

Orders of the Royal Court

**IV
2010**

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 5th day of August, 2010 before Sir Geoffrey Rowland, Bailiff; present:- Stephen Edward Francis Le Poidevin, David Osmond Le Conte, John Ferguson, Stephen Murray Jones, Peter Sean Trueman Girard, Niall David McCathie, Esquires and Margaret Ann Spaargaren, Jurats.

No. IV Order, 2010

ENTITLED

**THE ENVIRONMENTAL POLLUTION (APPEALS AND REFERENCES)
ORDER, 2010**

The Environmental Pollution (Appeals and References) Order, 2010

THE ROYAL COURT, in exercise of the powers conferred upon it by sections 26(1), 27 and 72 of the Environmental Pollution (Guernsey) Law, 2004^a, and of all other powers enabling it in that behalf, hereby orders:-

PART I APPEALS TO ROYAL COURT

Notice of appeal.

1. (1) Notice of an appeal under section 26(1) of the Law by a person aggrieved by a decision of the Tribunal on a question of law shall be in the form set out in the Schedule and shall contain a statement of the contentions of law on which the appellant relies.

(2) Notice of an appeal shall be sent to the Secretary within a period of one month beginning with the date of the decision in respect of which the appeal is made.

Notification of date of directions hearing.

2. (1) The Secretary shall -

(a) transmit a copy of the notice of appeal and of the documents attached thereto -

(i) to the Greffier,

- (ii) to the parties to the appeal (other than the person who has appealed in accordance with article 1),
 - (iii) to the person who chaired the Tribunal, and
 - (iv) to the President of the Panel, and
- (b) at the same time notify in writing -
- (i) the persons referred to in subparagraph (a), and
 - (ii) the person who appealed in accordance with article 1,

that a hearing shall be held at which directions shall be given as to the future conduct of the appeal and, subject to paragraph (2), of the place, date and time of that hearing.

(2) The date and time for the directions hearing to be notified under paragraph (1) shall be 10 a.m. on the first Friday (which is not a non-business day) after the expiry of a period of 14 clear days starting from the date of receipt of the notice of appeal by the Secretary under article 1(2).

PART II

REFERENCE OF POINTS OF LAW TO ROYAL COURT

Reference by Tribunal-submission of statement of case and notification of date

^a Order in Council No. XIII of 2004.

of directions hearing.

3. (1) If the Tribunal decides that -
- (a) a question of law has arisen in connection with the hearing and determination by it of an appeal, and
 - (b) the question of law should be referred for decision to the Royal Court under section 27(2) of the Law,

the person chairing the Tribunal shall, within 10 clear days of so deciding -

- (i) prepare and sign a statement (the "**statement of the case**") setting out the question of law and such particulars of the appeal as are, in his opinion, relevant to the determination of the question of law by the Royal Court, and
 - (ii) transmit the statement of the case to the Secretary.
- (2) The Secretary shall -
- (a) transmit a copy of the statement of the case -
 - (i) to the Greffier, and
 - (ii) to the parties to the appeal, and
 - (b) at the same time notify in writing -

- (i) the persons referred to in subparagraph (a), and
- (ii) the person chairing the Tribunal,

that a hearing shall be held at which directions shall be given as to the future conduct of the reference and, subject to paragraph (3), of the place, date and time of that hearing.

(3) The date and time for the directions hearing to be notified under paragraph (2) shall be 10 a.m. on the first Friday (which is not a non-business day) after the expiry of a period of 14 clear days starting from the date of receipt of the statement of the case by the Secretary under paragraph (1).

Reference by Director-submission of statement of case and notification of date of directions hearing.

4. (1) If the Director decides that -
- (a) a question of law has arisen in connection with a decision he is contemplating, and
 - (b) it would enable or assist him in the proper and lawful making of that decision to refer the question of law for determination to the Royal Court and that the question of law should be so referred under section 27(1) of the Law,

the Director shall, within 10 clear days of so deciding prepare and sign a statement (the "**statement of the case**") setting out the question of law and such particulars of the decision he is contemplating as are, in his opinion, relevant to the determination

of the question of law by the Royal Court.

- (2) The Director shall -
 - (a) transmit a copy of the statement of the case -
 - (i) to the Greffier, and
 - (ii) to any person who may have a right of appeal, as a person aggrieved by a decision, under section 25(1) of the Law in respect of the decision the Director is contemplating ("**interested party**"), and
 - (b) at the same time notify in writing the persons referred to in subparagraph (a) that a hearing shall be held at which directions shall be given as to the future conduct of the reference and, subject to paragraph (3), of the place, date and time of that hearing.

(3) The date and time for the directions hearing to be notified under paragraph (2) shall be 10 a.m. on the first Friday (which is not a non-business day) after the expiry of a period of 14 clear days starting from the date the Director transmits a copy of the statement of the case to the Greffier and to any interested party under paragraph (2); and if the copy of the statement of the case is transmitted on different days to the Greffier and any interested party the period shall start from whichever date is the last date on which the copy was transmitted to the Greffier or an interested party, as the case may be.

Further particulars to be furnished to Royal Court.

5. The Bailiff may -

- (a) at any time, require the person chairing the Tribunal or the Director, as the case may be, to furnish to the Greffier further particulars in writing, within such time as the Bailiff may direct, with regard to any question referred to the Royal Court under this Part, and
- (b) at any time prior to the fixing of the date of any further hearing of any such question -
 - (i) allow the amendment of the statement of the case prepared under article 3(1) or 4(1), as the case may be, and
 - (ii) extend the time laid down in article 3(1) or 4(1), as the case may be, for the preparation of the statement of the case.

Transmission of amendment to the statement of the case.

6. Where a statement of the case is amended under the provisions of article 5 -

- (a) in the case of a reference by the Tribunal, the Secretary shall transmit any such amendment to the Greffier and the parties to the appeal, and
- (b) in the case of a reference by the Director, the Director

shall transmit any such amendment to the Greffier and to any interested party.

Determination by Royal Court without a further hearing.

7. If the Royal Court is of the opinion, at the directions hearing held in accordance with article 3(2) or article 4(2) or at any time thereafter, that a question of law referred to it under this Part can properly be determined on the basis of the statement of the case and any further particulars furnished under article 5(a), the Royal Court may decide to dispense with any further hearing and determine the question on that basis.

PART III
GENERAL PROVISIONS

Representation before Royal Court.

8. Any -

- (a) party to an appeal which is the subject of an appeal or reference in accordance with Part I or II, or
- (b) interested party in relation to a contemplated decision of the Director which is the subject of a reference in accordance with Part II,

may (provided that, in the case of a reference, he is called upon to do so by the Royal Court) address the Royal Court in person or by an Advocate of the Royal Court.

Procedure before Royal Court.

9. (1) The Royal Court may call for such documents and examine such persons on oath, affirmation or otherwise as appear likely to afford testimony

relevant and material to any question of law to be determined by it on an appeal or reference in accordance with Part I or II.

(2) Any -

- (a) party to an appeal which is the subject of an appeal or reference in accordance with Part I or II, or
- (b) interested party in relation to a contemplated decision of the Director which is the subject of a reference in accordance with Part II,

may (provided that he is authorised to do so by the Royal Court) cause a summons to be served on any person, in the same manner as a witness summons must be served in respect of a civil action before the Royal Court under rule 85 of the Royal Court Civil Rules, 2007^b, summoning that person to attend a hearing of the Royal Court for the purpose of giving testimony or producing any document likely to assist the Royal Court in determining the question of law which is the subject of the appeal or reference.

(3) A person summoned in accordance with paragraph (2) shall be under a like obligation as to the giving of testimony and the production of documents as if he were summoned in respect of a civil action before the Royal Court under rule 85 of the Royal Court Civil Rules, 2007.

(4) The Royal Court may adjourn the hearing of any appeal or reference from time to time as it may think fit.

- (5) If the Royal Court is satisfied that -
- (a) all parties to an appeal which is the subject of an appeal or reference in accordance with Part I or II, or
 - (b) the Director and any interested party in relation to a contemplated decision of the Director which is the subject of a reference in accordance with Part II,

have been notified of the place, date and time of the hearing thereof, and if any of such persons fails to appear, the Royal Court may proceed to determine the appeal or reference, as the case may be, in the absence of that person.

(6) Save as otherwise expressly provided in this Order, the procedure at the hearing of an appeal or reference in accordance with Part I or II shall be such as the Royal Court may from time to time determine.

Notification of decision of Royal Court.

10. (1) The decision of the Royal Court on an appeal to it in accordance with Part I or on a question of law referred to it in accordance with Part II, shall be in writing, signed and sealed by the Greffier and transmitted by him to -

- (a) in the case of an appeal or reference in relation to an appeal to the Tribunal, the Secretary, or
- (b) in the case of a reference in relation to a contemplated decision of the Director, the Director.

b O.R.C. No. IV of 2007 as amended by O.R.C. No. II of 2008 and O.R.C. No. IV of 2009.

(2) In the case of an appeal or reference in relation to an appeal to the Tribunal, the Secretary shall send a copy of the decision to -

- (a) the parties to the appeal, and
- (b) the members of the Tribunal.

(3) In the case of a reference in relation to a contemplated decision of the Director, the Director shall send a copy of the determination to any interested party.

Appeal to the Court of Appeal.

11. Where an application is made under -

- (a) section 28(1)(a) of the Law from a decision of the Royal Court made under section 26 of the Law,
- (b) section 28(1)(b) of the Law against a determination made by the Royal Court under section 27(1) of the Law, or
- (c) section 28(1)(c) of the Law against a decision of the Royal Court made under section 27(2) of the Law,

for leave to appeal from a decision or determination of the Royal Court, as the case may be, the date on which the judgment or order of the court was pronounced shall, for the purposes of article 3 of the Court of Appeal (Civil Division) (Guernsey) Rules,

1964^c, be deemed to be the date the Secretary or the Director, as the case may be, sent a copy of the decision or determination of the Royal Court to the person seeking leave to appeal in accordance with article 10(2) or article 10(3), as the case may be.

Service of notices.

12. A document to be transmitted or notified under this Order to the Secretary or the Greffier may -

- (a) in the case of transmission or notification to the Secretary, be addressed to the Secretary and left at or sent by post to Sir Charles Frossard House, La Charroterie, St. Peter Port, Guernsey GY1 1FH, or
- (b) in the case of transmission or notification to the Greffier, be left at or sent by post to the Greffe^d.

Interpretation.

13. (1) In this Order, except where the context requires otherwise -

"**clear day**" means a period of 24 hours ending at midnight and does not include any non-business day,

"**the Director**" means the person appointed as Director of Environmental Health and Pollution Regulation under section 4 of the Law,

^c Orders of the Royal Court Vol. 1 page 234 as modified by Order of the Royal Court No. 11 of 1987.

^d The provisions of section 71 of the Law (service of notices) apply in relation to service to other persons by virtue of section 73(5) of the Law.

"enactment" includes a Law, an Ordinance and any subordinate legislation and any provision or portion of a Law, an Ordinance or any subordinate legislation,

"further hearing" means any hearing for the determination of an appeal or reference made in accordance with this Order which is fixed at a directions hearing for the appeal or reference in question or at any time thereafter,

"Greffier" means Her Majesty's Greffier,

"hearing" means an oral hearing,

"interested party": see article 4(2)(a)(ii),

"the Law" means the Environmental Pollution (Guernsey) Law, 2004,

"non-business day" means -

- (a) a Saturday, a Sunday, Christmas Day and Good Friday, and
- (b) any day appointed as a public holiday by Ordinance of the States of Deliberation under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^e,

^e Ordres en Conseil Vol XVII, p. 384 as amended by Vol. XXIV p. 84, No. XI of 1993, No. XIV of 1994 and No. IX of 2001.

"the Ordinance" means the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010^f,

"Panel" means the Environmental and Public Health Appeals Panel drawn up and maintained by the States under section 24(1) of the Law,

"person chairing the Tribunal" means the person nominated to chair the Tribunal under section 10(2)(b) of the Ordinance,

"President of the Panel" means the person who is designated as President of the Panel under section 8 of the Ordinance or, if he is unavailable, the vice-President,

"Royal Court" means the Royal Court sitting as an Ordinary Court,

"the Secretary" means a secretary to the Panel appointed under section 16 of the Ordinance,

"statement of the case" : see article 3(1)(i) and 4(1),

"subordinate legislation" means any regulation, article, order, notice, article of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

"Tribunal" means the Environmental and Public Health Appeals Tribunal appointed from the membership of the Panel under section 24(5) of the Law to hear and determine the appeal in question,

^f Approved by the States on 28th April, 2010.

"under the Law" includes provisions made under the Law,

"vice-President of the Panel" means the person designated as the vice-President of the Panel under section 8 of the Ordinance,

and any other expressions, unless the context otherwise requires, have the same meaning as in the Law or the Ordinance, as the case may be.

(2) Any provision of this Order imposing a duty on the Greffier, the Director or the Secretary to perform any act shall (except where a specific time limit is imposed) be construed as requiring the performance of the act as soon as is reasonably practicable.

(3) References in this Order to the person chairing the Tribunal include, in relation to any function conferred on that person by this Order, references to any member of the Tribunal appointed by him to undertake that function.

(4) The Interpretation (Guernsey) Law, 1948^g applies to the interpretation of this Order as it applies to the interpretation of an enactment.

(5) Except where the context requires otherwise, any reference in this Order to an enactment is a reference thereto as from time to time amended, repealed and re-enacted (with or without modification), extended or applied.

Citation.

14. This Order may be cited as the Environmental Pollution (Appeals and References) Order, 2010.

^g Ordres en Conseil Vol. XIII, p. 355.

Commencement.

15. This Order shall come into force on the 5th day of August, 2010.

SCHEDULE

article 1(1)

The Environmental Pollution (Appeals and References) Order, 2010

Notice of Appeal to the Royal Court.

To the Secretary,
Environmental and Public Health Appeals Panel,
PO Box 43,
Sir Charles Frossard House,
La Charroterie,
St. Peter Port,
Guernsey GY1 1FH.

I [*insert full name*]
of [*insert full address*]

being aggrieved by a decision of the Tribunal on a question of law given on the day
of , 20 [*insert date of decision appealed against*], in respect of an appeal to
the Tribunal concerning [*give brief description of decision appealed against and
names of any other parties to the appeal*]

under section 25 of the Environmental Pollution (Guernsey) Law, 2004 hereby give notice of appeal against the said decision.

The contentions of law on which I rely in support of my appeal are set out below.

In support of this appeal the following documents are attached [*insert list of all documents sent with this application*].

Dated this day of, 20.....

Signature

(Appellant)

CONTENTIONS OF LAW

N.B. The particulars furnished on this form and all other information and documents sent to the Secretary by or on behalf of an appellant in connection with his or her appeal will be disclosed to all other parties.