



Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government

**Section 261A of the Planning and Development Act,
2000 and related provisions**

Guidelines for Planning Authorities

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1. Introduction

A number of new legislative provisions in relation to quarries have recently been commenced. These provisions are contained chiefly in the **Planning and Development (Amendment) Act 2010** and the **Environment (Miscellaneous Provisions) Act 2011**, relevant provisions of which were commenced on 15 November 2011. The purpose of these Guidelines is to provide an overview of these changes and to provide guidance on their implementation. These Guidelines are issued by the Minister for the Environment, Community and Local Government to planning authorities and An Bord Pleanála (the Board) pursuant to section 28 of the Planning and Development Act 2000, as amended.

2. Background and brief overview

2.1 Curtailment of retention application

The European Court of Justice (ECJ) decision in case C-215/06 in July 2008 necessitated the removal of the facility to apply for retention permission from developments which require environmental impact assessment under the Environmental Impact Assessment (EIA) Directive except in exceptional circumstances. Section 23(c) of the Planning and Development (Amendment) Act 2010 therefore amended section 34(12) of the 2000 Act to provide that a retention application cannot be accepted by a planning authority for a development which would have required environmental impact assessment (EIA), a determination as to whether EIA was required (i.e. screening for EIA), or an appropriate assessment under the Habitats Directive¹ (since such an assessment is also required prior to permission for a proposed development). If none of these is required, a retention application may be submitted as heretofore. Section 23(c) of the 2010 Act was commenced on 31 March 2011, but planning authorities and the Board had been requested to cease accepting retention applications in respect of developments which would have required EIA in Circular Letter PD 6/08 of 8 October 2008.

2.2 Substitute consent

The ECJ ruling referred to above, did, however, allow EU Member States to provide for the regularisation of developments requiring EIA in exceptional circumstances. Accordingly, section 57 of the Planning and Development (Amendment) Act 2010, in inserting a new Part XA into the 2000 Act, makes provision for a substitute consent process for the regularisation of certain developments coming within the scope of the EIA or Habitats Directives in situations where a Court has found that there was a procedural error in the original consent or where the Board grants leave to a developer to apply for substitute consent in other exceptional circumstances. In deciding whether to grant leave to apply for substitute consent, the Board must consider a number of matters, including whether regularisation of the development concerned would circumvent the EIA Directive or the Habitats Directive and whether the applicant could reasonably have had a belief that the development was not unauthorised.

¹ Provisions in relation to appropriate assessment of proposed developments and draft plans are introduced by Section 57 of the 2010 Act which inserts a new Part XAB.

If, following a Court judgement, a planning authority serves notice on a developer requiring an application for substitute consent to be lodged, or the Board grants leave to a developer to apply for substitute consent, the application shall be made to the Board and must be accompanied by a remedial Environmental Impact Statement (EIS) and/or a remedial Natura Impact Statement (NIS), or both, as the case may be. The planning authority will be required to submit a report to the Board providing information about the development, including relevant development plan provisions and details of any enforcement history.

Because of the necessarily restrictive conditions governing the substitute consent process, it is unlikely that there will be many applications pursuant to the new provisions. Insofar as such applications are permissible, it is important to note that there is no presumption that substitute consent will be granted, in which case the development remains unauthorised and may be liable to enforcement action.

The substitute consent provisions were commenced on 21 September 2011.

2.3 “Sunset” provisions for certain quarry developments requiring EIA/appropriate assessment

A special provision was made for quarries in that it was provided that, for a very limited period, certain quarries with retention/EIA/Habitats issues will be permitted (and in fact required) to apply for substitute consent without having to prove exceptional circumstances. This is a last opportunity for certain quarries with legal issues/operating beyond their consent to regularise their status.

Under section 75 of the 2010 Act, which inserts a new section 261A into the 2000 Act, each planning authority will be asked to determine which quarries in its administrative area would, having regard to the dates of implementation of the EIA Directive and the Habitats Directive, respectively, have required an EIA, a determination in relation to EIA, or an appropriate assessment in relation to possible effects on the integrity of a European site, but which were not subject to such assessment/determination. Where a planning authority determines that a quarry comes within this category, the planning authority will then be required to make a further decision in relation to the planning status of the quarry, including registration status. Flowing from this decision, the planning authority will then either require an application for substitute consent or take enforcement action requiring the quarry to cease operations. The determination of the planning authority that EIA, a determination in relation to EIA, or an appropriate assessment were required but not carried out/made is reviewable by the Board as is the decision on the planning/registration status.

Section 261A was inserted into the Planning Act by section 75 of the Planning and Development (Amendment) Act 2010. Some small amendments to the section were made in Regulation 16 of the European Union (Environmental Impact Assessment and Habitats) Regulations 2011 (S.I. 473 of 2011). Both became operational on 15 November 2011. A consolidated version of section 261A is set out at Appendix 1 of to this note. Section 261A is covered in detail in Para. 3 of these Guidelines.

Other legislative amendments affecting quarries are the amendments to section 261 of the Act and to a number of the enforcement provisions of the Act: these are dealt with in Para. 4 and Para. 5 respectively of these Guidelines.

3. Section 261A of the Planning and Development Act, 2000

3.1 Section 261A(1): Public notice

Within 4 weeks of the commencement of section 261A, each planning authority must publish a notice in a newspaper and on its website stating its intention to examine every quarry in its area to determine whether development was carried out which would have required EIA, a determination as to whether EIA would have been required, or an appropriate assessment under the Habitats Directive. The notice must inform the public that where the planning authority determines such an assessment or determination was required but was not carried out and that where the planning authority further decides that the quarry commenced operation prior to 1964, or was granted permission, and fulfilled the requirements in relation to registration under section 261 in 2004/05 if required to do so², the quarry will be required to apply for substitute consent. However where the planning authority decides that the quarry commenced after 1 October 1964 and never obtained planning permission or failed to fulfil the requirements in relation to registration, (if applicable), the planning authority will serve an enforcement notice under section 154 of the 2000 Act requiring the cessation of operations and taking of such steps as the planning authority considers appropriate. The notice will also explain that enforcement action will also be taken if the quarry undertook unauthorised development after 3 July 2008 (the date of the ECJ ruling in case C-215/06) which would have required EIA, a determination as to whether EIA was required, or appropriate assessment, but where such were not carried out.

The notice will advise members of the public that they may make written submissions in relation to any quarry in the administrative area within 6 weeks of the date of the notice, without payment of a fee, and that a copy of any notice served on a quarry owner/operator (whether in relation to substitute consent or in relation to enforcement) will be given to any person making a submission in relation to that quarry, and that the quarry owner/operator, and the person who made the submission, will have the right to ask the Board to review the determination and decision of the planning authority contained in the notice.

It would be advisable for planning authorities to use the exact wording in subsection (1) for the public notice. It is also recommended that the public notice would advise members of the public that submissions made may be made available for inspection and to advise that because the 6 week period referred to above includes Christmas 2011, the period of 6 weeks for receipt of submissions or observations will be extended by 9 days.

² Quarries granted permission in the 5 years prior to the coming into operation of section 261 were not required to register.

3.2 Section 261A(2): Determination in relation to EIA/appropriate assessment

3.2.1 General

Under subsection (2)(a), as amended by Regulation 16 of the European Union (Environmental Impact Assessment and Habitats) Regulations 2011 (SI 473 of 2011), a planning authority is required to examine each quarry in its administrative area to determine whether

“(i) development was carried out after 1 February 1990 which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment or a determination as to whether an environmental impact assessment was required, but that such an assessment or determination was not carried out or made, or

(ii) development was carried out after 26 February 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out.”

The first task will be to compile a complete list – ideally on a GIS map - of all quarry developments within the area of the PA, based on every available source of data, such as:

- ❑ The planning register, in relation to permissions granted,
- ❑ The section 261 register (showing the position as of 2004/2005),
- ❑ Planning enforcement records,
- ❑ Information from members of the public, including any submissions received in response to the public notice,
- ❑ Rateable valuation records,
- ❑ Aerial photos or maps (if available), and
- ❑ Local knowledge from planning authority staff, particularly staff dealing with specific areas within a county.

A planning history file should be opened for each quarry.

A planning authority will have a maximum of 9 months from the date of commencement of section 261A, 15 November 2011, to make the determination referred to above and also to make the decisions under subsections (3), (4) and (5), where required, and to serve the notices on the quarry owners or operators under subsections (3), (4) and (5), where required. It should be noted this 9 month period, and all periods referred to in section 261A which include Christmas 2011, is extended by 9 days by virtue of the decision in Browne v Kerry County Council (2007 713 JR, decision 9 October 2009).

3.2.2 Development after 1 February 1990/26 February 1997?

Making the determinations referred to above will require a planning authority to firstly make the best assessment it can of the scale of the development that has taken place after 1/2/1990 in relation to the EIA Directive and after 26/2/1997 in relation to the Habitats Directive.

3.2.3 Whether post 1990 and/or post 1997 development is authorised?

When the planning authority has made an assessment of the amount of development that has taken place since 1 February 1990 and/or 26 February 1997 in the case of any quarry, it must

decide whether EIA/appropriate assessment would have been required in respect of this development, but was not carried out.

The first point to note here is that if the development carried out after 1/2/1990 was **authorised** by a planning permission granted prior to 1/2/1990 EIA is not required in respect of such development under the Directive because the Directive does not apply in respect of projects authorised before the Directive became operative. Any development which obtained planning permission before the EIA Directive came into effect and is operating in accordance with the terms of its planning permission is not affected by the Directive and does not require EIA under the terms of the Directive. Similarly appropriate assessment is not required in respect of development authorised by a planning permission granted prior to 26 February 1997. Obviously therefore the planning register should be checked to find out whether any planning permission or permissions were granted in respect of the quarry, and what is the extent of the development authorised by the permission(s). Where it is established that any post-February 1990 development is authorised by a pre-February 1990 planning permission, or that any post-February 1997 development is authorised by a pre-February 1997 planning permission no further action is required in respect of that quarry under section 261A.

The second point to note is that any quarry which applied for and obtained planning permission under section 261(7) will not be caught by this subsection, in respect of the EIA requirement, unless there has been recent further development in the quarry, which was not authorised by the permission granted under section 261(7) and which would require EIA or appropriate assessment.

Where the quarry has not got a planning permission it will necessary to decide, and this is the third point, whether the post-1990 and/or post-1997 development was authorised by a bona fide pre-1964 use and so might be said to have a “pre-1964 authorisation”. Obviously the first step here is establishing whether the quarry commenced prior to 1 October 1964. Planning authorities will already have looked at the pre- or post-1964 status of quarries in the registration process which took place in 2004-2005 and accordingly information gleaned as part of this process should be the first port-of-call. However, other sources of information (see 3.2.1 above) should also be checked; planning authorities are, of course, required to consider submissions made in the 6-week period following the public notice published under subsection (1).

Where the authority is satisfied that the quarry commenced prior to 1 October 1964 it must then further decide whether the post-1990/post 1997 development referred to above could reasonably have been envisaged in 1964 and so may be deemed to be authorised on the basis of its pre-1964 use: the courts have held that a quarry which commenced prior to 1 October 1964 may lawfully complete the quarrying which would have reasonably been envisaged when the quarry commenced. However, where the post 1990 development comprised quarrying in a direction that would not have been anticipated in 1964, this part of the quarry cannot be regarded as covered by the pre-1964 authorisation.

In determining whether post-1990 development was authorised by a *bona fide* pre-1964 use, the questions of intensification and abandonment may also be relevant. Where a pre-1964 quarry intensified post-1964 to such an extent that a material change of use took place, this essentially changed operation would not be deemed to be covered by the pre-1964 authorisation. Similarly,

where a quarry which commenced pre-1964 became abandoned, in the legal sense, and recommenced at some point post-1964 without obtaining planning permission, this quarry cannot be regarded as being covered by the pre-1964 authorisation. “Abandonment” was defined in the case of *Dublin Co. Council v. Tallaght Block Co. Ltd.* (1982) as “where a previous use of land has not merely been suspended for a temporary and determined period but had ceased for a considerable time, with no evidenced intention of resuming it at any particular time”: the intention to abandon is therefore crucial.

Where a permission was granted post 1 February 1990, or post 26 February 1997 for a quarry, the quarry may have already been subject to an environmental impact assessment and or appropriate assessment. However the planning authority should check whether there has been subsequent development in the quarry which was not authorised by or consistent with the permission granted.

3.2.4 Environmental impact assessment

Where a planning authority has determined that there has been post-1990 development which was not authorised by a planning permission or a pre-1964 authorisation (or which is not authorised by a permission granted under section 261(7)), the planning authority must then decide whether this post-1990 unauthorised development would have required EIA. In deciding whether EIA was required it will be necessary to refer to the relevant thresholds in place at the time the development was carried out and to decide whether, had an application for planning been made at the time, it would have required the submission of an EIS, having regard to the law in place at that time.

The EIA Directive was transposed, insofar as quarries are concerned, by the European Communities (Environmental Impact Assessment) Regulations, 1989 (S.I. No. 349 of 1989) and the Local Government (Planning and Development) Regulations, 1990 (S.I. No. 25 of 1990), making EIA mandatory for new quarries in excess of 5 hectares.

The second EIA Directive in 1997, 97/11/EC, introduced a requirement for EIA of changes or extensions to projects already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment.

This was transposed into Irish law in the European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1999, (S.I. No. 93 of 1999), which became operative on 1st May 1999, as

“Any change or extension of development which would—

(i) result in the development being of a class listed in Part I or paragraphs 1 to 12 of Part II of this Schedule, and

(ii) result in an increase in size greater than—

25%, or

an amount equal to 50% of the appropriate threshold,

whichever is the greater”.

This means that after that date mandatory EIA was required for the extension of a quarry which brought the total quarry to in excess of 5 hectares and represented an increase of over 25% of the existing quarry, provided that the extension in itself exceeded 2.5 hectares.

It should be noted that the term extension does not include the normal further development of a quarry within its authorisation (whether a planning permission or a “pre-1964 authorisation”).

3.2.5 Sub-threshold EIA

The thresholds are not the only matter to which planning authorities should have regard when deciding whether quarry development would have required EIA. Planning authorities must also consider the matter of environmental impacts. The “criteria for determining whether a development would or would not be likely to have significant effects on the environment” – now set out in the Schedule 7 to the Planning and Development Regulations, 2001, as amended – were introduced into the planning code in European Communities (Environmental Impact Assessment) Regulations, 1989 (S.I. No. 349 of 1989) (to transpose the addition of Annex IV to the 1985 Directive in Directive 97/11/EC) and should be applied in the case of development which took place after that date. These criteria can also be a guideline in respect of development before that date. The Department’s *Environmental Impact Assessment Guidance for Consent Authorities regarding Sub-threshold Development* of 2003 will be of assistance in this regard.

3.2.6 Determination in relation to EIA

It will be noted that the requirement under section 261A(2)(a) is to determine not only whether post-1990 development would have required EIA, but whether it would have required *a determination as to whether EIA was required*. As has been stated above, section 34(12) of the 2000 Act has been amended to remove the possibility of retention permission not only for developments which exceed EIA thresholds but also for developments which would have required a determination as to whether EIA was required (i.e. screening). Section 261A therefore also provides that a quarry development which would have required a determination as to whether EIA was required is treated in the same way as a quarry which would have required EIA. In making this determination (that is, as to whether a quarry development would have required a determination as to whether EIA was required) it is suggested that planning authorities decide whether the need for EIA could be ruled out without any substantial screening; where the need for EIA can be ruled out in this way it is clear that the development did not require a determination as to whether EIA was required. This would not be the case however where it is necessary to carry out a substantial assessment in order to decide if EIA was required, such as might be the case in developments close to the relevant thresholds or located in sensitive sites. In this regard the recent amendments to articles 103 and 109 of the Regulations³, which deal with the matter of screening, by planning authorities and the Board respectively, of planning applications for Schedule 5 sub-threshold development are relevant. Article 103 now reads:

“Where a planning application for sub-threshold development is not accompanied by an EIS, and the likelihood of significant effects on the environment cannot be excluded by the planning authority, the planning authority shall make a determination as to whether the development would be likely to have significant effects on the environment....”.

³ See Articles 14 and 17 of the Planning and Development (Amendment) (No.3) Regulations 2011 (SI 476 of 2011).

In other words, where the likelihood of significant effects on the environment can be excluded on the face of it, a screening for EIA is not required.

3.2.7 Appropriate assessment

A similar approach is required to the appropriate assessment question. Where the planning authority has determined that development has taken place after 26 February 1997 which was not authorised either by a planning permission granted prior to this date or by a “pre-1964 authorisation” it must then determine whether such development should have been subject to an appropriate assessment as to its possible adverse effects on the integrity of a European site. Planning authorities should refer to the Department’s *Guidance for Planning Authorities on Appropriate Assessment of Plans and Projects in Ireland*, December 2009.

It is important to note that in making a determination as to whether an appropriate assessment was required planning authorities should do so on the basis of the designations (cSAC, SPA, etc) in place at the time the development was carried out.

3.2.8 The determination

In making its determination under subsection (2) the planning authority must have regard to:

- ❑ submissions made within the permitted period;
- ❑ any information submitted to it in connection with the section 261 process;
- ❑ relevant information on the planning register;
- ❑ any relevant information obtained in enforcement actions against the quarry and
- ❑ any other relevant information

(section 261A(2)(b)).

In relation to submissions, these should be made available for inspection as soon as possible after receipt thereof – see also Para. 3.9 below.

The planning authority should document the reasons for its determination under subsection (2)(a). It will be required to give reasons for its determination where a notice is issued, and, in the event of a review (which can only take place in the event of a planning authority determination that EIA, a determination in relation to EIA, or an appropriate assessment was required but not carried out/made) will have to forward to the Board all the records/documentation on which its determination was based. Where the planning authority determine that EIA, screening, or appropriate assessment were not required but not carried, it should also make this determination and the reasons for it, available for inspection on request.

Where the determination of the planning authority is -

- ❑ that post-1990 development that would have required EIA or a determination in relation to EIA, without such EIA or determination in relation to EIA being carried out or made, did not take place, **and**

- that post-1997 development that would have required appropriate assessment without such appropriate assessment being carried out, did not take place,

no further action will be required **under section 261A** and therefore a notice will not be issued by the planning authority under subsection (3)(a), (4)(a) or (5)(a). However, while the immediate priority for the planning authority will be the implementation of section 261A, the planning authority should also ensure that unauthorised quarries, even if they do not require EIA/appropriate assessment, are regularised. Such unauthorised quarries will be permitted to apply for retention. The removal of the 7-year time limit means that enforcement action may be taken to require the cessation of quarries no matter when they commenced.

3.3 Section 261A(3): Decision of the planning authority and issue of notice under subsection (3)

Where the planning authority has made a determination under subsection (2)(a) in respect of a quarry that EIA, a determination in relation to EIA, or an appropriate assessment was required but not carried out/made, it must also decide the following in respect of the quarry:

- (a) whether the quarry at some stage obtained planning permission or whether it commenced operation prior to 1 October 1964 and
- (b) whether the quarry fulfilled the requirements in relation to registration under section 261 (if required to do so).

In relation to (a), the planning authority will already have examined whether the quarry obtained a permission, or commenced prior to 1 October 1964, in making the determination under subsection (2)(a).

It is important to note at this point that in order to fulfil the requirement at (a), the quarry just has to have commenced prior to 1964 – it does not have to be operating under a “pre-1964 authorisation” as outlined above: if the quarry was deemed, in respect of post-1990/post-1997 development as appropriate, to be operating under a “pre-1964 authorisation” it would not have been found to have required environmental impact assessment/screening/appropriate assessment in the first place and it would not therefore have been subject to a determination under subsection 2(a).

Similarly in relation to the permission question, the requirement is just that a planning permission was granted at some stage, the requirement is not for the permission to be current, or for the development to be in accordance with the permission.

In relation to (b), it may be noted that the requirement is to have fulfilled the requirements in relation to registration as opposed to having “registered”. It is understood that there may have been a very small number of cases where the registration of a quarry was not actually completed due to an error on the part of the planning authority. In any such case the planning may now consider whether or not the owner or operator fulfilled the requirements imposed on him/her by section 261.

In making the decision in relation to (a) and (b) above, the planning authority must, as when making the determination under subsection 2(a), have regard to submissions made within the period permitted and all other relevant information available to it (subsection 3(b)).

Where the planning authority decide the answer to questions (a) and (b) above is in the affirmative, it is required (subject to subsection (5)), to issue a notice to the owner or operator within 9 months from the date of commencement of section 261A, requiring him or her to apply for substitute consent in respect of the unauthorised development. It is recommended that the planning authority issue the notice to both the owner and operator of the quarry, where both are known. Where the planning authority has determined, however, that the development the subject of the determination took place after 3 July 2008, subsection (3) does not apply and the quarry will fall to be dealt with under subsection (5), i.e. intention to issue an enforcement notice will be signalled (see Para. 3.5 below).

It is important to note that the answer to both questions above must be in the affirmative before a notice requiring an application for substitute consent can issue – if a quarry commenced pre-October 1964 or obtained a planning permission but did not fulfil the requirements in relation to registration, it will not be permitted to apply for substitute consent. Similarly, a quarry which fulfilled the requirements in relation to registration will be permitted to apply for substitute consent only if it either obtained a permission at some stage or commenced operation before 1 October 1964.

The notice must inform of the determination under subsection (2)(a) that EIA, a determination in relation to EIA, or an appropriate assessment was required but not carried out/made and of the decision made under subsection (3)(a). The notice should:

- ❑ state that it is a notice issued under section 261A(3)(a),
- ❑ be dated,
- ❑ include the name and address of the quarry owner or operator, clearly identify the quarry which is the subject of the notice and must inform the person in question that he/she is required to apply to the Board for substitute consent not later than 12 weeks after the date of the notice or such further period as the Board may allow (*it is important that the latter words are included in the notice*),
- ❑ inform the quarry owner or operator of his/her right to refer the determination and/or the decision of the planning authority referred to in the notice to the Board for review not later than 21 days after the date of the notice, and
- ❑ inform the person in question that the referral of the notice to the Board for review within the time permitted, by the person to whom it was issued, or by any other person entitled to be given a copy of the notice, will have the effect of suspending the operation of the notice until the review is disposed of by the Board.

It is recommended that the planning authority send a copy of the notice to persons who made submissions in relation to the quarry in question within the time permitted, as is required, on the same day as it issues the notice to the quarry owner or operator, with a covering letter dated with the same date. The covering letter should state that the attached notice has been issued to the quarry owner/operator and that the quarry owner/operator and the person to whom the letter is addressed may refer either the determination of the planning authority under subsection (2)(a)

(that EIA, a determination in relation to EIA, or an appropriate assessment was required but not carried out/made) or the decision of the planning authority under subsection (3)(a), to the Board for review not later than 21 days after the date of the notice. The notice should also inform the person in question that the referral of the notice to the Board for review will have the effect of suspending the operation of the notice until the review is disposed of by the Board.

The planning authority must also send a copy of the notice to the Board.

3.4 Section 261A(4): Decision by a planning authority and issue of notice under subsection (4)

Where the planning authority has made a determination under subsection (2)(a) that EIA, a determination in relation to EIA, or an appropriate assessment was required but not carried out/made and has also decided that the quarry commenced after 1 October 1964 but never obtained planning permission or it failed to fulfil the registration requirements under section 261, it must issue a notice under subsection (4)(a) informing the quarry owner/operator that it intends to issue an enforcement notice requiring the cessation of operation of this unauthorised quarry development and the taking of such steps as the authority considers appropriate. Again it is recommended that the planning authority issue the notice to both the owner and operator of the quarry, where both are known. The notice must be issued within 9 months of the commencement of section 261A. Where the planning authority has determined, however, that the development the subject of the determination took place after 3 July 2008, subsection (4) does not apply and the quarry will fall to be dealt with under subsection (5), and a notice will be issued under subsection 5(a).

In making the above decision, the planning authority must, as when making the determination under subsection 2(a), have regard to submissions made within the period permitted and all other relevant information available to it (subsection 4(b))

It is important to note that if the decision on either leg of the planning authority decision is in the affirmative, a subsection (4) notice must issue. Accordingly if a quarry is post-1964 but without planning permission, a subsection (4) notice must issue regardless of whether it fulfilled the requirements in relation to registration, and a subsection (4) notice must issue to all quarries which failed to fulfil the registration requirement under section 261, if captured under that section.

The notice should be stated to be a notice issued under section 261A(4)(a), and should inform the quarry owner or operator of the determination under subsection (2)(a) that EIA, a determination in relation to EIA, or an appropriate assessment was required but not carried out/made, and of the decision under subsection (4)(a). The other advice above relating to the subsection (3) notice is also relevant here.

Where no application is made to the Board for a review of the determination under subsection (2)(a) or the decision under subsection (4)(a) referred to in the notice, the planning authority must issue the enforcement notice as soon as possible after the expiration of the period for a review (see subsection (9)).

3.5 Section 261A(5): Determination by a planning authority and issue of notice under subsection (5)

Where the planning authority makes a determination under subsection (2)(a) that EIA, a determination in relation to EIA, or an appropriate assessment was required but not carried out/made, it must also make a further determination under subsection (5)(a): under this subsection the planning authority must determine whether development took place after 3 July 2008 (i.e. the date of the ECJ ruling in case C-215/06) which would have required an EIA, a determination in relation to EIA, or an appropriate assessment but such were not carried out/made. A planning authority will only make such a determination where the development that took place after 3 July 2008 would of itself have required EIA, a determination in relation to EIA, or an appropriate assessment. In this case the quarry owner/operator will not be permitted to apply for substitute consent but instead an enforcement notice will be issued by the planning authority requiring the cessation of the unauthorised quarry development.

In determining whether EIA would have been required in respect of post 2008 development, the same methodology applies as in making the subsection (2)(a) determination as set above, that is, ascertaining whether the post 2008 development in itself:

- brings the entire quarry to a size in excess of 5 hectares and
- represents an increase of over 25% on the pre-July 3 2008 development and
- is in itself in excess of 2.5 hectares

or

- would have significant effects on the environment.

The determination under subsection (5)(a) that development was carried out after 3rd July 2008 that would have required an EIA, screening or appropriate assessment, but such were not carried out, is reviewable by An Bord Pleanála. Accordingly, the quarry owner/operator may yet be permitted to apply for substitute consent in the event that Board on review sets aside the planning authority determination under subsection 5(a) that EIA, screening or appropriate assessment were required but were not carried out: whether he/she would be permitted to apply for substitute consent in this scenario would depend on the decisions on the pre-1964, permission status and registration questions, therefore the planning authority is required to make decisions on these questions at this point.

Again submissions received within the permitted period and all other relevant information must be considered by the planning authority – section 5(b).

Where the planning authority makes a determination under subsection (5)(a) that EIA, screening or appropriate assessment were required but not carried out, it must issue a notice to the quarry owner/operator, within 9 months of the commencement of the section, informing him/her that it intends to issue an enforcement notice. Again it is recommended that the planning authority issue the notice to both the owner and operator of the quarry, where both are known. The notice should be stated to be a notice under section 261A(5)(a). The other advice above in relation to the notice under subsection (3)(a) also applies.

Where no application is made to the Board for a review of the determination under subsection (2)(a) or subsection (5)(a) set out in the notices issued under those subsections, the planning authority must issue the enforcement notice as soon as possible after the expiration of the period for a review (see subsection (11)).

3.6 Section 261A(6): Application to the Board for a review

A quarry owner/operator who has been issued with a notice under subsection (3)(a) (requiring an application for substitute consent), subsection (4)(a) or (5)(a) (informing him/her that an enforcement notice will be issued) may apply to the Board for a review of a determination or decision referred to in a notice issued to him/her (under subsection (3)(a), 4(a) or 5(a) as appropriate).

The application must be made not later than 21 days after the date of the notice. There is no fee for seeking a review.

Similarly, any person who was given a copy of the notice under subsection (3)(d), 4(d) or (5)(d) may apply to the Board for such a review.

When the Board receives an application for a review, it will inform the planning authority and will ask the authority to submit to it whatever information and documentation it considers necessary.

Any person may make submissions to the Board, without charge, within the 3 week period for applying for a review. As the 3 week period for applying for a review is the same 3 week period for making a submission on a review, persons may make submissions to the Board in that period, in anticipation of an application for a review: obviously the Board should hold such submissions until it is known whether an application for a review is being made, and in the event that such application is made, any submissions will fall to be considered.

The Board in deciding on a review must consider any documents submitted by the person who applied for the review, any submissions or observations received within the 3 week period referred to and the information furnished by the planning authority.

The Board must decide whether to confirm or to set aside the determination or decision or both of the planning authority which has been referred to it for a review. It is required to do so as soon as possible.

3.7 Section 261A(7) - (13): Outcomes of application to the Board for a review

The following is the effect of the possible decisions of the Board in relation to a review:

- A. Where the Board sets aside the determination of the planning authority under subsection (2)(a) that EIA, a determination in relation to EIA, or appropriate assessment were required but not carried out, no further action is required by the planning authority *under section 261A*. A notice issued under subsection (3)(a) requiring an application for substitute consent ceases to have effect (section 261A(6)(h)) and there is no requirement

on the planning authority to issue an enforcement notice pursuant to a subsection (4)(a) or a subsection (5)(a) notice.

B. Where the Board does not set aside the determination of the planning authority under subsection (2)(a) that EIA, a determination in relation to EIA, or appropriate assessment were required but not carried out - either because it confirms the planning authority determination or because the determination was not referred to it for review - the following are the possible outcomes of an application for review:

- The Board confirms the decision of the planning authority under subsection (3)(a) that the quarry commenced pre-October 1964/obtained planning permission and fulfilled the requirements in relation to registration. In this case the quarry owner/operator must proceed to apply for substitute consent (*see subsection (7)*).
- The Board sets aside the decision of the planning authority under subsection (3)(a) that the quarry commenced before 1 October 1964/obtained planning permission and fulfilled the requirements in relation to registration. In this case the notice issued under subsection (3) requiring an application for substitute consent ceases to have effect and the planning authority must issue an enforcement notice (*see subsection (8)*). It is important to note that the decision under subsection (3)(a) is a complete decision and if the Board sets aside any part of it (i.e. as to either the planning status or the registration status), the entire decision is set aside and an enforcement notice must issue.
- The Board confirms the decision of the planning authority under subsection (4)(a) that the quarry commenced after 1 October 1964 and did not obtain planning permission **or** is not registered. In this case the planning authority must issue an enforcement notice as soon as possible (*see subsection (9)*).
- The Board sets aside the decision of the planning authority under subsection (4)(a) that the quarry commenced after 1 October 1964 and did not obtain planning permission **or** is not registered. In this case the planning authority will issue a notice to the quarry owner/operator, requiring him/her to apply for substitute consent – *see subsection (10)*. It is important to note that in such a case the following conditions must be satisfied, after a review of a subsection (4)(a) notice, before the quarry owner/operator will be permitted to apply for substitute consent:
 - either there was no review of a planning authority decision under subsection (4)(a) that the quarry commenced pre-October 1964 or obtained planning permission or the Board on review confirmed that decision,

and

- either there was no review of a planning authority decision under subsection (4)(a) that the quarry fulfilled the requirements in relation to registration or the Board on review confirmed that decision.
- The Board confirms the determination of the planning authority under subsection (5)(a) that development was carried after 3 July 2008 that would have required an EIA, a determination in relation to EIA, or an appropriate assessment, but such were not carried out/made. In this case the planning authority must issue an enforcement notice as soon as possible (*see subsection 11*).
- The Board sets aside the determination of the planning authority under subsection (5)(a) that development was carried after 3 July 2008 that would have required an EIA, a determination in relation to EIA, or an appropriate assessment, but such were not carried out/made. In this case the quarry owner will be permitted to apply for substitute consent only if he has the 2 “positive decisions”, in relation both to planning status and registration status: otherwise, an enforcement notice must issue.

Subsection (12) therefore, provides that an application for substitute consent will be required, in this scenario, where:

- either there was no review of a planning authority decision under subsection (5)(a) that the quarry commenced before October 1964 or obtained planning permission, or the Board on review confirmed that decision

and

- either there was no review of a planning authority decision under subsection (5)(a) that the quarry fulfilled the requirements in relation to registration or the Board or the Board on review confirmed that decision.

Subsection (13), however, provides that the planning authority must issue an enforcement notice in this scenario where:

- either there was no review of a planning authority decision under subsection (5)(a) that the quarry commenced after 1 October 1964 and did not obtain planning permission or the Board on review confirmed that decision

or

- either there was no review of a planning authority decision under subsection (5)(a) that the quarry did not fulfil the requirements in relation to registration or the Board on review confirmed that decision.

3.8 Where notice not required to be issued under section 261A

Obviously, many quarries which are not subject to a determination under subsection (2)(a) that EIA, a determination in relation to EIA, or appropriate assessment were required but not carried out/made will be operating lawfully in that they are registered if required to do so and are operating within the terms of a permission granted or with the benefit of a pre-1964 use. Other quarries not subject to such subsection (2)(a) determinations may be unauthorised on the basis that they are:

- ❑ Post 1964 and never obtained permission or
- ❑ Failed to register if required to do so.

Such quarries will still be permitted to apply for retention as they are not affected by section 34(12) as amended. However, if they do not apply for and obtain retention permission, appropriate enforcement action should be taken and the amendments to section 157 and 160 (sections 28 and 29 of the Environment (Miscellaneous Provisions) Act 2011, commenced 15 November 2011) will facilitate the taking of such action.

Any quarry which is operating having been refused a permission under section 261(7) should be required to cease operations. Such a quarry is not covered by section 261A (because EIA will have been carried out) and it will not be eligible to apply for retention.

3.9 Availability of records/documents

The documents in relation to the section 261A process will of course be subject to the Freedom of Information Acts and it is recommended that there should be as much transparency as possible in the relation to the process and that all documents should be made available unless there was some compelling reason for not doing so. Analogous to the manner in which the transparency of planning application documents is provided for in section 38 of the Planning Act, it is recommended that submissions would be made available for inspection as they are received. Other documents on the file should be made available within a few days of the date of the notice issued under subsection (3), (4) or (5) as appropriate (or where no notice is issued, the date of the determination under subsection (2)), at the latest.

4. Amendments of section 261

As planning authorities are aware, there were some potential enforcement difficulties in relation to section 261. Accordingly, the following amendments were made in the 2010 Act (see section 74): these amendments were commenced on 15 November 2011.

It is now specifically provided that failure to comply with conditions imposed under section 261(6)(a)(i) renders the development unauthorised, notwithstanding any other provision in the Act.

It is also specifically provided that a quarry

- ❑ in respect of which the owner or operator failed to apply for permission having been required to do under section 261(7), or

- ❑ which continued to operate having been refused permission under section 261(7), or
- ❑ which is operating in breach of conditions attached to a permission granted pursuant to a section 261(7) application,

is unauthorised development, notwithstanding any other provision in the Act.

Subsection (10) which deals with failure to register or to supply further information has also been amended to facilitate enforcement by the addition of the words “notwithstanding any other provision in the Act”.

The other change is to section 261(8) which introduces compensation for conditions attached to a pre-1964 quarry. No such provision was included in the section, which had made provision for compensation for additional conditions attached to a planning permission, or for quarries refused permission/granted permission with conditions, under S.261(7). It was unclear why this was omitted and it was considered equitable to make the amendment in question.

In relation to quarries not affected by the provision of section 261A, the above amendments will enable enforcement action to be taken in relation to the section 261 process.

The new section 261A process will in some cases render the section 261 process irrelevant. For instance there may be many quarries who had conditions imposed under section 261(6)(a)(i) and are operating in compliance with such conditions but which will now be required to make an application for substitute consent because they are now the subject of a determination under section 261A(2)(a) that environmental impact assessment/screening/appropriate assessment were required but not carried out. There may also be quarries which had conditions imposed under section 261(6)(a)(i) which are now deemed, either by a planning authority or the Board, not to have commenced prior to 1 October 1964 and may therefore have enforcement notices served on them.

5. Other provisions relevant to quarries

5.1 Amendment of sections 157 and 160

Sections 47 and 48 of the 2010 Amendment Act amended sections 157 and 160 respectively of the 2000 Act to modify the 7 year limitation on the taking of enforcement actions against unauthorised quarries and peat extraction. It was subsequently considered that the amending sections did not achieve the policy aims intended and the sections were not therefore commenced and were repealed in section 42 of the Environment (Miscellaneous Provisions) Act 2011 (section 42 commenced 15 September 2011). Sections 157 and 160 were amended by sections 28 and 29 of the Environment (Miscellaneous Provisions) Act 2011, commenced 15 November 2011.

The amended section 157 (section 28 of Environment (Miscellaneous Provisions) Act 2011) provides that notwithstanding the general 7 year limitation on enforcement action, a warning letter or enforcement notice may issue at any time in respect of unauthorised quarry development or unauthorised peat extraction development in a case where-

(i) no permission for the development was granted and the development commenced not more than 7 years prior to 15 November 2011 (i.e. the development commenced after 15 November 2004) or;

(ii) where permission for the development was granted and the duration of the permission expired not more than 7 years prior to 15 November 2004 (i.e. the permission expired after 15 November 2004).

This means that in the case of any quarry which commenced after 15 November 2004 or whose permission expired after 15 November 2004, the 7 year limitation on enforcement is entirely abolished. Such a quarry will never achieve immunity from enforcement action in respect of unauthorised activity.

A further amendment provides that notwithstanding the general 7 year limitation, and notwithstanding the provision described in the previous paragraphs, a warning letter or enforcement notice may issue at any time to require any unauthorised quarry development or unauthorised peat extraction development to cease and proceedings for an offence under section 154 may issue at any time in relation to an enforcement notice so issued.

This means that in the case of any quarry, including a quarry which commenced on or before 15 November 2004 or whose permission expired on or before 15 November 2004, proceedings may be taken to require unauthorised quarrying to cease: the power given here does not extend to prosecuting the quarry owner/operator for the offence of unauthorised development or to requiring the remediation of the site. The effect of this provision is that, in the case of quarries which had under previous provisions achieved immunity from enforcement action prior to new provisions taking effect, action may be taken to require the cessation of operations. It was considered a provision abolishing the immunity entirely for quarries which had achieved the immunity, and to permit criminal prosecution or a requirement to remediate the site, would be vulnerable to challenge on constitutional grounds.

Section 29 of the Environment (Miscellaneous Provisions) Act makes similar amendments to section 160 in relation to the seeking of injunctions.

5.2 Amendment of section 153

The 2000 Act already placed a number of obligations on planning authorities in relation to enforcement:

- ❑ Requirement to issue a warning letter, within 6 weeks, in relation to written complaints regarding unauthorised development, or other unauthorised development the planning authority becomes aware of (except in the case of trivial or minor development) – section 152(1) – (3);
- ❑ Requirement for warning letter to comply with section 152(4);

- ❑ Requirement to carry out an investigation as expeditiously as possible and to make a decision on whether an enforcement notice to be issued, that decision to be taken within 12 weeks of the warning letter if at all possible (section 153(1) and (2));
- ❑ Requirement, in making the above decision, to consider any submissions from the person to whom the warning letter was issued any other material considerations;
- ❑ Requirement to enter its decision as to whether to issue an enforcement notice in the planning register, including the reasons for that decision (section 154(4));
- ❑ Requirement to issue an enforcement notice as soon as possible in cases where it is decided to issue an enforcement notice following a warning letter and investigation (section 154(1)(a));
- ❑ Requirement to issue an enforcement notice as soon as possible, without issue of warning letter, in cases where urgent action is necessary (section 154(1)(a));
- ❑ Where an enforcement notice is served, requirement to inform any person who made a complaint under section 152 and any other person concerned within 2 weeks (section 154(2) and section 155(2)).
- ❑ Where it is decided not to issue an enforcement notice, requirement to inform any complainant under section 152, and any person to whom the warning letter was copied, of the decision within 2 weeks (section 154(2)).

Section 153 was amended by section 45 of the Planning and Development (Amendment) Act 2010, commenced 5 October 2010 and was further amended by section 27 of Environment (Miscellaneous Provisions) Act 2011, commenced on 21 September 2011. A copy of the section as amended is attached as Appendix 3.

The essential change is to requirement that, having carried out an investigation, a decision be made expeditiously as to whether to issue an enforcement notice. Now, where a planning authority at establishes, following an investigation that unauthorised development (other than development that is of a trivial or minor nature) has been or is being carried out and the person who has carried out or is carrying out the development has not proceeded to remedy the position, the authority is required to take further action i.e. issue an enforcement notice under section 154 or make an application pursuant to section 160, or both, unless there are compelling reasons for not doing so.

Therefore, where an investigation establishes that there is unauthorised development which is not trivial or minor, and the person concerned has not moved to remedy the position – e.g. by removing the development or modifying the development to the satisfaction of the planning authority, or by applying for retention permission or substitute consent⁴ - the planning authority must take further action unless there are compelling reasons for not doing so. This is a significant increase in the enforcement requirements on planning authorities: there will now have

⁴ in the event that the Board gave leave for such an application.

to be a compelling reason for not taking further action where such is warranted in view of extent/nature of the development and the unwillingness of the person responsible to rectify the situation. The Department may issue guidelines on the issue of “compelling reasons” in the light of experience with this amended provision.

Obviously section 153 does not apply only to quarries, but it will of course have relevance to quarries.

5.3 Amendment of section 156

Section 156 was amended by section 46 of the Planning and Development (Amendment) Act 2010 (commenced 19 August 2010) to increase the penalties for offences as follows:

- ❑ For summary conviction of an offence under sections 58(4), 63, 151, 154, 205, 230(3), 239 and 247, from £1,500 (€1,905) to €5,000;
- ❑ For summary conviction of continuation of the above offence from £400 (€508) per day to €1,500 per day;
- ❑ For summary conviction of an offence referred to in first bullet involving the construction of an unauthorised structure, minimum fine, from £500 (€635) to €2,500;
- ❑ For summary conviction of an offence under the Act other than an offence referred to in first bullet, from £1,500 (€1,905) to €5,000;
- ❑ For summary conviction for continuation of an offence under sections 46(11), 208(2)(b) or 252(9), from £400 (€508) per day to €1,500 per day.

Again these provisions have relevance beyond quarries.

5.4 Definition of quarry

Section 261(13) of the Act contains a definition of a quarry and of the operator of a quarry for purpose of that section. Section 261(13) gives quarry “the meaning assigned to it by section 3 of the Mines and Quarries Act 1965”. In drafting the 2010 amendments it was intended to remove both definitions from section 261 and place them instead in section 2, definitions for the purpose of the Act.

However while section 74(e) of the 2010 Act removed the definition of a quarry and the owner of a quarry from section 261, the provision inserting these definitions into section 2 was inadvertently omitted. (Section 74(e) was not therefore commenced). For this reason section 16 of the Environment (Miscellaneous Provisions) Act 2011 amended section 2 of the 2000 Act to insert these definitions. However it subsequently transpired that the Mines and Quarries Act 1965 had been repealed. Accordingly Regulation 3 of the European Union (Environmental Impact Assessment and Habitats) (No.2) Regulations 2011 (SI 584 of 2011), which came into operation on 15 November 2011, amended section 2 to insert the definition of a quarry that had been in the Mines and Quarries Act 1965. Because that definition had made reference to “minerals” and “a mine” it was also necessary to define these terms in section 2 of the Act. Section 74(e) of the 2010 Act has not been commenced.

Appendix 1

Section 261A of Planning and Development Act, 2000 as inserted by section 75 of the Planning and Development (Amendment) Act 2010 and amended by Regulation 16 of the European Union (Environmental Impact Assessment and Habitats) Regulations 2011

261A.— (1) Each planning authority shall, not later than 4 weeks after the coming into operation of this section, publish a notice in one or more than one newspaper circulating in its administrative area and on the authority's website, stating—

- (a) that it intends to examine every quarry in its administrative area to determine, in relation to that quarry, whether having regard to the Environmental Impact Assessment Directive and the Habitats Directive, one or more than one of the following was required but was not carried out—
 - (i) an environmental impact assessment;
 - (ii) a determination as to whether an environmental impact assessment is required;
 - (iii) an appropriate assessment,
- (b) that where the planning authority determines in relation to a quarry that an environmental impact assessment, a determination as to whether environmental impact assessment was required, or an appropriate assessment, was required but was not carried out and the planning authority also decides that—
 - (i) the quarry commenced operation prior to 1 October 1964, or permission was granted in respect of the quarry under Part III of the Planning and Development Act 2000 or Part IV of the Local Government (Planning and Development) Act 1963,

and

- (ii) if applicable, the requirements in relation to registration under section 261 of the Planning and Development Act 2000 were fulfilled,

the planning authority will issue a notice to the owner or operator of the quarry requiring him or her to submit an application to the Board for substitute consent, such application to be accompanied by a remedial environmental impact statement or a remedial Natura impact statement or both of those statements, as appropriate,

(c) that where the planning authority determines in relation to a quarry that an environmental impact assessment, a determination as to whether environmental impact assessment was required, or an appropriate assessment was required, but was not carried out and the planning authority also decides that —

(i) the quarry commenced operation on or after 1 October 1964 and no permission was granted in respect of the quarry under Part III of the Planning and Development Act 2000 or Part IV of the Local Government (Planning and Development) Act 1963,

or

(ii) if applicable, the requirements in relation to registration under section 261 of the Planning and Development Act 2000 were not fulfilled,

the planning authority will issue a notice to the owner or operator of the quarry informing him or her that it intends to issue an enforcement notice under section 154 requiring the cessation of the operation of the quarry and the taking of such steps as the planning authority considers appropriate,

(d) that where the planning authority determines in relation to a quarry that an environmental impact assessment, a determination as to whether an environmental impact assessment was required, or an appropriate assessment, was required but was not carried out and the planning authority also determines that the development in question was carried out after 3 July 2008, the planning authority will issue a notice to the owner or operator of the quarry informing him or her that it intends to issue an enforcement notice under section 154 requiring the cessation of the operation of the quarry and the taking of such steps as the planning authority considers appropriate,

(e) that submissions or observations may be made in writing to the planning authority in relation to any quarry in its administrative area, by any person, not later than 6 weeks after the date of the publication of the notice under paragraph (a), that no fee in relation to the making of the submissions or observations shall be payable and that such submissions or observations will be considered by the planning authority,

(f) that a copy of any notice that is issued to the owner or operator of a quarry under this section, directing him or her to apply to the Board for substitute consent or informing him or her that the planning authority intends to issue an enforcement notice under section 154 in respect of the quarry, shall be given to a person who, not later than 6 weeks after

the date of the publication of the notice under paragraph (a) made submissions or observations, and

- (g) that an owner or operator of a quarry to whom a notice is issued, and any person to whom a copy of such a notice is given, may apply to the Board for a review of a determination or a decision, or both, of the planning authority referred to in the notice and that no fee in relation to the application for a review shall be payable.
- (2) (a) Each planning authority shall, not later than 9 months after the coming into operation of this section examine every quarry within its administrative area and make a determination as to whether—
- (i) development was carried out after 1 February 1990 which development would have required, having regard to the Environmental Impact Assessment Directive, an environmental impact assessment or a determination as to whether an environmental impact assessment was required, but that such an assessment or determination was not carried out or made, or
 - (ii) development was carried out after 26 February 1997, which development would have required, having regard to the Habitats Directive, an appropriate assessment, but that such an assessment was not carried out.
- (b) In making a determination under paragraph (a), the planning authority shall have regard, to the following matters:
- (i) any submissions or observations received by the authority not later than 6 weeks after the date of the publication of the notice under subsection (1)(a);
 - (ii) any information submitted to the authority in relation to the registration of the quarry under section 261;
 - (iii) any relevant information on the planning register;
 - (iv) any relevant information obtained by the planning authority in an enforcement action relating to the quarry;
 - (v) any other relevant information.
- (3) (a) Where a planning authority makes a determination under subsection (2)(a) that subparagraph (i) or (ii) or both, if applicable, of that paragraph apply in relation to a quarry (in this section referred to as a

‘determination under subsection (2)(a)’), and the authority also decides that—

- (i) either the quarry commenced operation before 1 October 1964 or permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, and
- (ii) if applicable, the requirements in relation to registration under section 261 were fulfilled,

the planning authority shall issue a notice, not later than 9 months after the coming into operation of this section, to the owner or operator of the quarry.

(b) In making a decision under paragraph (a), a planning authority shall consider all relevant information available to it including any submissions or observations received by the authority not later than 6 weeks after the date of the publication of the notice under subsection (1)(a).

(c) A notice referred to in paragraph (a) shall be in writing and shall inform the person to whom it is issued of the following matters:

- (i) the determination under subsection (2)(a) and the reasons therefor;
- (ii) the decision of the planning authority under paragraph (a) and the reasons therefor;
- (iii) that the person is directed to apply to the Board for substitute consent in respect of the quarry, under section 177E, with a remedial environmental impact statement or remedial Natura impact statement or both of those statements, as the case may be, in accordance with the determination of the planning authority under subsection (2)(a), not later than 12 weeks after the date of the notice, or such further period as the Board may allow;
- (iv) that the person may apply to the Board, not later than 21 days after the date of the notice, for a review of the determination of the planning authority under subsection (2)(a) or the decision of the planning authority under paragraph (a), and that no fee in relation to either application for a review shall be payable.

(d) At the same time that the planning authority issues the notice to an owner or operator of a quarry, the authority shall—

- (i) give a copy of the notice to any person who not later than 6 weeks after the date of the publication of the notice under subsection (1)(a), made submissions or observations to the authority in relation to the quarry,
 - (ii) inform that person that he or she may, not later than 21 days after the date of the notice, apply to the Board for a review of the determination under subsection (2)(a) or the decision of the authority under paragraph (a) and that no fee in relation to either application for a review shall be payable, and
 - (iii) forward a copy of the notice to the Board.
- (4) (a) Where a planning authority makes a determination under subsection (2)(a) and the authority also decides that—
- (i) the quarry commenced operation on or after 1 October 1964 and no permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, or
 - (ii) if applicable, the requirements in relation to registration under section 261 were not fulfilled,
- the planning authority shall issue a notice, not later than 9 months after the coming into operation of this section, to the owner or operator of the quarry.
- (b) In making a decision under paragraph (a), a planning authority shall consider all relevant information available to it, including any submissions or observations received by the authority not later than 6 weeks after the date of the publication of the notice under subsection (1)(a).
 - (c) A notice referred to in paragraph (a) shall be in writing and shall inform the person to whom it is issued of the following matters:
 - (i) the determination under subsection (2)(a) and the reasons therefor;
 - (ii) the decision of the planning authority under paragraph (a) and the reasons therefor;
 - (iii) that the planning authority intends to issue an enforcement notice in relation to the quarry under section 154 requiring the cessation of the operation of the quarry and the taking of such steps as the authority considers appropriate;

- (iv) that the person may apply to the Board, not later than 21 days after the date of the notice, for a review of the determination under subsection (2)(a) or the decision of the planning authority under paragraph (a), and that no fee in relation to either application for a review shall be payable.
- (d) At the same time that the planning authority issues the notice to an owner or operator of a quarry, the authority shall—
- (i) give a copy of the notice to any person who not later than 6 weeks after the date of the publication of the notice under subsection (1)(a), made submissions or observations to the authority in relation to the quarry, and
 - (ii) inform that person that he or she may, not later than 21 days after the date of the notice, apply to the Board for a review of the determination of the planning authority under subsection (2)(a) or the decision of the planning authority under paragraph (a) and that no fee in relation to either application for a review shall be payable.
- (5) (a) Notwithstanding anything contained in subsection (3) or (4), where a planning authority makes a determination under subsection (2)(a) and the authority further determines that the development the subject of the determination under subsection (2)(a) took place after 3 July 2008, the authority shall also decide whether—
- (i) the quarry commenced operation before 1 October 1964 or permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, and
 - (ii) if applicable, the requirements in relation to registration under section 261 were fulfilled,
- and shall issue a notice not later than 9 months after the coming into operation of this section to the owner or operator of the quarry.
- (b) In making a decision under paragraph (a), a planning authority shall consider all relevant information available to it, including any submissions or observations received by the authority not later than 6 weeks after the date of the publication of the notice under subsection (1)(a).
- (c) A notice referred to in paragraph (a) shall be in writing and shall inform the person to whom it is issued of the following matters:

- (i) the determination of the planning authority under subsection (2)(a) and the reasons therefor;
 - (ii) the determination of the planning authority under paragraph (a) that the development the subject of the determination under subsection (2)(a) took place after 3 July 2008, and the reasons therefor;
 - (iii) the decision of the planning authority under paragraph (a) and the reasons therefor;
 - (iv) that the planning authority intends to issue an enforcement notice in relation to the quarry under section 154 requiring the cessation of the operation of the quarry and the taking of such steps as the authority considers appropriate;
 - (v) that the person may apply to the Board, not later than 21 days after the date of the notice, for a review of the determination of the planning authority under subsection (2)(a), the determination of the planning authority under paragraph (a), or the decision of the planning authority under paragraph (a), and that no fee in relation to any application for a review shall be payable.
- (d) At the same time that the planning authority issues the notice to an owner or operator of a quarry, the authority shall—
- (i) give a copy of the notice to any person who made submissions or observations to the authority in relation to the quarry not later than 6 weeks after the date of the publication of the notice under subsection (1)(a), and
 - (ii) inform that person that he or she may, not later than 21 days after the date of the notice, apply to the Board for a review of the determination under subsection (2)(a), the determination of the planning authority under paragraph (a) that the development the subject of the determination under subsection (2)(a) took place after 3 July 2008 or the decision of the planning authority under paragraph (a), and that no fee in relation to any application for a review shall be payable.
- (6) (a) A person to whom a notice was issued under subsection (3)(a), (4)(a) or (5)(a), or a person to whom a copy of such a notice was given under subsection (3)(d), (4)(d) or (5)(d), may not later than 21 days after the date of the notice so issued or given to him or her, apply to the Board for a review of one or more than one, of the following, referred to in the notice:

- (i) a determination under subsection (2)(a);
 - (ii) a decision of the planning authority under subsection (3)(a);
 - (iii) a decision of the planning authority under subsection (4)(a);
 - (iv) a determination of the planning authority under subsection (5)(a) that the development the subject of the determination under subsection (2)(a) took place after 3 July 2008;
 - (v) a decision of the planning authority under subsection (5)(a).
- (b) Where an application for a review is made to the Board under paragraph (a) any person may make submissions or observations not later than 21 days after the date of the notice issued under subsection (3)(a), (4)(a) or (5)(a), as the case may be.
- (c) Where an application for a review is made under paragraph (a), the Board shall inform the planning authority and shall request the planning authority to furnish to it such information as the Board considers necessary to make a decision in relation to the review, and the planning authority shall comply with that request within the period specified in the request.
- (d) The Board in making a decision on an application for a review under paragraph (a) shall consider any documents or evidence submitted by the person or persons who applied for the review, any submissions or observations received under paragraph (b) and any information furnished by the planning authority under paragraph (c).
- (e) The Board shall make a decision as soon as may be whether to confirm or set aside the determination or decision of the planning authority to which the application for a review refers.
- (f) As soon as may be after the Board makes its decision under paragraph (e) it shall give notice of its decision to the person or persons who applied for the review, and to the planning authority concerned, and the giving of the notice shall, for the purposes of this section be considered to be the disposal, by the Board, of the review.
- (g) The application to the Board for a review under paragraph (a) shall have the effect of suspending the operation of a direction contained in a notice issued under subsection (3)(a) until the review is disposed of.

(h) Where the decision of the Board is to set aside a determination under subsection (2)(a) a direction to apply for substitute consent contained in a notice issued under subsection (3)(a) shall cease to have effect.

(7) Where in relation to a quarry in respect of which a notice has been issued under subsection (3)(a)—

(a) either no application has been made to the Board for a review of a determination under subsection (2)(a) or the Board in making a decision in relation to such a review has confirmed the determination of the planning authority, and

(b) either no application has been made to the Board for a review of a decision of the planning authority under subsection (3)(a) or the Board in making a decision in relation to such a review has confirmed the decision of the planning authority,

the person to whom the notice was issued under subsection (3)(a) shall apply to the Board for substitute consent under section 177E not later than 12 weeks after the date of the giving of the notice of its decision under subsection (6)(f) by the Board, or such further period as the Board may allow, save that where no application for review was made to the Board the person to whom the notice was issued under subsection (3)(a) shall apply to the Board for substitute consent within the period specified in that notice.

(8) Where in relation to a quarry in respect of which a notice has been issued under subsection (3)(a)—

(a) either no application has been made to the Board for a review of a determination under subsection (2)(a), or the Board in making a decision in relation to such a review has confirmed the determination of the planning authority, and

(b) the Board in making a decision in relation to a review of a decision of the planning authority under subsection (3)(a) has set aside the decision of the planning authority,

the direction to apply for substitute consent contained in the notice issued under subsection (3)(a) shall cease to have effect and the planning authority shall, as soon as may be after the date of the giving of the notice of its decision by the Board under subsection (6)(f), issue an enforcement notice under section 154 requiring the cessation of the operation of the quarry and the taking of such steps as the planning authority considers appropriate.

(9) Where in relation to a quarry in respect of which a notice has been issued under subsection (4)(a)—

- (a) either no application has been made to the Board for a review of a determination under subsection (2)(a) or the Board in making a decision in relation to such a review has confirmed the determination of the planning authority, and
- (b) either no application has been made to the Board for a review of a decision of the planning authority under subsection (4)(a) or the Board in making a decision in relation to such a review has confirmed the decision of the planning authority,

the planning authority shall, as soon as may be after the expiration of the period for applying for a review or the date of the giving of the notice of its decision by the Board under subsection (6)(f), as the case may be, issue an enforcement notice under section 154 requiring the cessation of the operation of the quarry and the taking of such steps as the planning authority considers appropriate.

(10) Where in relation to a quarry in respect of which a notice has been issued under subsection (4)(a)—

- (a) either no application has been made to the Board for a review of a determination under subsection (2)(a) or the Board in making a decision in relation to such a review has confirmed the determination of the planning authority, and
- (b) the Board in making a decision in relation to a review of a decision under subsection (4)(a) has set aside the decision of the planning authority, and
- (c) either no application has been made to the Board for a review of a decision of the planning authority under subsection (4)(a)(i) that the quarry commenced operation prior to 1 October 1964, or permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, or the Board in a review of such a decision has decided that the quarry commenced operation before 1 October 1964 or permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, and
- (d) either no application has been made to the Board for a review of a decision of the planning authority under subsection (4)(a)(ii) that if applicable, the requirements in relation to registration under section 261 were fulfilled, or the Board in a review of such a decision has decided that, if applicable, the requirements in relation to registration under section 261 were fulfilled,

the planning authority shall, as soon as may be after the date of the giving of the notice of its decision by the Board under subsection (6)(f), issue a notice to the owner or operator of

the quarry directing him or her to apply to the Board for substitute consent under section 177E with a remedial environmental impact statement or remedial Natura impact statement or both of those statements, as the case may be, in accordance with the determination of the planning authority under subsection (2)(a), not later than 12 weeks after the date of the notice issued by the planning authority under this subsection or such further period as the Board may allow.

(11) Where in relation to a quarry in respect of which a notice has been issued under subsection (5)(a)—

- (a) either no application has been made to the Board for a review of a determination under subsection (2)(a) or the Board in making a decision in relation to such a review has confirmed the determination of the planning authority, and
- (b) either no application has been made to the Board for a review of a determination of the planning authority under subsection (5)(a) that the development the subject of the determination under subsection (2)(a) took place after 3 July 2008 or the Board has confirmed the determination of the planning authority under subsection (5)(a),

the planning authority shall, as soon as may be after the expiration of the period for applying for a review or the date of the giving of the notice of its decision by the Board under subsection (6)(f), as the case may be, issue an enforcement notice under section 154 requiring the cessation of the operation of the quarry and the taking of such steps as the planning authority considers appropriate.

(12) Where in relation to a quarry in respect of which a notice has been issued under subsection (5)(a) and—

- (a) either no application has been made to the Board for a review of the determination under subsection (2)(a) or the Board in making a decision in relation to such a review has confirmed the determination of the planning authority, and
- (b) the Board, in making a decision in relation to a review of such a notice has set aside the determination of the planning authority under subsection (5)(a) that the development the subject of the determination under subsection (2)(a) took place after 3 July 2008, and
- (c) either no application has been made to the Board for a review of a decision of the planning authority under subsection (5)(a)(i) that the quarry commenced operation prior to 1 October 1964, or permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, or the Board in a review of such a decision has decided that the quarry commenced operation before 1 October 1964 or

permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, and

- (d) either no application has been made to the Board for a review of a decision of the planning authority under subsection (5)(a)(ii) that if applicable, the requirements in relation to registration under section 261 were fulfilled or the Board in a review of such a decision has decided that if applicable, the requirements in relation to registration under section 261 were fulfilled,

the planning authority shall, as soon as may be after the date of the giving of the notice of its decision by the Board under subsection (6)(f), issue a notice to the owner or operator of the quarry directing him or her to apply to the Board for substitute consent under section 177E with a remedial environmental impact statement or remedial Natura impact statement or both of those statements, as the case may be, in accordance with the determination of the planning authority under subsection (2)(a), not later than 12 weeks after the date of the notice issued by the planning authority under this subsection, or such further period as the Board may allow.

(13) Where in relation to a quarry in respect of which a notice has been issued under subsection (5)(a)—

- (a) either no application has been made to the Board for a review of the determination under subsection (2)(a) or the Board in making a decision in relation to such a review has confirmed the determination of the planning authority, and
- (b) the Board, in making a decision in relation to a review has set aside the determination of the planning authority under subsection (5)(a) that the development the subject of the determination under subsection (2)(a) took place after 3 July 2008, and
- (c) either—
 - (i) no application has been made to the Board for a review of a decision of the planning authority under subsection (5)(a)(i) that the quarry commenced operation on or after 1 October 1964 and no permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, or the Board in a review of such a decision has decided that the quarry commenced operation on or after 1 October 1964 and no permission was granted in respect of the quarry under Part III of this Act or Part IV of the Act of 1963, or
 - (ii) no application has been made to the Board for a review of a decision of the planning authority under subsection (5)(a)(ii) that if

applicable, the requirements in relation to registration under section 261 were not fulfilled, or the Board in a review of such a decision has decided that, if applicable, the requirements in relation to registration under section 261 were not fulfilled,

the planning authority shall, as soon as may be after the date of the giving of the notice of its decision by the Board under subsection (6)(f), issue an enforcement notice under section 154 requiring the cessation of the operation of the quarry and the taking of such steps as the planning authority considers appropriate.

(14) Where an application for substitute consent is required to be made under this section it shall be made in relation to that development in respect of which the planning authority has made a determination under subsection (2)(a).

(15) The provisions of Part XA shall apply, as appropriate, to an application for substitute consent made in accordance with a direction under subsection (3), (10) or (12).

Appendix 2

Section 261 as amended by section 74 of Planning and Development (Amendment) Act 2010

261.—(1) The owner or operator of a quarry to which this section applies shall, not later than one year from the coming into operation of this section, provide to the planning authority, in whose functional area the quarry is situated, information relating to the operation of the quarry at the commencement of this section, and on receipt of such information the planning authority shall, in accordance with *section 7*, enter it in the register.

(2) Without prejudice to the generality of *subsection (1)*, information provided under that subsection shall specify the following—

- (a) the area of the quarry, including the extracted area delineated on a map,
 - (b) the material being extracted and processed (if at all),
 - (c) the date when quarrying operations commenced on the land (where known),
 - (d) the hours of the day during which the quarry is in operation,
 - (e) the traffic generated by the operation of the quarry including the type and frequency of vehicles entering and leaving the quarry,
 - (f) the levels of noise and dust generated by the operations in the quarry,
 - (g) any material changes in the particulars referred to in *paragraphs (a) to (f)* during the period commencing on the commencement of this section and the date on which the information is provided,
 - (h) whether—
 - (i) planning permission under Part IV of the Act of 1963 was granted in respect of the quarry and if so, the conditions, if any, to which the permission is subject, or
 - (ii) the operation of the quarry commenced before 1 October 1964,
- and
- (i) such other matters in relation to the operations of the quarry as may be prescribed.

(3) A planning authority may require a person who has submitted information in accordance with this section to submit such further information as it may specify, within such period as it may specify, relating to the operation of the quarry concerned and, on receipt thereof, the planning authority shall enter the information in the register.

(4) (a) A planning authority shall, not later than 6 months from the registration of a quarry in accordance with this section, publish notice of the registration in one or more newspapers circulating in the area within which the quarry is situated.

(b) A notice under *paragraph (a)* shall state—

(i) that the quarry has been registered in accordance with this section,

(ii) where planning permission has been granted in respect of the quarry, that it has been so granted and whether the planning authority is considering restating, modifying or adding to conditions attached to the planning permission in accordance with *subsection (6)(a)(ii)*, or

(iii) where planning permission has not been granted in respect of the quarry, that it has not been so granted and whether the planning authority is considering—

(I) imposing conditions on the operation of the quarry in accordance with *subsection (6)(a)(i)*, or

(II) requiring the making of a planning application and the preparation of an environmental impact statement in respect of the quarry in accordance with *subsection (7)*,

(iv) the place or places and times at which the register may be inspected,

(v) that submissions or observations regarding the operation of the quarry may be made to the planning authority within 4 weeks from the date of publication of the notice.

(c) A notice under this subsection may relate to one or more quarries registered in accordance with this section.

(5) (a) Where a planning authority proposes to—

(i) impose, restate, modify or add to conditions on the operation of the quarry under this section, or

(ii) require, under *subsection (7)*, a planning application to be made and an environmental impact statement to be submitted in respect of the quarry in accordance with this section,

it shall, as soon as may be after the expiration of the period for making observations or submissions pursuant to a notice under *subsection (4)(b)*, serve notice of its proposals on the owner or operator of the quarry.

(b) A notice referred to in *paragraph (a)*, shall state—

- (i) the reasons for the proposals, and
 - (ii) that submissions or observations regarding the proposals may be made by the owner or operator of the quarry to the planning authority within such period as may be specified in the notice, being not less than 6 weeks from the service of the notice.
- (c) Submissions or observations made pursuant to a notice under *paragraph (b)* shall be taken into consideration by a planning authority when performing its functions under *subsection (6)* or *(7)*.
- (6)** (a) Not later than 2 years from the registration of a quarry under this section, a planning authority may, in the interests of proper planning and sustainable development, and having regard to the development plan and submissions or observations (if any) made pursuant to a notice under *subsection (4)* or *(5)*—
- (i) in relation to a quarry which commenced operation before 1 October 1964, impose conditions on the operation of that quarry, or
 - (ii) in relation to a quarry in respect of which planning permission was granted under Part IV of the Act of 1963 restate, modify or add to conditions imposed on the operation of that quarry,
- and the owner and operator of the quarry concerned shall as soon as may be thereafter be notified in writing thereof.
- (aa) Notwithstanding any other provisions of this Act, the operation of a quarry in respect of which the owner or operator fails to comply with conditions imposed under *paragraph (a)(i)* shall be unauthorised development.
- (b) Where, in relation to a grant of planning permission conditions have been restated, modified or added in accordance with *paragraph (a)*, the planning permission shall be deemed, for the purposes of this Act, to have been granted under section 34, on the date the conditions were restated, modified or added, and any condition so restated, modified or added shall have effect as if imposed under section 34.
- (c) Notwithstanding *paragraph (a)*, where an integrated pollution control licence has been granted in relation to a quarry, a planning authority or the Board on appeal shall not restate, modify, add to or impose conditions under this subsection relating to—
- (i) the control (including the prevention, limitation, elimination, abatement or reduction) of emissions from the quarry, or
 - (ii) the control of emissions related to or following the cessation of the operation of the quarry.

(7) (a) Where the continued operation of a quarry—

(i) (I) the extracted area of which is greater than 5 hectares, or

(II) that is situated on a European site or any other area prescribed for the purpose of *section 10(2)(c)*, or land to which an order under section 15, 16 or 17 of the Wildlife Act, 1976, applies,

and

(ii) that commenced operation before 1 October 1964,

would be likely to have significant effects on the environment (having regard to any selection criteria prescribed by the Minister under *section 176(2)(e)*), a planning authority shall not impose conditions on the operation of a quarry under *subsection (6)*, but shall, not later than one year after the date of the registration of the quarry, require, by notice in writing, the owner or operator of the quarry to apply for planning permission and to submit an environmental impact statement to the planning authority not later than 6 months from the date of service of the notice, or such other period as may be agreed with the planning authority.

(b) *Section 172(1)* shall not apply to development to which an application made pursuant to a requirement under *paragraph (a)* applies.

(c) A planning authority, or the Board on appeal, shall, in considering an application for planning permission made pursuant to a requirement under *paragraph (a)*, have regard to the existing use of the land as a quarry.

(d) Notwithstanding any other provision of this Act, the continued operation of a quarry in respect of which a notification under *paragraph (a)* applies, unless a planning application in respect of the quarry is submitted to the planning authority within the period referred to in that paragraph, shall be unauthorised development.

(e) Notwithstanding any other provision of this Act, the continued operation of a quarry in respect of which the owner or operator has been refused permission in respect of an application for permission made on foot of a notification under *paragraph (a)* shall be unauthorised development.

(f) Notwithstanding any other provision of this Act, the continued operation of a quarry in respect of which the owner or operator fails to comply with conditions attached to a permission granted in respect of an application for permission made on foot of a notification under *paragraph (a)* shall be unauthorised development.

- (8) (a) Where, in relation to a quarry for which permission was granted under Part IV of the Act of 1963, a planning authority adds or modifies conditions under this section that are more restrictive than existing conditions imposed in relation to that permission, the owner or operator of the quarry may claim compensation under *section 197* and references in that section to compliance with conditions on the continuance of any use of land consequent upon a notice under *section 46* shall be construed as including references to compliance with conditions so added or modified, save that no such claim may be made in respect of any condition relating to a matter specified in *paragraph (a), (b) or (c) of section 34(4)*, or in respect of a condition relating to the prevention, limitation or control of emissions from the quarry, or the reinstatement of land on which the quarry is situated.
- (b) Where, in relation to a quarry to which *subsection (7)* applies, a planning authority, or the Board on appeal, refuses permission for development under *section 34* or grants permission thereunder subject to conditions on the operation of the quarry, the owner or operator of the quarry shall be entitled to claim compensation under *section 197* and for that purpose the reference in *subsection (1)* of that section to a notice under *section 46* shall be construed as a reference to a decision under *section 34* and the reference in *section 197(2)* to *section 46* shall be construed as a reference to *section 34* save that no such claim may be made in respect of any condition relating to a matter specified in *paragraph (a), (b) or (c) of section 34(4)*, or in respect of a condition relating to the prevention, limitation or control of emissions from the quarry, or the reinstatement of land on which the quarry is situated.
- (c) Where, in relation to a quarry which commenced operation before 1 October 1964 a planning authority imposes conditions under *subsection (6)(a)(i)* on the operation of the quarry, the owner or operator of the quarry may claim compensation under *section 197* and references in that section to compliance with conditions on the continuance of any use of land consequent upon a notice under *section 46* shall be construed as including references to compliance with conditions so added or modified, save that no such claim may be made in respect of any condition relating to a matter specified in *paragraph (a), (b) or (c) of section 34(4)*, or in respect of a condition relating to the prevention, limitation or control of emissions from the quarry, or the reinstatement of land on which the quarry is situated.
- (9) (a) A person who provides information to a planning authority in accordance with *subsection (1)* or in compliance with a requirement under *subsection (3)* may appeal a decision of the planning authority to impose, restate, add to or modify conditions in accordance with *subsection (6)* to the Board within 4 weeks from the date of receipt of notification by the authority of those conditions.
- (b) The Board may at the determination of an appeal under *paragraph (a)* confirm with or without modifications the decision of the planning authority or annul that decision.
- (10) Notwithstanding any other provision of this Act, a quarry to which this section applies in respect of which the owner or operator fails to provide information in

relation to the operation of the quarry in accordance with subsection (1) or in accordance with a requirement under subsection (3) shall be unauthorised development.

(11) This section shall apply to—

- (a) a quarry in respect of which planning permission under Part IV of the Act of 1963 was granted more than 5 years before the coming into operation of this section, and
- (b) any other quarry in operation on or after the coming into operation of this section, being a quarry in respect of which planning permission was not granted under that Part.

(12) The Minister may issue guidelines to planning authorities regarding the performance of their functions under this section and a planning authority shall have regard to any such guidelines.

(13) In this section—

“emission” means—

- (a) an emission into the atmosphere of a pollutant within the meaning of the Air Pollution Act, 1987,
- (b) a discharge of polluting matter, sewage effluent or trade effluent within the meaning of the Local Government (Water Pollution) Act, 1977, to waters or sewers within the meaning of that Act,
- (c) the disposal of waste, or
- (d) noise;

“operator” means a person who at all material times is in charge of the carrying on of quarrying activities at a quarry or under whose direction such activities are carried out;

“quarry” has the meaning assigned to it by section 3 of the Mines and Quarries Act, 1965.

Appendix 3

Section 153 as amended by section 45 of Planning and Development (Amendment) Act 2010 and as further amended by section 27 of the Environment (Miscellaneous Provisions) Act 2011

Decision on enforcement

153. —(1) As soon as may be after the issue of a warning letter under section 152, the planning authority shall make such investigation as it considers necessary to enable it to make a decision on whether to issue an enforcement notice or make an application under section 160.

(2) (a) It shall be the duty of the planning authority to ensure that decisions on whether to issue an enforcement notice are taken as expeditiously as possible.

(b) Without prejudice to the generality of paragraph (a), it shall be the objective of the planning authority to ensure that the decision on whether to issue an enforcement notice shall be taken within 12 weeks of the issue of a warning letter.

(3) A planning authority, in deciding whether to issue an enforcement notice shall consider any representations made to it under section 152 (1)(a) or submissions or observations made under section 152 (4)(b) and any other material considerations.

(4) The decision made by the planning authority under subsection (1) including the reasons for it shall be entered by the authority in the register.

(5) Failure to issue a warning letter under section 152 shall not prejudice the issue of an enforcement notice or any other proceedings that may be initiated by the planning authority.

(7) Where a planning authority establishes, following an investigation under this section that unauthorised development (other than development that is of a trivial or minor nature) has been or is being carried out and the person who has carried out or is carrying out the development has not proceeded to remedy the position, then the authority shall issue an enforcement notice under section 154 or make an application pursuant to section 160, or shall both issue such a notice and make such an application, unless there are compelling reasons for not doing so.

(8) Nothing in this section shall operate to prevent or shall be construed as preventing a planning authority, in relation to an unauthorised development which has been or is being carried out, from both issuing an enforcement notice under section 154 and making an application pursuant to section 160.