

**Planning and Development, Heritage and Broadcasting
(Amendment) Bill 2021**

Regulatory Impact Analysis (RIA)

1. Summary

Table 1 General Summary of Regulatory Impact Analysis (RIA)	
Department/Office: Housing, Local Government and Heritage	Title of Legislation: Planning and Development, Heritage and Broadcasting (Amendment) Bill 2021
Stage: Publication of Bill	Date: March 2021
<p>Related Publications:</p> <p>Heritage (Transfer of Departmental Administration and Ministerial Functions) Order 2020, S.I. No. 339 of 2020 http://www.irishstatutebook.ie/eli/2020/si/339/made/en/print</p> <p>Wildlife Act 1976 http://www.irishstatutebook.ie/eli/1976/act/39/enacted/en/print.html</p> <p>Planning and Development Act 2000 http://www.irishstatutebook.ie/eli/2000/act/30/enacted/en/html</p> <p>Wildlife Amendment Act 2000 http://www.irishstatutebook.ie/eli/2000/act/38/enacted/en/print.html</p> <p>European Communities (Birds and Natural Habitats) Regulations 2011 http://www.irishstatutebook.ie/eli/2011/si/477/made/en/print</p>	
<p>What policy objectives are being pursued?</p> <p>As part of the reorganisation of Ministerial and Departmental responsibilities following the formation of the Government in 2020, it is intended to transfer powers and functions relating to heritage under a number of enactments from the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media to the Minister for Housing, Local Government and Heritage. These powers and functions come under the Planning and Development Act 2000 (as amended), the Wildlife Act 1976, the Wildlife (Amendment) Act 2000 and the European Communities (Birds and Natural Habitats) Regulations 2011.</p> <p>In the normal course, such transfers of Ministerial functions are effected through orders (i.e. secondary legislation) under the Ministers and Secretaries (Amendment) Act 1939. However, issues arise in the present case which require primary legislation in order to fully implement the transfer of functions from one Minister to the other. The Planning and Development, Heritage and Broadcasting (Amendment) Bill 2021 would amend the relevant sections in the following legislation to give full effect to the transfer of powers and functions relating to heritage:</p> <ul style="list-style-type: none"> • Planning and Development Act, 2000 • Wildlife Act, 1976 • Wildlife Amendment Act, 2000 • European Communities (Birds and Natural Habitats) Regulations 2011 <p>What policy options have been considered?</p> <p>The following 2 options were considered:</p>	

Option 1: No Change Option		
Option 2: Legislate to provide for the full transfer of the heritage function to the Minister for Housing, Local Government and Heritage		
Preferred Option:		
The preferred option is Option 2		
NO CHANGE OPTION		
COSTS	BENEFITS	IMPACTS
Cost implications for the State may arise due to possible Judicial Reviews and Court cases brought against the Minister for Housing, Local Government and Heritage.	<ul style="list-style-type: none"> No benefits 	<ul style="list-style-type: none"> Supreme Court decision in the Mulcreevy case of 2004 states that there may be a breach of a key Constitutional principle if functions which the Oireachtas, in primary legislation (i.e. an Act), had intended to be divided between two separate Ministers are merged into one through a Statutory Instrument. The Minister may not be able to lodge planning applications for development/s which may be required as part of the heritage brief.
PREFERRED OPTION: Legislate		
No Cost implications arise	<ul style="list-style-type: none"> No instances of a potential constitution breach would arise as per the Supreme Court decision in the Mulcreevy case of 2004. The Minister would be in a position to lawfully exercise all heritage functions as set out in the Planning and Development Act, 2000, Wildlife Act, 1976, Wildlife Amendment Act, 2000 and the European Communities (Birds and Natural Habitats) Regulations 2011. 	<ul style="list-style-type: none"> The Minister for Housing, Local Government and Heritage would be in a position to fully carry out all functions relating to heritage under the Planning and Development Act, 2000, Wildlife Act, 1976, Wildlife Amendment Act, 2000 and the European Communities (Birds and Natural Habitats) Regulations 2011.

2. Policy Context and Objectives

2.1 Policy Context

The intention of the heritage provisions of the Planning and Development, Heritage and Broadcasting (Amendment) Bill 2021 is not to alter existing Government policy or to introduce new Government policy. Rather it is a part of a technical Bill the function of which part is to facilitate the full transfer of the heritage function to the Minister for Housing, Local Government and Heritage.

2.2 Objectives

The overall objective of the heritage provisions of the Planning and Development, Heritage and Broadcasting (Amendment) Bill 2021 is to give legislative underpinning to the full transfer of the heritage function to the Minister for Housing, Local Government and Heritage through amending certain primary and secondary legislation as required.

3. Identification of Options

No Change Option:

If no changes are made, legal challenges could be made to certain of the Minister's decisions or actions in areas where there has been a merger of two separate functions, previously carried out by two different Ministers, into the function of the one Minister, other than in accordance with the enactment of primary legislation.

The Minister for Housing, Local Government and Heritage may not be in position to lodge applications for planning permission and this could hinder the delivery of certain aspects of the heritage function.

Both of the above consequences could lead to reputational damage, legal costs and the inability of the Minister to carry out lawfully all the necessary heritage functions.

Preferred Option: Enactment of the Planning and Development, Heritage and Broadcasting (Amendment) Bill 2021

The enactment of the Planning and Development, Heritage and Broadcasting (Amendment) Bill 2021 would give legislative underpinning to the full transfer of the heritage function to the Minister for Housing, Local Government and Heritage through amending certain primary and secondary legislation as required.

4. Identification of Costs, Benefits and Impacts

4.1 Costs

No Change Option:

Failure to enact the identified required amendments to existing legislation could lead to Judicial Reviews or Court cases being brought against the Minister for Housing, Local Government and Heritage as a consequence of the Mulcreevy Supreme Court ruling of 2004. This would have a cost attached to the State.

Preferred Option: Enactment of the Planning and Development, Heritage and Broadcasting (Amendment) Bill 2021

There would be no additional budgetary costs arising from the enactment of the Bill, which would give legislative underpinning to the full transfer of the heritage function to the Minister for Housing, Local Government and Heritage.

4.2 Benefits

No Change Option:

There are no benefits to the status quo remaining.

Preferred Option: Enactment of the Planning and Development, Heritage and Broadcasting (Amendment) Bill 2021

The Minister for Housing, Local Government and Heritage would be able to fully carry out all of the heritage functions to be transferred.

4.3 Impacts

No Change Option:

- Potential legal costs arising from legal challenges
- Reputational damage to the Minister and the Department
- Inability of the Minister to carry out lawfully all the necessary heritage functions which in turn could lead to a negative impact on the environment.

Preferred Option: Enactment of the Planning and Development, Heritage and Broadcasting (Amendment) Bill 2021

NO IMPACT under any of the following categories

- (a) national competitiveness including employment;
- (b) the socially excluded or vulnerable groups including gender equality, poverty, people with disabilities and rural communities;
- (c) the environment;
- (d) whether the proposal involves a significant policy change in an economic market including impacts on competition and consumers;
- (e) North-South, East-West relations;
- (f) the rights of citizens/ human rights;
- (g) compliance burden on third parties e.g. citizens and business and other criteria to be decided from time to time by Government

5. Consultation

No consultation is required as the Planning and Development, Heritage and Broadcasting (Amendment) Bill 2021 is a technical Bill to give legal standing to the Government decision to transfer the heritage function to the Minister for Housing, Local Government and Heritage.

6. Enforcement and Compliance

N/A

7. Review

N/A

Public accountability

N/A

8. Publication

The Bill will be published as soon as possible after securing Government approval to do so and to present the Bill to the Oireachtas.

This Regulatory Impact Analysis will be published on the Department's website at:

<https://www.gov.ie/housing/>

Department of Housing, Local Government and Heritage

19 March 2021