



**An Roinn Tithíochta,
Rialtais Áitiúil agus Oidhreachta**
Department of Housing,
Local Government and Heritage

Frequently Asked Questions

Effect of National Level 5 Covid-19 Restrictions on the Planning System

22nd October 2020

The Effect of National Level 5 Restrictions on the Planning System

Introduction

On Thursday 22nd October 2020, the Government, taking into account public health advice, brought into effect National Level 5 restrictions with regard to Covid-19 for a six-week period.

In order to ensure the continued and safe operation of all aspects of the statutory planning system, Regulations published under the Health Act 1947 (Statutory Instrument (SI) No. 448 of 2020)¹ have identified planning-related activity within the schedule of what is considered to be 'essential services':-

“statutory planning system activities, insofar they cannot be carried out remotely”.

The SI 448 Regulations further identify, within the list of reasons for a person to leave their place of residence, purposes that include travelling to:-

“attend the offices of a planning authority or An Bord Pleanála to engage in a statutory planning process (including making or inspecting a planning application or appeal, making an observation or submission or participating in a Development Plan process) or inspect a site notice (within the meaning of the Planning and Development Act 2000 (No. 30 of 2000)).”

There is no specified restriction on the distance that persons engaging in a statutory planning process, may travel.

The above provisions, and the continued operation of the planning system, are supported by the City and County Management Association (CCMA), the local government sector, An Bord Pleanála and the Office of the Planning Regulator (OPR), all of whom which have put extensive operational measures in place to safeguard the public health of both their staff and customers, while ensuring that the delivery of planning services remain operational.

These FAQs are intended to provide further clarity in relation to questions that might arise in the context of National Level 5 Restrictions and the planning system.

¹ Health Act 1947 (Section 31A – Temporary Restrictions) (Covid-19) (No. 8) Regulations 2020

Timelines and Access

1) In there any effect on statutory planning timelines?

No. Statutory planning timelines, including those for planning applications, appeals, judicial review procedures or development plans, remain unaffected. There is no temporary period of suspension in operation, as there previously was for an eight-week period from 29th March to 23rd May 2020, under Section 251A of the Planning and Development Act 2000 (as amended). The Section 251A order mechanism was a 'once-off' legislative provision, introduced during the country's previous lockdown period, that has since expired and may no longer be applied.

2) Can I travel from my place of residence to engage in a planning process?

Yes, while it is recommended that any planning activity that can be carried out remotely, should be, statutory planning activities are identified as 'essential services' for which persons may leave their place of residence. This includes travelling to attend a local authority planning office or An Bord Pleanála to engage in a planning process that may include making or inspecting a planning application or appeal, making an observation or submission, or participating in a Development Plan process, or to inspect a site notice.

There is no specified restriction on the distance that persons engaging in a statutory planning process may travel, noting that the 5km radius restriction relates to leisure and exercise only, but also emphasising the need to first consider whether the activity can be carried out remotely.

3) Are planning offices open to the public?

Yes. All local authority planning offices and the offices of An Bord Pleanála, including public planning counters, will remain open to the public to provide access to documentation and to facilitate planning application, appeal or other submissions to be made, while ensuring public health and social distancing requirements can be observed by both staff and customers.

For public health reasons, attendance at a planning office may be managed locally by a prior appointment system. It is therefore advisable to check with the relevant local authority prior to travelling.

4) Can I access planning services on-line?

Yes, all local authorities and An Bord Pleanála have websites that provide access to planning documentation. Amended Planning Regulations made on 22nd May 2020 require all planning application documentation received in respect of planning applications to be made available on-line within five working days of receipt of the application, save for some exceptional circumstances.

Planning Applications

5) Can I make a planning application?

Yes, planning applications may be made as normal and this should be done by post, where possible.

6) Can I make a third party submission on a planning application?

Yes, submissions can be made as normal on planning applications that are within the first five weeks of consideration. All planning offices accept submissions by post and almost all planning authorities facilitate on-line submissions and electronic means of payment. If a member of the public wishes to make a submission in person to the relevant local authority, this may require a prior appointment. It is therefore advisable to check with the local authority planning office prior to travelling.

7) Can 'Section 247' pre-planning meetings now take place?

Yes, planning authorities may continue to engage with applicants and their representatives, and/or consider pre-planning documentation. In view of public health considerations, such engagement should maximise the use of electronic and virtual means, where possible. Where an in-person meeting is considered necessary, the minimum number of people required for the meeting should attend, and public health and social distancing measures applied in accordance with public health advice and local operating procedures.

Site Visits/Inspections

8) Can site visits for planning assessment or to inspect site notices be undertaken?

Yes, site visits may be undertaken, subject to public health and social distancing procedures already in place. These include controls and protocols regarding the entering of dwellings by planning officers or inspectors in circumstances where it is strictly necessary for the assessment of a planning proposal. In such cases, prior appointments may need to be made and all appropriate public health guidance followed to protect planning officials and members of the public.

Local authority site visit procedure, in the context of ongoing COVID-19 public health requirements, is governed by Standard Operating Guidance (SOG) protocols that apply to the local government sector.

9) Should site notices be maintained and newspaper notices published as normal?

Yes, normal arrangements continue to apply to both, in compliance with the relevant statutory requirements.

10) Are newspaper notices published on-line, valid for planning application purposes?

No. In accordance with Article 18(2) of the Planning and Development Regulations 2001 (as amended), newspaper notices submitted with a planning application must be physically published in a newspaper that has been agreed with the local authority to have a sufficiently large circulation in the relevant area.

An Bord Pleanála

11) Can I make an appeal to An Bord Pleanála?

Yes, An Bord Pleanála remains open as normal, taking account of existing public health and social distancing measures.

12) Can An Bord Pleanála hold oral hearings?

As a general principle, in the interests of public health during this pandemic and taking account of the need to minimise unnecessary travel or gatherings, where an oral hearing or meeting is being scheduled by An Bord Pleanála during this period, they will be held remotely/virtually.

An Bord Pleanála aim to give parties involved three weeks' notice where a virtual oral hearing or meeting is being held. An agenda will be prepared for all oral hearings and meetings and these will be posted on the Board's website, with contact emails to deal with any queries that may arise.

The Board's inspector will generally conduct the hearing or meeting from An Bord Pleanála's office. While a limited number of participants may also be in attendance (depending on public health advice, room capacity and the nature of the case), it is expected that most participants will join virtually.

Members of the public who are interested in participating in an oral hearing must contact the Board using the email on the 'agenda' at least 2 days prior to the hearing or meeting opening. It is recommended that all participants familiarise themselves with the on-line guidance on the Board's website (www.pleanala.ie) in relation to participating in a remote hearing or meeting.

13) Can SHD tripartite meetings now take place?

An Bord Pleanála is continuing to engage with SHD applicants and their representatives. In view of public health considerations, and in line with general approaches across the public service, such engagement should maximise the use of electronic and non face-to-face means, where possible. Where an in-person meeting is considered necessary, the minimum number of people required for the meeting should attend, and public health and social distancing measures applied in accordance with local operating procedures.

Development Plans

14) Is timing of development plan preparation processes affected?

No, all statutory periods and timelines are still applicable, including publication of notice of the intention to review a plan and public consultation periods for the display and receipt of submissions on the various stages of the plan-making process. This includes consultation, draft plan and any amended draft plan documents.

15) Can city/county development plan Council meetings take place?

Yes, Orders has been made by the Minister for Housing, Local Government and Heritage further to Section 29 of the Civil and Criminal Justice (Miscellaneous Provisions) Act 2020, which enables certain designated bodies, that include local authorities and regional assemblies to hold meetings, to enable some or all participants to attend remotely. The Act also provides for any decisions made at such meetings to be valid.

16) Can city/county development plan Public meetings take place?

No, it will not be possible for City/County Development Plan public meetings to take place, taking into account the Health Regulations (SI 448 of 2020) public health requirement that no events that involve indoor gatherings of members of the public are permitted, save for specified exceptions.

The requirement to hold a public meeting under Section 11(3)(b) of the Planning and Development Act 2000 as amended, remains in place. While authorities are encouraged to utilise means of consultation that facilitate remote access in any event, any such public meeting that may have been scheduled to proceed over the next six weeks, must be deferred.

The provisions of Section 12(16) of the Planning and Development Act 2000 also apply. The above provisions are that no person may question the validity of a Development Plan by reason only that procedures under the Act as regards timeframes for progression of the development plan, were not completed within the time required.

Judicial Review

17) Are time limits for judicial review extended?

No, the period of time for making an application for leave to seek judicial review a planning decision as set out in the Planning and Development Act 2000 (as amended), continues to apply.

Enforcement of Working Hours Conditions

18) Will arrangements in place continue?

Circular PL 06/2020 of 15 May 2020 refers to working hours conditions attached to planning permissions in the context of Covid-19. Planning authorities should continue to apply, on a case-by-case basis, an appropriate level of discretion in respect of the enforcement of construction working hours. This is to assist the splitting of shifts premise for separating trades and activities required to achieve physical distancing on construction sites in accordance with relevant public health/ health and safety advice and protocols, while seeking to balance this with the need to ensure output and productivity by the sector.

Disclaimer:

These FAQs are published for the purpose of providing general assistance and guidance only and are not legal interpretations of the legislation. Readers must apply the relevant statutory provision to their own particular circumstances and, in doing so, should if necessary obtain their own expert planning and/or legal advice as appropriate.