

1978 No. 350

PUBLIC HEALTH**The Control of Noise (Appeals) Regulations (Northern Ireland) 1978***Made* 16th November 1978*Coming into operation* 18th December 1978

The Department of the Environment, in exercise of the powers conferred on it by Articles 50(1) and (2) and 86 of the Pollution Control and Local Government (Northern Ireland) Order 1978(a) and of every other power enabling it in that behalf, hereby makes the following regulations:—

PART I**INTRODUCTORY***Citation and commencement*

1. These regulations may be cited as the Control of Noise (Appeals) Regulations (Northern Ireland) 1978 and shall come into operation on 18th December 1978.

Interpretation

2. In these regulations—

“the Order” means the Pollution Control and Local Government (Northern Ireland) Order 1978, and any reference in these regulations to a numbered Article shall be construed as a reference to the Article bearing that number in the Order;

“best practicable means” shall be construed in accordance with Article 52;

“person responsible” has the meaning given to it by Article 53(1).

PART II**APPEALS TO COURTS OF SUMMARY JURISDICTION***Interpretation of Part II*

3. This part relates only to appeals brought to courts of summary jurisdiction under Part III of the Order, and any reference to an appeal or an appellant shall be construed accordingly.

Appeals under Article 38(3)

4.—(1) The provisions of this regulation shall apply to an appeal brought by any person under Article 38(3) (summary proceedings by district councils) against a notice served upon him by a district council under that Article.

(2) The grounds on which such a person served with such a notice may appeal under the said Article 38(3) may include any of the following grounds which are appropriate in the circumstances of the particular case:—

(a) that the notice is not justified by the terms of Article 38;

- (b) that there has been some informality, defect or error in, or in connection with, the notice;
- (c) that the council have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the notice are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time, or where more than one time is specified, any of the times, within which the requirements of the notice are to be complied with is not reasonably sufficient for the purpose;
- (e) where the noise to which the notice relates is noise caused in the course of a trade or business, that the best practicable means have been used for preventing, or for counteracting the effect of, the noise;
- (f) that the requirements imposed by the notice are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of—
 - (i) any notice served under Article 40 or 46; or
 - (ii) any consent given under Article 41 or 45; or
 - (iii) any determination made under Article 47;
- (g) that the notice should have been served on some person instead of the appellant, being the person responsible for the noise;
- (h) that the notice might lawfully have been served on some person instead of, or in addition to the appellant, being the owner or occupier of the premises from which the noise is emitted or would be emitted, and that it would have been equitable for it to have been so served;
- (i) that the notice might lawfully have been served on some person in addition to the appellant, being a person also responsible for the noise and that it would have been equitable for it to have been so served.

(3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the notice, the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal is brought include a ground specified in paragraph (2)(h) or (i) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which this regulation applies he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises in question.

(5) On the hearing of the appeal the court may—

(a) quash the notice to which the appeal relates; or

(b) vary the notice in favour of the appellant, in such manner as it thinks fit; or

(c) dismiss the appeal;

and a notice which is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the district council.

(6) Subject to paragraph (7), on the hearing of the appeal the court may make such order as it thinks fit—

- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work; or
 - (b) as to the proportions in which any expenses which may become recoverable by the council under Part III of the Order are to be borne by the appellant and by any other person.
- (7) In exercising its powers under paragraph (6), the court—
- (a) shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of any relevant tenancy and to the nature of the works required; and
 - (b) shall be satisfied, before it imposes any requirement thereunder on any other person other than the appellant that that person has received a copy of the notice of appeal in pursuance of paragraph (4).

Appeals under Article 40(7)

5.—(1) The provisions of this regulation shall apply to an appeal brought by any person under Article 40(7) (control of noise on construction sites) against a notice served on him by a district council under that article.

(2) The grounds on which a person served with such a notice may appeal under Article 40(7) may include any of the following grounds which are appropriate in the circumstances of the particular case:—

- (a) that the notice is not justified by the terms of Article 40;
- (b) that there has been some informality, defect or error in, or in connection with, the notice;
- (c) that the council have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the notice are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time, or where more than one time is specified, any of the times within which the requirements of the notice are to be complied with is not reasonably sufficient for the purpose;
- (e) that the notice should have been served on some person instead of the appellant, being a person who is carrying out, or going to carry out the works, or is responsible for, or has control over, the carrying out of the works;
- (f) that the notice might lawfully have been served on some person in addition to the appellant, being a person who is carrying out, or going to carry out, the works, or is responsible for, or has control over, the carrying out of the works, and that it would have been equitable for it to have been so served;
- (g) that the council have not had regard to some or all of the provisions of Article 40(4).

(3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the notice, the court shall dismiss the appeal, if it is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal is brought include a ground specified in paragraph (2)(e) or (f) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which this regulation applies he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises in question.

- (5) On the hearing of the appeal the court may—
- (a) quash the notice to which the appeal relates; or
 - (b) vary the notice in favour of the appellant in such manner as it thinks fit; or
 - (c) dismiss the appeal;

and a notice which is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the district council.

Appeals under Article 41(7)

6.—(1) The provisions of this regulation shall apply to an appeal brought by any person under Article 41(7) (prior consent for work on construction sites) in relation to a conditional consent given by a district council under that Article or in relation to a council's refusal or failure to give a consent within the period specified in paragraph (7) of that Article.

(2) In this regulation, "conditional consent" means a consent given by a district council under Article 41 in respect of which the council have attached any condition or imposed any limitation or qualification in pursuance of Article 41(5)(a), (b) or (c); and "condition" includes any limitation or qualifications so imposed.

(3) The grounds on which a person to whom a district council give a conditional consent may appeal under Article 41(7) may include any of the following grounds which are appropriate in the circumstances of the particular case:—

- (a) that any condition attached or imposed in relation to the consent (in this regulation referred to as a "relevant condition") is not justified by the terms of Article 41;
- (b) that there has been some informality, defect or error in, or in connection with, the consent;
- (c) that the requirements of any relevant condition are unreasonable in character or extent, or are unnecessary;
- (d) that the time, or where more than one time is specified, any of the times, within which the requirements of any relevant condition are to be complied with is not reasonably sufficient for the purpose.

(4) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the consent, the court shall dismiss the appeal, if it is satisfied that the informality, defect or error was not a material one.

(5) Where the appeal relates to a conditional consent given by a district council, on the hearing of the appeal the court may:—

- (a) vary the consent or any relevant condition in favour of the appellant in such manner as it thinks fit; or
- (b) quash any relevant condition; or
- (c) dismiss the appeal;

and a consent or condition which is varied under sub-paragraph (a) above shall be final and shall otherwise have effect as so varied, as if it had been given, attached or imposed in that form by the council.

(6) Where the appeal relates to a district council's refusal or failure to give a consent within the period specified in Article 41(7), on the hearing of

the appeal the court shall afford to the appellant and to the council an opportunity of making representations to it concerning the application under Article 41(1) to which the appeal relates and concerning the terms and conditions of any consent which they consider to be appropriate thereto, and thereafter the court shall either:—

- (a) adjourn the appeal to enable the appellant to submit to the council a new application under Article 41(1) relating to the matters which are the subject of the appeal; or
- (b) make an order giving consent to the application either unconditionally or subject to such conditions as it thinks fit, having regard to the provisions of Article 41(4), (5) and (9), and any other matters which appear to it to be relevant;

and any consent given by an order made under sub-paragraph (b) shall be final and shall otherwise have effect for the purpose of Part III of the Order as if it were a consent given by the district council under Article 41.

PART III

SUSPENSION OF NOTICES

7.—(1) Subject to paragraph (2), where an appeal is brought against a notice served under Article 38 or 40 and—

- (a) the noise to which the notice relates is noise caused in the course of the performance of some duty imposed by law on the appellant; or
- (b) compliance with the notice would involve any person in expenditure on the carrying out of work before the hearing of the appeal;

the notice shall be suspended until the appeal has been abandoned or decided by the court.

(2) A notice to which this regulation applies shall not be suspended if in the opinion of the district council—

- (a) the noise to which the notice relates:—
 - (i) is injurious to health; or
 - (ii) is likely to be of a limited duration such that the suspension of the notice would render the notice of no practical effect; or
- (b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance;

and the notice includes a statement that it shall have effect notwithstanding any appeal to a court of summary jurisdiction which has not been decided by the court.

(3) Save as provided in this regulation a notice under Part III of the Order shall not be suspended by reason only of the bringing of an appeal to a court of summary jurisdiction.

Sealed with the official seal of the Department of the Environment for Northern Ireland on 16th November 1978.

(L.S.)

J. A. D. Higgins

Senior Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the regulations, but is intended to indicate their general purport.)

These regulations make provision with respect to the making of appeals to courts of summary jurisdiction under Articles 38, 40 or 41 of the Pollution Control and Local Government (Northern Ireland) Order 1978. Part II sets out grounds on which appeals may be made to courts of summary jurisdiction, prescribes the procedure to be followed in certain cases in which the appellant claims that a notice should have been served on some other person, and the action which the court may take to give effect to its decision on an appeal. Part III prescribes the cases in which a notice under Articles 38 or 40 is to be suspended pending the abandonment of, or a decision by a court of summary jurisdiction on, an appeal, and provides that notices under other provisions of Part III of the Order will not be suspended pending an appeal.