1978 No. 350

PUBLIC HEALTH

The Control of Noise (Appeals) Regulations (Northern Ireland) 1978

Made . . . . . 16*th November* 1978

Coming into operation . . . 18*th 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;

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(*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.