



Number 23 of 1998

ROADS (AMENDMENT) ACT, 1998

ARRANGEMENT OF SECTIONS

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[No. 23.] *Roads (Amendment) Act, 1998.* [1998.]

Acts Referred to

Housing Act, 1966	1966, No. 21
Local Government (No. 2) Act, 1960	1960, No. 40
Local Government (Roads and Motorways) Act, 1974	1974, No. 6
Roads Act, 1993	1993, No. 14
Transport (Dublin Light Rail) Act, 1996	1996, No. 24



Number 23 of 1998

ROADS (AMENDMENT) ACT, 1998

AN ACT TO AMEND AND EXTEND THE ROADS ACT, 1993, AND THE TRANSPORT (DUBLIN LIGHT RAIL) ACT, 1996, TO PROVIDE, *INTER ALIA*, FOR THE COMPULSORY ACQUISITION OF SUBSTRATA OF LAND FOR THE PURPOSES OF THOSE ACTS, AND TO MAKE PROVISION FOR THE DECLARATION OF CERTAIN PROPOSED PUBLIC ROADS AS MOTORWAYS, AND TO PROVIDE FOR CONNECTED MATTERS. [1st July, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act “the Principal Act” means the Roads Act, 1993. Definition.

2.—Section 2 of the Principal Act is hereby amended by— Amendment of section 2 of Principal Act.

(a) the substitution for the definition of “the Minister” of the following definition:

“‘the Minister’ means the Minister for the Environment and Local Government;”,

(b) the insertion after the definition of “roadway” of the following definitions:

“‘rights’ includes, in relation to a scheme, rights which are existing or which are proposed to be created in the scheme;

‘scheme’ has the meaning assigned to it by section 47(1);

‘substratum of land’ means any subsoil or anything beneath the surface of land required—

(a) for the purposes of a tunnel or tunnelling or anything connected therewith, or

(b) for any other purpose connected with a scheme;”.

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Amendment of
section 43 of
Principal Act.

3.—Section 43 of the Principal Act is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) Notwithstanding subsection (2) and section 46(4), direct access from any adjoining land to a motorway or from the motorway to such land may be granted by the Authority to Córas Iompair Éireann in respect of a light railway—

- (a) authorised by a light railway order under section 9 of the Transport (Dublin Light Rail) Act, 1996, or
- (b) the subject of an application for a light railway order under section 3 of that Act,

and, accordingly, any such access shall not be a contravention of subsection (2) or section 46(4).”.

Amendment of
section 47 of
Principal Act.

4.—Section 47 of the Principal Act is hereby amended by the insertion—

- (a) in subsection (2)(a)(ii), after “land” of “or any substratum of land”, and
- (b) in subsection (2)(c)—
 - (i) after “The land” of “or substratum of land”, and
 - (ii) after “all land” in both places where it occurs of “, substrata of land”.

Amendment of
section 52 of
Principal Act.

5.—Section 52 of the Principal Act is hereby amended by the insertion—

- (a) in subsection (1) after—
 - (i) “acquire any land” of “or any substratum of land”, and
 - (ii) “in respect of that land” of “or substratum of land”,

and

- (b) after subsection (6) of the following subsections:

“(7) For the purposes of subsection (1), any reference in section 10(1) (inserted by section 86 of the Housing Act, 1966) of the Local Government (No. 2) Act, 1960, or in the Housing Act, 1966, to land shall include a reference to a substratum of land.

(8) For the purposes of subsection (1), the reference in section 10(4)(a) (inserted by section 86 of the Housing Act, 1966) of the Local Government (No. 2) Act, 1960, to section 78 of the Housing Act, 1966, shall be construed, as respects a scheme approved under section 49, as a reference to subsections (1) and (5) of the said section 78.

(9) A scheme approved under section 49 shall come into operation—

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- (a) in case an application for leave to apply for S.5 judicial review relating thereto has not been made, upon the expiration of—
- (i) the period of two months from the date on which notice of the decision under section 49(3) was first published, or
 - (ii) such period as extended by the High Court or Supreme Court under section 55A,
- (b) in case such an application has been made, and has not been withdrawn, in so far as it has not been declared invalid or quashed pursuant to that review, upon the final determination of the proceedings concerned or such other date as may be determined in those proceedings, and
- (c) in case such an application has been made and is withdrawn, upon the date of the withdrawal.”.

6.—The Principal Act is hereby amended by the insertion after Judicial Review. section 55 of the following section:

“55A.—(1) A person shall not question the validity of—

- (a) an order of the Minister under section 49(3), or
- (b) an order of the Minister under section 51(6),

otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986) (hereafter in this section referred to as ‘the Order’).

(2) An application for leave to apply for judicial review under the Order in respect of either of the matters referred to in subsection (1) shall—

- (a) be made within the period of two months commencing on the date on which notice of the decision under section 49(3) or 51(6), as the case may be, was first published, unless the High Court considers that there is good and sufficient reason for extending the period within which the application shall be made, and
- (b) be made by motion on notice (grounded in the manner specified in the Order in respect of an *ex parte* motion for leave) to the Minister and the road authority concerned,

and such leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the order is invalid or ought to be quashed.

(3) The High Court may, before hearing an application referred to in subsection (2), direct that notice of the application be also served on such persons (including any person who made an objection or submission to the Minister in accordance with section 48 or 51) as the Court may specify.

S.6

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

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

(5) Where an application is made for judicial review in respect of part only of an order of the Minister under section 49(3) or 51(6), the High Court may, if it so thinks fit, declare to be invalid or quash the part or any provision thereof without declaring to be invalid or quashing the remainder of the order or part, as the case may be, and if the Court does so, it may make any consequential amendments to the remainder of the order or part, as the case may be.

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

(7) This section shall not apply to proceedings initiated before the passing of the *Roads (Amendment) Act, 1998*."

Amendment of
Transport (Dublin
Light Rail) Act,
1996.

7.—The Transport (Dublin Light Rail) Act, 1996, is hereby amended by—

(a) the substitution in section 1 for the definition of "the Minister" of the following definition:

"'the Minister' means the Minister for Public Enterprise;"

(b) the insertion in section 1 after the definition of "public road" of the following definitions:

"'rights' includes, in relation to a light railway order, rights which are existing or which are proposed to be created in the order;

'substratum of land' means any subsoil or anything beneath the surface of land required—

(a) for the purposes of a tunnel or tunnelling or anything connected therewith, or

(b) for any other purpose connected with a light railway order;"

(c) the insertion in section 10(2) (a) after "land" of "or any substratum of land",

(d) the insertion in subsection (1) of section 13 after the first mention of "land" of "or any substratum of land",

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(e) the insertion in subsection (2) of section 13 after— S.7

- (i) “to acquire land” of “or any substratum of land”, and
- (ii) “adjoining land” in each place it occurs of “or substratum of land”,

and

(f) the insertion after subsection (2) of section 13 of the following subsection:

- “(3) For the purposes of this section, any reference in section 10(1) (inserted by section 86 of the Housing Act, 1966) of the Local Government (No. 2) Act, 1960, or in the Housing Act, 1966, to land shall include a reference to a substratum of land.”.

8.—Where a motorway scheme has been made pursuant to section 4 of the Local Government (Roads and Motorways) Act, 1974, and no order was made pursuant to section 2(2) of that Act in respect of the proposed public road the subject of such scheme, the Minister for the Environment and Local Government may, where the scheme was approved pursuant to either section 4 of that Act or section 49 of the Principal Act, by order declare such proposed public road to be a motorway and such order shall have the same effect as an order to which section 5(1)(b) of the Principal Act applies.

Motorway schemes made under Local Government (Roads and Motorways) Act, 1974.

9.—(1) This Act may be cited as the Roads (Amendment) Act, 1998.

Short title and collective citation.

(2) The Roads Act, 1993, and this Act (other than *section 7* of this Act) may be cited together as the Roads Acts, 1993 and 1998.

(3) The Transport (Dublin Light Rail) Act, 1996, and *section 7* of this Act may be cited together as the Transport (Dublin Light Rail) Acts, 1996 and 1998.