

Annex II

Environment and Miscellaneous Provisions Act 2011

PART 2

Costs of Certain Proceedings to be Borne by Each Party in Certain Circumstances

Costs of proceedings to be borne by each party in certain circumstances.

3.— (1) Notwithstanding anything contained in any other enactment or in—

(a) Order 99 of the Rules of the Superior Courts (S.I. No. 15 of 1986),

(b) Order 66 of the Circuit Court Rules (S.I. No. 510 of 2001), or

(c) Order 51 of the District Court Rules (S.I. No. 93 of 1997),

and subject to subsections (2), (3) and (4), in proceedings to which this section applies, each party (including any notice party) shall bear its own costs.

(2) The costs of the proceedings, or a portion of such costs, as are appropriate, may be awarded to the applicant, or as the case may be, the plaintiff, to the extent that he or she succeeds in obtaining relief and any of those costs shall be borne by the respondent, or as the case may be, defendant or any notice party, to the extent that the acts or omissions of the respondent, or as the case may be, defendant or any notice party, contributed to the applicant, or as the case may be, plaintiff obtaining relief.

(3) A court may award costs against a party in proceedings to which this section applies if the court considers it appropriate to do so—

(a) where the court considers that a claim or counter-claim by the party is frivolous or vexatious,

(b) by reason of the manner in which the party has conducted the proceedings, or

(c) where the party is in contempt of the court.

(4) Subsection (1) does not affect the court's entitlement to award costs in favour of a party in a matter of exceptional public importance and where in the special circumstances of the case it is in the interests of justice to do so.

(5) In this section a reference to “court” shall be construed as, in relation to particular proceedings to which this section applies, a reference to the District Court, the Circuit Court, the High Court or the Supreme Court, as may be appropriate.

Civil proceedings relating to certain licences, etc.

4.— (1) Section 3 applies to civil proceedings, other than proceedings referred to in subsection (3), instituted by a person—

(a) for the purpose of ensuring compliance with, or the enforcement of, a statutory requirement or condition or other requirement attached to a licence, permit, permission, lease or consent specified in subsection (4), or

(b) in respect of the contravention of, or the failure to comply with such licence, permit, permission, lease or consent,

and where the failure to ensure such compliance with, or enforcement of, such statutory requirement, condition or other requirement referred to in paragraph (a), or such contravention or failure to comply referred to in paragraph (b), has caused, is causing, or is likely to cause, damage to the environment.

(2) Without prejudice to the generality of subsection (1), damage to the environment includes damage to all or any of the following:

(a) air and the atmosphere;

(b) water, including coastal and marine areas;

(c) soil;

(d) land;

(e) landscapes and natural sites;

(f) biological diversity, including any component of such diversity, and genetically modified organisms;

(g) health and safety of persons and conditions of human life;

(h) cultural sites and built environment;

(i) the interaction between all or any of the matters specified in paragraphs (a) to (h).

(3) Section 3 shall not apply—

(a) to proceedings, or any part of proceedings, referred to in subsection (1) for which damages, arising from damage to persons or property, are sought, or

(b) to proceedings instituted by a statutory body or a Minister of the Government.

(4) For the purposes of subsection (1), this section applies to—

(a) a licence, or a revised licence, granted under section 83 of the Environmental Protection Agency Act 1992 ,

(b) a licence granted pursuant to section 32 of the Act of 1987,

(c) a licence granted under section 4 or 16 of the Local Government (Water Pollution) Act 1977 ,

(d) a licence granted under section 63, or a water services licence granted under section 81, of the Water Services Act 2007 ,

(e) a waste collection permit granted pursuant to section 34, or a waste licence granted pursuant to section 40, of the Act of 1996,

(f) a licence granted pursuant to section 23(6), 26 or 29 of the Wildlife Act 1976 ,

(g) a permit granted pursuant to section 5 of the Dumping at Sea Act 1996 ,

(h) a licence granted under section 40, or a general felling licence granted under section 49, of the Forestry Act 1946 ,

(i) a licence granted pursuant to section 30 of the Radiological Protection Act 1991 ,

(j) a lease made under section 2, or a licence granted under section 3 of the Foreshore Act 1933 ,

(k) a prospecting licence granted under section 8, a State acquired minerals licence granted under section 22 or an ancillary rights licence granted under section 40, of the Minerals Development Act 1940 ,

(l) an exploration licence granted under section 8, a petroleum prospecting licence granted under section 9, a reserved area licence granted under section 19, or a working facilities permit granted under section 26, of the Petroleum and Other Minerals Development Act 1960 ,

(m) a consent pursuant to section 40 of the Gas Act 1976 ,

(n) a permission or approval granted pursuant to the Planning and Development Act 2000 .

(5) In this section—

“damage”, in relation to the environment, includes any adverse effect on any matter specified in paragraphs (a) to (i) of subsection (2);

“statutory body” means any of the following:

(a) a body established by or under statute;

(b) a county council within the meaning of the Local Government Act 2001 ;

(c) a city council within the meaning of the Local Government Act 2001 .

(6) In this section a reference to a licence, revised licence, permit, permission, approval, lease or consent is a reference to such licence, permit, lease or consent and any conditions or other requirements attached to it and to any renewal or revision of such licence, permit, permission, approval, lease or consent.

Proceedings relating to Information Regulations.

5.— (1) Section 3 applies to civil proceedings, other than proceedings referred to in subsection (2), instituted by a person relating to a request referred to in Regulation 6 of the Information Regulations.

(2) Section 3 shall not apply to proceedings instituted by the Commissioner for Environmental Information or a public authority pursuant to the Information Regulations.

(3) In this section—

“Information Regulations” means the European Communities (Access to Information on the Environment) Regulations 2007 (S.I. No. 133 of 2007);

“public authority” has the meaning assigned to it by the Information Regulations.

Additional proceedings to which section 3 applies.

6.— Section 3 applies to—

(a) proceedings in the High Court by way of judicial review or of seeking leave to apply for judicial review, of proceedings referred to in section 4 or 5 ,

(b) an appeal (including an appeal by way of case stated) from the District Court, Circuit Court or High Court in any proceedings referred to in section 4 or 5 or paragraph (a), and

(c) proceedings for interim or interlocutory relief in relation to any proceedings referred to in section 4 or 5 or paragraph (a).

Application to court for determination that section 3 applies to proceedings.

7.— (1) A party to proceedings to which section 3 applies may at any time before, or during the course of, the proceedings apply to the court for a determination that section 3 applies to those proceedings.

(2) Where an application is made under subsection (1), the court may make a determination that section 3 applies to those proceedings.

(3) Without prejudice to subsection (1), the parties to proceedings referred to in subsection (1), may, at any time, agree that section 3 applies to those proceedings.

(4) Before proceedings referred to in section 3 are instituted, the persons who would be the parties to those proceedings if those proceedings were instituted, may, before the institution of those proceedings and without prejudice to subsection (1), agree that section 3 applies to those proceedings.

(5) An application under subsection (1) shall be by motion on notice to the parties concerned.

Judicial notice to be taken of Convention.

8.— Judicial notice shall be taken of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25 June 1998.