

# Air Pollution Act, 1987



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## AIR POLLUTION ACT, 1987

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## AIR POLLUTION ACT, 1987

AN ACT TO PROVIDE FOR THE CONTROL OF AIR POLLUTION AND OTHER MATTERS CONNECTED WITH AIR POLLUTION. [10th June, 1987]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

## PART I

## Preliminary and General

- Short title.** 1.—This Act may be cited as the Air Pollution Act, 1987.
- Commencement.** 2.—This Act shall come into operation on such day or days as may be appointed by order or orders of the Minister, either generally or with reference to a particular purpose or provision, or with reference to a particular area or areas, and different days may be fixed for different purposes and different provisions of this Act and for different areas.
- Non application of Act** 3.—This Act shall not apply in relation to an emission arising from—
- (i) the disposal at sea of a substance by deliberate combustion for thermal destruction, or
  - (ii) the use of any radioactive substance or device.
- Air pollution** 4.—“*Air pollution*” in this Act means a condition of the atmosphere in which a pollutant is present in such a quantity as to be liable to—
- (i) be injurious to public health, or
  - (ii) have a deleterious effect on flora or fauna or damage property, or
  - (iii) impair or interfere with amenities or with the environment.
- Best practicable means** 5.—(1) Subject to *subsection (3)*, a reference in this Act to the use of the best practicable means to prevent or limit an emission shall be construed as meaning the provision and proper maintenance, use, operation and supervision of facilities which, having regard to all the circumstances, are the most suitable for such prevention or limitation.
- (2) In considering whether facilities are the most suitable for the prevention or limitation of an emission, regard shall be had—
- (a) in the case of industrial plant, other than existing industrial plant, to—
    - (i) the current state of technical knowledge, and
    - (ii) the requirements of the environment, and
    - (iii) the costs which would be incurred in providing, maintaining, using, operating and supervising the facilities concerned, and
  - (b) in any other case, in addition to the matters specified in *paragraph (a) (i), (ii) and (iii)*, to—
    - (i) the nature, extent and effect of the emission concerned, and
    - (ii) the age of the existing industrial plant or other premises, the nature of the facilities installed therein and the period during which the plant or other premises is likely to be used or to continue in operation, and
    - (iii) the costs which would be incurred in renovating the plant or other premises, or of renovating or replacing the facilities therein, in relation to the economic situation of undertakings or enterprises of the class concerned.
- (3) The Minister may, from time to time as occasion demands, issue directions specifying the best practicable means for preventing or limiting such emission as may be specified in the direction either generally, or from premises of a particular class or description, and regard shall be had, in the administration of this Act, to any such directions.
- (4) Whenever the Minister issues a direction under *subsection (3)*, he shall cause as soon as may be—
- (a) a copy of such direction to be sent to each local authority and to An Bord Pleanála,
  - (b) notice of the issue of the direction to be published in *Iris Oifigiúil*, and
  - (c) a copy of the direction to be made available, on payment of such fee (if any) as may be fixed by the Minister, to every person who makes application for such a copy.

(5) In this section “*facilities*” means machinery, plant, equipment, appliances, apparatus, buildings and other structures

Industrial plant and  
existing industrial plant

6.—(1) “*Industrial plant*” in this Act means any plant, equipment, appliance, apparatus, machinery, works, building or other structure or any land or any part of any land which is used in the course of trade, business or industry for the purposes of, or incidental to, any industrial process specified in the Third Schedule.

(2) In this Act “*existing industrial plant*” means industrial plant—

(a) in respect of which a permission under Part IV of the Local Government (Planning and Development) Act, 1963, is granted prior to such day (in this subsection referred to as “*the relevant day*”) as may be prescribed by the Minister, or

(b) which is, on the day immediately prior to the relevant day, or was, at any time during the period of twelve months ending on the day immediately prior to the relevant day, used for the purposes of, or incidental to, any industrial process specified in the Third Schedule, other than industrial plant which is an unauthorised structure or the use of which constitutes an unauthorised use.

(3) The Minister may, by regulations, vary, by the addition or deletion of any industrial process, the Third Schedule.

(4) In this section “*unauthorised structure*” and “*unauthorised use*” have the meanings assigned to them by the Local Government (Planning and Development) Act, 1963.

Interpretation generally

7.—(1) In this Act—

“*air quality management plan*” has the meaning specified in section 46;

“*air quality standard*” means a standard prescribed for the purposes of this Act by the Minister pursuant to section 50;

“*authorised fireplace*” means a fireplace declared to be an authorised fireplace by the Minister in regulations under section 40 (2);

“*authorised fuel*” means a fuel declared to be an authorised fuel by the Minister in regulations under section 40 (3);

“*authorised person*” means a person who is—

(a) appointed in writing by a local authority to be an authorised person for the purposes of this Act, or

(b) appointed in writing to be an authorised person pursuant to regulations under this Act by a person specified in those regulations;

“*emission*” means, save where the context otherwise requires, an emission of a pollutant into the atmosphere;

“*emission limit value*” means a limit prescribed by the Minister under section 51;

“*fireplace*” includes any furnace, incinerator, grate or stove whether open or closed or any other place of combustion;

“*functions*” includes powers and duties;

“*industrial process*” includes any process which is carried on in the course of trade, business or industry and which is for, or incidental to, the making or production of any article, part of an article, substance, energy or thing or the altering, repairing, ornamenting, finishing, cleaning, washing, packing or canning, or the adapting for sale, or breaking up or demolition of any article, substance or thing; including, in particular, the getting, raising, taking, carrying away and processing (including size reduction, grading and heating) of minerals, the storage of mineral wastes and the incineration, treatment or recovery of other wastes;

“*licence*”, in relation to a licence granted under section 32, includes, where the context so admits or requires, such a licence as revised pursuant to section 33;

“*local authority*” means—

(a) in the case of the administrative county of Dublin, other than the borough of Dún Laoghaire, the council of the county of Dublin,

(b) in the case of the borough of Dún Laoghaire, the corporation of the borough,

(c) in the case of a county borough, the corporation of the county borough, and

(d) in the case of any other administrative county, the council of the county,

and references to the functional area of a local authority shall be construed accordingly;

“*the Minister*” means the Minister for the Environment;

“*monitoring*” includes the inspection, measurement, sampling or analysis, for the purposes of this Act, of any emission or of the ambient air in any locality, whether periodically or continuously;

“*occupier*”, in relation to any premises, includes a lessee, any person entitled to occupy the premises and any other person having, for the time being, control of the premises;

“*pollutant*” means any substance specified in the *First Schedule* or any other substance or energy which, when emitted into the atmosphere, either by itself or in combination with any other substance, may cause air pollution;

“*premises*” includes any messuage, building, structure or land (whether or not there are structures on the land or whether or not the land is covered with water) or any hereditament of any tenure, together with any out-buildings and curtilage;

“*prescribed*” means prescribed by regulations made by the Minister;

“*private dwelling*” means any building or structure or any part of any building or structure (including any ancillary building or structure) which is used, or intended to be used, solely for human habitation but does not include—

(a) a curtilage or garden, or

(b) an ancillary building or structure, or part of a building or structure, having a fireplace with a maximum heating capacity exceeding 45kW which serves more than one dwelling;

“*public place*” means any street, road, seashore or other place to which the public have access, whether by right or by permission, or whether subject to, or free of charge;

“*the register*” means the register kept pursuant to *section 17*;

“*reserved function*” means—

(a) in relation to the council of a county or the corporation of Dún Laoghaire, a reserved function for the purposes of the County Management Acts, 1940 to 1985,

(b) in relation to the corporation of a county borough, a reserved function for the purposes of the Acts relating to the management of the county borough;

“*smoke*” includes soot, ash, grit, and any other particle emitted in smoke;

“*special control area*” means an area in relation to which a special control area order is in operation;

“*special control area order*” has the meaning assigned to it by *section 39*.

(2) In this Act, a reference to a section, Schedule or Part is a reference to a section, Schedule or Part of this Act unless there is an indication that a reference to any other enactment is intended.

(3) In this Act, a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless there is an indication that a reference to some other provision is intended.

(4) A reference in this Act to any enactment shall be construed as a reference to that enactment as amended or adapted by any subsequent enactment.

Application of Act to premises belonging to State

8.—This Act shall apply to premises belonging to or in the occupation of the State.

Repeals

9.—(1) Each enactment mentioned in *column (2)* of *Part I* of the *Second Schedule* is hereby repealed to the extent specified in *column (3)* of that Part of that Schedule.

(2) Each Statutory Instrument mentioned in *column (2)* of *Part II* of the *Second Schedule* is hereby repealed to the extent specified in *column (3)* of that Part of that Schedule.

Regulations

10.—(1) The Minister may make regulations—

(a) for prescribing any matter referred to in this Act as prescribed,

(b) in relation to any matter referred to in this Act as the subject of regulations, and

(c) for the purpose of giving full effect to this Act.

(2) Regulations made under this Act may make different provisions in relation to different areas, different circumstances and different classes of cases.

(3) Where it is proposed to make regulations under *section 6*, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of the draft has been passed by each House.



(4) Every regulation made by the Minister under this Act (other than a regulation made under *section 6*) shall be laid before each House of the Oireachtas soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under it

## Offences

11.—(1) Any person who contravenes any provision of this Act or of any regulation made under this Act or of any notice served under this Act shall be guilty of an offence

(2) Where an offence under this Act is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to have been facilitated by any neglect on the part of, any director, manager, secretary or other official of such body, such person shall also be guilty of an offence

(3) In this section, a reference to the contravention of a provision includes, where appropriate, a reference to a refusal, or a failure, to comply with that provision.

## Penalties

12.—(1) A person guilty of an offence under this Act shall be liable—

(a) on summary conviction, to a fine not exceeding £1,000 (together with, in the case of a continuing offence, a fine not exceeding £100 for every day on which the offence is continued and not exceeding in total an amount which, when added to any other fine under this paragraph in relation to the offence concerned, equals £1,000), or to imprisonment for any term not exceeding six months or, at the discretion of the court, to both such fine and such imprisonment,

(b) on conviction on indictment, to a fine not exceeding £10,000 (together with, in the case of a continuing offence, a fine not exceeding £1,000 for every day on which the offence is continued), or to imprisonment for any term not exceeding two years or, at the discretion of the court, to both such fine and such imprisonment.

(2) *Section 13* of the *Criminal Procedure Act, 1967*, shall apply in relation to an offence to which *subsection (1)* relates as if, in lieu of the penalties provided for in subsection (3) of the said section 13, there were specified therein the penalties provided for in *subsection (1) (a)*, and the reference in subsection (2) (a) of the said section 13 to the penalties provided for in the said subsection (3) shall be construed and have effect accordingly.

## Prosecution of offences

13.—(1) (a) An offence under this Act may be prosecuted summarily by the local authority in whose functional area the offence is committed or, in the case of an offence arising from an order made, or a notice served, by a local authority, by the local authority concerned.

(b) Where a local authority are of opinion that an emission from any premises may cause air pollution affecting any part of their functional area, the local authority may, notwithstanding that the emission is from a premises which is situate outside the functional area of the local authority concerned, initiate summary proceedings for an offence under this Act in relation to the emission concerned.

(2) The Minister may, by regulations under this section, prescribe that such offence as may be specified in the regulations may be prosecuted summarily by such person (including the Minister) as may be so specified in addition to, or in lieu of, the relevant local authority.

(3) Notwithstanding the provisions of section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be commenced—

(a) at any time within twelve months from the date on which the offence was committed, or

(b) at any time within three months from the date on which evidence sufficient, in the opinion of the person by whom the proceedings are initiated, to justify the proceedings comes to such person's knowledge,

whichever is the later: provided that no such proceedings shall be initiated later than five years from the date on which the offence concerned was committed.

(4) For the purposes of this section, a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence relating to the offence came to his knowledge shall be *prima facie* evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purposes of this subsection and to be so signed shall be deemed to be so signed and shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

## Powers of authorised person

14.—(1) Subject to *subsection (2)*, an authorised person shall, for any purpose connected with this Act, be entitled, at all reasonable times, to enter into any premises and to bring therein such other persons or equipment as he may consider necessary for the purpose

(2) An authorised person shall not, other than with the consent of the occupier, enter into a private dwelling unless he has given to the occupier of the dwelling not less than 24 hours notice in writing of his intended entry.

(3) Every authorised person shall be furnished with a certificate of his appointment and when exercising any power conferred on him by or under this Act, the authorised person shall, if requested by any person affected, produce the certificate to that person.

(4) Whenever an authorised person enters into any premises pursuant to this section, he may therein—

(a) make such plans and carry out such inspections,

(b) make such tests and take such samples,

- (c) require from the owner or occupier of the premises or from any other person on the premises such information, or
- (d) inspect such records or such documents,

as he, having regard to all the circumstances, considers necessary for the purposes of this Act

(5) Any person who obstructs an authorised person in the exercise of his powers under this section or who fails to comply with a requisition of an authorised person or who wilfully withholds any information which the authorised person requires shall be guilty of an offence.

(6) Where an authorised person in the exercise of his powers under this section is prevented from entering any premises, the authorised person or the person by whom he was appointed may apply to the District Court for a warrant authorising such entry.

(7) The Minister may make regulations for the purposes of this section.

(8) Without prejudice to the generality of subsection (7), regulations under this section may provide for all or any of the following matters:

- (a) the taking of samples and the carrying out of tests, examinations and analysis of samples;
- (b) the specification of the classes of persons to be responsible for taking such samples and for the carrying out of such tests, examinations and analysis;
- (c) the specification of the certificate or other evidence to be given of the result of any such test, examination or analysis and the class or classes of person by whom such certificate or evidence is to be given;
- (d) that any certificate or other evidence given or to be given in respect of any test, examination or analysis of any sample shall in relation to that sample be evidence, without further proof, of the result of the test, examination or analysis until the contrary is shown.

#### Service of notices

15.—(1) Any notice required to be served or given by or under this Act shall be addressed to the person concerned and served or given in one of the following ways—

- (a) by addressing it to him by name and delivering it to him,
- (b) by leaving it at the address at which he ordinarily resides,
- (c) by sending it by post in a prepaid registered letter addressed to him at the address at which he ordinarily resides,
- (d) if an address for the service of notices has been furnished by him, by leaving it at, or sending it by prepaid registered post addressed to him to, that address,
- (e) where the address at which he ordinarily resides cannot be ascertained by reasonable inquiry and notice is required to be served on, or given to, him in respect of any premises, by delivering it to a person over the age of 16 years of age resident in, or employed on, the premises or by affixing it in a conspicuous position on or near the premises.

(2) Where the name of the occupier of a premises cannot be ascertained by reasonable inquiry, a notice under this Act may be addressed to “the occupier”.

(3) For the purposes of this section, a company registered under the Companies Acts, 1963 to 1986, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

#### Obligation to give information

16.—(1) A local authority may, for any purpose relating to their functions under this Act, by notice in writing, require—

- (a) the occupier of any premises within their functional area, within such period (being not less than fourteen days after the date of the service of the notice) as may be specified in the notice, to furnish in writing to the authority such particulars as to—
  - (i) any activity or process being carried out on the premises,
  - (ii) any fireplaces in the premises, and
  - (iii) the fuels or other materials being burned on the premises,
 as may be so specified,
- (b) the occupier of any premises (other than a private dwelling) within their functional area, within such period as may be specified in the notice, to furnish in writing whether by periodic returns or otherwise, such information concerning any emission from the premises as may be so specified, and



(c) any person engaged in the production, treatment, importation, placing on the market, distribution or sale of any fuel to furnish in writing to the authority such particulars as to the type and quantity of fuel produced, treated, imported, placed on the market, distributed or sold by such person, as the case may be, within the functional area of the authority concerned as may be specified in the notice.

(2) A notice under this section, whether or not requiring periodic returns, shall not require the provision of information—

(a) at intervals of less than three months, or

(b) in respect of a period in excess of twelve months.

(3) Any person who has been served with a notice under this section and who furnishes any information in reply to the notice which he knows to be false or misleading in a material particular shall be guilty of an offence.

(4) Information furnished to a local authority pursuant to a notice under this section shall not be given by the local authority to any person other than a person prescribed.

#### The register

17.—(1) Every local authority shall as soon as may be after the commencement of this Act establish and maintain a register (in this Act referred to as “the register”) for the purposes of this Act and shall make therein all such entries and additions as may, from time to time, be prescribed.

(2) The register shall be kept at the offices of the local authority and shall be made available for inspection by any person during office hours.

(3) When a request is made to a local authority for a copy of an entry in the register, the copy shall be issued to the applicant on the payment by him to the local authority of such fee (if any) as they shall fix not exceeding the reasonable cost of making the copy.

(4) Every document purporting to be a copy of an entry in the register and purporting to be certified by an officer of a local authority to be a true copy of the entry shall, without proof of the signature of the person purporting so to certify or that he was such officer, be received in evidence in any legal proceedings and shall, until the contrary is proved, be deemed to be a true copy of the entry and to be evidence of the terms of the entry.

(5) Evidence of an entry in the register may be given by production of a copy thereof certified pursuant to this section and it shall not be necessary to produce the register itself.

#### Research into air pollution

18.—(1) A local authority may organise and conduct research, surveys or investigations into the nature and extent, the cause and effect, and the prevention or limitation, of air pollution and may establish and maintain educational programmes relating to such matters and may publish, or cause to be published, any information derived from any such research, surveys, investigations or educational programmes.

(2) A local authority may support or assist, by means of a financial contribution or otherwise, any person, or body of persons, engaged, or proposing to engage, in any research, survey or investigation into the nature and extent, the cause and effect, and the prevention or limitation, of air pollution or in any educational programme relating to such matters.

(3) The making of a financial contribution pursuant to *subsection (2)* shall be a reserved function.

(4) The Minister, with the consent of the Minister for Finance, may make a financial contribution to any person, or body of persons, engaged, or proposing to engage, in research, surveys or investigations into the nature and extent, the cause and effect, and the prevention or limitation, of air pollution or in any educational programme relating to such matters.

#### Expenses

19.—The expenses incurred by the Minister in the administration of this Act shall be paid out of moneys provided by the Oireachtas to such extent as may be sanctioned by the Minister for Finance.

#### Consultation by local authorities

20.—The Minister may make regulations requiring a local authority to consult with such bodies or persons as may be specified in relation to the performance of such of their functions under this Act as may be prescribed.

#### Transfer of functions

21.—(1) The Minister may, by regulations, provide that any function conferred on a local authority under this Act shall, in addition to or in lieu of, being performed by a local authority, be performed by such other person (including the Minister or another local authority) or body of persons as may be specified.

(2) In particular and without prejudice to the generality of *subsection (1)*, regulations under this section may provide for the performance of any function conferred on a local authority by this Act by a body established under the Local Government Services (Corporate Bodies) Act, 1971, for that purpose.

(3) Whenever regulations under this section are in force, a reference in this Act to a local authority shall be construed as including a reference to the person or body specified in the regulations and the function to which the regulations relate shall be a function of that person or body.

(4) Regulations under this section may contain such incidental, supplementary, consequential and transitional provisions (including provisions modifying any provision of this Act) as appear to the Minister to be necessary for the purpose of, in consequence of, or to give full effect to the regulations.

#### Power to make charges in relation to emissions

22.—(1) A local authority may, in accordance with regulations made by the Minister under this section, make charges in relation to such emissions as may be specified in the regulations.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may make provision for all or any of the following matters:

- (a) specify the emissions in relation to which a charge under this section may be imposed;
- (b) specify the manner in which such a charge is to be imposed;
- (c) specify the method in which the amount of such charge is to be calculated;
- (d) enable a local authority to make different charges under this section in respect of different emissions and in different circumstances;
- (e) specify the manner in which representations may be made to a local authority regarding the imposition of a charge under this section and provide for the procedure to be followed in respect of such representations;
- (f) provide for the amendment, revocation or review of charges imposed under this section.

(3) A local authority may recover the amount of any charges made by them under this section from the person by whom they are payable as a simple contract debt in any court of competent jurisdiction.

## PART II

### General Provisions relating to Air Pollution

#### Prohibition on certain emissions

23.—For the purpose of preventing or limiting air pollution, the Minister may, by regulations, prohibit either absolutely, or subject to such exceptions as may be specified in the regulations—

- (a) such emissions as may be specified,
- (b) the production, treatment, use, import, placing on the market, distribution or sale of any substance (other than a fuel) which may cause air pollution.

#### Obligation to prevent air pollution

24.—(1) The occupier of any premises, other than a private dwelling, shall use the best practicable means to limit and, if possible, to prevent an emission from such premises.

(2) The occupier of any premises shall not cause or permit an emission from such premises in such a quantity, or in such a manner, as to be a nuisance.

(3) In any prosecution for a contravention of this section, it shall be a good defence to establish that—

- (a) the best practicable means have been used to prevent or limit the emission concerned, or
- (b) the emission concerned was in accordance with a licence under this Act, or
- (c) the emission concerned was in accordance with an emission limit value, or
- (d) the emission concerned was in accordance with a special control area order in operation in relation to the area concerned, or
- (e) in the case of an emission of smoke, the emission concerned was in accordance with regulations under *section 25*, or
- (f) the emission did not cause air pollution.

#### Prohibition on emission of smoke

25.—(1) For the purpose of preventing or limiting air pollution, the Minister may, by regulations, prohibit or restrict the emission into the atmosphere of smoke from any premises.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may—

- (a) specify the premises to which the regulations apply,
- (b) specify the kind of smoke to which the regulations apply,
- (c) prohibit, either absolutely or subject to specified exceptions, the emission of smoke from specified premises at specified times or periods,
- (d) exempt, subject to or without conditions, from any of the provisions of the regulations emissions of smoke from specified premises for specified periods,
- (e) prohibit or restrict, subject to such exceptions as may be specified, the burning of straw, waste or any other substance at such premises or at such times as may be specified.

(3) In any prosecution for a contravention of this section or of regulations made under this section, it shall be a good defence to establish that—

- (a) the best practicable means have been used to prevent or to limit the emission concerned, or
- (b) the emission concerned was in accordance with a licence under this Act, or
- (c) the emission concerned was in accordance with an emission limit value, or
- (d) the emission concerned was in accordance with a special control area order in operation in relation to the area concerned.

Power of local authority to require measures to be taken to prevent or limit air pollution.

26.—(1) Where it appears to a local authority that it is necessary so to do in order to prevent or to limit air pollution, the local authority may serve a notice under this section on the occupier of any premises from which there is an emission.

(2) In considering whether a notice should be served under this section, a local authority shall have regard to—

- (a) any air quality management plan in relation to the area in which the premises are situate,
- (b) any special control area order in operation in relation to the area in which the premises are situate,
- (c) any relevant emission limit value,
- (d) any relevant air quality standard,
- (e) the availability of the means necessary for compliance with the notice, and
- (f) the expense which would be incurred in complying with the notice.

(3) A notice pursuant to this section shall—

- (a) specify the measures which appear to the local authority serving the notice to be necessary in order to prevent or to limit air pollution,
- (b) direct the person on whom the notice is served to take such measures as may be specified in the notice to prevent or to limit air pollution, and
- (c) specify a period (being not less than fourteen days commencing on the date of the service of the notice) within which such measures are to be taken.

(4) A notice under this section—

- (a) may be served whether or not there has been a prosecution for an offence under this Act in relation to the emission concerned,
- (b) shall not prejudice the initiation of a prosecution under this Act for an offence relating to the emission concerned.

(5) A person on whom a notice under this section has been served may, within such period as may be specified in the notice, make such representations in writing as he thinks fit to the local authority concerning the terms of the notice, and the local authority, having considered any such representations, may amend or revoke the notice.

(6) A person on whom a notice under this section has been served shall, within the period specified, comply with the requirements of the notice, or, as the case may be, the notice as amended.

(7) If a person on whom a notice under this section has been served does not, within the period specified in the notice or in the notice as amended, as the case may be, comply with the requirements of the notice, the local authority who served the notice may take such steps as they consider reasonable and necessary to secure compliance with the notice and may recover any expense thereby incurred from the person on whom the notice was served as a simple contract debt in any court of competent jurisdiction.

Power of local authority to take steps to prevent or limit air pollution

27.—(1) Where it appears to a local authority that urgent measures are necessary to prevent or to limit air pollution affecting any part of their functional area or any adjoining area, the local authority may take such steps, carry out such operations or give such assistance as they consider necessary to prevent or to limit such pollution or to remedy the effects of any such pollution.

(2) Where a local authority take steps, carry out operations or give assistance under this section, the local authority may recover the costs of such steps, operations or assistance as a simple contract debt in a court of competent jurisdiction from such person as the local authority satisfy the court is the person whose act or omission necessitated such steps, operations or assistance.

Power of High Court in relation to air pollution

28.—(1) The High Court may, on the application of a local authority or any other person, by order, prohibit or restrict an emission from any premises where the Court is satisfied that—

- (a) the continuance of the emission (not being an emission which is in compliance with a licence granted under this Act) would give rise to a serious risk of air pollution, or

(b) the emission is an emission from industrial plant in contravention of the terms of a licence under this Act, or

(c) the emission is an emission from industrial plant for which a licence under this Act is required and in relation to which no such licence has been granted

(2) An order made by the High Court on an application under this section may contain such provisions as to the Court seem appropriate and may, in particular, include provisions—

(a) requiring specific measures to be taken to eliminate or reduce the risk of air pollution;

(b) requiring any person to do, or not to do, or cease from doing, as the case may be, anything which the Court considers necessary and specifies in the order to ensure that the emission concerned is terminated or restricted or, as the case may be, complies with any relevant licence under this Act;

(c) in relation to the payment of costs.

(3) An application for an order under this section shall be by motion and the High Court when considering the matter may make such interim or interlocutory order as it considers appropriate.

(4) An order of the High Court made pursuant to this section shall have effect notwithstanding the terms of any permission given under any other enactment in relation to the premises concerned.

Notification of incident causing air pollution

29.—(1) The occupier of any premises, other than a private dwelling, shall as soon as practicable after the occurrence of any incident which may cause air pollution notify the relevant local authority of the incident

(2) In this section “*incident*” includes an accidental emission.

### PART III

#### Licensing of Industrial Plant

Licence to operate industrial plant

30.—(1) A person shall not operate industrial plant, other than existing industrial plant, on or after such day as may be prescribed unless a licence under this Act is in force in relation to the plant.

(2) The Minister may, by regulations, provide that existing industrial plant of such class as may be specified in the regulations shall not be in operation on or after such date as may be so specified unless a licence under this Act is in force in relation to the plant.

(3) Where regulations under *subsection (2)* come into operation, the operation of existing industrial plant to which the regulations relate shall, in the period before a licence in relation to the plant is granted or refused, be deemed not to have contravened the provisions of this Act: provided that, before the date specified in those regulations, an application has been made for a licence in respect of that plant and the requirements of regulations made under *section 31* in relation to the application for the licence have been complied with by the applicant therefor.

Regulations regarding licences

31.—(1) The Minister shall, by regulations, provide for the grant of licences by local authorities to persons who apply to the local authority concerned and who comply with the requirements of, or made pursuant to, the regulations in relation to such applications.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may make provision for all or any of the following:

(a) the form of application and of licence;

(b) the publication by applicants of such notices as may be specified;

(c) specifying the plans, documents and other information and particulars to be submitted by applicants;

(d) requiring applicants to furnish such additional information or particulars relating to their applications as the local authority may request;

(e) requiring the production of evidence to verify any information and particulars given by an applicant;

(f) requiring local authorities to furnish to the Minister and to any other specified persons any specified information in relation to any applications and the manner in which they have been dealt with, or to publish any specified notices in relation to applications for, and the granting or refusing of, licences;

(g) specifying the period within which applications shall be dealt with by local authorities;

(h) requiring an applicant to defray or contribute towards the cost of any investigation carried out by a local authority in relation to an application.

(3) (a) A person who, in relation to an application for a licence, or for a review of a licence, under this Act, or in relation to an appeal arising from such an application, makes a statement in writing which to his knowledge is false or misleading in a material respect, shall be guilty of an offence.

(b) Where a person is convicted of an offence under this subsection, any licence issued to that person consequent on the application or appeal in relation to which the information was furnished shall stand revoked from the date of the conviction.

(4) A defrayment or contribution the payment of which is required under regulations made under this section shall be payable on demand and, in default of being so paid, shall be recoverable as a simple contract debt in a court of competent jurisdiction.

## Grant of licences

## 32.—(1) Where

(a) an application is made to a local authority in accordance with regulations under section 31 for a licence under this Act,

(b) the requirements of, or made pursuant to, such regulations have been complied with,

the local authority may, subject to section 35 (2), decide to grant the licence subject to, or without, conditions or to refuse the application.

(2) In considering an application for a licence under this Act, the local authority shall have regard to—

(a) any air quality management plan in force in relation to the area concerned, and

(b) any special control area order in operation in relation to that area.

(3) A local authority shall not grant a licence in relation to industrial plant unless they are satisfied that—

(a) the best practicable means will be used to prevent or limit any emissions from the plant,

(b) any emissions from the plant will comply with any relevant emission limit value,

(c) any emissions from the plant will not result in the contravention of any relevant air quality standard,

and, where appropriate, the local authority shall attach conditions relating to the matters specified in *paragraphs (a), (b) and (c)* to the licence.

(4) Without prejudice to the generality of *subsections (1) and (3)*, conditions attached to a licence under this Act may—

(a) specify the nature, composition, temperature, volume, rate and location of an emission;

(b) specify the periods during which an emission may, or may not, be made;

(c) specify a concentration of a pollutant in the ambient air, or a deposition rate, which shall not be exceeded;

(d) specify any matters relating to the design, construction and height of the chimneys, flues, stacks or other outlets through which an emission is to be made;

(e) specify the means (including the provision, operation, maintenance and supervision of plant, equipment and other facilities and the use of specified procedures) to be used for controlling an emission;

(f) require the provision, operation and maintenance of meters, gauges and other apparatus and other means for monitoring the nature, extent and effects of emissions;

(g) require the taking and analysis of samples, the making of measurements, the keeping of records and the furnishing of information to the local authority or to any other person who may be specified;

(h) specify the measures to be taken if there is a breakdown at industrial plant which may affect emissions from the plant;

(i) specify the type of fuel to be, or not to be, used, as the case may be;

(j) require the making of payments to the local authority concerned in relation to costs which may be incurred in monitoring, or otherwise in relation to, emissions;

(k) specify the latest date for complying with any conditions which are attached

(5) Whenever a local authority, having considered an application for a licence under this Act, decide that—

(a) the licence shall be granted, they shall forthwith notify the applicant of the decision and of any conditions which may be attached to the licence and of the reasons for the attachment of any such conditions, or

(b) the licence shall not be granted, they shall forthwith notify the applicant of the decision and of the reasons for the decision.

## Review of licences

33.—(1) A local authority may review a licence under this Act at any time with the consent of the licensee, or at a time not less than three years from the date on which the licence was granted or, as the case may be, the date of the latest review of the licence.

(2) As soon as may be after they have completed a review under this section, a local authority may decide to grant pursuant to this Act a revised licence in substitution for the licence reviewed.

(3) Notwithstanding any other provision of this Act or any provision in a licence under this Act—

(a) such licence shall be reviewed by the local authority which granted it if—

- (i) the local authority have reasonable grounds for believing that any emission from the industrial plant to which the licence relates constitutes a serious risk of air pollution, or
- (ii) there has been a material change in the nature or the extent of the emission, or
- (iii) there has been a material change, which could not have reasonably been foreseen when the licence was granted, in the air quality in the area in which the industrial plant to which the licence relates is situate, or
- (iv) further and better evidence, which was not available when the licence was granted, has become available relating to a pollutant present in the emission concerned or the effects of such pollutant, or
- (v) the licensee applies to the local authority concerned to review the licence,

(b) if—

- (i) a relevant emission limit value is specified in regulations under section 51 in relation to any pollutant emitted from the industrial plant to which the licence relates, or
- (ii) a relevant air quality standard is specified in regulations made under section 50 in relation to any pollutant emitted from the industrial plant to which the licence relates, or
- (iii) a special control area order affecting any pollutant emitted from the industrial plant to which the licence relates comes into operation in relation to the area in which the industrial plant is situate, or
- (iv) any directions are issued by the Minister specifying the best practicable means for the prevention or limitation of an emission to which the licence relates,

the local authority shall, as soon as may be after the regulations are made, the order comes into operation or the directions are given, as the case may be, review the licence,

and *subsection (2)* shall apply to a review under this subsection.

(4) (a) The Minister may make regulations for the purpose of this section

(b) Without prejudice to the generality of *paragraph (a)*, regulations under this subsection may make provision in relation to all or any of the following matters—

- (i) the giving of notice by a local authority of their intention to review a licence,
- (ii) requiring a statement in such a notice that representations relating to the review may be made within a specified period, and
- (iii) requiring local authorities to publish any specified notices with respect to a decision to grant a revised licence

(5) In the review of a licence under this section, a local authority shall have regard to—

- (a) any change in air quality in their functional area, and
- (b) the development of technical knowledge in relation to air pollution and the effect of pollutants

#### Appeals

34.—(1) Any person may, at any time before the expiration of the prescribed period, appeal to An Bord Pleanála in relation to the granting or refusing of a licence under section 32, or to the granting of a revised licence under section 33.

(2) An Bord Pleanála, after consideration of an appeal under this section, shall either (as it thinks proper) refuse the appeal or give appropriate directions to the local authority concerned relating to the granting or refusing of a licence, and, where such directions are given, the local authority concerned shall, as soon as may be after the receipt of the directions, comply with them.

(3) The Minister may, by regulations, make provision for any matter of procedure in relation to an appeal under this section.

(4) Regulations under this section may contain such incidental, supplemental, consequential and transitional provisions (including modification or application of any provision of the Local Government (Planning and Development) Acts, 1963 to 1983) as appear to the Minister to be necessary.

#### Fees

35.—(1) The Minister may make regulations providing for—



(a) the payment to local authorities of prescribed fees in relation to applications for—

- (i) licences under this Act, or
- (ii) reviews of licences under section 33,

(b) the payment to An Bord Pleanála of prescribed fees in relation to appeals under section 34,

and the regulations may provide for different fees in relation to cases of different classes or descriptions, for exemption from the payment of fees in specified circumstances, for the waiver, remission or refund (in whole or in part) of fees in specified circumstances and for the manner in which fees are to be disposed of.

(2) Where under regulations under this section a fee is payable to a local authority by an applicant in respect of an application referred to in subsection (1), the application shall not be decided by the authority unless the authority are in receipt of the fee.

(3) Where under regulations under this section a fee is payable to An Bord Pleanála by an appellant in respect of an appeal by him to An Bord Pleanála, the appeal shall be invalid unless the prescribed fee is received by An Bord Pleanála before the expiration of the prescribed period for making the appeal.

Limit on duration of licence

36.—(1) Subject to subsection (2), where industrial plant to which a licence under this Act relates—

- (a) has not commenced operations within three years after the date on which the licence was granted, or
- (b) has ceased operations for a period of not less than three years,

the licence shall cease to have effect.

(2) Subsection (1) shall not have effect if a licence was granted prior to the construction, or to the commencement of the operations, of industrial plant and the local authority, having regard to the nature and extent of the construction works and any other relevant consideration, are satisfied that the licence should continue to be in force for such period as the local authority consider reasonable, having regard to all the circumstances.

Change of ownership of industrial plant

37.—(1) Where a licence is granted under this Act, then, except as may be otherwise provided by the licence, the grant of the licence shall enure for the benefit of the industrial plant and of all persons for the time being interested therein, but without prejudice to the provisions of section 33 in relation to the review of the licence.

(2) Where a person to whom a licence was granted under this Act ceases to hold, or transfers to another person, his interest in the industrial plant to which the licence relates, he shall forthwith give notice to the local authority by whom the licence was granted—

- (a) that he no longer holds an interest in the industrial plant concerned, and
- (b) of the name of the person to whom his interest in the plant has been transferred.

Alterations at industrial plant

38.—(1) The occupier of industrial plant—

- (a) in respect of which a licence is in force under this Act, or
- (b) which is existing industrial plant the operation of which is not required to be licensed under regulations made under section 30,

shall give notice in writing to the local authority in whose functional area the industrial plant is situated if he proposes to—

- (i) effect any alteration to, or reconstruction of, the plant, or
- (ii) effect any alteration in the processes being carried out therein,

and such alteration or reconstruction would, or is likely to, materially increase emissions from the plant or cause new emissions therefrom.

(2) Whenever a local authority receive a notice under this section, the local authority, notwithstanding any other provision of this Act, may—

- (a) if there is a licence in force in respect of the industrial plant concerned, either review the licence under section 33 or direct the occupier to apply for a new licence, or
- (b) if there is no such licence in force, direct the occupier to apply for a licence,

and the occupier shall not effect the alteration or reconstruction until the review has been completed or the new licence or licence, as the case may be, has been granted.

(3) Where a local authority decide pursuant to *subsection (2)* to review a licence or to direct the occupier concerned to apply for a new licence or, as the case may be, a licence, the local authority shall, within one month of the receipt by them of the notice under this section, inform the occupier concerned accordingly and, if such occupier is not so informed, *subsection (2)* shall cease to have effect in relation to the alteration or reconstruction specified in the notice.

#### PART IV

##### Special Control Areas

###### Special control areas

39.—(1) Where it appears to a local authority that the whole or any part of their functional area should, in order to prevent or limit air pollution, be declared to be a special control area, they may make an order (in this Act referred to as a “*special control area order*”) under this section.

(2) In deciding whether it is necessary or expedient to make a special control area order in relation to any area, the local authority shall have regard to—

- (a) the incidence and cause of air pollution in the area, and
- (b) any air quality management plan in force in relation to the area, and
- (c) any relevant air quality standard, and
- (d) the availability of the means necessary for compliance with the order, and
- (e) the expense which would be incurred in complying with the order.

(3) A special control area order shall specify—

- (a) the area to which it relates,
- (b) the pollutant with which it is concerned, and
- (c) the measures to be taken and the requirements which shall have effect in the area to which the order relates.

(4) The Minister may, if he considers it expedient so to do in order to prevent or limit air pollution, having regard to the provisions of *paragraphs (a), (b), (c), (d) and (e) of subsection (2)*, direct a local authority to make a special control area order in relation to such area and such pollutant as may be specified in the direction and may, if he thinks fit, further direct the order should specify that particular measures shall be taken and that particular requirements shall have effect in such area and the local authority concerned shall comply with any direction of the Minister given under this subsection within such period as may be specified in the direction.

(5) A local authority may, with the consent of any other local authority concerned, make a special control area order in relation to an area which is within the functional area of the other authority.

(6) (a) Subject to *paragraph (b)*, a local authority may, by order under *subsection (1)*, revoke or amend a special control area order.

(b) A local authority may revoke or amend a special control area order which is made pursuant to a direction of the Minister under *subsection (4)* only with the consent of the Minister.

(7) A local authority shall, from time to time and at least once in every five years, review every special control area order made by them, and which is in operation, for the purpose of deciding whether it is necessary or desirable to revoke or amend the order.

(8) The making, revoking or amending of a special control area order and the giving of consent under *subsection (5)* to the making of such an order shall be a reserved function.

###### Special control area orders

40.—(1) Without prejudice to the provisions of *section 39 (3)*, a special control area order may make provision for the following:

- (a) prohibit, subject to such exceptions or limitations as may be specified, the emission of a specified pollutant from specified classes or descriptions of premises;
- (b) prohibit, subject to such exceptions or limitations as may be specified, the burning other than in an authorised fireplace of any fuel other than an authorised fuel;
- (c) prohibit, subject to such limitations and exceptions as may be specified, the burning of straw, waste or any other substance;
- (d) make, having regard to all the circumstances, different provisions for different parts of the area to which the order relates and for different premises or classes of premises;
- (e) exempt, with or without conditions, such premises or classes of premises as may be specified from all or any of the requirements of the order,

- (f) exempt, with or without conditions, such fireplaces or such classes of fireplaces as may be specified from all or any of the requirements of the order,
  - (g) specify the types or qualities of fuels to be, or not to be, burnt in such fireplaces or such classes of fireplaces as may be specified;
  - (h) specify the conditions subject to which, or the purposes for which, specified fuels or classes of fuels may be burnt in the special control area,
  - (i) prohibit or limit the carrying on of such operations or processes as may be specified in the special control area or specify the conditions under which such operations or processes may be carried on,
  - (j) prohibit or restrict the sale or delivery in a special control area of specified fuels or classes of fuels.
- (2) The Minister may, by regulations, declare that any particular class of fireplace shall, subject to such conditions as may be specified in the regulations, be an authorised fireplace for the purposes of a special control area order.
- (3) The Minister may, by regulations, declare that any particular type of fuel shall be an authorised fuel for the purposes of a special control area order.
- (4) Any person who contravenes any provision of a special control area order which is in operation shall be guilty of an offence.
- (5) In any proceedings relating to the contravention of a special control area order and involving the emission of a pollutant, it shall be a good defence to establish that—
- (a) the emission of the pollutant was not caused by the use of a fuel other than an authorised fuel,
  - (b) the emission of the pollutant was caused by the burning of a fuel other than an authorised fuel in an authorised fireplace in accordance with the conditions (if any) subject to which the fireplace was declared to be an authorised fireplace.

Confirmation of special  
control area order

41.—(1) As soon as may be after they have made a special control area order, a local authority shall publish in one or more newspapers circulating in the area to which the order relates a notice—

- (a) stating that a special control area order has been made and specifying the area to which the order relates;
  - (b) naming a place where a copy of the order and any map or plan referred to therein may be inspected free of charge by any interested person;
  - (c) specifying the times and the period, being not less than one month, during which the order and the map and plan (if any) can be so inspected;
  - (d) specifying the period, being not less than one month, within which, and the manner in which, any person affected by the order may make objections thereto;
  - (e) stating that the order will not come into operation until it has been confirmed by the Minister;
  - (f) stating that if objections are duly made to the order and are not withdrawn, the Minister, before confirming or refusing to confirm the order, will cause an oral hearing to be held at which any person who has, within the period specified in the notice, made an objection to the order will be afforded an opportunity of being heard.
- (2) As soon as may be after the period for the making of objections has expired, the local authority concerned shall transmit the special control area order to the Minister for confirmation and, when so transmitting the order, they shall also transmit to the Minister any objections which have, within the specified period, been made and have not been withdrawn.
- (3) Where no objections have, within the specified period, been made to the making of the special control area order or all such objections have been withdrawn, the Minister may—
- (a) by order confirm the special control area order with or without modifications, or
  - (b) refuse to confirm the order, or
  - (c) if he considers it desirable so to do, before confirming, or refusing to confirm, the order, cause an oral hearing to be held in relation to the order.
- (4) Where objections have, within the specified period, been made to the making of the special control area order and such objections have not been withdrawn, the Minister shall cause an oral hearing to be held in relation to the order and shall afford each person who duly made an objection to the order the opportunity of being heard.
- (5) When he has considered the report (including any recommendation contained therein) of the person who held the oral hearing, the Minister may, by order, confirm the special control area order, with or without modifications, or he may refuse to confirm it.

(6) In deciding whether or not to confirm a special control area order, the Minister shall have regard to the provisions of *paragraphs (a), (b), (c), (d) and (e) of section 39 (2)*.

(7) Every order made by the Minister under this section confirming a special control area order shall specify a date, being not less than six months after the date of the making of the confirming order, on which the special control area order shall come into operation: provided always that the date so specified in relation to a special control area order which—

(a) revokes a previous special control area order, or

(b) exempts specified areas or specified buildings or classes of buildings from all or any of the requirements of a special control area order,

may be the date of the making of the confirming order or any date subsequent to that date.

(8) Notice of the making of an order confirming a special control area order and of the date on which the special control area order shall come into operation shall be published, given or served by the local authority concerned in such manner as the Minister may direct.

#### Oral hearings

42.—(1) An oral hearing in relation to a special control area order held pursuant to *section 41 (3) or (4)* shall be conducted by a person appointed for that purpose by the Minister.

(2) A person conducting an oral hearing may require any officer of a local authority concerned to give to him any information which he reasonably requires for the purpose of the hearing, and it shall be the duty of the officer concerned to comply with the requirement.

(3) (a) A person conducting an oral hearing may visit and inspect premises for any purpose he considers necessary in relation to the special control area order which is the subject of the hearing.

(b) Any person who obstructs the exercise of the power conferred by this subsection shall be guilty of an offence.

(4) A person conducting an oral hearing may take evidence on oath and for that purpose may administer oaths, and a person giving evidence shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

(5) (a) Subject to *paragraph (b)*, a person conducting an oral hearing may, by giving notice in that behalf in writing to any person, require that person to attend at such time and place as is specified in the notice to give evidence in relation to any matter in question at the hearing or to produce any books, deeds, contracts, maps, plans, or other documents in his possession, custody or control which relate to any such matter.

(b) The following provisions shall have effect for the purposes of the foregoing paragraph:

(i) it shall not be necessary for a person to attend in compliance with a notice at a place more than ten miles from his ordinary place of residence unless such sum as will cover the reasonable and necessary expenses of the attendance have been paid or tendered to him;

(ii) the local authority shall, at the request of the person conducting the oral hearing, pay or tender to any person whose attendance is required such sum as the person conducting the hearing considers will cover the reasonable and necessary expenses of the attendance;

(iii) any person who in compliance with a notice has attended at any place shall, save in so far as the reasonable and necessary expenses of the attendance have already been paid to him, be paid those expenses by the local authority, and those expenses, save as aforesaid, shall, in default of being so paid, be recoverable as a simple contract debt in any court of competent jurisdiction;

(iv) every person to whom a notice has been given who refuses or who wilfully neglects to attend in accordance with the notice or who wilfully alters, suppresses, conceals or destroys any document to which the notice relates or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates shall be guilty of an offence.

(6) Where an oral hearing is conducted on behalf of the Minister under this Act by a person appointed for the purpose by the Minister, the person so appointed shall make to the Minister a written report on the hearing and shall include in his report a recommendation relating to the matter with which the hearing was concerned.

#### Relaxation or suspension of special control area order

43.—(1) If, at any time, it appears to the Minister to be necessary so to do, he may, by order, suspend or relax the operation of a special control area order in relation to the whole or any part of a special control area for such period as may be specified in the order.

(2) Before making an order under *subsection (1)*, the Minister shall, unless because of the urgency of the situation such consultation is not practicable, consult the local authority concerned.

(3) The Minister may by order amend or revoke an order under this section (including this subsection).

(4) A local authority concerned shall publish, in such manner as the Minister may direct, notice of the making of an order under this section.

44.—(1) A local authority may, by notice in writing served on the person who appears to them to be the owner or occupier of a premises which—

Power of local authority  
to require alterations to  
premises

(a) is within a special control area, or

(b) will be, when a special control area order which has been confirmed by the Minister comes into operation, within such an area,

require the owner or occupier of the premises to carry out such alterations to the premises as may be specified in the notice.

(2) A notice under *subsection (1)* shall—

(a) specify the works which appear to the local authority to be necessary in order to comply with the special control area order;

(b) direct the person on whom the notice is served to carry out, or to cause to be carried out, such works as are specified in the notice;

(c) specify a period (being not less than twenty-eight days beginning on the date of service of the notice and ending not sooner than the date on which the special control area order comes into operation) within which such works are to be completed;

(d) specify that representations in writing in relation to the terms of the notice may be made by the person on whom the notice is served to the local authority within the period stated in the notice.

(3) The local authority shall consider any representations duly made to them within the period specified in the notice and, having considered such representations if they consider it reasonable so to do, may amend or revoke the notice.

(4) A person on whom a notice under this section is served shall, within the period specified, comply with the requirements of the notice or, as the case may be, the notice as amended.

(5) Where a person on whom a notice has been served under this section does not, within the period specified, comply with the requirements of the notice or, as the case may be, the notice as amended, the local authority that served the notice may take such steps as they consider reasonable and necessary to secure such compliance.

(6) A local authority may recover any expenses incurred by reason of the exercise of the powers conferred on them by *subsection (5)* from the person on whom a notice under this section was served as a simple contract debt in any court of competent jurisdiction.

Financial assistance for  
certain works

45.—(1) The Minister may, with the consent of the Minister for Finance, make a scheme or schemes for the granting of financial assistance in relation to the whole or any part of the costs incurred by the owner or occupier of a premises situate within a special control area in order to enable the premises to comply with the requirements of a special control area order or a notice under *section 44*.

(2) Without prejudice to the generality of *subsection (1)*, the following provisions shall apply to a scheme under this section:

(a) such scheme may provide for its administration in whole or in part by a local authority or by such other person or body (including the Minister) as may be specified in the scheme,

(b) such scheme may provide for the determination by the Minister or by any other person (including an arbitrator) of any dispute which arises as to the entitlement of any person to, or the amount of, any financial assistance payable under the scheme,

(c) notice of the making of such a scheme shall be published in such a manner as to the Minister seems appropriate.

(3) The Minister may, with the consent of the Minister for Finance, amend or revoke a scheme made by him under this section.

## PART V

### Air Quality Management Plans and Standards

Air quality management  
plans

46.—(1) A local authority may, and shall if the Minister so directs, make, in relation to all or any part of their functional area, a plan (in this Act referred to as an “*air quality management plan*”) for the preservation or the improvement of the air quality in the area to which such plan relates.

(2) A local authority may, from time to time as occasion demands, and shall at least once in every five years after the date of the making of an air quality management plan, review the plan and make in it any variations (whether by way of alteration, addition or deletion) which they consider proper or replace it by a new plan.

(3) Two or more local authorities may, in relation to all or any part of their functional areas, jointly make an air quality management plan and the provisions of *subsection (2)* shall apply to any such plan.

(4) An air quality management plan shall contain such objectives as seem to the local authority concerned to be reasonable and necessary for the prevention or limitation of air pollution or the preservation or improvement of air quality in the area to which such plan relates but shall not contain any objective which would be inconsistent with any regulations made under *sections 50* or *51* or with any special control area order in operation in relation to such area.

(5) The making, review, variation or replacement of an air quality management plan shall be a reserved function.

Power of Minister in relation to an air quality management plan

47.—The Minister may—

- (a) direct a local authority, or two or more local authorities jointly, to make an air quality management plan;
- (b) require a local authority or, as the case may be, two or more local authorities, to vary (whether by alteration, addition or deletion) an air quality management plan made or jointly made by them in such manner as the Minister may specify or to replace the plan by a new plan;
- (c) require that an air quality management plan made or to be made by two or more local authorities be co-ordinated in such manner and in relation to such matters as the Minister may specify;

and a local authority shall comply with every such direction or requisition of the Minister.

Publication of notices in relation to air quality management plans

48.—(1) Where a local authority propose to make, vary or replace an air quality management plan, the local authority shall cause to be published in at least one newspaper circulating in their functional area a notice of the proposal, as the case may be, to make, vary or replace the plan.

(2) A notice under *subsection (1)* shall state that—

- (a) a copy of the proposed plan or, as the case may be, of the variation to the plan may be inspected at a stated place and at stated times during a stated period;
- (b) representations in relation to the proposed plan or to the proposed variation of the plan made to the local authority within the stated period will be taken into consideration before the making of the plan or, as the case may be, the variation of the plan (and any such representations shall be taken into consideration accordingly).

(3) When the local authority have considered any representations duly made to them within the period stated in the notice under *subsection (2)*, the local authority may, as they think fit, make, vary or replace the plan with or without amendment.

- (4) (a) Any person may request a local authority for a copy, or extract, of an air quality management plan and the local authority shall comply with such request.
- (b) A document purporting to be a copy of an air quality management plan or to be an extract from such plan and to be certified by an officer of a local authority as a true copy shall be *prima facie* evidence of the plan or extract, as the case may be, and it shall not be necessary to prove the signature of such officer or that he was in fact such officer.
- (c) Evidence of an air quality management plan or of an extract from such plan may be given by production of a copy thereof certified pursuant to this subsection and it shall not be necessary to produce the plan itself.
- (d) Where a request is made to a local authority for a copy under this subsection, the copy shall be issued to the applicant on payment by him to the local authority of such fee (if any) as they shall fix not exceeding the reasonable cost of making the copy.

Duty of local authority on making, varying or replacing an air quality management plan

49.—As soon as may be after a local authority have made, varied or replaced an air quality management plan, the local authority shall transmit a copy of the plan or the new plan, as the case may be, to the Minister and to such other persons as may be prescribed.

Air quality standards

50.—(1) The Minister may, for the purposes of this Act, by regulations specify standards (in this Act referred to as “*air quality standards*”) and different air quality standards may be specified for different areas or classes of areas, different circumstances or classes of circumstances or for different periods of time.

(2) Without prejudice to the provisions of *subsection (1)*, regulations under this section may make provision for all or any of the following matters—

- (a) relate an air quality standard to a particular pollutant or to a combination of pollutants;
- (b) express an air quality standard as a concentration in the air, or as a mass depositing on a specified area, of the particular pollutant or combination of pollutants which is not to be exceeded for specified periods, and under specified conditions;
- (c) provide that the Minister may suspend, relax or modify an air quality standard for such period and in such circumstances as may be specified either generally or in relation to a particular area.

(3) Where it appears as a result of monitoring carried out under *section 54*, or otherwise, that an air quality standard is being, or is likely to be, exceeded in any part of their functional area, a local authority shall—

- (a) include in any air quality management plan prepared by them such objectives as the local authority consider appropriate for the improvement of the quality of the air and for the prevention or limitation of air pollution in the affected area so that within such period as the local authority consider reasonable, or such period as the Minister may direct, the air quality standard will not be exceeded, and



- (b) take such other steps as may be appropriate in discharge of their functions under this Act to secure compliance with the air quality standard.

## Emission limit values

51.—(1) The Minister may, for the purposes of this Act, by regulations specify limits (in this Act referred to as “*emission limit values*”) for emissions and different emission limit values may be specified for different areas or classes of areas, different premises or classes of premises, different circumstances or classes of circumstances or for different periods of time.

- (2) An emission limit value may relate to a particular pollutant or to a combination of pollutants.

(3) Where a relevant emission limit value is specified in regulations under this section, the occupier of any premises from which the pollutant or, as the case may be, the combination of pollutants, is emitted into the atmosphere shall take such steps as may be necessary to ensure that such emissions do not exceed the emission limit value concerned.

(4) The Minister may give directions to a local authority in relation to the sampling, analysis and measurement methods to be used in determining whether emissions of any pollutant or combination of pollutants comply with an emission limit value specified in relation to that pollutant or combination of pollutants and it shall be the duty of the local authority concerned to comply with any such directions.

(5) Regulations under this section may provide that the Minister may suspend, relax or modify an emission limit value for such period and in such circumstances as may be specified either generally or in relation to premises of a particular class or in relation to a particular area.

## Directions by Minister in relation to air pollution

52.—(1) The Minister shall, from time to time as occasion demands, issue such general directions as to policy in relation to the prevention and limitation of air pollution as he considers necessary.

(2) In performing their functions under this Act, a local authority and An Bord Pleanála shall have regard to any directions issued by the Minister under this section.

- (3) Whenever the Minister gives a direction under this section, he shall—

- (a) cause a copy of the direction to be transmitted to each local authority and to An Bord Pleanála,
- (b) cause to be published in *Iris Oifigiúil* a notice of the issue of the direction.

(4) Whenever the Minister causes a notice to be published pursuant to *subsection (3) (b)*, such notice shall specify where a copy of the direction to which it relates may be obtained and the fee (if any) payable in respect of such copy.

## Regulations in relation to fuel

53.—(1) The Minister, for the purpose of preventing or limiting air pollution, may make regulations in relation to—

- (a) the standard, specification, composition and contents of any fuel of a type which is used in mechanically propelled vehicles or in mechanically propelled vehicles of a particular class or description or mechanically propelled vehicles in a particular area or a particular class of areas,
  - (b) the standard, specification, composition and contents of any type of fuel which is burnt in fireplaces or in fireplaces of a particular class or description or in fireplaces in a particular area or particular class of areas,
  - (c) the production, treatment, importation, placing on the market, distribution or sale of fuel of any type or description,
  - (d) the burning, or the prohibition of burning, in fireplaces, or in fireplaces of a particular class or description of a fuel, or of a fuel which does not comply with such requirements as may be specified;
  - (e) the use, or the prohibition of the use, in mechanically propelled vehicles, or in mechanically propelled vehicles of a particular class or description of a fuel, or of a fuel which does not comply with such requirements as may be specified.
- (2) Without prejudice to the generality of *subsection (1)*, regulations under this section may—
- (a) prohibit the sale, distribution, use or burning of a fuel which does not conform with such standards as may be specified either generally or in a specified area or class of areas,
  - (b) specify different standards in relation to different fuels,
  - (c) specify the tests which shall be conducted to establish whether a fuel complies with the provisions of regulations made under this section,
  - (d) provide for exemption in such circumstances or in such cases as may be specified from all or any of the provisions of the regulations,
  - (e) require that specified information in relation to fuels be displayed at such places and in such a manner as may be specified,
  - (f) provide for the enforcement of the regulations (or of any provision thereof) by persons specified in the regulations and provide for the powers of such persons and any person authorised by such persons,

- (g) provide for the issue of certificates by such persons as may be specified,
- (h) provide for the keeping of records by specified persons and for the examination of such records,
- (i) provide for the examination of such premises, records and vehicles as may be specified and for the requirements that may be made of the owner or other person in charge of premises, records or vehicles so specified for the purpose of such examination;
- (j) provide for the taking of samples of fuels at specified premises or from specified vehicles;
- (k) provide for the colouring of different fuels to be used in different mechanically propelled vehicles or classes of mechanically propelled vehicles,
- (l) provide that any certificate or other evidence given or to be given in respect of any test, examination or analysis of any sample taken or conducted pursuant to the regulations shall be evidence, without further proof, of the result of the test, examination or analysis, until the contrary is shown.

## PART VI

## Miscellaneous

Monitoring of air quality  
and emissions

54.—(1) A local authority shall carry out, or cause to be carried out, such monitoring of—

- (a) air quality, and
- (b) the nature, extent and effects of emissions,

as the local authority may consider necessary for the performance of their functions under this Act or as they may be directed by the Minister to carry out.

(2) A local authority shall keep and maintain, or cause to be kept and maintained, such records of any monitoring carried out under *subsection (1)* as they consider reasonable and necessary.

(3) A local authority may require the occupier of any premises, other than a private dwelling, from which there is an emission to carry out such monitoring of the nature, extent and effect of the emission and of the air quality as the local authority consider necessary and to keep and to supply to the local authority such records of the monitoring as the local authority consider necessary.

(4) A local authority shall, if so directed by the Minister, supply to him or to any person specified by him at such intervals and in such manner as the Minister may direct records of any monitoring carried out under this section.

(5) Where an air quality standard applies to their functional area or to any part thereof, the local authority shall, in relation to the area of application of the air quality standard, make such arrangements for monitoring as may be necessary so that the local authority can determine if the air quality standard is being complied with.

(6) The Minister may give directions to a local authority in relation to—

- (a) the number and location of places within an area at which monitoring is to be carried out,
- (b) the manner in which sampling, measuring and analysing for the purposes of this section is to be carried out,
- (c) the equipment to be used for the purposes of such sampling, measuring or analysing,

and the local authority shall comply with every such direction of the Minister.

(7) The Minister may monitor, or make such arrangements for the monitoring of, air pollution as seem to him to be necessary or desirable.

Power of court to  
authorise works

55.—(1) If the occupier of any premises is unable, without the consent of some other person, to carry out works which he is required to carry out in order to comply with the provisions of this Act, and such other person withholds his consent to the carrying out of the works, the occupier may apply to the District Court for an order under this section.

(2) If, on the hearing of an application under *subsection (1)*, the District Court determines that the consent of the other person has been unreasonably withheld, the District Court may, in its discretion, deem the consent to have been given and direct the occupier of the premises to carry out the works.

(3) If the occupier of any premises is required to carry out, pursuant to this Act, works on the premises, and such occupier considers that the cost of such works should be borne, in whole or in part, by the owner of the premises or some other person who has an interest therein, or by the owner or occupier of an adjoining premises, he may apply to a court of competent jurisdiction for an order directing that the whole, or such part as may be specified in the order, of the cost of the works be borne by, as the case may be, the owner of the premises, the other person interested therein or the owner or occupier of the adjoining premises; and the court shall make such order on the hearing of the application as it considers just having regard to all the circumstances of the case.

Application of Local Government (Planning and Development) Act, 1963

56.—(1) Where a licence under this Act is granted in relation to industrial plant and a permission under Part IV of the Local Government (Planning and Development) Act, 1963, has been granted in respect of the same plant, any conditions attached to that permission shall, in so far as they relate in any way to air pollution, cease to have effect.

(2) The grant of a permission under Part IV of the Local Government (Planning and Development) Act, 1963, in relation to any premises shall not prejudice, affect or restrict in any way the application of any provision of this Act to such premises.

Transitional provisions in relation to alkali, etc work

57.—(1) The provisions of the Alkali, etc. Works Regulation Act, 1906, in relation to emissions shall, notwithstanding the repeal of that Act by this Act, apply to every relevant work until a licence under this Act is granted in respect of the work.

(2) Notwithstanding the provisions of *subsection (1)*, the provisions of section 9 of the Alkali, etc. Works Regulation Act, 1906, in relation to the registration of works shall not apply to a relevant work.

(3) A local authority in whose functional area a relevant work is situated shall, on and after the commencement of this section, be responsible for ensuring that it is carried on in accordance with the provisions of *subsection (1)*.

(4) In this section "*relevant work*" means existing industrial plant which is either—

(a) an alkali work within the meaning of the Alkali, etc. Works Regulation Act, 1906, or

(b) a work listed in the First Schedule to that Act.

Transitional provisions in relation to certain licensable works

58.—The provisions of section 10 of the Local Government (Sanitary Services) Act, 1962, and of the Control of Atmospheric Pollution, (Licensing) Regulations, 1985, shall, notwithstanding the repeal by this Act of that Act and those regulations, apply to existing industrial plant which is used for the purpose of any trade, works or process within the meaning of those regulations until a licence under this Act is granted in respect of the plant concerned.

Savers

59.—(1) Nothing in this Act shall legalise any act or default that would, but for this Act, be deemed to be a nuisance, or otherwise be contrary to law, or deprive any person of any remedy to which he would have been entitled if this Act had not been passed.

(2) A person shall not be entitled solely by reason of the grant of a licence under this Act to construct, alter or operate industrial plant or to carry on any other operation or activity.

(3) Save for section 28 (4), nothing in this Act shall affect the operation of the Safety in Industry Acts, 1955 and 1980, in relation to factories or to any other premises to which those Acts apply.

#### FIRST SCHEDULE

##### Pollutants to which Act Applies

##### Section 7

1. All smoke, gas, aerosols and dust

2. Without prejudice to the generality of *paragraph (1)*, this Act shall apply in particular to smoke, gas, aerosols and dust consisting of—

(a) sulphur dioxide and other sulphur compounds, or

(b) oxides of nitrogen and other nitrogen compounds, or

(c) carbon monoxide, or

(d) organic compounds, or

(e) heavy metals and their compounds, or

(f) asbestos fibres, glass fibres or mineral fibres, or

(g) chlorine and its compounds, or

(h) fluorine and its compounds.

#### SECOND SCHEDULE

##### Section 9

#### Part I

##### Enactments Repealed

Session and Chapter, Number and Year	Short Title	Extent of Repeal
(1)	(2)	(3)
41 & 42 Vict. c. 52	Public Health (Ireland) Act, 1878.	Paragraph 7 of section 107; the words "Any chimney (not being the chimney of a private dwelling house) sending forth black smoke in such quantity as to be a nuisance" in section 107; the second proviso to section 107; the words "also to enforce the provisions of any Act in force within their district requiring fireplaces and furnaces to consume their own smoke" in section 108.
6 Edw. 7. c. 14	Alkali, etc. Works Regulation Act, 1906.	The whole Act.
No. 26 of 1962	<u>Local Government (Sanitary Services) Act, 1962</u>	<u>Section 10</u>
No. 28 of 1963	<u>Local Government (Planning and Development) Act, 1963</u>	<u>Section 56 (1) (c) (iv)</u> (inserted by the Local Government (Planning and Development) Act, 1976), and section 61 (1) (as amended by the Local Government (Planning and Development) Act, 1976), to the extent that those provisions relate to air pollution.

## Part II

*Statutory Instruments Repealed*

S.I. Number and Year	Short Title	Extent of Repeal
(1)	(2)	(3)
S.I. No. 156 of 1970	Control of Atmospheric Pollution Regulations, 1970.	The whole Regulations.
S.I. No. 361 of 1977	The European Communities (Sulphur Content of Gas Oil) Regulations, 1977.	The whole Regulations.
S.I. No. 178 of 1985	Control of Atmospheric Pollution (Licensing) Regulations, 1985.	The whole Regulations.
S.I. No. 326 of 1985	The European Communities (Sulphur Content of Gas Oil) (Amendment) Regulations, 1985.	The whole Regulations.
S.I. No. 378 of 1985	The European Communities (Lead Content of Petrol) Regulations, 1985.	The whole Regulations.

## THIRD SCHEDULE

## Industrial Processes to which Act Applies

Section 6*No.**Process*

- The refining of oil other than operations solely manufacturing lubricants from crude oil.
- The generation of electricity in plants with a nominal heat output exceeding 50 MW, other than hydro and nuclear plants.
- The raising of steam in plants with a nominal heat output exceeding 50 MW.
- The roasting and sintering of metal ores in plants with a capacity of more than 1,000 tonnes per year.
- The production of pig iron and crude steel in integrated plants.
- The production of ferrous metals in foundries having melting installations with a capacity greater than 5 tonnes.
- The production and melting of non-ferrous metals in installations having a capacity greater than 1 tonne for heavy metals or 0.5 tonnes for light metals.
- The production of cement.
- The production of a compound or alloy of magnesium.
- The production of lime in a kiln.

11. The production of a compound or alloy of manganese.
12. The production and processing of asbestos
13. The manufacture of asbestos-based products
14. The manufacture of glass fibre or mineral fibre.
15. The production of glass (ordinary and special) in plants with a capacity of more than 5,000 tonnes per year.
16. The manufacture of coarse ceramics including refractory bricks, stoneware pipes, facing and floor bricks and roof tiles.
17. The manufacture of olefins, derivatives of olefins, monomers and polymers.
18. The manufacture of organic intermediate products other than those specified at No. 17.
19. The manufacture of basic inorganic chemicals.
20. Any chemical process in which any of the following basic inorganic chemicals are used or evolved, that is to say, ammonia, bromine, carbon disulphide, chlorine, fluorine, hydrofluoric acid, hydrogen chloride, hydrogen cyanide, or hydrogen sulphide.
21. Any chemical process in which mercaptans are used or evolved.
22. The incineration of solid or liquid wastes.
23. The manufacture of paper pulp by chemical methods in plants with a capacity greater than 25,000 tonnes per year.
24. The manufacture of artificial fertilizers
25. The extraction of aluminium oxide from an ore and the reaction of aluminium or its alloys with chlorine or its compounds.
26. The production of tar and bitumen and the manufacture of products containing them.
27. The extraction or recovery, by burning or by the application of heat, of aluminium, zinc, copper or lead, from any scrap metal or alloy, waste material or residue including scrap or waste cable.
28. The getting, raising, taking, carrying away and processing (including size reduction, grading and heating) of minerals and the storage of mineral wastes.
29. The manufacture of pesticides, pharmaceutical products and their intermediates.
30. The rendering of animal by-products

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