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STATUTORY INSTRUMENTS

1996 No. 667

ENVIRONMENTAL PROTECTION

The Environmental Protection (Applications, Appeals and Registers) (Amendment) Regulations 1996

<i>Made</i>	- - - -	<i>7th March 1996</i>
<i>Laid before Parliament</i>		<i>11th March 1996</i>
<i>Coming into force</i>	- -	<i>1st April 1996</i>

The Secretary of State for the Environment as respects England, the Secretary of State for Wales as respects Wales and the Secretary of State for Scotland as respects Scotland, in exercise of the powers conferred on them by sections 10(8), 11(1) and (3) to (7), 15(10), 20(1) to (3) and (10) and 22(6) of and paragraphs 1, 2, 3, 6 and 7 of Schedule 1 to the Environmental Protection Act 1990(1) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Environmental Protection (Applications, Appeals and Registers) (Amendment) Regulations 1996 and shall come into force on 1st April 1996.

(2) In these Regulations, “the principal Regulations” means the Environmental Protection (Applications, Appeals and Registers) Regulations 1991(2).

Amendment of the principal Regulations

2. The principal Regulations shall be amended in accordance with the provisions of the Schedule below.

(1) 1990 c. 43.
(2) S.I. 1991/507, amended by S.I. 1991/836, 1994/1271.

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Signed by authority of the Secretary of State

6th March 1996

Ferrers
Minister of State,
Department of the Environment

Signed by authority of the Secretary of State for Wales

7th March 1996

Gwilym Jones
Parliamentary Under Secretary of State, Welsh
Office

6th March 1996

Lindsay
Parliamentary Under Secretary of State, Scottish
Office

SCHEDULE

Regulation 2

AMENDMENT OF THE PRINCIPAL REGULATIONS

1. In regulation 2 (applications for an authorisation), at the end of paragraph (1)(a) there shall be added the words “and, if that body corporate is a subsidiary of a holding company (within the meaning of section 736 of the Companies Act 1985⁽³⁾), the name of the ultimate holding company and the address of its registered or principal office”.

2. In regulation 3 (variation of conditions of an authorisation), at the end of paragraph (3) there shall be added the following sub-paragraph—

“(iv) in a case where the holder of the authorisation is a body corporate which is a subsidiary of a holding company (within the meaning of section 736 of the Companies Act 1985) and the information has not already been supplied under regulation 2(1)(a) above, with the name of the ultimate holding company and the address of its registered or principal office.”.

3.—(1) In regulation 4 (consultation)—

(a) in paragraph (1)(a), after the words “in all cases” there shall be inserted the words “except, in the case of a prescribed process designated for local control, where the enforcing authority has, within the period specified in paragraph (2) below, notified the Health and Safety Executive that the application has been made or, as the case may be, that notification has been given pursuant to section 10(5) of the 1990 Act”;

(b) paragraph (1)(e) shall be omitted;

(c) in paragraph (1)(f)—

(i) for the words “regional or islands council” there shall be substituted the words “sewerage authority”;

(ii) for the words “the council” there shall be substituted the words “the authority”;

(d) in paragraph (1)(g)—

(i) for the words “the Nature Conservancy Council for Scotland” there shall be substituted the words “Scottish Natural Heritage”;

(ii) for the words “the Council's” there shall be substituted the words “the body's”;

(e) paragraph (1)(i)(4) shall be omitted;

(f) at the end of paragraph (1) there shall be added the following sub-paragraphs—

“(j) the local authority in whose area the process will be carried on, in the case of all prescribed processes (other than those which will be carried on by means of mobile plant) designated for central control, or in respect of which a direction under section 4(4) of the 1990 Act is in force, which will be carried on in England and Wales;

(k) the local authority in whose area the process will be carried on, in the case of all prescribed processes (other than those which will be carried on by means of mobile plant) which will be carried on in Scotland;

(l) the local fisheries committee, in the case of all prescribed processes designated for central control which may involve a release of any substance directly into relevant territorial waters or coastal waters within the sea fisheries district of that committee.”;

⁽³⁾ 1985 c. 6; a new section 736 was substituted by section 144(1) of the Companies Act 1989 (c. 40).

⁽⁴⁾ Sub-paragraph (i) was inserted by S.I. 1994/1271, regulation 2.

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(g) at the end there shall be added the following paragraphs—

“(4) In paragraph (1)(f) above “sewerage authority” shall be construed in accordance with section 62 of the Local Government etc. (Scotland) Act 1994⁽⁵⁾.

(5) In paragraph (1)(j) above “local authority” means—

(a) in England—

(i) the council of a county, so far as it is the council of an area for which there are no district councils;

(ii) a district council;

(iii) the council of a London borough;

(iv) the Council of the Isles of Scilly;

(v) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;

(b) in Wales, the council of a county or county borough.

(6) In paragraph (1)(k) above “local authority” means a council for an area constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

(7) In paragraph (1)(l) above “relevant territorial waters” and “coastal waters” have the same meaning as in Part III of the Water Resources Act 1991⁽⁶⁾

(2) The amendments set out in sub-paragraph (1) above shall not apply in cases where the relevant day referred to in sub-paragraph (a), (b) or, as the case may be, (c) of regulation 4(2) of the principal Regulations falls before 1st April 1996.

4.—(1) In regulation 5 (advertisements)—

(a) at the end of paragraph (1) there shall be added the following—

“and also, in the case of a prescribed process designated for central control—

(i) if the process will be carried on in England and Wales otherwise than by means of mobile plant, or will be carried on by means of mobile plant by a person whose principal place of business in Great Britain is in England and Wales, in the London Gazette;

(ii) if the process will be carried on in Scotland otherwise than by means of mobile plant, or will be carried on by means of mobile plant by a person whose principal place of business in Great Britain is in Scotland, in the Edinburgh Gazette.”;

(b) in paragraph (3)(b), there shall be inserted at the beginning the words “except in the case of a prescribed process which will be carried on by means of mobile plant”;

(c) at the end of paragraph (3) there shall be added the following sub-paragraph—

“(f) explain that any such representations made by any person will be entered in a public register unless that person requests in writing that they should not be so placed, and that where such a request is made there will be included in the register a statement indicating only that representations have been made which have been the subject of such a request.”;

(d) in paragraph (4), for the words “The preceding provisions of this regulation do not apply” there shall be substituted the words “The requirement in paragraph (1) of this regulation

(5) 1994 c. 39.

(6) 1991 c. 57; see section 104(1).

to publish an advertisement in one or more newspapers circulating in the locality in which the prescribed process will be carried on does not apply”.

(2) The amendments set out in sub-paragraph (1) above shall not apply in cases where the relevant day referred to in sub-paragraph (a), (b) or, as the case may be, (c) of regulation 5(2) of the principal Regulations falls before 1st April 1996.

5.—(1) In regulation 11 (action upon receipt of notice of appeal)—

- (a) in paragraph (1)(b)(ii), for the words “2, 6 or 7” there shall be substituted the words “2 or 7”;
- (b) paragraph (2)(d) shall be omitted;
- (c) in paragraph (2)(e), there shall be added at the end the words “, and that copies of any representations so made will be furnished to the appellant and to the enforcing authority”;
- (d) after paragraph (2)(e) there shall be inserted the following sub-paragraph—
 - “(ea) explain that any such representations made by any person will be entered in a public register unless that person requests in writing that they should not be so placed, and that where such a request is made there will be included in the register a statement indicating only that representations have been made which have been the subject of such a request;”;
- (e) in paragraph (3), the words from “send” to “shall” shall be omitted;
- (f) after paragraph (3) there shall be inserted the following paragraph—
 - “(3A) In the event of an appeal being withdrawn, the enforcing authority shall give written notice of the withdrawal to every person to whom notice was given under paragraph (1) above.”.

(2) The amendments set out in sub-paragraph (1) above shall not apply in cases where the enforcing authority receives the copy of the notice of appeal in accordance with regulation 9(1) of the principal Regulations before 1st April 1996.

6. In paragraph (8) of regulation 13 (hearings), after the word “shall” where it first occurs there shall be inserted the words “, unless he has been appointed under section 114(1)(a) of the Environment Act 1995(7) to determine the appeal.”.

7. For regulation 15 (registers) there shall be substituted the following regulation—

“15. Subject to sections 21 and 22 of the 1990 Act, a register maintained by an enforcing authority under section 20 of that Act shall be maintained in accordance with regulation 15A below and shall contain—

- (a) all particulars of any application for an authorisation, or for a variation of the conditions of an authorisation, made to the authority;
- (b) all particulars of any advertisement published pursuant to regulation 5 above;
- (c) all particulars of any notice to the applicant by the authority under paragraph 1(3) of Schedule 1 to that Act and of any information furnished in response to such a notice;
- (d) all particulars of any representations made by any person in response to an advertisement published pursuant to regulation 5 above which contains the explanation required by paragraph (3)(f) of that regulation, or a notice given pursuant to regulation 11(1) above which contains the explanation required by paragraph (2)(ea) of that regulation, other than representations which the person who made them requested should not be placed in the register;

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- (e) in a case where any such representations are omitted from the register at the request of the person who made them, a statement by the authority that such representations have been made which have been the subject of such a request (but such statement shall not identify the person who made the representations in question);
- (f) all particulars of any authorisation granted by the authority;
- (g) all particulars of any written notice of the transfer of an authorisation given to the authority pursuant to section 9(2) of that Act;
- (h) all particulars of any notification given to the holder of an authorisation by the authority under section 10(5) of that Act;
- (i) all particulars of any revocation of an authorisation effected by the authority;
- (j) all particulars of any variation notice, enforcement notice or prohibition notice issued by the authority;
- (k) all particulars of any notice issued by the authority withdrawing an enforcement notice or a prohibition notice;
- (l) all particulars of any notice of appeal under section 15 of that Act against a decision by the authority, the documents relating to the appeal mentioned in regulation 9(2)(a), (d) and (e) above, any written notification of the Secretary of State's determination of such an appeal and any report accompanying any such written notification;
- (m) details of any conviction of any person for any offence under section 23(1) of that Act which relates to the carrying on of a prescribed process under an authorisation granted by the authority, or without such an authorisation in circumstances where one is required by section 6(1) of the 1990 Act, including the name of the offender, the date of conviction, the penalty imposed and the name of the Court;
- (n) all particulars of any monitoring information relating to the carrying on of a prescribed process under an authorisation granted by the authority obtained by the authority as a result of its own monitoring or furnished to the authority in writing by virtue of a condition of the authorisation or section 19(2) of that Act;
- (o) in a case where any such monitoring information is omitted from the register by virtue of section 22 of that Act, a statement by the authority, based on the monitoring information from time to time obtained by or furnished to them, indicating whether or not there has been compliance with any relevant condition of the authorisation;
- (p) all particulars of any other information furnished to the authority on or after 1st April 1996 in compliance with a condition of the authorisation, a variation notice, enforcement notice or prohibition notice, or section 19(2) of that Act;
- (q) all particulars of any report published by an enforcing authority relating to an assessment of the environmental consequences of the carrying on of a prescribed process in the locality of premises where the prescribed process is carried on under an authorisation granted by the authority; and
- (r) all particulars of any direction (other than a direction under section 21(2) of that Act) given to the authority by the Secretary of State under any provision of Part I of that Act.”.

8. After regulation 15 there shall be inserted the following regulation—

“15A.—(1) Where an advertisement is required to be published in accordance with regulation 5 above—

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- (a) in the case of an advertisement under paragraph 1(2) or 7(2) of Schedule 1 to the 1990 Act, the particulars referred to in paragraph (a) of regulation 15 above shall be entered in the register not later than 14 days after the receipt by the enforcing authority of the application to which the advertisement relates;
- (b) in the case of an advertisement under paragraph 6(2) of that Schedule, the particulars referred to in paragraph (h) of regulation 15 above shall be entered in the register not later than 14 days after the giving of the notification under section 10(5) of the 1990 Act.

(2) Where an application for an authorisation is withdrawn by the applicant at any time before it is determined, all particulars relating to that application which are already in the register shall be removed from that register not less than two months and not more than three months after the date of withdrawal of the application, and no further particulars relating to that application shall be entered in the register.

(3) Where, by virtue of any regulations made under section 2(1) of the 1990 Act a description of process ceases to be a prescribed process, all particulars relating to processes of that description shall be removed from the register not less than two months and not more than three months after the date on which that description of process ceases to be prescribed.”.

9. For regulation 16 there shall be substituted the following regulation—

“**16.** A register maintained by a local enforcing authority in England and Wales which is not a port health authority shall (in addition to the particulars required by regulation 15 above) contain all particulars of such information contained in any register maintained by the Environment Agency as relates to the carrying on in the area of the local enforcing authority of prescribed processes in relation to which that Agency has functions under Part I of the 1990 Act.”.

10. For regulation 17 there shall be substituted the following regulation—

“**17.** Nothing in regulation 15 or 16 above shall require an enforcing authority to keep in a register maintained by them—

- (a) monitoring information relating to a particular process four years after that information was entered in the register; or
- (b) information relating to a particular process which has been superseded by later information relating to that process four years after that later information was entered in the register,

but nothing in this regulation shall apply to any aggregated monitoring data relating to overall emissions of any substance or class of substances from prescribed processes generally or from any class of prescribed process.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Environmental Protection (Applications, Appeals and Registers) Regulations 1991 (S.I. 1991/507), which prescribe various matters in respect of applications, appeals

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and registers in connection with integrated pollution control and air pollution control under Part I of the Environmental Protection Act 1990. Part I of that Act is amended (mainly with effect from 1st April 1996) by the Environment Act 1995 (c. 25), Schedule 22, paragraphs 45 to 61 and 93.

The amendments relate to the information to be contained in an application for an authorisation or for a variation of an authorisation, the persons to be consulted on an application, the advertisement of applications, the procedure to be followed in the event of an appeal to the Secretary of State against the decision of an enforcing authority, and the contents and maintenance of public registers maintained under section 20 of the 1990 Act.

A compliance cost assessment in respect of these Regulations may be obtained from Air and Environmental Quality Division, Department of the Environment, Romney House, 43 Marsham Street, London SW1P 3PY; Environment Division, Welsh Office, Cathays Park, Cardiff CF1 3NQ; or the Scottish Office, Agriculture Environment and Fisheries Department, 1H Victoria Quay, Edinburgh EH6 6QQ.