
EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 35(4) of the Environmental Protection Act 1990 (“the 1990 Act”) allows an authority (the Environment Agency in England and Wales and the Scottish Environment Protection Agency in Scotland) to impose on a waste management licence conditions which require the licence holder to carry out works or do other things notwithstanding that he is not entitled to do so. Sections 37(1) and (2)(a), 38(9) and 42(7) of the 1990 Act, as amended by the Environment Act 1995 (“the 1995 Act”), allow those Agencies to impose similar conditions when modifying the conditions of, or suspending, a waste management licence. Where such a condition is imposed, any person whose consent would be required before the works etc. could be carried out must grant to the licence holder, or join in granting, such rights as will enable him to comply with the condition.

Regulation 3 of these Regulations provides that the period for the making of representations, in response to the prior consultation with owners, tenants and occupiers of land in respect of which rights are likely to be required (which is required by new sections 36A and 37A of the 1990 Act and new subsection (9B) of section 38 of that Act, as inserted by the 1995 Act), is 3 months from the date on which the consultation notice was served or, where the consultation relates to the proposed modification of a waste management licence, six weeks.

Regulation 4 defines the descriptions of loss and damage in respect of which compensation is payable following the grant of rights under section 35(4) or the new 38(9A) (inserted by the 1995 Act) of the 1990 Act. Regulation 5 specifies the time at which the entitlement to compensation arises. Regulation 6 prescribes the procedure for making applications for compensation. In particular, paragraph (1) requires a claim to be made either within 12 months of the date on which the entitlement to compensation arises or within six months of the first exercise of the rights, as the grantor decides. Regulation 7 sets out the basis on which compensation is to be assessed. Regulation 8 makes provision for payment and for the determination of disputes by the Lands Tribunal or, in Scotland, the Lands Tribunal for Scotland.