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## PROCEDURE FOR APPROVAL FOR ABSTRACTION FROM WATER SOURCE WATER SUPPLIES ACT, 1942

Note: this procedure is in addition to any requirement for planning approval under the Planning and Development Act, 2000.

SECTION <small>[Water Supplies Act except where stated]</small>	TIMING	REQUIREMENT
2	Commencement of procedure	<p>A "sanitary authority" may formulate a proposal for taking a "supply of water" from a source "for the purpose of increasing, extending or providing a supply of water under the Public Health Acts, 1878 to 1931. In the present case, the sanitary authority is Kildare County Council.</p> <p>The proposal must contain the information listed in section 3 of the Water Supplies Act, 1942</p> <p>There is no period of time specified for preparing the proposal and/or the book of reference.</p>
4(1)(a)	After preparing the proposal (the Act describes this as the "procedure consequent upon making a proposal")	<p>The sanitary authority must:</p> <ul style="list-style-type: none"> <li>▪ take "all reasonable steps" to ascertain persons to whom damage <u>may</u> be caused by the abstraction of the water in question; and</li> <li>▪ estimate "as nearly as may be" the amount of such damage.</li> </ul> <p>The name and residential address of these persons are to be included in the "book of reference" (section 4(1)(b) – see below)). In the present case, since the prior procedure has identified a lot of people who were not in the original book of reference, it could be said that that procedure constituted all reasonable efforts and that all reasonable efforts were made to identify persons to whom damage may be caused.</p>
		<p>Whilst carrying out the requirements of section 4(1)(a), the sanitary authority should also:</p> <ul style="list-style-type: none"> <li>▪ make any necessary arrangements for placing the proposal on public display at the sanitary authority's principal office (section 4(1)(c) and 5);</li> <li>▪ decide the newspaper for publication of notice of the proposal (section 4(1)(e)); and</li> <li>▪ settle the form of public notices about the proposal (section 4(1)(d), (e)).</li> </ul> <p>Under section 4(4) the sanitary authority has the option of including an offer of a "specified sum of money by way of compensation for the damage" in its notice to persons to whom damage may be caused by the abstraction.</p>
4(1)(b)	After ascertaining persons to whom damage may be caused by the proposed abstraction	The sanitary authority must prepare <u>in duplicate</u> a book of reference showing all persons who are persons to whom damage may be caused by the abstraction of the water, including name and address (where reasonably ascertainable).
<b>Provision of Notice</b>		
4(1)(d), 4(2)(c)	After preparing the book of reference	The sanitary authority must give to every person whose name appears in the book of reference a written notice about the proposal "conforming with this section" (ie. must meet the requirements of section 4(2) – (4)).

SECTION [Water Supplies Act except where stated]	TIMING	REQUIREMENT
		Such notice must specify a deadline for making objections to the proposal. Section 4(2)(c) provides that a person who is served with such a notice must be allowed <u>at least one month after "notice is given to such person"</u> in which to make an objection to the proposal.
4(1)(e), 4(2)(d)	After ascertaining persons to whom damage may be caused by abstraction	<p>The sanitary authority must publish notice of the proposal in a newspaper circulating in the relevant sanitary district from which the water is proposed to be extracted. The notice must comply with the requirements of section 4(2).</p> <p>The notice must specify a deadline for making objections to the proposal. Section 4(2)(d) provides that the newspaper notice must state that any person "who is aggrieved with" the proposal may object to the proposal – aggrieved persons must be allowed at least one month after publication of the notice in the newspaper in which to submit their objection.</p> <p>Ideally the deadline for making objections should be the same as for the persons listed in the book of reference.</p>
21(3)	"Any time before or after" the proposal comes into force	<p>Section 21(3) provides that where a sanitary authority makes a proposal to extract water, it must give written notice of the proposal to the "navigation authority of any navigable water". In the present case the navigation authority is Waterways Ireland (see separate document setting out reasons for this).</p> <p>The Act states that this notice may be given <u>at any time before or after the proposal comes into force</u>. It may be preferable to provide notice <u>before</u> the proposal comes into force since section 21 allows the navigation authority a right to object (which from a timing perspective might be better dealt with alongside any landowners' objections lodged under section 6).</p>
21(4), (9)	Within 21 of days of the giving of notice to the navigation authority	<p>The navigation authority has 21 days in which to give the sanitary authority notice that it is of the view that the proposal "makes or will make" the navigation of the relevant waterway "impossible or unreasonably difficult". They must state their reasons for this claim.</p> <p>If the navigation authority has not within this 21 day period given such an "interference notice" (or the notice is annulled or withdrawn) – it shall not be open at any time in the future for the navigation authority to contend in any court that the abstraction of water in accordance with the proposal makes navigation impossible or unreasonably difficult.</p>
21(5), (6)	After receiving an interference notice	<p>In the event of an interference notice, under section 21 the sanitary authority has several alternatives:</p> <ul style="list-style-type: none"> <li>▪ the sanitary authority may reduce the volume of water to be extracted under the proposal; and/or</li> <li>▪ the sanitary authority may consider the navigation authority's objection and negotiate for the withdrawal of the interference notice, and/or</li> <li>▪ the sanitary authority may apply to the High Court for annulment of the notice.</li> </ul>
<b>Public Exhibition of the Proposal/Objections</b>		
4(1)(c), 5	On giving notice of the public exhibition of the proposal	<p>One copy of the book of reference and a copy of the abstraction proposal must be made available for inspection by the public, in accordance with section 5:</p> <ul style="list-style-type: none"> <li>▪ the proposal/book of reference shall be exhibited at the principal office of the sanitary authority (to which the public have access);</li> </ul>

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		<ul style="list-style-type: none"> <li>▪ the period of public exhibition must commence no later than (1) the first date on which notice of the proposal is given to any person (section 4(1)(d)) or (2) the date on which notice is published in a newspaper (section 4(1)(e)), <u>whichever is the earlier</u>; and</li> <li>▪ the proposal must remain on public exhibition until the proposal “comes into force” and the period for applying for compensation has expired (or alternatively when the proposal is abandoned).</li> </ul> <p>Section 5(c) permits any interested person to take a copy (at the sanitary authority’s office) of all or part of the abstraction proposal, free of charge, while it is on public display.</p>
4(2)(c), 4(2)(d), 6	After receiving notice about the public exhibition of the proposal	Any person may make a written objection about the proposal to the sanitary authority. All objections must be delivered to the sanitary authority before the deadline stated in the newspaper notice or (if the person’s name appears in the book of reference) the notice that person received. An objection must be made in writing and the grounds of objection stated.
217 (Planning Act 2000)	On receipt of first objection	The six week period leading to application for provisional order begins to run from the date of receipt of the first objection (in practice, the sanitary authority should be in a position to apply for the provisional order within 6 weeks of the commencement of the public exhibition period).
4(2)(c), (d), 7	At least 1 month after notice is given to any person about the proposal	<p>End of period for making objections under section 6.</p> <p>Where no objections have been received at this point (or every objection has been withdrawn), the proposal is deemed to have been agreed. The section 6 objection process is complete but the section 21 procedure may still be relevant.</p>
<b>Applying for Provisional Order</b>		
8 (and 217 Planning Act 2000)	Within six weeks of receiving the first objection to the abstraction proposal	<p>Section 217 of the Planning and Development Act, 2000 provides that the sanitary authority must apply for a provisional order in accordance with section 8 of the Water Supplies Act within 6 weeks of receiving an objection (not withdrawn) to the proposal.</p> <p>Depending on the length of the period for making objections, an application for a provisional order <u>may</u> be required to be made before the end of the objections period.</p> <p>Section 8(1) of the Water Supplies Act specifies that an application for a provisional order must be made to An Bord Pleanála (the Board). The application must include each of the following documents:</p> <ul style="list-style-type: none"> <li>▪ one copy of the abstraction proposal;</li> <li>▪ one copy of the book of reference;</li> <li>▪ one copy of each of the objections received (and which have not been withdrawn);</li> <li>▪ a certificate stating that the above copies are true copies and the procedure required by the Act has been duly carried out, in the form specified in the Water Supplies (Application for Provisional Order) Regulations, 2000;</li> <li>▪ one copy of the written notice given to persons listed in the book of reference; and</li> <li>▪ one copy of the newspaper containing notice of the abstraction proposal.</li> </ul>

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9, 10	After the Board receives the application for a provisional order	<p>The Board is required to consider the application and may refuse the application, make a provisional order or alter the application in one or more of the following ways:</p> <ul style="list-style-type: none"> <li>▪ altering the maximum rate of abstraction; and/or</li> <li>▪ inserting any restrictions or conditions the Board thinks proper on the taking of water, or in respect of any "ancillary operations".</li> </ul> <p><u>Note: The following is given for information purposes only</u> as it is the Board's responsibility for ensuring that the correct procedures are followed. Section 10 adopts the following provisions in relation to the making of provisional orders:</p> <ul style="list-style-type: none"> <li>▪ ss. 209, 210, 212 and 213 Public Health (Ireland) Act, 1878: the Board may direct that any inquiry be held into the application for the provisional order;</li> <li>▪ s. 214(1), (2) and (7) Public Health (Ireland) Act, 1878: the Board shall not make a provisional order without giving notice of the proposed order "in two successive weeks" in a newspaper circulating in the relevant district/s. Before making a provisional order the Board shall consider any objections by persons affected – and in cases "where the subject matter is one to which a local inquiry is applicable", shall have convened such an inquiry;</li> <li>▪ s. 215 Public Health (Ireland) Act, 1878: the costs of any sanitary authority and the public inquiry shall be borne by the relevant sanitary authority; and</li> <li>▪ s. 5(2) Public Health Acts Amendment Act, 1907: the local (sanitary) authority must pay the Board's expenses in carrying out any public inquiry (including the expenses of witnesses summoned by the inspector).</li> </ul>
<b>Confirmation of a Provisional Order</b>		
10	After considering the application for a provisional order	The Board makes the order
Item 1 Schedule 1	"With all convenient speed" after the making of the provisional order	A copy of the provisional order must be given by the sanitary authority to every person who made an objection, together with a statement that "unless a petition praying that the provisional order shall not become law without further inquiry" is presented to the Circuit Court by any objector(s) <u>within 5 weeks</u> from the date when such copy was given to him the provisional order shall be confirmed.
Item 2 Schedule 1	Within 5 weeks of receiving notice of the provisional order	Any objector may present a petition to the Circuit Court in relation to the provisional order. If such a petition is made then a copy must be sent to the Minister (it is unclear whether this should in fact be the Board – see section 214(2)(b) of the Planning and Development Act).
10(3), Schedule 1		<p>Section 10(3) of the Water Supplies Act applies section 68 of the Local Government Act, 1925, which provides that:</p> <p style="text-align: center;"><i>"Any provisional order made by the Minister... may be confirmed by the Minister or the Circuit Court..."</i></p> <p>Section 214(2)(b) of the Planning and Development Act, 2000 provides that the reference to the Minister in the above section should, in the context of the Water Supplies Act, refer to the Board.</p>

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		<p>The rules for confirmation of provisional orders are set out in the Schedule to the Water Supplies Act. They may be confirmed either by the Court or the Board:</p> <ul style="list-style-type: none"> <li>▪ where there is no petition from an objector, the Board may (without further inquiry) confirm the provisional order; and</li> <li>▪ where there is a petition, it shall be heard at the first sitting of the Court held after the expiry of 1 week from the date of presentation of the petition (or such later date as the Court may direct) so that the Court may confirm or disallow the provisional order.</li> </ul> <p>Where confirming a provisional order, the Court or the Board may amend the relevant proposal/provisional order.</p> <p>Section 68(2) of the Local Government Act, 1925 provides the procedure for confirmation of a provisional order:</p> <p><i>“Not less than one week before confirming an order... the Minister shall cause notice of his intention to confirm such order to be published in a newspaper circulating in the district where the ... rights are sought to be acquired are situate.”</i></p>
<b>Coming into force of the proposal</b>		
11(1)	Following agreement of a proposal (ie where no objections) or confirmation of a provisional order	<p>The sanitary authority “may” publish in a newspaper circulating in the relevant sanitary district in which the relevant water is to be extracted a notice specifying:</p> <ul style="list-style-type: none"> <li>▪ the date on which the proposal will come into force. Such date must be <u>at least one week</u> after the publication of the notice; and</li> <li>▪ that any person who claims that damage has been or will be caused to him by the abstraction of water - may apply at any time <u>before the expiry of 2 years</u> from the date of coming into force of the proposal to the sanitary authority for compensation in respect of such damage.</li> </ul>
12	As soon as practicable after newspaper notice (11(1))	<p>“As soon as may be after” the notice under section 11(1) is published, the sanitary authority must give to every person whose name appears in the book of reference a notice informing these persons:</p> <ul style="list-style-type: none"> <li>▪ of the date the proposal comes into force; and</li> <li>▪ that they may applying in writing for compensation “in respect of the damage which has been or will be caused to him” in extracting water – such application to be made at any time <u>before the expiry of 1 year</u> from the date of coming into force of the proposal.</li> </ul>
11(2)	At least one week after the newspaper notice (11(1))	Proposal for abstraction of waters comes into force.
12	One year later	End of period for applications by those in book of reference for compensation.
12	Two years after proposal comes into force	End of period for applications by others for compensation (respondents to newspaper advertisement).