

1989 No. 1157

WATER, ENGLAND AND WALES

**The Control of Pollution
(Discharges by the National Rivers Authority)
Regulations 1989**

<i>Made</i> - - - -	<i>6th July 1989</i>
<i>Laid before Parliament</i>	<i>7th July 1989</i>
<i>Coming into force</i>	<i>1st September 1989</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 on them by section 113(2) and (3) of 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 (Discharges by the National Rivers Authority) Regulations 1989 and shall come into force on 1st September 1989.

Consents for discharges by the National Rivers Authority

2. Consents required by the National Rivers Authority for the purposes of section 108(1)(a) of the Act (authority for discharges and other defences for the purposes of section 107) shall be given by the Secretary of State (instead of by the Authority) and, accordingly, the provisions of Schedule 12 to the Act shall apply in relation to cases in which consents are so required with the modifications specified in Schedule 1 to these Regulations.

Modifications

3. Schedule 2 to these Regulations reproduces Schedule 12 to the Act with the modifications set out in Schedule 1 hereto.

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

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 1

Regulation 2

MODIFICATIONS OF SCHEDULE 12 TO THE ACT

Schedule 12 to the Act shall have effect in relation to discharges by the Authority subject to the following modifications –

- (1) paragraph 1 shall apply as if –
 - (a) in sub-paragraphs (1) and (2), for the words “the Authority” (wherever they appear) there were substituted the words “the Secretary of State”;
 - (b) for sub-paragraph (3)(d) there were substituted the following sub-paragraph –

“(d) in the case of an application which relates to proposed discharges into coastal waters or relevant territorial waters in or adjacent to England, send a copy of the application to the Minister;”;
 - (c) after sub-paragraph (3)(d) there were inserted the words–

“and the notice published by virtue of paragraph (a) or (b) above shall contain the statement “representations or objections with respect to the application may be made in writing to the Secretary of State”.”;
 - (d) sub-paragraphs (4) to (6) were omitted; and
 - (e) in sub-paragraph (7) –
 - (i) for the words “a person who” and “that person” there were substituted the words “the Authority”;
 - (ii) immediately after the words in brackets there were added the word “and”;
- (2) paragraph 2 shall apply as if –
 - (a) for sub-paragraph (1) there were substituted the following sub-paragraph –

“(1) The Secretary of State may give the consent applied for, either unconditionally or subject to conditions, or refuse it.”;
 - (b) sub-paragraph (2) were omitted;
 - (c) in sub-paragraph (3) for the words “the Authority” (in both places where they appear) there were substituted the words “the Secretary of State”; and
 - (d) sub-paragraph (4) were omitted;
- (3) paragraph 3 shall be omitted;
- (4) paragraph 4 shall apply as if –
 - (a) sub-paragraphs (1) to (3) were omitted;
 - (b) in sub-paragraph (4) –
 - (i) for the words from the beginning to paragraph (a) there were substituted the words “Before determining an application the Secretary of State may, if he has received representations or objections in response to the notice which the Authority is required to publish by paragraph 1(3) and shall, if a request to be heard is made to him by the Authority within 10 weeks after the date on which a copy of the notice was published in the London Gazette in accordance with paragraph 1(3)(b), –”; and

- (ii) in paragraph (b) the words "the applicant and" were omitted;
 - (c) sub-paragraph (5) were omitted;
 - (d) in sub-paragraph (6) the words "an applicant and" were omitted; and
 - (e) sub-paragraphs (7) to (9) were omitted;
- (5) paragraph 5 shall be omitted;
- (6) paragraph 6 shall apply as if –
- (a) in sub-paragraph (1) –
 - (i) for the words "It shall be the duty of the Authority to" there were substituted the words "The Secretary of State shall"; and
 - (ii) for the words "under paragraphs 2 and 5 above" there were substituted the words "under paragraph 2(1) above";
 - (b) in sub-paragraph (2) –
 - (i) for the words from the beginning to "Authority" there were substituted the words "Where the Secretary of State";
 - (ii) for the word "it", in the first place in which it appears, there were substituted the word "he"; and
 - (iii) for the words "person making a discharge in pursuance of the consent" there were substituted "the Authority";
 - (c) sub-paragraph (3) were omitted;
 - (d) in sub-paragraph (4), for the words following paragraph (c) there were substituted the words "he may at any time do anything mentioned in sub-paragraph (2)(a) to (c) above."; and
 - (e) sub-paragraphs (5) and (6) were omitted; and
- (7) paragraphs 7 to 9 shall be omitted.
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SCHEDULE 2

Regulation 3

SCHEDULE 12 TO THE ACT, AS MODIFIED

Applications for consents

1.—(1) An application for a consent for the purposes of section 108(1)(a) of this Act for any discharges shall be made to the Secretary of State; and such an application shall be accompanied or supplemented by all such information as the Secretary of State may reasonably require.

(2) An application made in accordance with this paragraph which relates to proposed discharges at two or more places may be treated by the Secretary of State as separate applications for consents for discharges at each of those places.

(3) Where an application is made in accordance with this paragraph the Authority shall—

- (a) publish notice of the application, at least once in each of two successive weeks, in a newspaper or newspapers circulating in –
 - (i) the locality or localities in which the places are situated at which it is proposed in the application that the discharges should be made; and
 - (ii) the locality or localities appearing to the Authority to be in the vicinity of any controlled waters which the Authority considers likely to be affected by the proposed discharges;
- (b) publish a copy of that notice in an edition of the London Gazette published no earlier than the day after the publication of the last of the notices to be published by virtue of paragraph (a) above;
- (c) send a copy of the application to every local authority or water undertaker within whose area any of the proposed discharges is to occur;
- (d) in the case of an application which relates to proposed discharges into coastal waters or relevant territorial waters in or adjacent to England, send a copy of the application to the Minister;

and the notice published by virtue of paragraph (a) or (b) above shall contain the statement "representations or objections with respect to the application may be made in writing to the Secretary of State".

(7) If the Authority proposes to make or has made an application under this paragraph ("the relevant application") and –

- (a) applies to the Secretary of State within the prescribed period for a certificate providing that the provisions of sub-paragraph (3) above and of section 117(1) of this Act shall not apply to –
 - (i) the relevant application;
 - (ii) any consent given or conditions imposed on the relevant application;
 - (iii) any sample of effluent taken from a discharge for which consent is given on the relevant application; or
 - (iv) information produced by analysis of such a sample;
- and
- (b) satisfies the Secretary of State that it would be contrary to the public interest or would prejudice, to an unreasonable degree, some private interest, by disclosing information about a trade secret, if a certificate were not issued under this paragraph,

the Secretary of State may issue a certificate to the Authority providing that those provisions shall not apply to such of the things mentioned in paragraph (a) above as are specified in the certificate.

Consents on applications under paragraph 1

2.—(1) The Secretary of State may give the consent applied for, either unconditionally or subject to conditions, or refuse it.

.....

(3) The conditions subject to which a consent may be given under this paragraph shall be such conditions as the Secretary of State may think fit and, in particular, may include conditions –

- (a) as to the places at which the discharges to which the consent relates may be made and as to the design and construction of any outlets for the discharges;
- (b) as to the nature, origin, composition, temperature, volume and rate of the discharges and as to the periods during which the discharges may be made;
- (c) as to the steps to be taken, in relation to the discharges or by way of subjecting any substance likely to affect the description of matter discharged to treatment or any other process, for minimising the polluting effects of the discharges on any controlled waters;
- (d) as to the provision of facilities for taking samples of the matter discharged and, in particular, as to the provision, maintenance and use of manholes, inspection chambers, observation wells and boreholes in connection with the discharges;
- (e) as to the provision, maintenance and testing of meters for measuring or recording the volume and rate of the discharges and apparatus for determining the nature, composition and temperature of the discharges;
- (f) as to the keeping of records of the nature, origin, composition, temperature, volume and rate of the discharges and, in particular, of records of readings of meters and other recording apparatus provided in accordance with any other condition attached to the consent; and
- (g) as to the making of returns and the giving of other information to the Secretary of State about the nature, origin, composition, temperature, volume and rate of the discharges;

and it is hereby declared that a consent may be given under this paragraph subject to different conditions in respect of different periods.

Reference to Secretary of State of certain applications for consent

4.

(4) Before determining an application the Secretary of State may, if he has received representations or objections in response to the notice which the Authority is required to publish by paragraph 1(3) and shall, if a request to be heard is made to him by the Authority within 10 weeks after the date on which a copy of the notice was published in the London Gazette in accordance with paragraph 1(3)(b), –

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

.....

(6) Where under this paragraph the Secretary of State affords to the Authority an opportunity of appearing before, and being heard by, a person appointed for the purpose, it shall be the duty of the Secretary of State to afford an opportunity of appearing before, and being heard by, that person to every person who has made any representations or objection to the Secretary of State with respect to the application in question.

.....

Revocation of consents and alteration and imposition of conditions

6.—(1) The Secretary of State shall review from time to time the consents given under paragraph 2(1) above and the conditions (if any) to which the consents are subject.

(2) Where the Secretary of State has reviewed a consent under this paragraph, he may by a notice served on the Authority –

- (a) revoke the consent;
- (b) make modifications of the conditions of the consent; or
- (c) in the case of an unconditional consent, provide that it shall be subject to such conditions as may be specified in the notice.

(4) If it appears to the Secretary of State appropriate to do so –

- (a) for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect to any Community obligation or to any international agreement to which the United Kingdom is for the time being a party;
- (b) for the protection of public health or of flora and fauna dependent on an aquatic environment; or
- (c) in consequence of any representations or objections made to him or otherwise,

he may at any time do anything mentioned in sub-paragraph (2)(a) to (c) above.

.....

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for consents required by the National Rivers Authority for the purposes of section 108(1)(a) of the Water Act 1989 (authority for discharges and other defences for the purposes of section 107) in respect of the discharge of any effluent or other matter to be given by the Secretary of State. They also prescribe the modifications subject to which the provisions of Schedule 12 to that Act (consents to certain discharges) are to have effect in relation to discharges by the Authority. Schedule 2 to the Regulations reproduces Schedule 12 with those modifications.

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