
STATUTORY INSTRUMENTS

1975 No. 2116

PUBLIC HEALTH, ENGLAND AND WALES

The Control of Noise (Appeals) Regulations 1975

<i>Made</i>	- - - -	<i>11th December 1975</i>
<i>Laid before Parliament</i>		<i>12th December 1975</i>
<i>Coming into Operation</i>		<i>1st January 1976</i>

The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred upon them by sections 70(2) and (3) and 104(1) of the Control of Pollution Act 1974 and of all other powers enabling them in that behalf, hereby make the following regulations:—

PART I
INTRODUCTORY

Title and commencement

1. These regulations may be cited as the Control of Noise (Appeals) Regulations 1975 and shall come into operation on 1st January 1976.

Interpretation

2.—(1) The Interpretation Act 1889 shall apply for the interpretation of these regulations, as it applies for the interpretation of an Act of Parliament.

(2) In these regulations, unless the context otherwise requires—

“the Act” means the Control of Pollution Act 1974, and any reference in these regulations to a numbered section shall be construed as a reference to the section bearing that number in the Act;

“best practicable means” shall be construed in accordance with section 72;

“person responsible” has the meaning given to it by section 73(1).

(3) Any reference in these regulations to a numbered regulation shall be construed as a reference to the regulation bearing that number in these regulations.

PART II

APPEALS TO MAGISTRATES' COURTS

Interpretation of Part II

3. This part of these regulations relates only to appeals brought to magistrates' courts under Part III of the Act, and any reference in this part to an appeal or an appellant shall be construed accordingly.

Appeals under section 58(3)

4.—(1) The provisions of this regulation shall apply to an appeal brought by any person under subsection (3) of section 58 (summary proceedings by local authorities) against a notice served upon him by a local authority under that section.

(2) The grounds on which a person served with such a notice may appeal under the said subsection (3) may include any of the following grounds which are appropriate in the circumstances of the particular case:—

- (a) that the notice is not justified by the terms of section 58;
- (b) that there has been some informality, defect or error in, or in connection with, the notice;
- (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the notice are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time, or, where more than one time is specified, any of the times, within which the requirements of the notice are to be complied with is not reasonably sufficient for the purpose;
- (e) where the noise to which the notice relates is noise caused in the course of a trade or business, that the best practicable means have been used for preventing, or for counteracting the effect of, the noise;
- (f) that the requirements imposed by the notice are more onerous than the requirements for the time being in force, in relation to the noise to which the notice relates, of—
 - (i) any notice served under section 60 or 66, or
 - (ii) any consent given under section 61 or 65, or
 - (iii) any determination made under section 67;
- (g) that the notice should have been served on some person instead of the appellant, being the person responsible for the noise;
- (h) that the notice might lawfully have been served on some person instead of or in addition to the appellant, being the owner or occupier of the premises from which the noise is emitted or would be emitted, and that it would have been equitable for it to have been so served;
- (i) that the notice might lawfully have been served on some person in addition to the appellant, being a person also responsible for the noise, and that it would have been equitable for it to have been so served.

(3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the notice, the court shall dismiss the appeal if it is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal is brought include a ground specified in paragraph (2)(h) or (i) above, the appellant shall serve a copy of his notice of appeal on any other

person referred to, and in the case of any appeal to which this regulation applies he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises in question.

- (5) On the hearing of the appeal the court may—
- (a) quash the notice to which the appeal relates, or
 - (b) vary the notice in favour of the appellant, in such manner as it thinks fit, or
 - (c) dismiss the appeal;

and a notice which is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.

(6) Subject to paragraph (7) below, on the hearing of the appeal the court may make such order as it thinks fit—

- (a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or
- (b) as to the proportions in which any expenses which may become recoverable by the authority under Part III of the Act are to be borne by the appellant and by any other person.

(7) In exercising its powers under paragraph (6) above, the court—

- (a) shall have regard, as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of any relevant tenancy and to the nature of the works required, and
- (b) shall be satisfied, before it imposes any requirement thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

Appeals under section 60(7)

5.—(1) The provisions of this regulation shall apply to an appeal brought by any person under subsection (7) of section 60 (control of noise on construction sites) against a notice served upon him by a local authority under that section.

(2) The grounds on which a person served with such a notice may appeal under the said subsection (7) may include any of the following grounds which are appropriate in the circumstances of the particular case:—

- (a) that the notice is not justified by the terms of section 60;
- (b) that there has been some informality, defect or error in, or in connection with, the notice;
- (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the notice are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time, or, where more than one time is specified, any of the times, within which the requirements of the notice are to be complied with is not reasonably sufficient for the purpose;
- (e) that the notice should have been served on some person instead of the appellant, being a person who is carrying out, or going to carry out, the works, or is responsible for, or has control over, the carrying out of the works;
- (f) that the notice might lawfully have been served on some person in addition to the appellant, being a person who is carrying out, or going to carry out, the works, or is responsible for, or has control over, the carrying out of the works, and that it would have been equitable for it to have been so served;
- (g) that the authority have not had regard to some or all of the provisions of section 60(4).

(3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the notice, the court shall dismiss the appeal, if it is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal is brought include a ground specified in paragraph (2)(e) or (f) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which this regulation applies he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises in question.

(5) On the hearing of the appeal the court may—

- (a) quash the notice to which the appeal relates, or
- (b) vary the notice in favour of the appellant in such manner as it thinks fit, or
- (c) dismiss the appeal;

and a notice which is varied under sub-paragraph (b) above shall be final and shall otherwise have effect, as so varied, as if it had been so made by the local authority.

Appeals under section 61(7)

6.—(1) The provisions of this regulation shall apply to an appeal brought by any person under subsection (7) of section 61 (prior consent for work on construction sites) in relation to a conditional consent given by a local authority under that section or in relation to an authority's refusal or failure to give a consent within the period specified in subsection (6) of that section.

(2) In this regulation, “conditional consent” means a consent given by a local authority under section 61 in respect of which the authority have attached any condition or imposed any limitation or qualification in pursuance of section 61(5)(a), (b) or (c); and “conditions” includes any limitation or qualification so imposed.

(3) The grounds on which a person to whom a local authority give a conditional consent may appeal under the said subsection (7) may include any of the following grounds which are appropriate in the circumstances of the particular case:—

- (a) that any condition attached or imposed in relation to the consent (in this regulation referred to as “a relevant condition”) is not justified by the terms of section 61;
- (b) that there has been some informality, defect or error in, or in connection with, the consent;
- (c) that the requirements of any relevant condition are unreasonable in character or extent, or are unnecessary;
- (d) that the time, or where more than one time is specified, any of the times, within which the requirements of any relevant condition are to be complied with is not reasonable sufficient for the purpose.

(4) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the consent, the court shall dismiss the appeal, if it is satisfied that the informality, defect or error was not a material one.

(5) Where the appeal relates to a conditional consent given by a local authority, on the hearing of the appeal the court may—

- (a) vary the consent or any relevant condition in favour of the appellant in such manner as it thinks fit, or
- (b) quash any relevant condition, or
- (c) dismiss the appeal;

and a consent or condition which is varied under sub-paragraph (a) above shall be final and shall otherwise have effect, as so varied, as if it had been given, attached or imposed in that form by the authority.

(6) Where the appeal relates to a local authority's refusal or failure to give a consent within the period specified in section 61(6), on the hearing of the appeal the court shall afford to the appellant and to the authority an opportunity of making representations to it concerning the application under section 61(1) to which the appeal relates and concerning the terms and conditions of any consent which they consider to be appropriate thereto, and thereafter the court shall either—

- (a) adjourn the appeal to enable the appellant to submit to the authority a new application under section 61(1) relating to the matters which are the subject of the appeal, or
- (b) make an order giving consent to the application either unconditionally or subject to such conditions as it thinks fit, having regard to the provisions of section 61(4), (5) and (9), and any other matters which appear to it to be relevant,

and any consent given by an order made under sub-paragraph (b) above shall be final and shall otherwise have effect for the purpose of Part III of the Act as if it were a consent given by the local authority under section 61.

Appeals under section 66(7)

7.—(1) The provisions of this regulation shall apply to an appeal brought by any person under subsection (7) of section 66 (reduction of noise levels) against a noise reduction notice served upon him by a local authority under that section.

(2) The grounds on which a person served with such a notice may appeal under the said subsection (7) may include any of the following grounds which are appropriate in the circumstances of the particular case:—

- (a) that the notice is not justified by the terms of section 66;
- (b) that there has been some informality, defect or error in, or in connection with, the notice;
- (c) that the authority have refused unreasonably to accept compliance with alternative requirements, or that the requirements of the notice are otherwise unreasonable in character or extent, or are unnecessary;
- (d) that the time, or, where more than one time is specified, any of the times, within which the requirements of the notice are to be complied with is not reasonably sufficient for the purpose;
- (e) where the noise to which the notice relates is noise caused in the course of a trade or business, that the best practicable means have been used for preventing, or for counteracting the effect of, the noise;
- (f) that the notice should have been served on some person instead of the appellant, being the person responsible for the noise;
- (g) that the notice might lawfully have been served on some person in addition to the appellant, being a person also responsible for the noise and that it would have been equitable for it to have been so served.

(3) If and so far as an appeal is based on the ground of some informality, defect or error in, or in connection with, the notice, the court shall dismiss the appeal, if it is satisfied that the informality, defect or error was not a material one.

(4) Where the grounds upon which an appeal is brought include a ground specified in paragraph (2)(g) above, the appellant shall serve a copy of his notice of appeal on any other person referred to, and in the case of any appeal to which this regulation applies he may serve a copy of his notice of appeal on any other person having an estate or interest in the premises in question.

(5) On the hearing of the appeal the court may—

- (a) quash the notice to which the appeal relates, or
- (b) vary the notice in favour of the appellant in such manner as it thinks fit, or

(c) dismiss the appeal;

and a notice which is varied under sub-paragraph (b) above shall be final and shall otherwise have effect as so varied as if it had been so made by the local authority.

(6) Subject to paragraph (7) below, on the hearing of the appeal the court may make such order as it thinks fit—

(a) with respect to the person by whom any work is to be executed and the contribution to be made by any person towards the cost of the work, or

(b) as to the proportions in which any expenses which may become recoverable by the local authority under Part III of the Act are to be borne by the appellant and any other person.

(7) In exercising its powers under paragraph (6) above, the court shall be satisfied, before it imposes any requirements thereunder on any person other than the appellant, that that person has received a copy of the notice of appeal in pursuance of paragraph (4) above.

PART III

APPEALS TO THE SECRETARY OF STATE

Interpretation of Part III

8. This part of these regulations relates only to appeals brought to the Secretary of State under Part III of the Act, and any reference in this part to an appeal or an appellant shall be construed accordingly.

Appeals under sections 64(3), 65(4) and 67(3)

9.—(1) Any person who brings an appeal under section 64(3), 65(4) or 67(3) shall give notice of appeal in writing, stating the grounds of the appeal, to the Secretary of State, and shall within seven days of giving that notice (or such longer period as the Secretary of State may at any time allow) send to him a copy of the following documents:—

(a) the application, if any, made to the local authority;

(b) any relevant plans and particulars submitted to them;

(c) any relevant record, consent determination, notice or other notification issued by the authority;

(d) all other relevant correspondence with the authority;

(e) a plan of the premises concerned (unless such a plan is included in the documents mentioned above).

(2) The Secretary of State may, if he thinks fit, require the appellant or the local authority to submit within a specified period a further statement in writing in respect of the matters to which the appeal relates, and if, after considering the grounds of the appeal and any such further statement, the Secretary of State is satisfied that he is sufficiently informed for the purposes of reaching a decision as to those matters, he may decide the appeal without further investigation; but otherwise the Secretary of State shall cause a local inquiry to be held.

(3) When he determines the appeal, the Secretary of State may allow or dismiss the appeal, or may reverse or vary any part of any record, consent, determination or decision of the local authority to which the appeal relates, or may deal with the application, if any, made by the appellant to the local authority as if it had been made in the first instance to the Secretary of State, and he may give the authority such directions as he thinks fit for giving effect to his determination.

(4) At any time before the appeal is determined, the appellant may abandon it by giving notice in writing to the Secretary of State, and as soon as may be after he gives any such notice he shall send a copy thereof to the local authority.

PART IV

SUSPENSION OF NOTICES

10.—(1) Subject to paragraph (2) of this regulation, where an appeal is brought against a notice served under section 58, 60, or 66 and—

- (a) the noise to which the notice relates is noise caused in the course of the performance of some duty imposed by law on the appellant, or
- (b) compliance with the notice would involve any person in expenditure on the carrying out of works before the hearing of the appeal,

the notice shall be suspended until the appeal has been abandoned or decided by the court.

(2) A notice to which this regulation applies shall not be suspended if in the opinion of the local authority—

- (a) the noise to which the notice relates—
 - (i) is injurious to health, or
 - (ii) is likely to be of a limited duration such that suspension of the notice would render the notice of no practical effect, or
- (b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance,

and the notice includes a statement that it shall have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court.

(3) Save as provided in this regulation a notice under Part III of the Act shall not be suspended by reason only of the bringing of an appeal to a magistrates' court or the Secretary of State.

10th December 1975

Anthony Crosland
Secretary of State for the Environment

11th December 1975

John Morris
Secretary of State for Wales

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EXPLANATORY NOTE

These Regulations make provision with respect to the making of appeals to magistrates' courts under section 58, 60, 61 or 66 of the Control of Pollution Act 1974 and to the Secretary of State under section 64, 65 or 67 of that Act. Part II sets out grounds on which appeals may be made to magistrates' courts, prescribes the procedure to be followed in certain cases in which the appellant claims that a notice should have been served on some other person, and the action which the court may take to give effect to its decision on an appeal. Part III prescribes the procedure to be followed in appeals to the Secretary of State and confers powers on the Secretary of State to give effect to his decision on any appeal. Part IV prescribes the cases in which a notice under section 58, 60 or 66 is to be suspended pending the abandonment of, or a decision by a magistrates' court on, an appeal, and provides that notices under other provisions of Part III of the Act will not be suspended pending an appeal, whether to the court or to the Secretary of State.