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Department of Housing, Local Government and Heritage

March 2023

Why is the temporary measure to exempt housing developments from the 'Part 8' process being implemented?

This measure will allow for accelerated delivery of social, affordable and cost-rental housing by local authorities by way of exemption from the local authority own development 'Part 8' process in section 179 of the Planning and Development Act 2000, as amended (the Act) in strictly defined circumstances.

The amendments to the Act and the Planning and Development Regulations 2001, as amended (the regulations) are balanced with the need to provide for the accelerated delivery of social and affordable housing while also ensuring proper planning and sustainable development by means of the introduction of a temporary time-bound exemption from the 'Part 8' process for the approval of local authority own development housing projects on local authority or State owned lands.

This planning amendment will assist local authorities to accelerate housing delivery.

Can the local authority use the existing 'Part 8' process for the provision of Housing?

Where the development meets the criteria of section 179A of the Act the housing development is classed as exempted development and is exempted from the 'Part 8' process, therefore, the 'Part 8' process cannot be used.

Can the local authority continue to use the 'Part 8' process for developments for which the process under 'Part 8' had commenced prior to Section 179A of the Act coming into effect?

Transitional arrangements are provided for under article 85A of the regulations; this states that where a local authority gave notice under 'Part 8' for a development prior to the commencement of Section 179A of the Act, the local authority shall continue with the process under 'Part 8'.

What is defined as a housing development?

'Housing Development' is defined under section 179A(5) of the Act:

> 'housing development' includes—

(a) the construction or erection of a house or houses,

(b) the construction of a new road or the widening or realignment of an existing road, to serve houses referred to in paragraph (a),

(c) the construction or erection of pumping stations, treatment works, holding tanks or outfall facilities for waste water or storm water, to serve houses referred to in paragraph (a),

(d) the laying underground of sewers, mains, pipes or other apparatus,

(e) the provision of open spaces, recreational and community facilities and amenities and landscaping works to serve houses referred to in paragraph (a), and

(f) the provision of car parks, car parking places, surface water sewers and flood relief work, and ancillary infrastructure to serve houses referred to in paragraph (a);

How should the elected members be informed?

The Chief Executive of the local authority must inform the elected members of the local authority of the housing development prior to the site notice or newspaper notice being issued in accordance with article 81A(1) of the regulations. It is recommended that the Chief Executive engages with the elected members as early as possible in order to ensure they are fully informed prior to issuing the site notice or newspaper notice and before the final decision to undertake the development is made. Local authorities should maintain a record showing that the elected members were informed prior to issuing the site notice and newspaper notice.

What is the Role of the elected members?

It is important to recognise that the elected members have a key role in establishing suitable sites for the zoning of land for residential development including:

- the approval of the development plan which includes the housing strategy for the functional area of the local authority, or
- the approval of local area plans as may be relevant.

The central role elected members play in setting the overarching framework for the development of their local areas remains in place. The elected members also retain their approval powers under 'Part 8' for all other forms of local authority own development proposals i.e. roads, bridges, waste facilities, swimming pools, fire stations, libraries, and any

other development works with a cost exceeding €126,000 etc. The new exemption from the 'Part 8' approval process is a temporary arrangement to expedite the urgent provision of social and affordable housing in the context of the current housing shortage. Any social and affordable housing developments which do not meet the criteria set out within Section 179A of the Act or are not commenced by end 2024 will be subject to the 'Part 8' (or 'Part 10') process in the normal manner.

When is the site notice and newspaper notice required?

The site notice and newspaper notice is required to be published at least 8 weeks prior to the commencement of housing development in accordance with article 81A(1) of the regulations. In addition, the site notice must be maintained in situ for a period of at least 8 weeks under article 81A(7) of the regulations.

What should the site notice and newspaper notice include?

In accordance with Article 81A(2) of the regulations, the notices shall:

(a) indicate the location, townland or postal address of the housing development (as may be appropriate),

(b) indicate the nature and extent of the housing development under the requirements of Section 179A of the Act,

(c) indicate instances where the housing development consists of or comprises the carrying out of works to protected structures or within an architectural conservation area

(d) state that plans and particulars of the housing development will be available for inspection both online and in LA offices

(e) indicate the LA screening determinations for EIA and AA

(f) state that a person may question the validity of any decision of the planning authority by way of an application for judicial review

When publishing the newspaper notice and issuing the site notice of the housing development, it is also required to include the screening determinations for Environmental Impact assessment and for Appropriate Assessment where appropriate. A screening determination is subject to judicial review and must be made available at the same time as the site notice for public inspection.

What is the purpose of the site notice and newspaper notice?

The site notice and newspaper notice are intended to make the public aware of the decision of the local authority to build a housing development on the specified site as it meets the criteria under Section 179A of the Act. It informs the public that the works will commence on the site and that, within the period of 8 weeks of the date of the site notice/ newspaper notice, the decision may be subject to an application for judicial review.

Does the exemption from the 'Part 8' process include public participation?

No, the provisions under Section 179A of the Act and the supplementary regulations provide an exemption from the 'Part 8' process and, where a development is classed as exempted development, there is no public participation process. The notification process by means of site and newspaper notices will notify interested parties of the intention to undertake the proposed development.

Where can the exemption be utilised?

The exemption can be utilised on any land owned by a local authority or by the prescribed State bodies and where the zoning objectives for the land as set out within the adopted development plan or local area plan includes residential use (i.e. where the land is zoned for residential purposes or for mixed use including residential).

Who are the specific State Bodies that may own land that can be utilised for the provision of Housing Developments under section 179A of the Act?

As per Section 179A(5) of the Act the specified State Bodies are as follows:

(a) a Minister of the Government;

(b) an Education and Training Board established under the Education and Training Boards Act 2013 ;

(c) Courts Service;

(d) Digital Hub Development Agency;

(e) Dublin Institute for Advanced Studies;

(f) Enterprise Ireland;

(g) Environmental Protection Agency;

(h) the Garda Síochána;

(i) Health Service Executive;

(j) Housing and Sustainable Communities Agency;

(k) Industrial Development Agency (Ireland);

(l) an Institute of Technology being a college within the meaning of section 2 of the Regional Technical Colleges Act 1992 ;

(m) Institute of Public Administration;

(n) Prison Service of the Department of Justice which is charged with the management of prisons;

(o) Legal Aid Board;

(p) Marine Institute;

(q) National Archives;

(r) Oberstown Children Detention Campus;

(s) Commissioners of Public Works in Ireland;

(t) Ordnance Survey Ireland;

(u) Sport Ireland;

(v) State Laboratory;

(w) Teagasc - the Agriculture and Food Development Authority;

(x) a technological university established by virtue of an order under section 36 of the Technological Universities Act 2018 ;

(y) An tSeirbhís Oideachais Leanúnaigh agus Scileanna.

Will the exemption apply to mixed social/affordable development or just social housing?

The temporary exemption from 'Part 8' will apply to all applicable sites that are zoned for residential purposes or for mixed use including residential; and the proposed development may include social and affordable housing.

What happens if the zoning objectives do not include residential use?

Where the zoning objectives for the land in question do not include residential use, the standard 'Part 8' process applies and the exemption under Section 179A of the Act may <u>not</u> be utilised in those cases.

It should be noted that in order to benefit from the exemption from the 'Part 8' process, the proposed development shall not contravene the development plan, a local area plan, the housing strategy or the residential zoning status as already approved by the elected members.

Is the site required to be serviced – Electricity, water etc.?

If the site can be connected to services, the exemption may be availed of. Local authorities should engage with service providers to assist in identifying suitable locations that are appropriately zoned, screened for environmental assessment (including the provision of service connections) and can be connected/are connected to services.

How long is the exemption in effect?

The exemption will be in effect for developments which commence prior to 31 December 2024 and comply with the requirements of Section 179A of the Act.

What is meant by commenced?

The local authority must ensure that housing developments are commenced prior to 31 December 2024 to avail of this exemption. Under Building Regulations, local authorities are required to lodge a commencement notice for housing into the Building Control Management System (BCMS). The lodging of this commencement notice provides a commencement date for the housing development.

In addition, under regulation 22 and schedule 3 of the Safety, Health and Welfare at Work (Construction) Regulations 2013,

- [SI 291 of 2013 [https://www.irishstatutebook.ie/eli/2013/si/291/]

where the construction site will last longer than 30 days or the volume of work will exceed 500 person days, the project supervisor must notify the Health and Safety Authority of certain minimum particulars including commencement date before the construction work begins.

The lodging of these notices provides a commencement date for the housing development.

Can a local authority undertake works prior to the erection and publication of a site notice and newspaper notice?

No, all requirements of section 179A of the Act and its supplementary regulations must be complied with prior to commencing any works for a housing development under this provision.

What process should the local authority use for housing developments which will not be commenced prior to 31 December 2024?

Developments which will commence after 31 December 2024 will require the standard 'Part 8' (or 'Part 10') process prior to commencing.

Can the exemption be utilised with the intention to support other development types?

No, the purpose of the exemption is to provide for a Housing Development. The definition of 'housing development' is included in section 179A(5) of the Act and includes:

> (a) the construction or erection of a house or houses,
>
> (b) the construction of a new road or the widening or realignment of an existing road, to serve houses referred to in paragraph (a),
>
> (c) the construction or erection of pumping stations, treatment works, holding tanks or outfall facilities for waste water or storm water, to serve houses referred to in paragraph (a),
>
> (d) the laying underground of sewers, mains, pipes or other apparatus,
>
> (e) the provision of open spaces, recreational and community facilities and amenities and landscaping works to serve houses referred to in paragraph (a), and
>
> (f) the provision of car parks, car parking places, surface water sewers and flood relief work, and ancillary infrastructure to serve houses referred to in paragraph (a);

Does the exemption cover water and waste water infrastructure?

Yes, the exemption covers water and waste water infrastructure under Section 179A(5)(c) of the Act:

> *(c) the construction or erection of pumping stations, treatment works, holding tanks or outfall facilities for waste water or storm water, to serve houses referred to in paragraph (a),*

Local authorities should work with Uisce Eireann to confirm that public infrastructure solutions are available for the provision of water and waste water services and that any solutions are included in any environmental screening for EIA or AA.

Is there a minimum threshold for the number of housing units or the size of sites for the development of housing?

No, there is no minimum threshold on the number of houses, or the size of sites that can be utilised under Section 179A of the Act. Local Authorities are encouraged to look at all eligible land holdings to accelerate the delivery of housing by local authorities.

What information shall be made available to the Public?

In accordance with article 83A(1) of the regulations a local authority shall make the following available for inspection on their website and at the offices of the local authority:

(a) a document describing the nature and extent of the development and the principal features thereof, including –

(i) Indicate the nature and extent of the development under section 179A(5)(a) to (f) of the Act,

(ii) where development would relate to a protected structure or a proposed protected structure, an indication of that fact.

(b) a location map, drawn to a scale of not less than 1:1000 in built up areas and 1:2500 in all other areas (which shall be identified thereon) and marked or coloured so as to identify clearly the land on which it is proposed to carry out the development.

(c) a site layout plan, drawn to a scale of not less than 1:500, showing the boundary of the site on which it is proposed to carry out the proposed development and the buildings or other structures, and roads or other features, in the vicinity of the site.

(d) such other plans and drawings, drawn to a scale of not less than 1:100, as are necessary to describe the proposed housing development.

(e) the determinations of the local authority under articles 81A(5) and 81A(6) and any associated documents**.**

The local authority shall also enter all the documents, plans and particulars into the planning register.

How will the use of the exemption under section 179A of the Act be reported to the Minister?

Under section 39A(1) of the Act the local authorities are required to report on a quarterly basis:

- the number of proposed housing developments,
- the number of commenced housing developments, and
- the number of completed housing developments under section 179A(5)(a) to (f) of the Act, and
- which information shall include the number of houses under each category.

The Department will issue the request to local authorities in Q2 2023 and provide a reporting template.

Environmental Assessment and Screening

Should all housing developments be screened for environmental assessment?

All housing development projects seeking to utilise the exemption under Section 179A of the Act must have regard to the criterion specifying that the exemption will not apply to development requiring either EIA or AA, and developments should be screened for Environmental Impact Assessment and Appropriate Assessment as appropriate in accordance with the precautionary principle.

What aspects of the housing development need to be screened for EIA and AA?

All aspects of the Housing Development may require to be screened in order to avoid 'project splitting'. Screening for environmental assessments should include the environmental effects of all construction work(s) related to the construction stage of the housing development, in addition to its operational and post-operational stages, including its demolition stage if applicable.

Any aspects of a housing development project which may necessitate changes or extensions to projects within the meaning of point 24 of Annex I or point 13(a) of Annex II of the EIA Directive that are likely to have significant effects on the environment, shall be made subject

to a requirement for a development consent. Refer to Commission guidance[1]. i.e. where a proposed housing development will alter an existing development which required an EIAR, the proposed housing development will require an EIAR.

Both screening processes should be undertaken with reference to the Strategic Environmental Assessment (SEA) and the Appropriate Assessment (AA) of the relevant development plan(s) within the zone of influence of the proposed housing development and any other relevant plans or programmes.

What happens if an EIAR is required?

In circumstances where an EIAR is required, the housing development does not comply with section 179A of the Act. The local authority should follow the applicable process for Environmental Impact Assessment.

What happens if a NIS is required?

In circumstances where a NIS is required, the housing development does not comply with section 179A of the Act. The local authority should follow the applicable process for Appropriate Assessment.

Is there guidance documents available for EIA and AA?

Yes, guidance documents are available for Environmental Impact Assessment

- Ireland: https://www.opr.ie/wp-content/uploads/2019/08/2018-Environmental-Impact-Assessment-1.pdf
- European Commission: https://environment.ec.europa.eu/law-and-governance/environmental-assessments/environmental-impact-assessment_en

and for Appropriate Assessment:

- Ireland: https://assets.gov.ie/128907/343c327c-53cf-42a6-b020-9b410e8b63f9.pdf

[1] European Commission (2021) Commission notice regarding application of the Environmental Impact Assessment Directive (Directive 2011/92/EU of the European Parliament and of the Council, as amended by Directive 2014/52/EU) to changes and extension of projects - Annex I.24 and Annex II.13(a), including main concepts and principles related to these. p. 19.

- European Commission: https://ec.europa.eu/environment/nature/natura2000/management/pdf/methodological-guidance_2021-10/EN.pdf

Department of Housing, Local Government and Heritage,

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