Frequently Asked Questions

Order made under Section 251A of the Planning and Development, Act 2000, as amended, on 29 March 2020
Frequently Asked Questions on effect of an Order under Section 251A of the Planning and Development, Act, 2000 as amended

On 29 March, 2020, the Minister and the Government, taking account of the considerations under section 251A(5) of the Planning and Development Act, 2000 as amended, made orders which result in an extension of time for a range of specified/appropriate periods and timelines under this Act, and a number of other related Planning Acts and associated regulations.

This means that such periods are extended in duration from 29 March 2020 to 20 April 2020 inclusive. This follows on from the statement by An Taoiseach on 27 March 2020, which asked people generally to stay at home until Easter Sunday (12 April 2020), other than for certain essential activities, and introduced cocooning for people aged over 70 and vulnerable groups.

In determining the end date of the order under Section 251A, a number of additional days have been added to this period to allow for appropriate notice of revised arrangements on expiry of the order.

The Section 251A Order

1) How long will the Order under Section 251A last?

In the context of the current civil emergency arising from the COVID-19 pandemic, the Government has decided to make an Order from Sunday 29th March 2020 to Monday 20th April 2020 inclusive, a total period of three weeks and two days (23 days).

Section 251A of the Planning and Development Act, 2000 as amended provides that this order could be extended (before it expires), once the statutory requirements for extension are met and could be further extended as many times as is considered necessary, until 9th November 2020. Any such future decision to extend the period of the order would be communicated to planning authorities and these FAQs will be updated in that circumstance.

2) What does an Order under Section 251A mean for the Planning System?

An Order under Section 251A means that the time periods specified for any statutory process in the Planning and Development Act 2000 as amended (the Act) and related planning and building control legislation as per note below are disregarded, which means that they are, in effect, extended for the duration of the time period specified by the Order.

An Order with a duration of 23 days, means that a planning authority will have the normal period of eight weeks, together with an additional period of up to three weeks

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1 Derelict Sites Act, 1990; Part 2 of the Urban Regeneration and Housing Act, 2015; Chapter 1 of Part 2 of the Planning and Development (Housing) and Residential Tenancies Act, 2016. (Similar arrangements also apply to periods referred to in Sections 4(4), 6 and 17(60 of the Building Control acts, and regulations made under those provisions).
and two days i.e. *up to* eleven weeks and two days in total, to determine a planning application.

An Order with a duration of 23 days, also means that an interested person will have the normal period of five weeks, together with an **additional period** of *up to* three weeks and two days i.e. *up to* eight weeks and two days in total, to participate in the planning process.

The exact calculation of the extended time period will depend on the date a planning application is submitted and the stage of the process it is at, with further details set out below.

### Planning Applications

3) **Can Planning Applications still be made during the period of the Order?**

Yes, in all cases planning applications may be posted to the relevant principal office of the local authority, even where public offices are closed. This may be more challenging in the case of more complex applications, and almost all local authorities have made arrangements locally in this regard. Initial processing, including validation, will be progressed.

4) **Can Planning Applications be decided during the period of the Order?**

Yes, but only planning applications that were submitted to a planning authority at least five weeks prior to the date of commencement of the Order, i.e. applications submitted up to and including Friday 21st February 2020. These applications have been subject to the minimum period for public consultation and can be decided. The period for deciding these applications may be extended by up to the duration of the Order i.e. up to a further three weeks and two days.

Any planning application that was submitted to a planning authority less than five weeks prior to the date of commencement of the Order, i.e. after Friday 21st February 2020, cannot be decided by the Planning Authority until after Monday 20th April 2020. This is to ensure that the five-week period for public participation is completed after the expiry of the duration of the Order. The effect of this is that the period for deciding any such applications, must be extended by the full duration of the Order.

In the same way, any planning application submitted to a planning authority after the date of commencement of the Order, cannot be decided by the Planning Authority until the five-week period for public participation on the application has been completed, and this cannot be until the expiry of the duration of the Order plus at least five weeks i.e. after Monday 25th May 2020.

The effect of this is that period for deciding any such applications must also be extended by the full duration of the Order.
5) Can ‘Section 247’ Pre-Planning meetings take place during the period of the Order?

Yes, planning authority staff may continue to engage with applicants and their representatives, and/or consider pre-planning documentation by electronic means, even where public offices are closed. It is noted however, that the requirement for pre-planning meetings requested under Section 247 of the Act to be held within four weeks of a request for such a meeting, is extended by the full duration of the Order.

6) Can I inspect planning documentation during the period of the Order?

Yes, almost all planning authorities facilitate the on-line display of planning application documentation within a short period of receipt and validation of an application. Where such on-line systems are in place, all planning applications submitted to a planning authority prior to, the period of duration of an Order should be available for electronic inspection.

In most cases, planning application documentation submitted during the period of the Order will also be available on-line, but in some cases this will not be possible, at least until restrictions on non-essential activity currently in place until 12th April 2020, are lifted. Limitations that might arise in the availability of planning documentation during the period of the Order are one of the principal reasons for extending the five-week public participation process beyond the period of the Order.

7) Can I make a submission on a planning application during the period of the Order?

Yes, a submission may be made on any planning application lodged with a planning authority less than five weeks prior to the date of commencement of the Order, i.e. after Friday 21st February 2020 and for the duration of the Order. In addition, submissions may be made during the remainder of any five-week period that commenced prior to the commencement of the Order.

In the case of all applications made within the duration of the Order, submissions may also be made for a further five-week period, to Monday 25th May 2020.

All planning offices accept submissions by post and almost all planning authorities facilitate on-line submissions and electronic means of payment.
Site Visits/Inspections

8) Should site visits for planning assessment be undertaken during the period of the Order?

No, site visits for planning assessment purposes should not be undertaken during current Covid-19 public health emergency restrictions on non-essential activity, i.e. until 12th April 2020 inclusive.

However, the period covered by the Order under Section 251A includes a further eight days after that date, i.e. to 20th April, to facilitate an orderly resumption of activity in the planning system. Subject to Covid-19 public health emergency restrictions on non-essential activity not being extended, site visits may be undertaken after 12th April 2020. These dates are subject to review and change to take account of public health recommendations.

9) When should Site Visits be undertaken to inspect Site Notices?

Site inspections for the purpose of specifically confirming the presence or otherwise of a planning site notice must be undertaken during the relevant five-week period for public participation, which period is extended by the Order made under Section 251A i.e. site notice inspections should have either been undertaken prior to 29th March 2020, or must be undertaken after 20th April 2020. In some cases it may be necessary to revisit sites in respect of which applications were submitted prior to 29th March 2020 in order to re-inspect site notices, after 20th April 2020.

10) Should Site Notices be maintained on site during the period of the Order?

Yes, site notices for all planning applications submitted after 21st February 2020, should be maintained on site during the period covered by the Order under Section 251A.

For planning applications submitted prior to 29th March 2020, site notices must be maintained on site for the unexpired period of the initial five-week consultation period that remains after 20th April 2020.

For planning applications submitted after 29th March 2020 during the period covered by the Order, site notices must be maintained on site for five-weeks after 20th April 2020 i.e. until 25th May 2020.

The additional eight-day period between the cessation of Covid-19 public health emergency restrictions on non-essential activity on 12th April 2020 and the cessation of the Order under Section 251A on 20th April 2020 is to facilitate an orderly resumption of activity in the planning system.

Subject to Covid-19 public health emergency restrictions on non-essential activity not being extended, new site notices may be erected after 12th April 2020. These dates are subject to review and change/to take account of public health recommendations.
11) Does the Order apply to Newspaper Notices?

Yes, the two-week period in which to lodge a planning application, following publication of a valid newspaper notice, is extended for the period covered by the Order.

Newspaper notices published less than 14 days prior to 29th March 2020, i.e. from 16th March 2020, will remain valid until at least 21st April 2020. This is because the unexpired part of the relevant two-week period remaining on 29th March 2020, i.e. a minimum of 1 day up to a maximum of 13 days, subject to when the newspaper notice was published, will still remain after 20th April 2020.

Newspaper notices published anytime during the period of the Order, i.e. from 29th March 2020 to 20th April 2020 inclusive, will remain valid for two weeks after the cessation of the period of the Order i.e. until Monday 4th May 2020. Again, all of these dates are subject to change if the period of the Order is extended.

Appeals to An Bord Pleanála

12) Can I make an appeal to An Bord Pleanála during the period of the Order?

Yes, any planning application that was determined by a local planning authority not more than four weeks prior to the commencement of an Order under Section 251A, may be appealed to An Bord Pleanála. The appeal period is extended by the duration of the Order, i.e. by a further three weeks and two days, or longer if further orders are made extending the Orders. The calculation of the final appeal date in each case will depend on the period of duration of the normal four-week appeal period remaining on the date of cessation of the Order.

During the period of the Order, where a planning application is determined by a local planning authority, i.e. in accordance with 4) above, where it was submitted to the planning authority at least five weeks prior to the date of commencement of the Order, an appeal may be made to An Bord Pleanála. The four-week period in which the appeal may be made, shall be extended by up to the period of duration of the Order remaining on the date of the planning authority’s decision.

Appeals may be submitted by post to An Bord Pleanála. Although the Boards offices will be closed to the public until Monday 13th April 2020, arrangements are in place to enable documents (appeals, submissions, observations, applications, etc.) to be submitted on working days during that period. Details are displayed on the An Bord Pleanála website www.pleanala.ie/COVID-19. At present, the Board’s offices are intended to re-open to the public on Tuesday 14th April 2020.

Upon re-opening the office, An Bord Pleanála acknowledge and/or validate all submissions/appeals to it and to publish an updated weekly list reflecting all submissions made during this period.

Given that the period to lodge an appeal is being extended by the dates specified in the Order, individuals can also opt to await the resumption of the Board’s normal business to lodge their appeals in person or by post at that point within the extended time period.
13) Can appeals be decided by An Bord Pleanála during the period of the Order?

Yes, where the public consultation period has ended in respect of planning appeals and/or strategic housing or infrastructure applications, the Board will continue to process and assess cases and, in some instances, to make decisions on those cases, where Board members are able to convene meetings, subject to COVID-19 requirements. Notifications of application and appeal decisions and the posting out of Orders to participants will be progressed once the Board’s offices re-open.

14) Will An Bord Pleanála Oral Hearings take place during the period of the Order?

No, all oral hearings scheduled to take place during the period specified in the Order will be suspended and will be re-scheduled for a later date.

Strategic Housing Development (SHD)

15) Can I make a Strategic Housing Development (SHD) Application to An Bord Pleanála during the period of the Order?

Yes, although the Boards offices will be closed to the public until Monday 13th April 2020, arrangements are in place to enable Strategic Housing Development (SHD) application documentation to be submitted on working days during that period. Details are displayed on the An Bord Pleanála website www.pleanala.ie/COVID-19. At present, the Board’s offices are intended to re-open to the public on Tuesday 14th April 2020.

16) Can SHD tripartite meetings take place during the period of the Order?

There are no SHD pre-application consultations planned during this period. If the duration of the Order is further extended, An Bord Pleanála will re-examine its ICT and digital capabilities to determine whether it is feasible to carry out some meetings remotely.

17) Can SHD applications be decided by An Bord Pleanála during the period of the Order?

Where the public consultation period has ended in respect of planning appeals and/or strategic housing or infrastructure applications, the Board will continue to process and assess cases and, in some instances, to make decisions on those cases, where Board members are able to convene meetings, subject to COVID-19 requirements. Notifications of application and appeal decisions and the posting out of Orders to participants will be progressed once the Board’s offices are re-opened.
Development Plans

18) Will Development Plan and other Plan Processes continue during the period of the Order?

No, the period in which all Plan public consultation and council briefing and meeting activity must take place, is extended for the period covered by the Order. This includes County/City Development Plan, Development Plan Variations and Local Area Plan processes.

This means that public meetings and council meetings in respect of all plan processes should not take place during the period covered by the Order. This is considered necessary because Plan processes require engagement with members of the public, and in particular public meetings, as well as Council briefings and meetings to allow for information, direction and decision-making.

Accordingly, the cessation of activity is required to facilitate social distancing, limit non-essential travel and protect vulnerable persons and to ensure full public participation. Local authority forward planning teams may use the period of the Order to progress necessary research, strategy, drafting, engagement with statutory consultees and process-related work, through electronic and other means of remote working.

Given the nature of plan review processes, there is a need for advance notification and organisation of public consultation events and council briefings/meetings and as a consequence, the effect of the Order on such processes, may extend beyond the period of the Order.

Accordingly, it is noted that there is already provision in the Act whereby the validity of a Development Plan cannot be challenged by failure to meet the specified timelines within the process, under Section 12(16). This can be relied upon in addition to the specified period of the Order, in situations where the effect of the Order has a knock-on impact on the overall Development Plan process beyond the duration of the Order. There are similar provisions for Development Plan Variation processes.

‘Part 8’ Processes

19) Does a Section 251A Order apply to Local Authority planning i.e. ‘Part 8’ processes

Yes, an order under Section 251A, has the effect of extending the public display, reporting or decision making periods of the local authority ‘Part 8’ process, as applicable, for the duration of the period of the Order, i.e. by a further three weeks and two days, or longer if further orders are made extending the Orders.

However, where the initial six-week consultation period has been completed on the date of commencement of the Order, a Chief Executive may submit a Report to, and engage with, the members of the local authority and a quorum of that local authority may determine whether to proceed with the project or otherwise. It is noted that the
period for reporting by the Chief Executive and determination by the elected members of such a project may be extended by up to the full duration of the Order.

Judicial Review

20) Are time limits for Judicial Review extended?
Yes, as the period of time for making an application for leave to seek judicial review a planning decision is set out in the Planning and Development Act 2000 (as amended), the period covered by the Section 251A Order applies. Time limits for Judicial Review are therefore extended by the period of duration of the order i.e. three weeks and 2 days.

Environmental Assessments

21) Is the period of time for assessments required under EIA, SEA and the Habitats Directive extended?
Yes, the period of time for assessments required under EIA, SEA and Habitats Directive are extended by the period covered by the Section 251A Order, as specific time limits are set in national (planning) legislation. It should be noted that Transboundary provisions are required by the EIA and SEA Directives, but not the Habitats Directive. However, any assessment of a planning application is subject to the requirements of the Section 251A Order.

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