



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



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

Supplementary Guidelines for Planning Authorities

July 2012

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1. Introduction

Section 261A of the Planning and Development Act, 2000 was commenced with effect from 15 November 2011 and Guidelines for Planning Authorities on **Section 261A of the Planning and Development Act, 2000 and related provisions** were issued in early January 2012 (this was the final version, a number of drafts had been circulated in the period since section 261A was enacted in July 2010). Since then a number of implementation issues have arisen and the Department has had discussions with a number of planning authorities and with a section 261A Implementation Group set up by the Land Use and Transportation Sub-Committee of the City and County Managers Association. To facilitate the smooth implementation of section 261A it was decided that some clarifying amendments were required to be made to the section and also that it was appropriate to issue some supplementary Guidelines. These Guidelines are issued under section 28 of the Planning and Development Act, 2000.

2. Amendments to section 261A: SI No. 246 of 2012

2.1 General

The European Union (Environmental Impact Assessment and Habitats) Regulations 2012, SI No. 246 of 2012, were signed by the Minister on 9 July 2012. These make a number of amendments to section 261A.

2.2 Amendment in relation to enforcement notices

The legislation currently requires that where a quarry owner/operator is not permitted to apply for substitute consent, an enforcement notice must issue to require “the cessation of the operation of the quarry”. The intention of this provision was that the owner/operator of the quarry would be required to cease the unauthorised quarrying, that is to say, the quarrying the subject of the subsection (2)(a) determination (the quarrying which should have had environmental impact assessment/appropriate assessment, etc. but did not). It was subsequently pointed out that there may be cases where in addition to an unauthorised part of a quarry, there is also an authorised part (e.g. covered by a permission) where there are still resources/deposits: in such a case the intention was that the quarry owner/operator should cease the unauthorised quarrying but he or she should not be prevented from continuing to work on any authorised portion of the quarry. Accordingly the references to enforcement notices requiring “the cessation of the operation of the quarry” in subsections (4)(c)(iii), (5)(c)(iv), (8), (9), (11) and (13) are now replaced with references to notices requiring the “the cessation of the unauthorised quarrying”. The latter wording was used in the Guidelines issued in January. This amendment is effected in Regulation 3(a).

2.3 Amendment in relation to subsection (5)(a) notice

Regulation 3(b) replaces, in subsection (5)(a), (5)(c)(ii), (5)(d)(ii), (6)(a)(iv), (11)(b), (12)(b) and (13)(b), the words

“the development the subject of the determination under subsection (2)(a)”

with the words

“subparagraph (i) or (ii) or both, if applicable, of subsection (2)(a) apply to the development which” (took place after 3 July 2008).

The determination under subsection (2)(a) is a determination that development took place after 1990 that would have required an environmental impact assessment/screening or development took place after 1997 that would have required an appropriate assessment.

The intention of subsection (5)(a) was to provide that in situations where quarrying took place after 3 July 2008 which would have required environmental impact assessment/screening or appropriate assessment an enforcement notice should issue. However the wording used appeared only to capture situations where the entire quantum of the unauthorised development requiring environmental impact assessment/screening that took place after 1990 took place after 3 July 2008 (or the entire quantum of the unauthorised development requiring appropriate assessment that took place after 1997 took place after 3 July 2008).

An example will illustrate this: take a quarry which obtained permission in 1985 for a quarry for 3 hectares, and which had reached 3 hectares by 1992 but continued to expand without the further required permission: say 11 hectares of unauthorised quarrying took place between 1992 and the present time, of which the last 5 hectares was quarried after 3 July 2008. Because quarrying requiring environmental impact assessment (5 hectares) took place after 3 July 2008 it was the intention that subsection (5)(a) would apply to such a quarry, and that an enforcement notice would be issued regardless of any other factor. However it would appear subsection (5)(a) as it was worded does not catch that quarry - i.e. the quarry will be the subject of a determination under subsection (2)(a) that 11 hectares of unauthorised quarrying took place after 1 February 1990: however to be caught under subsection (5)(a) as it was worded “the development the subject of the determination under subsection (2)(a)” that is to say, the full 11 hectares of quarrying, must have taken place after 3 July 2008, which was not the case.

The amendment makes clear that to be caught by subsection (5)(a) it is sufficient that unauthorised quarrying took place after 3 July 2008 which would have required environmental impact assessment, etc. and that it is not necessary, for subsection (5)(a) to apply, that the entire amount of the development the subject of the subsection (2)(a) determination have taken place after 3 July 2008.

2.4 Amendment in relation to application for leave to apply for substitute consent

Regulation 3(c) adds new subsections (16), (17), (18) and (19) to section 261A. These provide that with effect from the coming into operation of the new subsections, until the section 261A process has been fully played out, including the outcome of any applications to the Board for reviews, the Board will not consider any application from a quarry for leave to apply for substitute consent.

3. Supplementary Guidance

3.1 Extant permissions

Section 261A itself, and the Guidelines of January 2012, were drafted with unauthorised development in mind. The main purpose of section 261A was to decide which unauthorised quarry development requiring environmental impact assessment/appropriate assessment would be permitted to apply for substitute consent

(effectively retention) and which would not. The legislation, and the Guidelines, were based on the assumption that where permission had been granted for a development, environmental impact assessment and appropriate assessment would have been carried out if required, i.e. the assumption that all relevant provisions of the Planning Acts and associated Regulations, and the European Communities (Natural Habitats) Regulations, 1997 (SI No. 94 of 1997) were implemented by planning authorities/the Board when granting permissions. Therefore the Guidelines issued in January concentrated on the matter of the examination of unauthorised development i.e. development that was not authorised by a permission or “a pre-1964 authorisation”.

It is the case however that under section 261A a planning authority must make the appropriate determination under subsection (2)(a) in a case where the development requiring environmental impact assessment/appropriate assessment which took place after 1990/1997 was authorised by a permission, but the authority now considers that the process by which the permission was granted was defective in that environmental impact assessment/appropriate assessment were not carried out although required at the time. The vast majority of permissions will of course have been properly granted, with environmental impact assessment and appropriate assessment carried out where required.

3.2 Appropriate assessment

The following may be of assistance in determining whether an appropriate assessment was required.

The Habitats Directive 1992 was transposed into Irish law by the European Communities (Natural Habitats) Regulations, 1997 (SI No. 94 of 1997) which came into operation on 26 February 1997. Regulation 27 of these Regulations required a local authority, when considering an application for planning permission in respect of a proposed development which would be likely (either individually or in combination with other developments) to have a significant effect on a European site, to ensure that an appropriate assessment of the implications for the site, in view of the site's conservation objectives, was undertaken.

Regulation 2 of these Regulations defined a “European site” as:

- (a) a special area of conservation;*
- (b) a site of Community importance which has been placed on the list referred to in the third subparagraph of Article 4(2) of the Habitats Directive;*
- (c) an area classified pursuant to paragraph (1) or (2) of Article 4 of the Birds Directive.*

A special area of conservation was defined as a site of Community importance which had been designated by the Member States through a statutory, administrative or contractual act i.e. those sites which have been formally designated as special areas of conservation (none to date). As regards (b), it is understood that the reference is to the list of sites which have been notified to the European Commission as sites which it is proposed to formally designate as special areas of conservation. The National Parks and Wildlife Service deem a site to have been included on the list when the

Minister for Heritage notifies his/her intention to designate it (i.e. by notice to the landowner, the planning authority etc, pursuant to Regulation 4). This was clarified in the amendment to the definition of European site in section 75 of the Wildlife (Amendment) Act, 2000, commenced with effect from 31 July 2001. The new definition of a European site was

“(a) a site—

(i) notified for the purposes of Regulation 4, subject to any amendments made to it by virtue of Regulation 5, or

(ii) transmitted to the Commission in accordance with Regulation 5(4),
or

(iii) added by virtue of Regulation 6 to the list transmitted to the Commission in accordance with Regulation 5(4),

but only until the adoption in respect of the site of a decision by the Commission under Article 21 of the Habitats Directive for the purposes of the third paragraph of Article 4(2) of that Directive,

(b) a site adopted by the Commission as a site of community importance for the purposes of Article 4(2) of the Habitats Directive in accordance with the procedure laid down in Article 21 of that Directive,

(c) a special area of conservation,

(d) an area classified pursuant to paragraph (1) or (2) of Article 4 of the Birds Directive;”

As regards (c) of the 1997 provision and (d) of the above, the reference here is to sites which have been classified as Special Protection Areas under the Birds Directive. 153 such classifications have been made, between 1987 and the current date. Information on the dates of notification of sites and the classification of sites under the Birds Directive is available from the National Parks and Wildlife Service.

Regulation 27 of the European Communities (Natural Habitats) Regulations, 1997 stated that an environmental impact assessment in respect of a proposed development (prepared in accordance with a requirement of or under the Local Government (Planning and Development) Regulations, 1994 (SI No. 86 of 1994) “**shall be an appropriate assessment**”. These Regulations remained in place until they were revoked on 21 September 2011, replaced by Part XAB of the Planning and Development Act, 2000. It is the case, however, that in the decision of the European Court of Justice in case C-418/04, given on 13 December 2007, it was held that a similar provision in Regulation 17 of the Habitats Regulations (i.e. that an environmental impact assessment shall be an appropriate assessment) was not correct. Therefore a view could be taken that until 13 December 2007 at least, provided that an environmental impact assessment was carried out and provided that it considered all relevant environmental effects, which of course include the direct and indirect effects on flora and fauna, then the appropriate assessment requirements could be deemed to be adequately addressed. However, where an adverse impact on the integrity of the site was identified and permission was subsequently granted, the requirements of the Habitats Regulations would not have been met, unless imperative reasons of overriding public interest were identified, there were no alternative

solutions and there were compensatory measures taken to ensure that the overall coherence of Natura 2000 was protected.

It should also be noted that it is not necessary for an appropriate assessment to have taken place that the term “appropriate assessment” was used in the assessment of the planning application, or in the EIS, what is important is that likely significant effects on the site, and/or the possibility of an adverse impact on the integrity of the site were assessed, i.e. that an appropriate assessment was *de facto* undertaken.

3.3 Error in previous Guidelines

Please note that the previous Guidelines contain an error on page 9 of the guidelines. Para. 3.2.5 states that:

“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.”

The reference to the 1989 Regulations here is an error: the reference should be to the **European Communities (Environmental Impact Assessment) (Amendment) Regulations, 1999 (SI No. 93 of 1999)** which came into effect on 1 May 1999.

3.4 Fulfilling the requirements in relation to registration

A number of planning authorities have queried the meaning of the phrase “the requirements in relation to registration under section 261 were fulfilled”. This term refers to the requirements to supply the information as required by section 261: it does not refer to compliance with conditions that may have been imposed under section 261(6): the section 261 process is now historical and whether or not conditions imposed under that section were complied with is not particularly relevant to the examination, determinations and decisions required under section 261A.

Effectively, having fulfilled the requirements in relation to registration means the same as having “registered”. The reason the former term was used is that it was understood that there were a small number of cases where a planning authority did not technically “register” a quarry due to an issue about the level of information provided, or disputes about whether information had been provided. The intention of the wording used was to allow a planning authority to decide now whether in its view the requirements of section 261, in relation to the information to be provided, had been substantially met.

3.5 Consultation with quarry owners/operators

The issue has been raised a number of times regarding consultation with quarry owners/operators. While section 261A does not refer to any such consultation it is considered that nothing in the section precludes a planning authority from consulting with quarry owners/operators, including seeking the provision of further information, on a voluntary basis, from the quarry owners/operators.

3.6 Communication of decision of planning authority

Section 261A requires the planning authority to issue a notice to the quarry owner/operator, and to any person who made submissions in accordance with the section, in cases where it has made the determination under subsection (2)(a) that environmental impact assessment/screening/appropriate assessment were required but not carried out. The Guidelines state at Para. 3.2.8 that where the planning authority determine that EIA, screening, or appropriate assessment were not required¹ it should also make this determination and the reasons for it, available for inspection on request. It is best practice that a copy of this determination should also be given to the quarry owner/operator in question and to any person who made a submission in relation to the quarry.

¹ The words “but not carried” after “were not required” are there in error.

Appendix

**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 2011² and Regulation 3 of the European
Union (Environmental Impact Assessment and Habitats) Regulations 2012³**

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

² S.I. No. 473 of 2011

³ S.I. No. 246 of 2012

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 unauthorised quarrying 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 subparagraph (i) or (ii) or both, if applicable, of subsection (2)(a) apply to the development which 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 subparagraph (i) or (ii) or both, if applicable, of subsection (2)(a) apply to the development which 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 unauthorised quarrying 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 subparagraph (i) or (ii) or both, if applicable, of

subsection (2)(a) apply to the development which 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 subparagraph (i) or (ii) or both, if applicable, of subsection (2)(a) apply to the development which 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 unauthorised quarrying 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 unauthorised quarrying 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 subparagraph (i) or (ii) or both, if applicable, of subsection (2)(a) apply to the development which 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 unauthorised quarrying 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 subparagraph (i) or (ii) or both, if applicable, of subsection (2)(a) apply to the development which 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 subparagraph (i) or (ii) or both, if

applicable, of subsection (2)(a) apply to the development which 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 unauthorised quarrying 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).

(16) On or before 15 August 2012, notwithstanding sections 177C and 177D, the Board shall refuse to consider, in respect of a quarry, an application for leave to apply for substitute consent under section 177C made to the Board during the period commencing on 15 November 2011 and ending on 15 August 2012 and shall return any such application to the person who makes the application.

(17) Nothing in subsection (16) shall prevent the Board from considering, in respect of a quarry, an application for leave to apply for substitute consent under section 177C made to the Board after 15 August 2012.

(18) (a) The Board, before considering any application, in respect of a quarry, for leave to apply for substitute consent under section 177C shall make enquiries and request information of the applicant or planning authority concerned as to whether one of the following has occurred:

- (i) the planning authority, under this section, has decided that no notice is required to be issued in respect of the quarry concerned;
- (ii) a notice was issued by the planning authority under subsection (4) or (5) and no application was made to the Board for a review of such notice within the period specified in subsection (6)(a);
- (iii) a notice was issued by the planning authority under subsection (3), (4) or (5) and an application was made to the Board for a review of such notice within the period specified in subsection (6)(a);
- (iv) an enforcement notice was issued by the planning authority under subsection (8), (9), (11) or (13), which notice has or has not been complied with.

(b) When the information requested at paragraph (a) has been received by the Board it may proceed to consider the application for leave to apply for substitute consent, save that where a notice under subsection (3), (4) or (5) has been referred to the Board for a review under subsection (6), it may not proceed to consider the application for leave concerned until it has made a decision on the application for a review under subsection (6).

(c) The Board shall, when considering an application for leave to apply for substitute consent in relation to a quarry, in addition to any matter referred to in sections 177C and 177D, take into account the matters referred to at paragraph (a) including any decision made by the Board under subsection (6) on an application for a review of a notice issued by a planning authority referred to it under that subsection.

(19) Section 177D(5) shall apply in relation to an application, in respect of a quarry, for leave to apply for substitute consent subject to the modification that it shall be read as if in that subsection the following subparagraph were included and subject to any other necessary modifications:

“(aa) 6 weeks after the Board has received information following enquiries under section 261A(18) or 6 weeks after the Board makes a decision on an application for a review under section 261A(6) of a notice issued by a planning authority whichever shall be later.”.