
DRAFT STATUTORY INSTRUMENTS

2010 No.

The Environmental Permitting
(England and Wales) Regulations 2010

PART 5

Public Registers

Interpretation of this Part

45. In this Part—

“final confidentiality decision” means—

- (a) a determination under regulation 50,
- (b) a determination under section 22(2) or 66(2) of the 1990 Act,
- (c) a determination under regulation 31(2) of the 2000 Regulations, or
- (d) the determination or withdrawal of an appeal in relation to a determination referred to in paragraphs (a) to (c);

“the information subject” means the person to whom information relates; and

“objection notice” means a notice given under regulation 48(1)(b).

Duty of the regulator to maintain a public register

46.—(1) Subject to regulations 47 and 48, the regulator must maintain a register (a “public register”) containing the information in paragraph 1 of Schedule 24 (public registers).

(2) Nothing in paragraph (1) requires a public register to contain information relating to criminal proceedings, or anything which is the subject matter of criminal proceedings, before those proceedings are finally disposed of.

(3) In paragraph (2), “criminal proceedings” includes prospective criminal proceedings.

(4) A local authority must also include on its public register any information which is included on the Agency’s public register in respect of a regulated facility (other than mobile plant or a stand-alone water discharge activity or stand-alone groundwater activity)—

- (a) for which the Agency is the regulator; and
- (b) which is in the area of the authority.

(5) But—

- (a) paragraph (4) does not apply to a port health authority; and
- (b) every local authority whose area adjoins that of a port health authority must comply with paragraph (4) as if the port health authority had not been constituted.

(6) The Agency must provide the local authority with the information necessary to comply with paragraph (4).

(7) The regulator must enter information on its public register as soon as reasonably practicable after it comes within the regulator's possession.

(8) Where information of any description is excluded from any public register under regulation 48, a statement must be entered on the register indicating the existence of information of that description.

(9) The regulator must—

- (a) make its public register available for public inspection at all reasonable times, free of charge; and
- (b) enable members of the public to obtain copies of entries on its public register on payment of a reasonable charge.

(10) A public register may be kept in any form.

Exclusion from public registers of information affecting national security

47.—(1) The appropriate authority may direct the regulator that in the interests of national security specified information or information of a specified description must be excluded from a public register.

(2) The regulator must notify the appropriate authority of any information (other than information relating to a radioactive substances activity) that it excludes from a public register pursuant to such a direction.

(3) The appropriate authority may direct the regulator that in the interests of national security information of a specified description—

- (a) must be referred to the authority for its determination as to whether or not the information may be included on a public register; and
- (b) must not be included on a public register unless the appropriate authority determines that it may be included.

(4) A person may give a notice to the appropriate authority stating that, in the person's opinion, the inclusion of information on a public register would be contrary to the interests of national security.

(5) A notice under paragraph (4) must specify the information and indicate its apparent nature.

(6) A person giving a notice under paragraph (4) must at the same time notify the regulator.

(7) The regulator must not include information notified under paragraph (4) on a public register unless the appropriate authority determines that it may be included.

Exclusion from public registers of confidential information

48.—(1) The regulator must exclude information from a public register, unless a condition in paragraph (2) is met, if it—

- (a) considers that the information may be confidential information; or
- (b) receives notice from the information subject which—
 - (i) states that the information subject considers the information is confidential information, and
 - (ii) gives reasons for that view.

(2) The conditions are that—

- (a) in relation to paragraph (1)(a), the regulator has given a notice under regulation 49(1) and the information subject has given notice of consent under regulation 49(2)(a);
- (b) in relation to paragraph (1)(a) or (b)—

- (i) a final confidentiality decision that the information should be included on the register has been made, or
- (ii) the appropriate authority has given a direction under regulation 56(1) which requires the information to be included on the register.

Procedure if the regulator considers that information may be confidential

49.—(1) If the regulator considers that information may be confidential information but has not received an objection notice, it must give notice of that view to the information subject.

(2) The information subject may within 15 working days after the date of the notice given by the regulator under paragraph (1)—

- (a) give notice to the regulator consenting to the regulator including the information on the register; or
- (b) give an objection notice to the regulator.

Duty to determine confidentiality

50. The regulator must determine whether information must be included on the public register, or excluded from the public register because it is confidential information, if—

- (a) having given notice under regulation 49(1), it does not receive notice of consent in accordance with regulation 49(2)(a); or
- (b) it receives an objection notice.

Determination of confidentiality

51.—(1) When making a determination under regulation 50, the regulator must comply with this regulation.

(2) In making the determination, the regulator must—

- (a) take any reasons given in an objection notice into account;
- (b) apply a presumption in favour of including the information on the public register; and
- (c) determine to exclude the information from the public register if it considers that—
 - (i) the information is commercial or industrial information,
 - (ii) its confidentiality is provided by law to protect a legitimate economic interest, and
 - (iii) in all the circumstances, the public interest in maintaining the confidentiality of the information outweighs the public interest in including it on the register.

(3) But, to the extent that information relates to emissions, the regulator must determine to include it on the public register.

(4) Nothing in this regulation authorises the exclusion from the public register of information contained in or otherwise held with other information excluded from the register unless the information is not reasonably capable of being separated for the purposes of inclusion on the register.

Procedure following a determination

52.—(1) The regulator must give notice of its determination, the reasons for it and the details of the appeals procedure to the information subject within—

- (a) a period of 20 working days beginning with the date its duty under regulation 50 arises; or
- (b) such longer period as it agrees with the information subject.

(2) If the regulator fails to give notice under paragraph (1) within the period required by that paragraph, the information subject may give notice to the regulator of that failure, and on such notice—

- (a) the regulator is deemed to have determined that the information must be included on the register; and
- (b) the deemed determination is subject to the right of appeal in regulation 53(1).

(3) If the regulator determines that the information must be included on the public register, it must not include the information before the expiry of the period of 15 working days after—

- (a) it has given notice of the determination; or
- (b) a notice under paragraph (2) resulting in a deemed determination is given,

but must include it after the expiry of that period if notice of appeal has not been given.

Appeals in relation to confidentiality

53.—(1) The information subject may give notice of appeal to the appropriate authority against a determination made under regulation 50 within 15 working days after the regulator has given notice of it.

(2) A notice of appeal must—

- (a) be in writing;
- (b) include a statement of the grounds of appeal;
- (c) state whether the information subject wishes the appeal to be in the form of a hearing or to be disposed of through written representations; and
- (d) be copied to the regulator.

(3) If the information subject gives notice of appeal, the regulator must not include the information on the public register before the appeal is decided.

(4) The appropriate authority—

- (a) may give the information subject and the regulator an opportunity of appearing before and being heard by a person appointed by it; and
- (b) must do so in a case where the notice of appeal states that the information subject wishes the appeal to be in the form of a hearing.

(5) A hearing under paragraph (4) of this regulation is subject to paragraphs 5(2) to 5(6) and 6 of Schedule 6 (except paragraph 5(3)(c)) as if it were a hearing under paragraph 5(1) of that Schedule, save that “the appellants” is to be read as “the information subject”.

Consequences of an appeal

54.—(1) If the appropriate authority allows the appeal, the regulator must exclude the information from the public register.

(2) If the appropriate authority rejects the appeal or the appeal is withdrawn, the regulator must include the information on the public register.

Reconsideration of confidentiality

55.—(1) The regulator must cease to treat information as confidential information at the expiry of—

- (a) a period of 4 years after the final confidentiality decision; or
- (b) such shorter period as is specified in that decision.

(2) But if the person to whom the information relates gives notice to the regulator before the expiry of that period that the person considers that the information remains confidential information—

- (a) regulation 48 applies in respect of the information and the regulator must treat the notice as an objection notice; and
- (b) regulations 50 to 54 apply notwithstanding any previous compliance with those regulations in relation to the information.

Directions of the appropriate authority in relation to confidentiality

56.—(1) The appropriate authority may direct the regulator that specified information, or information of a specified description, must be included on the public register even though it is confidential information.

(2) The appropriate authority must not give a direction under paragraph (1) unless it considers that the public interest in including such information on the register outweighs the public interest in maintaining its confidentiality.