



An Bille um Dhíospóidí idir Comharsana (Fásra), 2017
Neighbour Disputes (Vegetation) Bill 2017

Mar a tionscnaíodh

As initiated



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AN BILLE UM DHÍOSPÓIDÍ IDIR COMHARSANA (FÁSRA), 2017
NEIGHBOUR DISPUTES (VEGETATION) BILL 2017

Bill

entitled

An Act to address neighbour disputes concerning vegetation that causes a nuisance including the obstruction of sunlight; to provide for mediation of neighbour disputes and formal adjudication if necessary by adjudication officers appointed by local authorities; to provide for the appeal and enforcement of decisions made by adjudication officers; and to provide for related matters. 5

Be it enacted by the Oireachtas as follows: 10

Interpretation

1. In this Act, unless the context otherwise requires—

“adjoining” includes adjacent or in proximity to;

“adjoining owner” means the owner of any estate or of an interest in a dwelling adjoining the dwelling of another; 15

“Court” means the District Court;

“dwelling” means any building occupied for residential purposes, or part of a building occupied for residential purposes, and includes any outbuilding, office, yard, garden or other land appurtenant to it or usually enjoyed with it;

“nuisance” means any nuisance, including the obstruction of sunlight, caused by vegetation which is situated at or on or close to the boundary line between adjoining and separately owned dwelling including any outbuilding, office, yard, garden or other land appurtenant to it or usually enjoyed with it; 20

“vegetation” includes a hedge, shrub or tree, or parts thereof;

“works” include carrying on the adjustment, alteration, cutting into or away, lowering, maintenance, replacement, strengthening or taking down, or treatment of vegetation; 25

“works order” means an order under *section 6(3)*.

Referral of disputes to local authority

2. (1) A person who is in dispute with an adjoining owner with respect to vegetation which is causing a nuisance may apply to the local authority for an order directing the removal of the nuisance caused by the vegetation (a “works order”). 30

- (2) A person shall not refer a dispute to the local authority without first requesting the adjoining owner to remedy the nuisance and providing a period of at least 30 days to the adjoining owner to remedy the nuisance.

Mediation Officers

3. (1) The local authority may appoint— 5
- (a) such and so many of the members of staff of the local authority, and
 - (b) such and so many other persons,
- as he or she considers appropriate to be mediation officers for the purposes of this Act.
- (2) An appointment under this section shall cease— 10
- (a) if the local authority revokes the appointment in accordance with this section,
 - (b) in the case of a person appointed to be a mediation officer who is a member of the staff of the local authority, if the person concerned ceases to be a member of the staff of the local authority, or
 - (c) in the case of an appointment that is for a fixed period, on the expiry of that period. 15
- (3) The local authority may revoke an appointment under this section.
- (4) A mediation officer shall be independent in the performance of his or her functions.

Mediation

4. (1) (a) The local authority, may refer the dispute for resolution to a mediation officer. 20
- (b) The local authority shall not refer a dispute for resolution to a mediation officer if either of the parties to the dispute objects to its being so referred, or if the dispute is adjudged is frivolous or vexatious.
- (2) Where a dispute is referred for resolution under this section the mediation officer concerned may— 25
- (a) convene a meeting (in this section referred to as a “mediation conference”) in accordance with *subsection (3)* for the purpose of resolving the dispute, or
 - (b) employ such other means as he or she considers appropriate for the purpose of resolving the dispute.
- (3) A mediation conference shall— 30
- (a) take place at a time and place determined by the mediation officer,
 - (b) be attended by the mediation officer and the parties to the complaint concerned, and
 - (c) be conducted otherwise than in public.
- (4) Where a dispute referred to a mediation officer under this section is resolved, whether by mediation or otherwise— 35

- (a) the mediation officer concerned shall record in writing the terms of the resolution,
 - (b) each of the parties to the dispute concerned shall, if satisfied that it accurately represents the terms of the resolution, sign the record thereof, and
 - (c) the mediation officer concerned shall send the record as so signed to the local authority and shall give a copy thereof to each of the parties to the dispute. 5
- (5) (a) Where a mediation officer has attempted (whether by convening a mediation conference or other means) to resolve a dispute referred to him or her under this section and such conference or the employment of those other means has not resulted in a resolution of the dispute, the mediation officer shall notify the parties to the dispute and the local authority in writing of that fact. 10
- (b) The local authority shall, upon receiving a notification under *paragraph (a)*, refer the dispute concerned for adjudication by an adjudication officer under *section 6*.
- (6) The terms of a resolution of a dispute recorded in writing and signed by the parties to the dispute in accordance with *subsection (4)* shall be binding on the parties and if either party contravenes any such term, the contravention shall be actionable in any court of competent jurisdiction, and enforceable under *section 9* as if it were a works order that had not been appealed. 15
- (7) The terms of a resolution referred to in *subsection (4)* shall not be disclosed by a mediation officer or by either party to the dispute concerned in any proceedings before a court (other than proceedings in respect of the contravention of or failure to adhere to the terms of the resolution), or otherwise. 20
- (8) All communications (including communications during a mediation conference) by a mediation officer with the parties to a dispute referred for resolution under this section to him or her and all records and notes, including records and notes relating to a mediation conference held for the purposes of resolving any matter to which the dispute concerned relates, shall be confidential and shall not be disclosed in any proceedings before a court, or otherwise. 25

Adjudication Officers

5. (1) The local authority may appoint— 30
- (a) such and so many of the members of the staff of the local authority, and
 - (b) such and so many other persons,
- as he or she considers appropriate to be adjudication officers for the purposes of this Act.
- (2) An appointment under this section shall cease— 35
- (a) if the local authority revokes the appointment in accordance with this section,
 - (b) in the case of a person appointed to be a adjudication officer who is a member of the staff of the local authority, if the person concerned ceases to be a member of the staff of the local authority, or
 - (c) in the case of an appointment that is for a fixed period, on the expiry of that 40

period.

- (3) The local authority may revoke an appointment under this section.
- (4) An adjudication officer shall be independent in the performance of his or her functions.

Adjudication

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- 6. (1) Where a dispute is presented under *section 2*, the local authority shall, subject to *section 4* and *5*, refer the complaint for adjudication by an adjudication officer.
- (2) An adjudication officer to whom a dispute is referred under this section shall—
 - (a) inquire into the dispute, including arranging a site inspection with or without the parties present, 10
 - (b) give the parties to the dispute an opportunity to—
 - (i) be heard by the adjudication officer, and
 - (ii) present to the adjudication officer any evidence relevant to the dispute,
 - (c) issue a works order in relation to the dispute,
 - (d) dismiss a complaint, and 15
 - (e) give the parties to the dispute a copy of that decision in writing.
- (3) In determining whether to make a works order and, if one is to be made, what terms and conditions should be attached to it, the adjudication shall have regard to the nuisance complained of, the cost of remedying any such nuisance that exists and may take into account any other circumstances which it considers relevant. 20
- (4) An adjudication officer may refuse to entertain a dispute referred to him or her under this section if, he or she is not satisfied, that the person referring the dispute, made a reasonable attempt to comply with *section 2(2)*, or if the dispute referred is frivolous or vexatious.

Terms and conditions of works orders

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- 7. (1) A works order shall require the carrying out of the works specified, on such terms and conditions (including those necessary to remedy the nuisance and prevent future nuisance) as the adjudication officer thinks fit in the circumstances of the case.
- (2) Without prejudice to the generality of the foregoing, a works order shall specify the persons subject to the order, the works that shall be taken to remedy the nuisance and a reasonable period of time for the carrying out of such works. 30

Appeal to the District Court

- 8. (1) Not later than 42 days from the date of a decision of the adjudication officer under *section 6*, a party to the dispute may appeal against the decision to the Court by notice in writing specifying the grounds of the appeal, and where the party does so, the Court shall determine such appeal. 35
- (2) In its determination of the appeal, the Court may affirm, revoke or vary the decision

of the adjudication officer, and the Court may issue any decision or works order which could have been made by the adjudication officer.

- (3) An application under this section to the Court shall be made to a judge of the District Court assigned to the District Court district in which the property the subject of the dispute is situated. 5

Enforcement of works order

9. (1) If a person fails to comply with a works order before the expiration of 56 days after the date specified for completing the works specified in the works order, the District Court shall on application to it in that behalf by the person concerned or local authority, and without hearing the other party or any evidence (other than in relation to the matters aforesaid) make an order directing the person to comply with the works order in accordance with its terms. 10
- (2) The reference in *subsection (1)* to a decision of the adjudication officer is a reference to such a decision in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought, or if such an appeal has been brought it has been abandoned and the references to the date of the decision shall, in a case where such an appeal is abandoned, be construed as a reference to the date of such abandonment. 15
- (3) An application under this section to the Court shall be made to a judge of the District Court assigned to the District Court district in which the property the subject of the dispute is situated. 20

Short title

10. This Act may be cited as the Neighbour Disputes (Vegetation) Act 2017.

An Bille um Dhíospóidí idir Comharsana
(Fásra), 2017

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do thabhairt aghaidh ar dhíospóidí idir comharsana a bhaineann le fásra is cúis le nús, lena n-áirítear bac ar sholas na gréine; do dhéanamh socrú maidir le hidirghabháil a dhéanamh i dtaca le díospóidí idir comharsana agus maidir le hoifigigh bhreithniúcháin arna gceapadh ag údaráis áitiúla do dhéanamh breithniú foirmiúil, más gá, ar dhíospóidí idir comharsana; do dhéanamh socrú maidir le hachomharc a dhéanamh in aghaidh breitheanna arna dtabhairt ag oifigigh bhreithniúcháin agus maidir le breitheanna den sórt sin a fhorfheidhmiú; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

*An Teachta Aengus Ó Snodaigh a thug isteach,
29 Meitheamh, 2017*

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*Introduced by Deputy Aengus Ó Snodaigh,
29th June, 2017*

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