

Some Relevant Irish Legislation:

Environment (Miscellaneous Provisions) Act 2011

[<http://www.irishstatutebook.ie/2011/en/act/pub/0020/sec0003.html#sec3>](http://www.irishstatutebook.ie/2011/en/act/pub/0020/sec0003.html#sec3)

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.

MAIN IMPLEMENTING LEGISLATION: Planning and Development (Amendment) Act 2010

[<http://www.irishstatutebook.ie/2010/en/act/pub/0030/sec0033.html#sec33>](http://www.irishstatutebook.ie/2010/en/act/pub/0030/sec0033.html#sec33)

Costs in environmental matters.

33.— The Principal Act is amended by the insertion of the following new section after section 50A:

“50B.— (1) This section applies to proceedings of the following kinds:

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

(i) any decision or purported decision made or purportedly made,

(ii) any action taken or purportedly taken, or

(iii) any failure to take any action,

pursuant to a law of the State that gives effect to—

(I) a provision of Council Directive 85/337/EEC of 27 June 1985 to which Article 10a (inserted by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directive 85/337/EEC and 96/61/EC) of that Council Directive applies,

(II) Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, or

(III) a provision of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control to which Article 16 of that Directive applies; or

(b) an appeal (including an appeal by way of case stated) to the Supreme Court from a decision of the High Court in a proceeding referred to in paragraph (a);

(c) proceedings in the High Court or the Supreme Court for interim or interlocutory relief in relation to a proceeding referred to in paragraph (a) or (b).

(2) Notwithstanding anything contained in Order 99 of the Rules of the Superior Courts and subject to subsections (3) and (4), in proceedings to which this section applies, each party (including any notice party) shall bear its own costs.

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

(a) because the Court considers that a claim or counterclaim by the party is frivolous or vexatious,

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

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

Irish Statutes applying to judicial review procedures

(4) Subsection (2) 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 'the Court' shall be construed as, in relation to particular proceedings to which this section applies, a reference to the High Court or the Supreme Court, as may be appropriate."

Planning and Development Act, 2000 [original format]

Judicial review of appeals, referrals and other matters.

50.—(1) Where a question of law arises on any appeal or referral, the Board may refer the question to the High Court for decision.

(2) A person shall not question the validity of—

(a) a decision of a planning authority—

(i) on an application for a permission under this Part, or

(ii) under section 179 ,

(b) a decision of the Board—

(i) on any appeal or referral,

(ii) under section 175 , or

(iii) under Part XIV,

otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) ("the Order").

Above (section 2) substituted by-

32.— Section 50A of the Principal Act is amended by the substitution of the following subsection for subsection (2):

"(2) (a) An application for section 50 leave shall be made by motion ex parte and shall be grounded in the manner specified in the Order in respect of an ex parte motion for leave.

(b) The Court hearing the ex parte application for leave may decide, having regard to the issues arising, the likely impact of the proceedings on the respondent or another party, or for other good and sufficient reason, that the application for leave should be conducted on an inter partes basis and may adjourn the application on such terms as it may direct in order that a notice may be served on that person.

(c) If the Court directs that the leave hearing is to be conducted on an inter partes basis it shall be by motion on notice (grounded in the manner specified in the Order in respect of an ex parte motion for leave)—

(i) if the application relates to a decision made or other act done by a planning authority or local authority in the performance or purported performance of a function under this Act, to the authority concerned and, in the case of a decision made or other act done by a planning authority on an application for permission, to the applicant for the permission where he or she is not the applicant for leave,

(ii) if the application relates to a decision made or other act done by the Board on an appeal or referral, to the Board and each party or each other party, as the case may be, to the appeal or referral,

(iii) if the application relates to a decision made or other act done by the Board on an application for permission or approval, to the Board and to the applicant for the permission or approval where he or she is not the applicant for leave,

(iv) if the application relates to a decision made or other act done by the Board or a local authority in the performance or purported performance of a function referred to in section 50(2)(b) or (c), to the Board or the local authority concerned, and

(v) to any other person specified for that purpose by order of the High Court.

(d) The Court may—

(i) on the consent of all of the parties, or

(ii) where there is good and sufficient reason for so doing and it is just and equitable in all the circumstances,

treat the application for leave as if it were the hearing of the application for judicial review and may for that purpose adjourn the hearing on such terms as it may direct.”.

(3) The Board or any party to an appeal or referral may, at any time after the bringing of an application for leave to apply for judicial review of a decision of a planning authority, apply to the High Court to stay the proceedings pending the making of a decision by the Board in relation to the appeal or referral concerned, and the Court may, where it considers that the matter is within the jurisdiction of the Board, make an order on such terms as it thinks fit.

(4) (a) (i) Subject to subparagraph (iii), application for leave to apply for judicial review under the Order in respect of a decision referred to in paragraph (a) (i) or (b) (i) of subsection (2), shall be made within the period of 8 weeks commencing on the date of the decision of the planning authority or the Board, as the case may be.

(ii) Subject to subparagraph (iii), application for leave to apply for judicial review under the Order in respect of a decision referred to in paragraph (a) (ii) or (b) (ii) or (iii) of subsection (2), shall be made within the period of 8 weeks commencing on the date on which notice of the decision was first published.

(iii) The High Court shall not extend the period referred to in subparagraph (i) or (ii) unless it considers that there is good and sufficient reason for doing so.

(b) An application for leave to apply for judicial review shall be made by motion, on notice (grounded in the manner specified in the Order in respect of an ex parte motion for leave)—

(i) if the application relates to a decision referred to in paragraph (a) of subsection (2), to the planning authority concerned and, with regard to a decision on an application for permission under this Part, to the applicant for the permission where he or she is not the applicant for leave,

(ii) if the application relates to a decision referred to in subparagraph (i) of subsection (2)(b), to the Board and each party or each other party, as the case may be, to the appeal or referral,

(iii) if the application refers to a decision referred to in subparagraph (ii) or (iii) of subsection (2)(b), to the Board and the planning or local authority concerned, and

(iv) to any other person specified for that purpose by order of the High Court,

and leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed, and that the applicant has a substantial interest in the matter which is the subject of the application.

(c) Without prejudice to the generality of paragraph (b), leave shall not be granted to an applicant unless the applicant shows to the satisfaction of the High Court that—

(i) the applicant—

(I) in the case of a decision of a planning authority on an application for permission under this Part, was an applicant for permission or is a prescribed body or other person who made submissions or observations in relation to the proposed development,

(II) in the case of a decision of a planning authority under section 179, is a prescribed body or other person who made submissions or observations in relation to the proposed development,

(III) in the case of a decision of the Board on any appeal or referral, was a party to the appeal or referral or is a prescribed body or other person who made submissions or observations in relation to that appeal or referral,

(IV) in the case of a decision of the Board under section 175, is the planning authority which applied for approval, or is a prescribed authority or other person who made submissions or observations under subsection (4) or (5) of that section, or

(V) in the case of a decision of the Board under Part XIV, is a local authority that proposes to acquire land or to carry out a scheme or proposed road development or is a person who made objections, submissions or observations in relation to that proposal,

or

(ii) in the case of a person (other than a person to whom clause (I), (II), (III), (IV) or (V) applies), there were good and sufficient reasons for his or her not making objections, submissions or observations, as the case may be.

(d) A substantial interest for the purposes of paragraph (b) is not limited to an interest in land or other financial interest.

(e) A Member State of the European Communities or a state which is a party to the Transboundary Convention shall not be required, when applying for leave to apply for judicial review of a decision referred to in paragraph (c), to comply with the requirements of that paragraph.

(f) (i) The determination of the High Court of an application for leave to apply for judicial review, or of an application for judicial review, shall be final and no appeal shall lie from the decision of the High Court to the Supreme Court in either case, except with the leave of the High Court, which leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(ii) This paragraph shall not apply to a determination of the High Court, in so far as it involves a question as to the validity of any law, having regard to the provisions of the Constitution.

(g) Where an application is made for judicial review under this section in respect of part only of a decision referred to in subsection (2), the High Court may, if it thinks fit, declare to be invalid or quash the part concerned or any provision thereof without declaring to be invalid or quashing the remainder of the decision or part of a decision, and if the Court does so, it may make any consequential amendments to the remainder of the decision or part of a decision that it considers appropriate.

(h) References in subsection (2) and this subsection to the Order shall be construed as including references to the Order as amended or re-enacted (with or without modification) by rules of court.

(5) (a) Where an application is made for leave to apply for judicial review, or an application is made for judicial review, in respect of—

(i) a decision by a planning authority under section 34 of a class in relation to which the Minister has given a direction under section 126 (5),

(ii) a decision of the Board on an appeal of a decision of a class in relation to which the Minister has given a direction under section 126 (5),

(iii) a decision of a planning authority referred to in subsection (2)(a)(ii), or

(iv) a decision of the Board referred to in subsection (2)(b)(ii) or (iii),

the High Court shall, in determining the application, act as expeditiously as possible consistent with the administration of justice.

(b) The Supreme Court shall act as expeditiously as possible consistent with the administration of justice in determining any appeal made in respect of a determination by the High Court of an application referred to in paragraph (a).

(c) Rules of court may make provision for the expeditious hearing of an application referred to in paragraph (a).

Section 3 of Planning and Development (Amendment) Act 2010:

(3) The Court shall not grant section 50 leave unless it is satisfied that—
(a) there are substantial grounds for contending that the decision or act concerned is invalid or ought to be quashed, and
(b) (i) the applicant has a sufficient interest in the matter which is the subject of the application, or

(ii) where the decision or act concerned relates to a development identified in or under regulations made under section 176, for the time being in force, as being development which may have significant effects on the environment, the applicant—

(I) is a body or organisation (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection,

(II) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives, and

(III) satisfies such requirements (if any) as a body or organisation, if it were to make an appeal under section 37(4)(c), would have to satisfy by virtue of section 37(4)(d)(iii) (and, for this purpose, any requirement prescribed under section 37(4)(e)(iv) shall apply as if the reference in it to the class of matter into which the decision, the subject of the appeal, falls were a reference to the class of matter into which the