

L.N. 28 of 2002

**DEVELOPMENT PLANNING ACT**

**(CAP. 356)**

**Development Planning  
(Planning Obligations) Regulations, 2002**

IN virtue of the powers conferred by subarticle (3) of article 40 and of paragraph (h) of subarticle (1) of article 60 of the Development Planning Act, the Minister for Home Affairs, in consultation with the Planning Authority, has made the following regulations:

Title and  
commencement.

1. (1) The title of these regulations is the Development Planning (Planning Obligations) Regulations, 2002.

(2) These regulations shall come into force on the 1st February, 2002.

Definitions.

2. (1) In these regulations, unless the context otherwise requires:-

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“the Act” means the Development Planning Act;

“the Authority” has the same meaning as is assigned to it in article 2 of the Act;

“development permission” means a permission to carry out development granted by the Authority on an application;

“planning obligation” in relation to these regulations shall have the same meaning assigned to them by article 40 of the Act limited to those entered into by public deed;

“relevant period” for the purposes of subregulation (2) of regulation 5 means:

(a) such periods as may be specified in accordance with subparagraph (b) of subregulation (1) of regulation 3, or

(b) if no such period is prescribed, the period of five years beginning with the date the obligation is entered into by means of a public deed.

(2) In these regulations any expression defined by the Act has the same meaning as it has in the Act.

3. (1) A planning obligation may:-

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(a) be unconditioned or subject to conditions;

(b) be for a specific period or periods or be for an indefinite period of time in regard to any restrictions or requirements mentioned in paragraphs (a), (b) or (c) of subarticle (2) of article 40 of the Act;

(c) if it requires a sum or sums to be paid in terms of paragraph (d) of subarticle (2) of article 40 of the Act, that such sum is specified in the public deed entered into by the applicant with the Authority;

(d) if they require a sum or sums to be paid periodically in terms of subparagraph (d) of subarticle (2) of article 40, such sum may be required to be paid for a specified period of time or indefinitely.

(2) A planning obligation entered into by a public deed shall:

(a) include a statement that the obligation is a planning obligation for the purpose of article 40 of the Act,

(b) identify properly the site to which the obligation is related, and

(c) identify exactly the person who enters into a planning obligation and the interest of such person on the site so identified.

4. (1) A planning obligation shall be enforceable by the Authority against the person entering into such obligation or against any person acquiring in any manner the property or rights on which there is such permission covered by the planning obligation.

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(2) If it appears to the Authority that any restriction or requirement imposed by a planning obligation as mentioned above is not abided by, the Authority shall serve a notice to any person mentioned in subregulation (1) of this regulation, requiring such steps as may be specified in the notice to comply with any such restriction or requirement, within such time as may be specified in the notice, including the discontinuance of anything being done or carried on.

(3) The Authority shall not give less than fifteen days' notice when serving a notice as is specified in subregulation (2) of this regulation. However, any order stopping anything that is being carried out or done has to be complied with immediately.

(4) The Authority may also in the notice specified in subregulation (2) of this regulation, revoke or modify the development permission covered by the planning obligation, subject to the fulfilling of the planning obligation or the payment of the stipulated sum, as the case may be.

(5) Subject to the provisions of subregulations (1) to (4) of this regulation, the provisions of article 55A of the Act shall apply to a notice issued in terms of this article.

Modifications and discharge of planning obligations.

5. (1) A planning obligation may not be modified or discharged except:

(a) by agreement between the Authority and the person on whom such obligation is enforceable; or

(b) in accordance with the following subarticles.

(2) A person on whom a planning obligation is enforceable may, after the expiry of the relevant period, apply to the Authority for the obligation:-

(a) to have effect subject to such modifications as may be specified in the application; or

(b) to be discharged.

(3) An application under paragraph (a) of subregulation (2) of this regulation may not specify a modification imposing a condition or obligation on any other person against whom the obligation is also enforceable.

(4) An application under subregulation (2) of this regulation shall be made on a form as the Authority may from time to time specify.

(5) Where such an application is made to the Authority, the Authority may determine:-

(a) that the obligation shall continue to have effect without modification; or

(b) that the obligation shall be discharged if it no longer serves a useful purpose; or

(c) that the obligation shall continue to have effect subject to the modifications requested in the application, if such obligation continues equally to serve a useful purpose subject to such modifications.

(6) Such determination shall be notified to the applicant within three months from the date that the Authority is notified with such an application.

(7) Where the Authority determines that a planning obligation shall have effect subject to modifications specified in the application, the obligation as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to applicant.

6. (1) A right of appeal shall lie from the Authority's decision to the Planning Appeals Board in terms of subregulations (2) and (4) of regulation 4 by any person on whom such notice is issued, within fifteen days from the service of the notice in terms of article 62 of the Act. Appeals from planning obligations.

(2) In case of an appeal mentioned in subregulation (1) of this regulation, the Appeals Board shall determine only whether a planning obligation has been breached or a payment has not been effected and if it is satisfied that no such breach has occurred or that payment has been effected in terms of the obligation, it shall uphold the appeal. If it is satisfied that a breach has occurred or that payment has not been effected, it shall dismiss the appeal.

(3) In case of such an appeal mentioned in subregulation (1) of this regulation, the provisions of the Act and of the Planning Appeals (Fees) Regulations, 1993 relating to procedure and fees of appeals from enforcement notices shall apply *mutatis mutandis* to such appeals. L.N. 7 of 1993.

(4) Where the Authority:

(a) determines that a planning obligation shall continue to have effect or to have effect without modifications requested by an applicant in terms of subregulation (5) of regulation 5, or

(b) fails to give notice of its determination to the applicant within the stipulated time mentioned in subregulation (6) of regulation 5,

the applicant may appeal to the Planning Appeals Board within 30 days of his being notified with the determination, or within 30 days of the lapse of the stipulated period above mentioned in paragraph (b), as the case may be.

L.N. 7 of 1993.

(5) In case of such an appeal mentioned in subregulation (4) of this regulation, the provisions of the Act and of the Planning Appeals (Fees) Regulations, 1993, relating to procedure and fees of appeals from refusal of a development permission shall apply *mutatis mutandis* to such appeal.

(6) In the case of subparagraph (b) of subregulation (4) of this regulation, for the purpose of an appeal, it shall be assumed that the Authority has determined that the obligation shall continue to have effect without modification.

(7) An interested third party shall have no right of appeal to the Planning Appeals Board under regulations 3, 4 and 5 of these regulations.