

STATUTORY INSTRUMENTS

S.I.No.96 of 1978

LOCAL GOVERNMENT (WATER POLLUTION) ACT, 1977,
(TRANSFER OF APPEALS) ORDER, 1978.

DUBLIN
Published by the Stationery Office.

Pr1.7052

Price 16p.

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LOCAL GOVERNMENT (WATER POLLUTION) ACT, 1977,

(TRANSFER OF APPEALS) ORDER, 1978.

The Minister for the Environment, in exercise of the powers conferred on him by section 21 of the Local Government (Water Pollution) Act, 1977, (No. 1 of 1977), hereby orders as follows:-

1. This Order may be cited as the Local Government (Water Pollution) Act, 1977, (Transfer of Appeals) Order, 1978.

2. In this Order -

"the Act" means the Local Government (Water Pollution) Act, 1977;

"appeal" means an appeal under section 8 or 20 of the Act;

"the Board" means An Bord Pleanála;

"the Minister" means the Minister for the Environment;

"local authority" means a local authority as defined in section 1 of the Act;

"sanitary authority" means a sanitary authority as defined in section 1 of the Act.

3. This Order shall come into operation on the 1st day of April, 1978.

4. On the coming into operation of this Order all appeals shall, in lieu of being brought to the Minister, be brought to the Board.

5. In relation to appeals brought to the Board -

(1) sections 6(2)(d), 19(2)(d) and subsections (1)(a) and (9) of section 28 of the Act shall apply subject to the modification that references to the Minister shall be construed as references to the Board;

(2) section 6 of the Act shall apply subject to the modification that the following paragraph shall be added to subsection (2):-

"(g) the oral hearing of any appeal to An Bord Pleanála and any such oral hearing being conducted by An Bord Pleanála or by a person appointed for that purpose by An Bord Pleanála.";

(3) section 19 of the Act shall apply subject to the modification that the following paragraph shall be added to subsection (2):-

"(f) the oral hearing of any appeal to An Bord Pleanála and any such oral hearing being conducted by An Bord Pleanála or by a person appointed for that purpose by An Bord Pleanála"; and

(4) the provisions of the Local Government (Planning and Development) Acts, 1963 and 1976 specified in the Schedule to this Order shall apply as modified in that Schedule.

SCHEDULE

Local Government
(Planning and
Development) Act,
1963, Section 82(4),
(5), (6) and (7).

82(4) A person conducting an oral hearing of any appeal may require any officer of a local authority or a sanitary authority to give to him any information in relation to the appeal which he reasonably requires for the purposes of the appeal, and it shall be the duty of the officer to comply with the requirement.

(5)(a) A person conducting an oral hearing of any appeal may visit and inspect any land to which the appeal relates.

(b) Any person who obstructs the exercise of the power conferred by this subsection shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five pounds.

(6) A person conducting an oral hearing of any appeal may take evidence on oath and for that purpose may administer oaths, and a person giving evidence at any such hearing shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

(7)(a) Subject to the following paragraph, a person conducting an oral hearing of any appeal may, by giving notice in that behalf in writing to any person, require that person to attend at such time and place as is specified in the notice to give evidence in relation to any matter in question at the hearing or to produce any plans or other documents in his possession, custody or control which relate to any such matter.

(b) The following provisions shall have effect for the purposes of the foregoing paragraph:

(i) it shall not be necessary for a person to attend in compliance with a notice at a place more than ten miles from his ordinary place of residence unless such sum as will cover the reasonable and necessary expenses of the attendance have been paid or tendered to him;

(ii) the local authority or sanitary authority shall, at the request of the person conducting the oral hearing, pay or tender to any person whose attendance is required such sum as the person conducting the hearing considers will cover the reasonable and necessary expenses of the attendance;

(iii) any person who in compliance with a notice has attended at any place shall, save in so far as the reasonable and necessary expenses of the attendance have already been paid to him, be paid those expenses by the local authority or sanitary authority, and those expenses, save as aforesaid, shall, in default of being so paid, be recoverable as a simple contract debt in any court of competent jurisdiction;

(iv) every person to whom a notice has been given who refuses or wilfully neglects to attend in accordance with the notice or who wilfully alters, suppresses, conceals or destroys any document to which the notice relates or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding twenty pounds.

Local Government
(Planning and
Development) Act,
1976,
Section 5.

5(1) The Board shall, so far as may in the opinion of the Board be necessary for the performance of its functions, keep itself informed of the policies and objectives for the time being of the Minister, local authorities, sanitary authorities and any other body which is a public authority whose functions have, or may have, a bearing on control of water pollution.

(2) In this section "public authority" means any Minister of the Government not being the Minister, the Commissioners of Public Works in Ireland and any other body established by or under statute which is for the time being declared, by order made by the Minister, to be a public authority for the purposes of this section.

Section 6.

6(1) The Minister shall, from time to time, give to the Board such general directives as to policy in relation to control of water pollution as he considers necessary.

(2) The Board shall in performing its functions have regard to any directive under this section.

(3) Nothing in this section shall be construed as enabling the Minister to exercise any power or control in relation to any particular case with which the Board is or may be concerned.

(4) Where the Minister gives a directive under this section, the following provisions shall apply, namely -

- (a) as soon as may be the Minister shall cause a copy of the directive to be laid before each House of the Oireachtas,
- (b) the directive shall be published in the Oifigiúil, and
- (c) the Minister shall cause a copy of the directive to be sent to each local authority and sanitary authority.

Section 15.

15(1) A deposit of £10 shall be lodged with the Board by an appellant with his appeal and any appeal to the Board which is not accompanied by such deposit shall be invalid.

(2) As soon as may be after an appeal to the Board is either withdrawn or determined, subject to section 18(3) of the Local Government (Planning and Development) Act, 1976 as modified by the Local Government (Water Pollution) Act, 1977, (Transfer of Appeals) Order, 1978, (S.I. No. 96 of 1978), the Board shall return the deposit to the appellant.

Section 16.

16(1) Except where a direction is given by the Minister under this section, the Board shall have absolute discretion to hold an oral hearing of appeal to the Board.

(2) Where the Board is requested to hold an oral hearing of an appeal and decides to determine the appeal without an oral hearing, the Board -

- (a) shall serve notice of its decision on the person who requested such hearing, and
- (b) shall not proceed to determine the appeal until after the expiration of the period mentioned in subsection (3) of this section.

(3) Any person on whom a notice is served under subsection (2) of this section, other than a person on whom there has also been served a notice under section 18 of the Local Government (Planning and

Development) Act, 1976 as modified by the Local Government (Water Pollution) Act, 1977, (Transfer of Appeals) Order, 1978, relating to the relevant appeal, may, at any time before the expiration of fourteen days beginning on the day on which the notice under the said subsection (2) is served, apply in writing to the Minister for a direction under this section as regards the relevant appeal.

(4) In case an application is made under subsection (3) of this section to the Minister, unless the Board decides to hold an oral hearing of the relevant appeal, it shall not determine such appeal pending the decision of the Minister on the application.

(5) The Minister may direct the Board to hold an oral hearing of any appeal to the Board and any such direction shall be complied with by the Board.

Section 17.

17. The Board in deciding an appeal may take into account matters other than those raised by the parties to the appeal provided that the matters are brought to the notice of those parties and they are accorded an opportunity of making observations thereon to the Board or, in the case of an oral hearing, the person conducting the hearing.

Section 18.

18(1) Where the Board is of opinion that an appeal is vexatious or is being unnecessarily delayed by any party, the Board may serve a notice on the party stating that it will, at a time after the day specified in the notice (being a day which is not less than seven days after the service of the notice) without further notice to the party, determine the appeal to which the notice relates, and that the appeal may be so determined by the Board notwithstanding the fact that no submission has been made to the Board by the party in relation to the appeal.

(2) Where a notice has been served under this section the Board may, at any time after the day specified in the notice, without further notice to the party on whom the notice was served, determine the appeal, and the appeal may be so determined by the Board notwithstanding the fact that no submission has been made to the Board by such party in relation to the appeal.

(3) In case the Board in determining an appeal is of opinion that the appeal is vexatious, the Board may direct that the deposit lodged in relation to the appeal shall be forfeited to the Board.

Section 19.

19(1) Subject to subsection (2) of this section, where there is an appeal to the Board -

(a) the Board, if it so thinks proper and irrespective of the result of the appeal, may direct the local authority or sanitary authority to pay -

(1) to the appellant, such sum as the Board, in its absolute discretion, specifies as compensation to the appellant for the expense occasioned to him in relation to the appeal,

(ii) to the Board, such sum as the Board, in its absolute discretion, specifies as compensation to the Board towards the expense incurred by the Board in relation to the hearing of the appeal;

(b) in case the Board in determining the appeal does not accede in substance to the appellant's grounds of appeal, the Board, if it so thinks proper, may direct the appellant to pay -

(1) to the local authority or sanitary authority, such sum as the Board, in its absolute discretion, specifies as compensation to the local authority or sanitary authority for the expense occasioned to them in relation to the appeal,

(ii) to any of the other parties to the appeal, such sum as the Board, in its absolute discretion, specifies as compensation to the party for the expense occasioned to him in relation to the appeal,

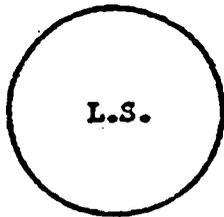
(iii) to the Board, such sum as the Board, in its absolute discretion, specifies as compensation to the Board towards the expense incurred by the Board in relation to the hearing of the appeal.

(2) A direction to pay any sum exceeding £50 shall be given by the Board under subsection (1) of this section only after consultation with the Minister.

(3) Any sum directed under this section to be paid shall, in default of being paid, be recoverable as a simple contract debt in any court of competent jurisdiction.

Section 23.

23. Where in relation to an appeal an inspection is carried out or an oral hearing is conducted on behalf of the Board, by a person appointed for the purpose by the Board, the person so appointed shall make to the Board a written report on the inspection or hearing, as the case may be, and shall include in his report a recommendation relating to the matter with which the inspection or hearing was concerned, and the Board shall, before determining the appeal in relation to which the inspection was carried out or the hearing was conducted, consider the report (including any recommendation contained therein).



GIVEN under the Official Seal of the
Minister for the Environment this
30th day of March, 1978.

SILVESTER BARRETT
Minister for the Environment.

Explanatory Note

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This order provides that all appeals under sections 8 and 20 of the Local Government (Water Pollution) Act, 1977 shall be brought to An Bord Pleanála, and also for matters incidental, supplementary and consequential to such provision.