



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART III

#### CONTROL OF POLLUTION OF WATER RESOURCES

### CHAPTER II

#### POLLUTION OFFENCES

##### *Appeals in respect of consents under Chapter II*

## **91 Appeals in respect of consents under Chapter II.**

- (1) This section applies where the [<sup>F1</sup>Agency], otherwise than in pursuance of a direction of the Secretary of State—
- (a) on an application for a consent under this Chapter for the purposes of section 88(1)(a) above, has refused a consent for any discharges;
  - (b) in giving a discharge consent, has made that consent subject to conditions;
  - (c) has revoked a discharge consent, modified the conditions of any such consent or provided that any such consent which was unconditional shall be subject to conditions;
  - (d) has, for the purposes of paragraph [<sup>F2</sup>8(1)] or (2) of Schedule 10 to this Act, specified a period in relation to a discharge consent without the agreement of the person who proposes to make, or makes, discharges in pursuance of that consent;
  - (e) has refused a consent for the purposes of section 89(4)(a) above for any deposit; or
  - (f) has refused a consent for the purposes of section 90 above for the doing of anything by any person or, in giving any such consent, made that consent subject to conditions.

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- [<sup>F3</sup>(g) has refused a person a variation of any such consent as is mentioned in paragraphs (a) to (f) above or, in allowing any such variation, has made the consent subject to conditions; or
- (h) has served an enforcement notice on any person.]
- (2) The person, if any, who applied for the consent [<sup>F4</sup>or variation] in question, or any person whose deposits, discharges or other conduct is or would be authorised by the consent [<sup>F5</sup>, or the person on whom the enforcement notice was served,] may appeal against the decision to the Secretary of State.
- [<sup>F6</sup>(2A) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).
- (2B) An appeal under this section shall, if and to the extent required by regulations under subsection (2K) below, be advertised in such manner as may be prescribed by regulations under that subsection.
- (2C) If either party to the appeal so requests or the Secretary of State so decides, an appeal shall be or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held, or held to any extent, in private).
- (2D) On determining an appeal brought by virtue of any of paragraphs (a) to (g) of subsection (1) above against a decision of the Agency, the Secretary of State—
- (a) may affirm the decision;
  - (b) where the decision was a refusal to grant a consent or a variation of a consent, may direct the Agency to grant the consent or to vary the consent, as the case may be;
  - (c) where the decision was as to the conditions of a consent, may quash all or any of those conditions;
  - (d) where the decision was to revoke a consent, may quash the decision;
  - (e) where the decision relates to a period specified for the purposes of paragraph 8(1) or (2) of Schedule 10 to this Act, may modify any provisions specifying that period;
- and where he exercises any of the powers in paragraphs (b), (c) or (d) above, he may give directions as to the conditions to which the consent is to be subject.
- (2E) On the determination of an appeal brought by virtue of paragraph (h) of subsection (1) above, the Secretary of State may either quash or affirm the enforcement notice and, if he affirms it, may do so either in its original form or with such modifications as he may in the circumstances think fit.
- (2F) Subject to subsection (2G) below, where an appeal is brought by virtue of subsection (1)(c) above against a decision—
- (a) to revoke a discharge consent,
  - (b) to modify the conditions of any such consent, or
  - (c) to provide that any such consent which was unconditional shall be subject to conditions,
- the revocation, modification or provision shall not take effect pending the final determination or the withdrawal of the appeal.
- (2G) Subsection (2F) above shall not apply to a decision in the case of which the notice effecting the revocation, modification or provision in question includes a statement

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that in the opinion of the Agency it is necessary for the purpose of preventing or, where that is not practicable, minimising—

- (a) the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter, or
- (b) harm to human health,

that that subsection should not apply.

(2H) Where the decision under appeal is one falling within subsection (2G) above, if, on the application of the holder or former holder of the consent, the Secretary of State or other person determining the appeal determines that the Agency acted unreasonably in excluding the application of subsection (2F) above, then—

- (a) if the appeal is still pending at the end of the day on which the determination is made, subsection (2F) above shall apply to the decision from the end of that day; and
- (b) the holder or former holder of the consent shall be entitled to recover compensation from the Agency in respect of any loss suffered by him in consequence of the exclusion of the application of that subsection;

and any dispute as to a person's entitlement to such compensation or as to the amount of it shall be determined by arbitration.

(2J) Where an appeal is brought under this section against an enforcement notice, the bringing of the appeal shall not have the effect of suspending the operation of the notice.

(2K) Provision may be made by the Secretary of State by regulations with respect to appeals under this section and in particular—

- (a) as to the period within which and the manner in which appeals are to be brought; and
- (b) as to the manner in which appeals are to be considered.]

(8) In this section “discharge consent” means such a consent under this Chapter for any discharges or description of discharges as is given for the purposes of section 88(1) (a) above either on an application for a consent or, by virtue of paragraph [F76] of Schedule 10 to this Act, without such an application having been made.

#### Textual Amendments

- F1** Words in s. 91 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F2** Words in s. 91(1)(d) substituted (subject to other provisions of the amending Act) (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 143(1)(a)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)
- F3** S. 91(1)(g)(h) added (subject to other provisions of the amending Act) (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 143(1)(b)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)
- F4** Words in s. 91(2) inserted (subject to other provisions of the amending Act) (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 143(2)(a)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)
- F5** Words in s. 91(2) inserted (subject to other provisions of the amending Act) (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 143(2)(b)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)

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- F6** S. 91(2A)-(2K) substituted for s. 91(3)-(7) (subject to other provisions of the amending Act) (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 143(3)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)
- F7** Word in s. 91(8) substituted (subject to other provisions of the amending Act) (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 143(4)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)

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**Modifications etc. (not altering text)**

- C1** S. 91: power to delegate functions conferred (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, **s. 114(2)(a)(v)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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