



# **National Roads Authority**

An tÚdarás um Bóithre Náisiúnta

Advice Note  
On The Procedures For The  
Holding Of An Oral Hearing  
Into A  
Draft Toll Scheme

PPP Unit

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*This report contains 10 pages*

Oral hearing report

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# **1 Draft Toll scheme - Legal Provisions**

## **1.1 Introduction**

The National Roads Authority (the “Authority”) has the general duty of securing the provision of a safe and efficient network of national roads. As such it has overall responsibility for the planning and supervision of works for the construction and maintenance of national roads. Its main functions, duties and powers are primarily contained in the Roads Act, 1993 together with the Planning and Development Act, 2000.

## **1.2 Power to Toll National Roads**

Part V of the Roads Act, 1993, as amended by Part XX of the Planning and Development Act, 2000 bestows a statutory power upon the Authority to charge tolls in respect of the use of national roads. Section 57 of the Roads Act (as amended) provides that “*a road authority may prepare a scheme for the establishment of a system of tolls in respect of the use of a public road*”. The 1993 Act defines “*road authority*” as meaning in the case of toll schemes relating to national roads, the National Roads Authority.

## **1.3 Summary of Statutory Process**

The statutory process applicable to a Draft Toll Scheme is set out in Part V of the Roads Act, 1993, as amended by Part XX of the Planning and Development Act, 2000. The essential elements of the procedure include the following:

- A Notice to be published by the Authority in one or more newspapers circulating in the relevant area, informing that a Draft Toll Scheme has been prepared and indicating the place and times where the Draft Toll Scheme and accompanying Explanatory Statement can be inspected, and including a statement of the time limits within which members of the public can make objections in writing to the National Roads Authority.
- Copies of the Draft Toll Scheme and Explanatory Statement to be available for inspection by the public for a minimum period of one month.
- Objections to the Draft Toll Scheme to be made in writing to the National Roads Authority before a specified date not less than two weeks after the inspection period.
- A Notice to be served by the Authority on the relevant local authorities informing them that a Draft Toll Scheme has been prepared and stating that

representations may be made in writing to the National Roads Authority within a specified period.

- If objections to the Draft Toll Scheme are received and not withdrawn, the National Roads Authority shall cause an oral hearing to be held into the matters to which the objections relate. The report and recommendations of the person appointed to hold the hearing will be considered by the Board of the National Roads Authority prior to determining whether or not to adopt the Draft Toll Scheme.
- The National Roads Authority may adopt a Draft Toll Scheme with or without modifications or may refuse to adopt it.

In addition to the above procedures, the Roads Act, 1993, as amended by the Planning and Development Act, 2000, prescribes what must be contained in a Draft Toll Scheme and Explanatory Statement. Section 57(3) of the Roads Act, 1993, as amended by section 271 of the Planning and Development Act, 2000, states:

- “A scheme prepared under subsection (1) shall—*
- ( a ) specify the public road or proposed public road in respect of the use of which it is proposed to establish a system of tolls,*
  - ( b ) indicate the classes of vehicles and road users for whose use the toll road is intended,*
  - ( c ) indicate the classes of vehicles which and road users who will be charged tolls in respect of such use,*
  - ( d ) include an estimate of the amounts of the tolls that it is proposed to charge in respect of the use of the toll road by such vehicles and road users,*
  - ( e ) specify such other information as the road authority may consider appropriate or the Minister may prescribe.”*

Section 57(4) of the Roads Act, 1993, as amended by section 271 of the Planning and Development Act, 2000, states:

- “A scheme under subsection (1) shall be accompanied by an explanatory statement outlining the provisions of the scheme and its purpose and effect and shall include (as appropriate)—*
- ( a ) information in relation to the general arrangements for the construction, maintenance and operation of the toll road to which the scheme relates and for the payment of the cost of such construction, maintenance and operation,*
  - ( b ) estimates of the capital cost of the road (where appropriate) and of the capital and operating costs of tolling the road, and*
  - ( c ) estimates of the volume and kind of traffic that will use the road and the amounts of the tolls in respect of such traffic.”*

## **2 Oral hearings**

### **2.1 Main Legal Provisions**

Section 58(2)(b) of the Roads Act, 1993, as inserted by section 272 of the Planning and Development Act, 2000, states *“if an objection to a draft toll scheme is made and is not withdrawn, the road authority shall, before deciding whether to adopt the draft toll scheme or not, cause an oral hearing to be held into the matters to which the objection relates, by a person appointed by the road authority, and shall consider the report of and any recommendation by the person so appointed.”*

The exact format and procedures for the holding of an oral hearing into a Draft Toll Scheme by a person appointed by the Authority, are not directly specified in the roads legislation. However, procedural guidance for the holding of oral hearings by other bodies, in particular An Bord Pleanala, is provided in legislation. In particular, section 135 of the Planning and Development Act, 2000, sets out various provisions pertaining to oral hearings by An Bord Pleanala, which, although not mandatory for an oral hearing by the Authority, offers an appropriate template. These have been considered in the development of the procedural approach to the holding of an oral hearing into a Draft Toll Scheme.

### **2.2 Appointment of Inspector**

Where an objection to a Draft Toll Scheme is received within the period allowed for objections, and is not subsequently withdrawn, the Authority will, by formal decision, appoint a person to hold an oral hearing into the matters to which the objection relates. The person so appointed shall be termed the “Inspector” for the purposes of this document. A written warrant of appointment will be issued to the Inspector by the Authority authorising him/her to hold an oral hearing and to report to the Authority thereon.

### **2.3 General Arrangements**

There are a number of general arrangements which must be made to facilitate the holding of the oral hearing. These are mainly administrative in nature and will be undertaken by the Authority. These are as follows:

- (a) The Authority will collate all submissions received in relation to the Draft Toll Scheme. A copy of all the submissions will be provided to the Inspector.
- (b) The Authority will issue letters to all persons who made submissions acknowledging receipt of their representation. A copy of these acknowledgements will be provided to the Inspector.

- (c) The Authority will arrange the venue of the oral hearing. In all cases it will be an objective to arrange a local venue to facilitate attendance by persons living in the vicinity of the road project to which the Draft Toll Scheme relates.
- (d) When the date of the oral hearing is established in conjunction with the Inspector, the Authority will arrange for the insertion of a public notification into the same newspaper(s) that had carried the original publication advertisements for the Draft Toll Scheme. This notification will announce the venue for the oral hearing and the time and date of its commencement. The date of insertion will be at least 14 days prior to the commencement of the oral hearing.
- (e) The Authority will issue letters of invitation to all parties who made representations on the Draft Toll Scheme, providing at least 14 days notification, and ideally one month's notification, of the holding of the oral hearing.
- (f) Although the hearing is intended to operate without undue formality, the Authority may arrange the provision of stenographers to provide a transcription service as assistance to the Inspector. However, it is proposed that in the interests of informality that this service only be provided in exceptional circumstances.
- (g) The Authority will arrange the provision of a secretarial support service to the Inspector during the period of the oral hearing.

## **3 Conduct of Oral Hearing**

### **3.1 General Overview**

The Inspector conducting an oral hearing shall have discretion as to the conduct of the hearing. A primary objective in exercising such discretion shall be to conduct the hearing without undue formality. Notwithstanding that intention, it is necessary to provide a procedural framework within which the oral hearing can function.

To facilitate the conduct of the oral hearing, the Inspector is empowered to do all or any of the following things: determine the order of speakers; decide the manner of questioning of witnesses; intervene to limit repetitive questioning or the giving of repetitive evidence; require the removal of persons behaving in an unruly or disruptive manner; adjourn the oral hearing.

The Inspector shall have the power to hear evidence under oath, but in the interest of avoiding undue formality this should rarely be exercised.

The following sections provide additional guidance on individual elements of the oral hearing.

### **3.2 Opening of Hearing**

The oral hearing should be opened by the Inspector introducing himself, stating his appointment by the Authority and outlining the purpose of the oral hearing. The Inspector should then give a very brief description of the toll proposal under consideration and a summary of the main grounds of objection advanced by way of written submission. A full list of appearances for the Authority and the objectors should then be taken. The Inspector should then determine the order of speakers taking into account, in so far as it is convenient for the oral hearing, of any special requests relating to the order of speakers. He should also request that, if possible, written statements of evidence should be provided by all speakers, acknowledging that this will not be possible in all cases. However, the absence of a written copy of a statement shall not prevent that speaker from being heard.

### **3.3 Hearing of Witnesses**

While the purpose of the oral hearing is to inquire into the matters to which a prior written objection to the Draft Toll Scheme relates, the Inspector shall have discretion to hear speakers other than those who have formally objected to the Draft Toll Scheme. In addition, should speakers wish to raise additional points not covered by a prior written objection, the Inspector shall be at liberty to hear such matters, provided that in his opinion they are relevant to the oral hearing.

The Inspector shall at all times be cognisant of the fact that separate statutory procedures apply to the issues of land acquisition and environmental impacts associated with the road proposal. These are the subject of separate statutory public consultation with provision for separate oral hearings arranged by An Bord Pleanála. Therefore, matters pertaining to the design and construction of the road itself, the physical aspects of the toll plazas, environmental issues associated with either the road or the toll plazas, together with land acquisition/compensation issues, may not be dealt with at the oral hearing into the Draft Toll Scheme.

The normal arrangement for conducting the hearing is that the applicant, in this case the Authority, would present its case first, to be followed, in an order determined by the Inspector, by the other parties wishing to make submissions. The applicant should at the outset provide evidence of compliance with the statutory procedures in relation to the Draft Toll Scheme. Questioning of the applicant's speakers should be facilitated in whatever manner the Inspector considers expedient to all concerned. It may be appropriate to examine each speaker after the speaker has given his/her evidence. Alternatively, the Inspector may wish to wait until all of the applicant's witnesses have provided their evidence prior to allowing questioning of any of the applicant's witnesses.

Regarding the issue of who may question witnesses and how, it would be expected that only those parties who made written submissions upon the Draft Toll Scheme during the statutory period allowed for that purpose would be provided the facility of direct questioning of the witnesses either by themselves or through their representatives. Other observers wishing to raise questions may do so through the Inspector. The Inspector may also directly address questions on his/her own behalf to a witness.

The degree and intensity of questioning will be controlled by the Inspector to elicit an acceptable degree of information and views without harassment of any witness or inappropriate questions being asked.

Where objectors make a submission to the oral hearing, the opportunity of questioning the objectors shall be afforded to the applicant by the Inspector. The Inspector shall have due regard to "voluntary" role of many such speakers and shall ensure that any questioning of such speakers is conducted in a non-confrontational manner, and may require that questions are put only through the Inspector. However, where expert witnesses are put forward by objectors, questioning of such witnesses shall be conducted in a similar format to that pertaining to the applicant's witnesses.

### **3.4 Modifications to Published Documents**

The Inspector shall note any request for modification of the Draft Toll Scheme and its associated Explanatory Statement put forward by the applicant at the oral hearing. He/she shall then consider such request as part of the report on the oral hearing and make such recommendations upon any such request as he/she considers appropriate.

### **3.5 Legal Points**

Where legal points are raised at an oral hearing, the parties at the oral hearing should be informed that the points will be included in the Inspector's report. If, however, a legal argument is put forward which relates to the procedure at the oral hearing, the Inspector shall make a decision upon the matter following the taking of legal advice as appropriate.

### **3.6 Request for Adjournment**

Adjournments may be permitted by the Inspector either for a brief period during the oral hearing or for a longer period as considered appropriate. Various circumstances may arise requiring an adjournment and each will have to be considered by the Inspector on its own merits.

### **3.7 Application for Costs**

There is no mandatory provision in the legislation for the payment of costs associated with the attendance at an oral hearing of objectors to a Draft Toll Scheme or their witnesses. However, in exceptional cases the Inspector may undertake to bring a particular application for costs to the attention of the Authority as part of the Inspector's Report, with the decision on such application to be made by the Authority.

### **3.8 Language of Hearing**

The oral hearing shall be conducted through the medium of the English language. However, in any case where an objector wishes to make his/her submission in the Irish language this shall be allowed. Additionally, should such objector wish to question witnesses in Irish, this shall be facilitated in so far as practical. In such cases the Inspector may arrange with the Authority for the provision of an Irish language translator who will translate such submissions, questions and answers, as required.

## 4 Inspector's Report

### 4.1 Introduction

The purpose of the oral hearing is to inquire into matters relating to the Draft Toll Scheme which have been the subject of a prior written objection or such other appropriate matters as may be raised at the hearing. The legislative provisions covering the holding of such oral hearing require the consideration by the Board of the National Roads Authority of the report of, and any recommendation by, the Inspector holding the oral hearing. It is, therefore, an important function of the Inspector to produce a report summarising the proceedings of the Oral Hearing and putting forward any recommendations considered appropriate.

### 4.2 Format of Report

While there is no mandatory format for the Inspector's Report the following template is suggested:

- (a) *Oral Hearing Details*: Venue, date and time of the oral hearing. Inspector's name, warrant of appointment.
- (b) *Description of Proposal*: Brief description of the relevant Draft Toll Scheme and its purpose.
- (c) *Statutory Requirements*: Analysis of whether the Authority's statutory obligations in regard to publication, Draft Toll Scheme provisions, availability for inspection, representation period and similar have been complied with.
- (d) *Appearances by Applicant*: List of all those persons appearing for the applicant.
- (e) *Appearances by Other Parties*: List of all other parties appearing at the oral hearing.
- (f) *Case by Proposer*: Summarise case put forward by the applicant. Identify any significant issues raised in questioning/cross-examination.
- (g) *Case by Objectors*: Summarise case put forward by the objectors. Identify any significant issues raised in questioning/ cross-examination.
- (h) *Conclusions and Recommendations*: Summarise the salient points. Any recommendations should be clearly stated.

### 4.3 Publication of Report

The policy of the Authority is to make copies of the Inspector's Report available on request.