

1961

Juni
16

Nr. 15

ENGLISH TRANSLATION

Low on nett hove
mellom gramma.

NEIGHBOUR'S ACT
of 16 June 1961

BIBLIOTEKTJENESTEN VED
DET JURIDISKE FAKULTET
UNIVERSITETET I OSLO
Karl Johans gate 47 - Oslo 1

~~Utenriksdepartementets~~
~~bibliotek~~

MINISTRY OF ENVIRONMENT

OSLO, December 1974

Act of 16 June 1961 concerning the Legal Relations between Neighbours, with amendments of 19 June 1969, 2 February 1973 and 31 May 1974.

General Provisions

§ 1

The provisions of this Act are applicable only insofar as other arrangements do not apply as a result of agreement or special legal relations.

§ 2

No one may have, do or start anything which unreasonably or unnecessarily causes damage or is a nuisance to neighbouring property. Included in the term nuisance is anything which must be considered dangerous.

In deciding whether something is unreasonable, due weight shall be given to whether it is likely to accord with the usual conditions obtaining in the locality. If it is not worse than that which usually follows from normal use or operational methods in such places, it shall not be considered unreasonable.

§ 3

Unless it is a matter of significant importance to the owner, the latter must not have a tree, which causes damage or is a substantial nuisance for the neighbour, nearer to

the house, garden, yard or cultivated ground on the neighbouring property than one-third the height of the tree. The King may lay down specific provisions concerning measuring procedures.

Hedges which are lower than 2 metres are not considered unlawful under the provisions of this Section. Hedges which must be considered as boundary fences do not come in under this Act.

The provisions in this Section do not give the right to have trees standing which the neighbour is entitled to have removed in accordance with § 10 cf. § 2.

§ 4

No one may build in such a way that roof-water or snow falls onto the neighbouring property in such a way as to cause damage or nuisance for the neighbour.

Doors and windows or other transparent opening in the wall facing the neighbour must not be nearer the neighbouring property than 1.25 metres. If the wall-opening as mentioned has been specially authorised, the neighbour may not build closer to the opening than 1.25 metres.

§ 5

No one may commence digging, building, dynamiting or the like, without taking necessary precautions against collapse, sagging, vibration, flying stones, air pressure and the like on the neighbouring property.

Neighbour Notification and Advance Decisions

§ 6

If anyone plans to commence planting, digging, building,

industrial activity or other measures which may cause damage or nuisance to the neighbouring property, he shall notify the neighbour a reasonable period of time ahead.

If it is not feasible to locate the person who is to be notified or if it is not known how many are to be notified, it shall be announced in at least one newspaper which is widely read locally. The same notification procedure may be used when for other reasons it is difficult to notify the neighbour directly in the usual way.

Neighbour notification is not required when the activity in question enjoys rights of expropriation as mentioned in § 10, paragraph 3.

§ 7

The question of how an activity should be implemented so that it does not come into conflict with this Act may be settled in advance by either of the neighbours requesting that procedure under an official neighbour appraisal panel be initiated. If anyone other than the person who has commenced the activity in question wants to request such an appraisal procedure, it must be done within 4 weeks upon receipt of the notification mentioned in § 6. The request for appraisal may in any case be rejected if it is unwarranted. When an appraisal has been requested the activity in question must not be commenced, except by special permission of the appraisal panel, until a final decision has been reached in the appraisal case.

If the appraisal panel finds that the activity in question comes into conflict with this Act, it shall prohibit the activity being undertaken if there is a risk that the implementation thereof may cause serious damage to another person's property. Even if there is no such danger, the activity shall be prohibited as stated, if it is clear that the activity comes into conflict with the law.

The appraisal panel may decide to impose advance security being furnished for liability in accordance with § 9. It may likewise impose the precautions being taken in accordance with § 5 and decide on the apportionment of liability between the parties concerned in accordance with § 13.

A neighbour appraisal procedure cannot be requested when the activity in question enjoys rights of expropriation as mentioned in § 10, paragraph 3.

§ 8

If experience shows that conditions or injunctions made in accordance with § 7, first paragraph, are too stringent or have an effect other than intended, a new neighbour appraisal panel may revoke them or amend them for the future.

Damages

§ 9

Financial loss suffered from damage or nuisance caused by the infringement of any of the provisions in §§ 2-5 must be compensated by the person responsible, whether he himself, or someone he is responsible for, is guilty of negligence or not. This also applies to damage or nuisance due to activities undertaken as a result of decisions made in accordance with § 7, cf. § 8, or due to activities enjoying rights of expropriation as mentioned in § 10, paragraph 3.

The provisions in the first paragraph apply only insofar as the damage or nuisance is not caused by the neighbouring property or something on it being more vulnerable than would otherwise be the case in normal neighbour relations.

If the injured party in accordance with good neighbourly custom should have given warning earlier, the claim for damages may lapse or the amount of damages be reduced.

This section does not reduce the right anyone has to damages in accordance with other statutory provisions in force.

Corrective Measures

§ 10

The neighbour is entitled to have corrected a state or condition which conflicts with any of the provisions in §§ 2-5.

Activities undertaken on the basis of a decision made in accordance with § 7, cf. § 8 shall nevertheless be permitted to continue on the condition that the neighbour receives payment in consideration which must not be set at less than the damage or nuisance incurred. In cases where the corrective measure would entail such great expense or loss otherwise that it ^{be} obviously disproportionate to the benefit gained, exceptions to the obligation to take corrective measures may be made on the same terms, this also applies to activities etc. which are not authorised by an appraisal panel provided it is something for which the person undertaking the activity cannot to any extent be blamed.

The provisions of the first paragraph do not apply when ~~decisions have been made or consent given to expropriation~~ of land for the said activities or when such rights of expropriation follow directly from the law.

§ 11

The neighbour is entitled to have removed or corrected a house or other structure where part of it unlawfully encroaches on the neighbouring property. In cases where ~~this~~ would entail such great expense or loss otherwise that it was obviously disproportionate to the benefit gained, and where the owner of the structure cannot be blamed to any extent, exceptions may be made to the obligation to take

corrective measures in exchange for the neighbour receiving a consideration which must not be set at less than the damage or nuisance incurred.

If the structure was originally placed unlawfully on the neighbouring property, then the payment in consideration for the right to keep it standing must not normally be less than the gain derived from the encroaching structure.

If the structure is corrected or moved or collapses, the easement acquired over the neighbouring property shall lapse.

§ 12

The neighbour is entitled to cut off at the property boundary, and claim for himself, trees, branches and roots which extend into the neighbouring property and cause significant damage or nuisance. For trees and branches this only applies when warning has been given and they are then not removed within a reasonable period of time.

This provision does not apply to trees serving as boundary markers nor where there is forest on both sides of the boundary line.

Properties etc. which
are very vulnerable

§ 13

The person undertaking an activity is not obliged to defray the added cost for such extraordinary measures as might be required because the structures etc. on a neighbouring property are more vulnerable than would otherwise be the case in normal neighbour relations. But if such measures can conveniently be undertaken in connection with the activity otherwise, he shall nevertheless implement them provided he is assured that the neighbour desires this and is willing to bear the cost involved.

When one of the parties realises that extraordinary measures are necessary, he must notify the other party without undue delay.

The right to take special
measures on the neighbouring property

§ 14

Anyone who, for the purpose of lawful building work, repair work, digging, dynamiting or similar activities on his own property, or for the purpose of taking safety precautions on his property, must thus cause damage to or temporarily make use of the neighbouring property, may be allowed to do so for a consideration, provided it does not appear unreasonable and if the benefit to him is substantially greater than the damage caused to the neighbour.

This decision is subject to neighbour appraisal. The provisions in § 16 apply correspondingly.

§ 15

If a structure etc. constitutes a risk of seriously damaging the neighbouring property, the neighbour may have the necessary safety measures taken at the expense of the owner.

This decision is subject to neighbour appraisal.

Determining the amount of
damages or of payments in consideration

§ 16

If it is not possible fully to determine the extent of the damage or nuisance or obtain a valuation of the easement until later, the court may decide to wait for a certain period before determining the amount of damages or

consideration or of any part thereof. Each of the parties may, however, request that the court immediately set a valuation on whatever can be assessed at once.

If the court decides on postponement in accordance with the first paragraph it may provisionally determine an annual amount for damages or for payments in consideration. In any event the court shall determine the amount each party other than the state shall furnish as security with the distraint official before the activity may be carried out. The distraint official shall decide whether the security furnished by the party concerned is adequate.

§ 17

Consideration in accordance with §§ 10 and 11 concerning payment for damage, nuisance or easement, which is not limited in time, shall be determined as a lump sum once and for all. In other cases the court may set the consideration either as a once-for-all lump sum or as an annual sum, or in part as a once-for-all lump sum and in part as an annual sum.

All parties except the state shall furnish the security determined by the court so that annual payment in consideration may be correctly settled. The property or activity in question acts in addition as security for the consideration in accordance with the rules on property tax.

The obligation to pay the annual consideration remains in force until the end of the year in which the state of things or condition lapses.

Annual compensation shall be reviewed every 20 years in accordance with rules of adjustment determined by the King in Council. When the rules are being determined special emphasis shall be given to changes in the value of money.

Neighbour Appraisal

§ 18

Neighbour appraisal is a judicial appraisal. Decisions in accordance with § 7, second and third paragraph, and §§ 14 and 15 are enforceable by distraint.

Compulsory permits and regulations for air pollution

§ 19

Industrial activity or other enterprise which can spread noise, gas, smoke, radiation or the like causing damage or nuisance for many people, or over a wide area, may not be commenced without consent of the King. The same applies when older concerns or enterprises are planning operational changes which can cause more damage or nuisance than previously. When important considerations of public interest so require permits may be granted even if the damage or nuisance on the neighbouring properties is greater than that which must normally be expected in accordance with § 2.

Before a permit may be granted the King shall provide for the publication of a short report concerning the projected enterprise allowing for a reasonable time-limit for objections to be raised by those who may be affected by the damage or nuisance. In especially clear cases a permit may be granted without any such publication.

For permits in the individual case the King shall impose such conditions as are necessary in the public interest or for the protection of those affected by the damage or nuisance.

The King may lay down regulations concerning which activities a permit must be applied for in accordance with this Section, and establish specific rules for applications

and their publication, objections, project costs, announcement of decisions and the like. Exceptions may be made in such regulations from the rules in § 17 and § 27, first paragraph, in the Public Administration Act.

§ 20

Permit conditions which prove to be more stringent than necessary or which have an effect other than intended may be revoked by the King or amended for the future.

If the damage or nuisance caused by the enterprise proves to be much worse than anticipated, the entrepreneur may nonetheless continue with its operation subject to taking such measures as are imposed by the King to prevent or counteract damage or nuisance. After 20 years or more the King may issue such instructions as are necessary in the public interest or for the protection of the property or rights of others, even if the damage or nuisance from the enterprise has not been worse than anticipated. The entrepreneur is entitled to a reasonable time-limit to effect any changes.

Before permit conditions are revoked or amended or before instructions are given, those affected by the damage or nuisance shall be given the opportunity of expressing their opinions.

§ 21

An expert council - the Smoke Control Council - shall conduct such inquiries and provide such information and guidance as may be needed to enable decisions to be made in accordance with §§ 19-20. The King may charge the Council with other duties in connection with the permit system or such as are designed to counteract damage or nuisance from gas, smoke, radiation or the like.

The Smoke Control Council shall have a chairman and five councillors together with a deputy for each of them, all appointed by the King for 4 years at a time. The chairman and his deputy shall have the qualifications required for a justice of the Supreme Court. The Council constitutes a quorum when the chairman or his deputy and at least 3 other councillors or deputies are present. The King may lay down specific rules concerning Council procedures.

Insofar as the Council is empowered to decide individual cases, an applicant or another person to whom the decision applies may submit an appeal to the Ministry concerned.

§ 22

Activities or enterprises which may entail damage or nuisance as mentioned in § 19 are required to provide such information and themselves conduct or facilitate the conduct of such inquiries as are necessary to enable decisions to be made and action to be taken in accordance with §§ 19-21.

Knowledge acquired by any person in the execution of his duties in accordance with §§ 19-21 concerning operational or business conditions may not be used in such a person's own activity or own enterprise or communicated to others except where this follows from his official duties. Any person wilfully violating this provision shall be punished by a fine or by a prison term of up to 3 months. Violation due to negligence shall be punished by a fine.

§ 23

The provisions in §§ 6-8 do not apply to such damage or nuisance which require a permit in accordance with § 19, cf. § 20.

A permit in accordance with § 19, cf. § 20 does not reduce the right to damages in accordance with § 9 or in accordance with otherwise applicable statutory provisions. With

respect to the obligation to take corrective measures in accordance with § 10 the permit has corresponding effect as a decision in accordance with § 7, cf. § 8.

§ 23 a

The King may by means of regulations establish a permit requirement in pursuance of § 19, first paragraph, first sub-paragraph, for activities or enterprises established before January 1, 1962. The permit requirement applies insofar as the enterprise does not come under a permit which has been granted later in pursuance of § 19. Furthermore, the regulations may establish which undertakings or measures require a permit application in pursuance of this Section. For the rest, the provisions in § 19 - 23 apply correspondingly unless otherwise specified in regulations.

In the same way, regulations may be laid down establishing a time-limit for permit applications pursuant to the first paragraph; and concerning what shall apply when permits are sought for the initiation of operational changes (cf. § 19 first paragraph, second sub-paragraph), before the time-limit has expired or during the period before a decision has been taken on the permit pursuant to the first paragraph and concerning the overall consideration of and decisions on permit applications; and concerning the right to grant temporary permits for operational changes during this period.

In the period preceding a decision on a permit for an activity or enterprise as mentioned in the first paragraph, the King may enjoin the carrying out of measures designed to combat dispersion of air pollution or to counteract damage or nuisance from air pollution. Such injunctions should only be given when it is clear that corresponding or more stringent conditions will be laid

down in the permit pursuant to the first paragraph and that it does not constitute an unreasonable hardship for the activity or enterprise in question to carry out the measure(s) during this injunction period. Injunctions pursuant to this paragraph may be issued separately for individual enterprises or together for a group of such activities or enterprises. The provisions in § 21, first and third paragraphs, apply correspondingly.

§ 23 b

The King may for the whole country or for certain areas lay down regulations concerning injunctions and prohibitions in connection with activities which may cause air pollution. For activities covered by such regulations it may be established that the rules specified in the regulations may in their entirety or in part apply instead of the permit requirement in or in pursuance of §§ 19 and 23 a.

§ 23 c

The King may lay down regulations to the effect that no one may commence construction or establishment of particular types of industrial enterprise or the like or undertake significant expansion of such activity before the question of air pollution has been taken up in accordance with the regulations in or in pursuance of § 19.

§ 23 d

For violation of permit conditions pursuant to §§ 19 and 23 a, a compulsory fine payable to the State may be imposed which may either be increased for as long as the violation continues, or be made applicable to each violation. If a permit is granted on the basis of inaccurate or incomplete information concerning obtaining

conditions of substantial significance the permit may be withdrawn. The same holds true for repeated or continued violation of permit conditions.

If a permit is withdrawn a new fine may be imposed which will remain in force until the polluting activity has been terminated.

Fines may be collected by distraint.

§ 23 e

The King may enjoin such measures as he finds necessary in order to prevent, limit or stop pollution or significant risk of pollution which clearly contravenes this Act or regulations or permits issued in pursuance of the Act.

If the injunction is not complied with, the King may put necessary measures into effect. The same holds true even in the absence of previous injunctions in cases where delay may cause danger. Refund of costs of such measures can be claimed from the person(s) responsible to the extent otherwise applicable in normal compensation rules.

Where of sufficient importance property may, in exchange for compensation, be damaged or used when putting such measures into effect, provided that the benefit is significantly greater than the damage or loss for the owner or holder of rights concerned.

§ 23 f

Whoever wilfully omits to apply for a permit in accordance with the rules in or in pursuance of §§ 19 and 23 a, shall be punished by fine or prison sentence not exceeding four months, providing that the situation is not covered by more stringent penal provisions. Whoever wilfully or negligently violates regulations, conditions, injunctions or prohibitions as specified in or in pursuance of §§ 19-23 e in this Act is liable to similar punishment.

If a punishable act as specified in the first paragraph has been committed by someone who has acted on behalf of a company, a foundation or organisation, the company, foundation or organisation may be fined and deprived of the right to operate its business activity. This shall however only occur when the violation is committed for the purpose of promoting the interests of the company, foundation or organisation, or when the company, foundation or organisation may be assumed to have benefited significantly from the violation. § 28 of the General Penal Code does not apply to fines according to this paragraph.

Entry into force and transitional provisions

§ 24

1. This Act enters into force from such time as the King decides (1 January 1962 by Royal Decree of 22 December 1961). The King may decide that § 21 shall enter into force before the rest of the Act. (16 October 1961 by Royal Decree of 13 October 1961.
2. From the date this Act enters into force the following amendments are made in other statutes:
 - a) Act of 27 May 1887 concerning Delimitation of Property Rights in Neighbour Relations no longer applies unless otherwise specified in the provisions in subsection 3 below.
 - b) In the Penal Code of 22 May 1902: § 398, subsection 2 no longer applies.
 - c) In the Act of 15 March 1940 concerning Watercourses, § 54 shall read:

"With the curtailments which follow from the rules in this chapter, the provisions in §§ 2, 7-10, 15, 16, 17 and 18 in the Act concerning Legal Relations between Neighbours shall have corresponding application to damage and nuisance in pollution of water-courses or groundwater".

d) In the Act of 5 May 1961 concerning boundary fences § 17, final sub-paragraph shall read:

"If compulsory appraisal is not already applicable, disputes concerning costs may be decided by boundary-fence appraisal when the work has been carried out".

3. If, when this Act enters into force, a decision has been requested in accordance with §§ 4, 5, 6 *et*. § 7, 10 or 11, sub-paragraph 4 in the Neighbour Act of 27 May 1887, the request may be submitted in accordance with the provisions of that Act. A case concerning advance appraisal in accordance with § 13 and § 14 in the Neighbour Act of 27 May 1887 which has not been settled when this Act enters into force must be settled by neighbour appraisal in accordance with this Act.

The provisions in § 10, second paragraph, first sentence, apply correspondingly to measures carried out in conformity with neighbour appraisal in accordance with § 13 and § 14 in the Neighbour Act of 27 May 1887.

4. Activities or enterprises which require permits in accordance with § 19 and are under construction at the time when this Act enters into force may, upon application to the King, be exempted from this permit requirement.
5. The King may lay down specific regulations for the implementation of this Act.

Royal Decree of 22 December 1961

I. Act of 16 June 1961 concerning Legal Relations between Neighbours enters into force from 1 January 1962.

II. By authority of § 3, first paragraph, of the Act of 16 June 1961 concerning Legal Relations between Neighbours these regulations are laid down concerning measuring methods:

The height of the tree shall be measured in a vertical line from the ground where the tree (trunk) stands and to the highest point in the crown of the tree.

The distance to house, garden, yard or cultivated ground on the neighbouring property shall be measured in a horizontal line from the nearest exterior surface of the tree-trunk. If the tree-trunk does not lean appreciably the measurement may be made at a suitable height from the ground, but otherwise the measurement shall be made at a height corresponding to half the height of the tree (see above) or - if the trunk itself is lower - at a point level with the highest point on the trunk.

III. The Ministry of Justice is empowered to lay down specific regulations for the implementation of this Act, apart from the Section concerning compulsory permit for certain kinds of enterprise (§§ 19-23).