STATUTORY INSTRUMENTS

1981 No. 158

Clean Air (Northern Ireland) Order 1981

Smoke control areas

Adaptation of fireplaces in private dwellings

18.—(1) If, after the confirmation of an order made by a district council under Article 17, the owner or occupier of, or any person having an estate or interest in, any private dwelling which is or will be within a smoke control area as a result of the order, not being a new dwelling, incurs expenditure on adaptations in or in connection with the dwelling to avoid contraventions of Article 17, the district council, subject to paragraph (2),—

(a) shall repay to the owner, occupier or other person seven-tenths of the expenditure so incurred; and

(b) may if it thinks fit also repay to the owner, occupier or other person the whole or any part of the remainder of that expenditure.

(2) Paragraph (1) shall not apply to any expenditure unless it is—

(a) incurred before the coming into operation of the order and with the approval of the district council given (whether before or after the expenditure is incurred) for the purposes of paragraph (1) and this paragraph; or

(b) reasonably incurred in carrying out adaptations required by a notice given under paragraph (3);

and, in either such case, unless the adaptations in question are carried out to the satisfaction of the district council.

(3) The district council may, by notice in writing served on the person appearing to them to be the owner or occupier of a private dwelling which is, or when an order made under Article 17 comes into operation will be, within a smoke control area, require the carrying out of adaptations in or in connection with the dwelling to avoid contraventions of Article 17.

(4) A notice under paragraph (3) shall require the adaptations to be carried out within such period, being not less than twenty-one days from the service of the notice, as may be specified in the notice, but that period may be extended by written permission of the district council.

(5) Where the district council serve a notice on any person under paragraph (3) it shall inform each other person on whom a notice under that paragraph may be served of the fact that such a notice has been served.

(6) A person on whom a notice is served under paragraph (3) may, within twenty-one days from the service of the notice, or such longer period as the district council may in writing allow, appeal to a court of summary jurisdiction on any of the following grounds which are appropriate to the circumstances of the particular case—

(a) that the notice is not justified by the terms of paragraph (3);

(b) that there has been some informality, defect or error in, or in connection with, the notice;

(c) that the district council has refused unreasonably to approve the execution of alternative adaptations, or that the adaptations required by the notice to be carried out are otherwise unreasonable in character or extent, or are unnecessary;

(d) that the time within which the adaptations are to be carried out is not reasonably sufficient for the purpose;

(e) that the notice might lawfully have been served on the occupier of the dwelling in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served.

(7) When an appeal is brought under paragraph (6) the court may, as it thinks fit, confirm, revoke or vary the notice, but where the appeal is based solely on the grounds of some informality, defect or error in, or in connection with a notice, the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(8) Where the grounds upon which an appeal under paragraph (6) is brought include the ground specified in paragraph (6)(*e*), the appellant shall serve a copy of his notice of appeal on each other person referred to in the notice, and on the hearing of the appeal the court may make such order as it thinks fit with respect to—

(a) the person by whom the adaptations are to be carried out;

(b) whether that person is to bear the whole or part of the cost of carrying out the adaptations, and the proportion which any such part is to bear to that cost; and

(c) whether any other person is to make to that person a contribution towards that cost, and the proportion which such contribution is to bear to that cost.

(9) In exercising its powers under paragraph (8) the court shall have regard, as between an owner and an occupier, to the terms and conditions (whether contractual or statutory) of the tenancy and to the nature of the adaptations to be carried out.

(10) If a notice served under paragraph (3) is not complied with, then—

(a) after the expiration of the time within which the adaptations are required to be carried out; or

(b) if on an appeal brought against the notice, the notice has been confirmed with or without variation, after the expiration of twenty-one days from the final determination of the appeal or such longer period as the court in determining the appeal may fix;

the district council may carry out the adaptations required to be carried out by the notice (with any variation made by the court).

(11) Where the district council carry out adaptations under paragraph (10), the council may,—

(a) if an order is not made by virtue of paragraph (8), recover from the person on whom the notice was served under paragraph (3) the appropriate fraction of the relevant expenses;

(b) if an order is made by virtue of paragraph (8), recover from—

(i) the person who under the order is to bear the whole of the cost of carrying out the adaptations the appropriate fraction of the relevant expenses;

(ii) any person who under the order is to bear part of, or make a contribution towards, the cost of carrying out the adaptations the appropriate fraction of so much of the relevant expenses as bears to the relevant expenses the same proportion as that fixed under paragraph (8)(*b*) or, as the case may be, paragraph (8)(*c*).

(12) In paragraph (11)—

"appropriate fraction" means three-tenths or such smaller fraction as the district council may in any particular circumstances determine;

"relevant expenses" means the expenses reasonably incurred by the district council in carrying out the adaptations.

Changes to legislation:
There are currently no known outstanding effects for the Clean Air (Northern Ireland) Order 1981, Section 18.