

1989 No. 1151

WATER, ENGLAND AND WALES

**The Control of Pollution (Consents for Discharges etc.)
(Secretary of State Functions) Regulations 1989**

Made - - - - - 6th July 1989

Laid before Parliament 7th July 1989

Coming into force 1st September 1989

The Secretary of State for the Environment and the Secretary of State for Wales, acting jointly in exercise of the powers conferred on them by section 185(2)(e) of, and paragraphs 1(7), 3(3), 4(3), 4(5), 4(9) and 8(3) of Schedule 12 to the Water Act 1989(a), and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Control of Pollution (Consents for Discharges etc.) (Secretary of State Functions) Regulations 1989 and shall come into force on 1st September 1989.

Interpretation

2. In these Regulations—

“the 1989 Act” means the Water Act 1989;

“application for consent” means an application for a consent for the purposes of section 108 of the 1989 Act (authority for discharges and other defences for the purposes of section 107) for any discharge;

“transmitted application” means an application for consent which is transmitted to the Secretary of State for determination pursuant to a direction under paragraph 4(1) of Schedule 12 to the 1989 Act; and

any reference in these Regulations to a numbered paragraph is, except where the context otherwise requires, a reference to that paragraph of Schedule 12 to the 1989 Act.

Requests for directions to transmit

3.—(1) A request to the Secretary of State pursuant to paragraph 3(3) to direct that an application for consent be transmitted to him for determination shall be made by submitting to the Secretary of State—

(a) a copy of the notice served by the National Rivers Authority (“the Authority”) pursuant to paragraph 3(2) on the person making the request and a copy of any notice of the application published pursuant to paragraph 1(3); or

(b) a written statement—

(i) of the name of the applicant for the consent;

(ii) of a reference number or letter identifying the relevant application;

(a) 1989 c.15; and see the definition of “prescribed” in section 189(1).

- (iii) identifying the land from which, and the waters into or land on to which, the discharge for which consent is sought is to be made;
- (iv) describing the effluent or other matter to which the consent is to relate;
- (v) of the date on which the person making the request was served with notice under paragraph 3(2) (notice of right to request a direction),

together with a request that the Secretary of State give a direction under paragraph 4(1) and a statement of the reasons why the applicant considers that his request should be granted.

(2) A copy of any request and of the documents or statement sent with it shall be sent to the Authority at the same time as the request is made.

Publicity for transmitted applications

4.—(1) In relation to a transmitted application, paragraph 1(3) to (6) shall have effect with the following modifications—

- (a) where at the date of the giving of the direction to transmit the application to the Secretary of State for determination by him the Authority has not discharged its duty under sub-paragraphs (a) and (b) of paragraph 1(3), those sub-paragraphs shall apply as if they referred to a duty to publish, if so directed by the Secretary of State, a notice in the form set out in the Schedule to these Regulations (a “notice of reference”), and not a duty to publish notice of the application;
- (b) where the Authority publishes a notice of reference—
 - (i) paragraph 1(3)(c) and (d) shall apply as if they referred to copies of that notice and of the application; and
 - (ii) paragraph 1(5) shall apply as if it imposed a duty on the Secretary of State to consider all representations made to him within a period of six weeks beginning with the date on which the notice of reference is published in the London Gazette; and
- (c) where the Authority does not publish a notice of reference, paragraph 1(5) shall apply as if it imposed a duty on the Authority to send to the Secretary of State within such period as he may specify any such representations and objections as are mentioned in that sub-paragraph, together with any statement which it may wish to make with respect to the application or the representations and objections, and imposed a duty on the Secretary of State to consider those representations and objections and any such statement.

(2) Paragraph 1(6) shall apply as if it referred to a notice published in accordance with paragraph 1(3)(a) or (b), as modified by paragraph (1)(a) above, and paragraph 1(4) shall not apply.

Requests to be heard

5. A request pursuant to paragraph 4(5) to be heard in relation to a transmitted application (whether made by the applicant or the Authority) shall be—

- (a) made in writing; and
- (b) sent to the Secretary of State before the expiry of a period of 28 days beginning with the day on which the Authority, in accordance with paragraph 4(2), has informed the applicant that the application has been transmitted to the Secretary of State for determination.

Publicity: prescribed period for applying for an exemption certificate

6. An application under paragraph 1(7) for a certificate under that sub-paragraph (exemption from certain publicity and disclosure requirements) may be made at any time before the application for consent is submitted or not later than 7 days after it is submitted.

Appeals

7.—(1) In this regulation, “appeal” means an appeal to the Secretary of State under paragraph 8(2) (appeals against certain decisions of the Authority), and “appellant” shall be construed accordingly.

(2) Notice of appeal with a statement of the grounds of appeal, shall be given in writing to the Secretary of State before the expiry of the period of three months beginning with the day on which—

- (a) the Authority notified the appellant of its decision; or
 - (b) the Authority was deemed under paragraph 2(2) to have refused consent; or
- before the expiry of such longer period as the Secretary of State may allow (as the case may be).

(3) The Secretary of State may require the appellant to send him within 28 days of giving notice of appeal (or such longer period as the Secretary of State may allow) a copy of any or all of the following documents—

- (a) any relevant application;
- (b) any relevant maps, plans or other documents submitted in support of the application;
- (c) any relevant record, consent, determination, notice or other notification given, made, issued or served by the Authority; and
- (d) any other relevant correspondence between the appellant and the Authority.

(4) The Secretary of State shall—

- (a) send the Authority a copy of the notice of appeal and of the statement of the grounds of appeal given to him under paragraph (2) above; and
- (b) where the appeal is against such a decision as is mentioned in paragraph 8(1)(a), require the Authority to serve notice in writing, within 14 days of the receipt by it of the copy of the notice of appeal mentioned in the preceding sub-paragraph, on any person whose representations or objections with respect to the application fell to be considered by it in accordance with paragraph 1(5).

(5) A notice required to be served under paragraph (4)(b) above shall state that an appeal has been lodged, and that further representations may be made to the Secretary of State in respect of the application within a period of 21 days from the date of service of the notice.

(6) The Secretary of State shall send to the appellant and the Authority a copy of any representations received by him in pursuance of paragraph (5) above.

(7) The Secretary of State may, if he thinks fit, require the appellant or the Authority to submit to him within a specified period a further statement in writing in respect of any of the matters to which the appeal relates, and where he exercises this power he shall send to the appellant or, as the case may be, the Authority a copy of any statement made by the other.

(8) (a) If, after considering the grounds of the appeal and the documents before him, the Secretary of State is satisfied that he is sufficiently informed to determine the appeal he may, not earlier than 14 days after giving notice of his intention to the appellant and the Authority, determine the appeal without further investigation unless such investigation is required by the appellant or the Authority pursuant to paragraph (9) below.

(b) Where any requirement by the Secretary of State under paragraph (3) or (7) above has not been complied with by the expiry of the relevant period the Secretary of State may, after allowing a further specified period which appears to him reasonable, determine the appeal without further investigation.

(9) If either the appellant or the Authority within a period of fourteen days after service of notice under paragraph (8)(a) above request the Secretary of State not to determine the appeal without further investigation, the Secretary of State shall either—

- (a) cause a local inquiry to be held with respect to the appeal; or
- (b) afford the appellant and the Authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

Signed by authority of the Secretary of State.

6th July 1989

Michael Howard
Minister for Water and Planning,
Department of the Environment

6th July 1989

Peter Walker
Secretary of State for Wales

SCHEDULE

Regulation 4(1)(a)

FORM OF NOTICE

WATER ACT 1989: SCHEDULE 12

NOTICE OF REFERENCE OF APPLICATION TO SECRETARY OF STATE

Notice is hereby given that, in pursuance of paragraph 4(1) of Schedule 12 to the Water Act 1989, the Secretary of State has directed the National Rivers Authority to transmit to him for determination an application made by (a) _____ for consent to discharge (b) _____ of (c) _____ to (d) _____ at (e) _____ from (f) _____

Any person who wishes to make representations about the application should do so in writing to the Secretary of State (g) _____ by (h) _____ quoting (i) _____

A copy of the application may be inspected free of charge at (j) _____ at all reasonable hours.

Signed _____

*On behalf of _____

Date _____

**Delete where inappropriate*

- (a) Insert name of applicant.
- (b) Insert maximum quantity of the matter which it is proposed to discharge on any one day.
- (c) Insert nature of matter to be discharged (for example sewage effluent, trade effluent etc.).
- (d) Insert name or description of waters (for example, river or tributary thereof, whether tidal or non-tidal, estuarial, coastal or underground) or land into or on to which matter is proposed to be discharged.
- (e) Specify (by reference to identifiable geographical features or to Ordnance Survey Map national grid co-ordinates, followed by name of district) the place at which it is proposed to make the discharge.
- (f) Insert address of the premises from which the discharge will be made.
- (g) Insert address to which representations should be made.
- (h) Insert the date six weeks from the date on which the notice is published in the London Gazette.
- (i) Insert reference number and/or letters.
- (j) Insert the address of a place within the locality of the point of discharge.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Chapter I of Part III of the Water Act 1989 is concerned with pollution of water. Section 113(1) and Schedule 12 provide for the making of applications and the giving of consent for discharges of effluent and other matter.

These Regulations make ancillary provision in connection with such applications and consents.

Applications for consent are generally to be made to, and determined by, the National Rivers Authority: but under paragraph 3 of Schedule 12 to the Act a person who has made representations about an application may ask the Secretary of State to direct that the application in question be referred to him for decision. Regulation 3 prescribes the manner in which such a request is to be made.

Paragraph 1 of Schedule 12 requires the Authority to give publicity to applications for consent. Regulation 4 modifies the operation of that paragraph where the Secretary of State has directed that an application be referred to him for decision. For example, the Authority is, in certain circumstances, required to publish in newspapers a notice in the form set out in the Schedule in respect of the application.

Regulation 5 is concerned with requests to the Secretary of State by an applicant or the Authority to be heard upon any application which the Secretary of State is to determine. A request to be heard must be made in writing within 28 days of the day on which the applicant is informed by the Authority that his application has been transmitted to the Secretary of State for decision.

Regulation 6 prescribes the period for applying to the Secretary of State under paragraph 1(7) of Schedule 12 for exemption from the statutory publicity requirements relating to applications and consents. An application for an exemption must be made no later than 7 days after the making of the application for consent.

Regulation 7 prescribes the procedures for appeals to the Secretary of State against decisions of the Authority. The Secretary of State may reach a conclusion on the documents put before him by the interested parties. He is, however, required to hold a local inquiry or give the appellant and the Authority the right to be heard by a person appointed by him if either party requires him not to determine the case without further investigation.