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STATUTORY INSTRUMENTS

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**2006 No. 2362**

The Environmental Impact Assessment  
(Agriculture) (England) Regulations 2006

PART 5

Appeals

**Appeals against notices**

**32.**—(1) A person may appeal to the Secretary of State in accordance with this regulation against any of the following notices served on him—

- (a) a screening notice;
- (b) a stop notice;
- (c) a remediation notice, or
- (d) a notice under paragraph 5 of Schedule 4,

and any such notice is referred to in this regulation as the “relevant notice”.

(2) An appeal may be brought on any of the following grounds—

- (a) that Natural England did not have power to serve the relevant notice, or to include a particular requirement in it;
- (b) that there has been some material irregularity, defect or error in, or in connection with, the relevant notice; or
- (c) that any of the requirements of the relevant notice are unreasonable.

(3) An appeal against a relevant notice must be brought by notice, which must—

- (a) include a copy of the relevant notice;
- (b) state the grounds of appeal; and
- (c) be served on the Secretary of State within 28 days of the date of service of the relevant notice.

(4) As soon as is reasonably practicable after receiving a notice of appeal, the Secretary of State must send a copy of the notice to Natural England.

(5) Except as otherwise provided by this regulation, the Secretary of State must determine the procedure for deciding the appeal, and that procedure may include provision for site visits.

(6) Appeals under this regulation may be conducted by written representations or by hearing.

(7) On determining the appeal, the Secretary of State—

- (a) may affirm, vary or revoke the relevant notice, and
- (b) must notify the applicant and Natural England of his decision, together with the reasons for it.

(8) Where an appeal is brought against a screening notice or a stop notice (unless the notice is withdrawn by Natural England) all the requirements contained in it have effect until such time as the Secretary of State revokes the notice or varies the requirements.

(9) If the Secretary of State varies the requirements of a screening notice or a stop notice the variations have effect from the date of notification under paragraph (7)(b).

(10) Where an appeal is brought against a remediation notice or a notice served under paragraph 5 of Schedule 4, the notice will be of no effect until it is affirmed or varied on appeal or until the appeal is withdrawn.

(11) The Secretary of State may appoint a person to exercise on his behalf, with or without payment, his function of determining the appeal or any matter involved in the appeal, and Schedule 5 has effect in relation to such an appointment.

### **Appeals against screening and consent decisions**

**33.**—(1) The persons specified in paragraph (2) may appeal under this regulation to the Secretary of State.

(2) The persons referred to in paragraph (1) are—

- (a) a person who has applied for a screening decision in respect of a project which Natural England has decided is a significant project, or is deemed to have so decided, under regulation 9;
- (b) a person who has applied for consent for a significant project in respect of which consent has been refused or has been granted subject to conditions, other than those specified in regulation 19(2); and
- (c) a person who has been notified of a further decision under paragraph 3 of Schedule 4.

(3) An appeal against a relevant decision must be brought within 3 months of the date the person was notified of the relevant decision.

(4) A notice of appeal must—

- (a) describe the relevant decision;
- (b) state the grounds of appeal; and
- (c) state whether the appellant would like the appeal to be in the form of a hearing or local inquiry or to be disposed of on the basis of written representations.

(5) As soon as is reasonably practicable after receiving a notice of appeal against a relevant decision, the Secretary of State must serve a copy of the notice on Natural England.

(6) Natural England must, within 14 days of the date it receives the copy of the notice of appeal, provide the Secretary of State with sufficient information to identify the interested parties.

(7) The Secretary of State must serve copies of the notice on the interested parties as soon as is reasonably practicable after receiving that information.

(8) A person who is served with a copy of the notice under paragraph (7) may only make representations in respect of the appeal if he notifies the Secretary of State of his wish to do so within 21 days of the date he receives the copy of the notice.

(9) The Secretary of State must decide whether the appeal should be—

- (a) by hearing or local inquiry; or
- (b) conducted by written representations,

and the Secretary of State must notify his decision to the participants in the appeal.

(10) On determining the appeal, the Secretary of State may allow or dismiss the appeal, or reverse any part of the relevant decision, and may consider the appeal as if he were making a decision on the matter in question for the first time.

(11) The Secretary of State may appoint a person to exercise on his behalf, with or without payment, his function of determining the appeal or any matter involved in the appeal, and Schedule 5 has effect in relation to such an appointment.

(12) Subsections (2) to (5) of section 250 of the Local Government Act 1972(1) (power to direct inquiries) apply in relation to hearings or local inquiries held in accordance with regulation 35 as they apply to local inquiries under that section, but as if the references to the Minister were references to the Secretary of State and with the omission of references to a local authority.

(13) Section 322A of the Town and Country Planning Act 1990(2) (orders as to costs: supplementary) applies in relation to a hearing or local inquiry under regulation 35 as it applies to a hearing or local inquiry referred to in that section.

(14) Except as otherwise provided by this regulation or by regulation 34 or 35, the Secretary of State must determine the procedure for deciding the appeal, and that procedure may include provision for site visits.

(15) Any representations, statement or other documents to be submitted to the Secretary of State under regulation 34 or 35 must be accompanied by as many copies as the Secretary of State specifies.

(16) In this regulation, “relevant decision” means—

- (a) a decision referred to in paragraph (2)(a);
- (b) a refusal of consent or a grant of consent subject to conditions referred to in paragraph (2)(b); or
- (c) a notification referred to in paragraph (2)(c).

### **Determination of appeals by written representations**

**34.**—(1) This regulation applies where an appeal is to be determined by written representations.

(2) Within 6 weeks of receiving notice that the appeal is to be so determined the appellant and Natural England must—

- (a) serve on the Secretary of State any (or any further) representations he or it wishes to rely on in the appeal; or
- (b) notify the Secretary of State that he or it wishes to rely only on the information already provided.

(3) As soon as is practicable after receiving the representations or notification in paragraph (2), the Secretary of State must—

- (a) send copies of any (or any further) representations to the other participants in the appeal; and
- (b) notify the other participants in the appeal of any notification by the appellant or Natural England that he or it does not wish to rely on any further representations.

(4) Any of the participants in the appeal who wishes to make representations must do so within 28 days of the date he or it is notified of the representations or notification under paragraph (3).

(5) If the Secretary of State receives any representations under paragraph (4), he must send copies of them to the other participants in the appeal.

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(1) 1972 c. 70; section 250 was amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46, the Housing and Planning Act 1986 (c. 63), section 49(2) and Schedule 12, Part 3 and by the Statute Law (Repeals) Act 1989 (c. 43), section 1 and the Schedule, Part 4.

(2) 1990 c. 8. Section 332A was inserted by the Planning and Compensation Act 1991 (c. 34), section 30(1).

(6) The Secretary of State must allow the participants in the appeal a period of at least 14 days to respond to any representations made under paragraphs (2) or (4).

(7) Following the expiry of the period allowed in paragraph (6) the Secretary of State, or the person appointed to determine the appeal, must determine the appeal and notify the decision to the participants in the appeal.

### **Determination of appeals by hearing or local inquiry**

**35.**—(1) This regulation applies where an appeal is to be determined by hearing or by local inquiry.

(2) Within 6 weeks of receiving notice that the appeal is to be so determined, the appellant and Natural England must serve on the Secretary of State a statement containing full particulars of his or its case and copies of any documents he or it wishes to rely on at the hearing or local inquiry.

(3) After receiving the statements and documents in paragraph (2), the Secretary of State must send copies of them to the other participants in the appeal.

(4) The Secretary of State must—

- (a) give the participants in the appeal 6 weeks' notice of the date, time and place fixed for the hearing or local inquiry and the name of the person appointed to conduct the hearing or local inquiry (or, as applicable, to determine the appeal); and
- (b) give such notice as he thinks fit to inform the public not less than 21 days before the date fixed for the hearing or local inquiry.

(5) The Secretary of State may vary the time or place for the hearing or local inquiry and must give such notice of the variation as he thinks fit.

(6) If an interested party wishes to be heard at the hearing or local inquiry he must notify the Secretary of State within 28 days of being sent the appellant's and Natural England's statements under paragraph (3).

(7) Where an interested party has so notified the Secretary of State, the Secretary of State may require him to submit a statement containing the particulars of his case and copies of any documents he wishes to refer to (except documents which the appellant or Natural England served under paragraph (2)).

(8) The Secretary of State must send copies of any statements and documents received under paragraph (7) to the appellant and to Natural England.

(9) The Secretary of State may require any person who has provided him with a statement under paragraph (2) or (7) to provide him with any further information he specifies in relation to the statement, and must send a copy of the further information to each of the other participants in the appeal.

(10) Before a hearing or local inquiry takes place the Secretary of State must make all of the documents submitted available for inspection by any person who so requests.

(11) The participants in the appeal are entitled to be heard at a hearing or local inquiry.

(12) Any participant in the appeal who proposes to give evidence at an inquiry by reading a witness statement must send a copy of the witness statement, and a written summary of it, to the Secretary of State not less than 3 weeks before the date fixed for the inquiry, and the Secretary of State must send copies of the witness statement and summary to the other participants in the appeal.

(13) After the conclusion of the hearing or local inquiry, the person appointed to conduct the hearing or local inquiry must, unless he has been appointed to determine the appeal, make a report to the Secretary of State which must include—

- (a) his conclusions; and

(b) his recommendations or his reasons for not making any recommendations.

(14) If the Secretary of State is minded to disagree with the recommendation made in the report because he—

(a) differs from the person making the report on any matter of fact mentioned in, or appearing to him to be material to, a conclusion reached by that person; or

(b) takes into consideration new evidence or a new matter of fact,

he must not come to a decision without first giving every person who appeared at the hearing or local inquiry an opportunity to make representations within a reasonable time specified by him.

(15) The Secretary of State or the person appointed to determine the appeal must notify the participants in the appeal of his decision, the reasons for it and, where a report has been made in accordance with paragraph (13), a copy of that report.

### **Application to the court by person aggrieved**

**36.**—(1) A person aggrieved by a decision of Natural England that a project is not a significant project or a decision to grant consent for a significant project may make an application to the High Court for an order quashing the decision.

(2) The High Court may quash the decision if it is satisfied that—

(a) the decision was not lawfully made; or

(b) the interests of the person who has applied to the court have been substantially prejudiced by a failure to comply with any other requirement of these Regulations.

(3) Any application to the High Court under this regulation must be made within 6 weeks of the date the decision is entered in the register in accordance with regulation 9(4)(b) or published in accordance with regulation 20(b).

(4) The High Court may by interim order, pending the determination of an application under this regulation, stay the operation of the decision on such terms as it thinks fit.

### **Interpretation of this Part**

**37.** In this Part—

“interested parties” means—

(a) such of the consultation bodies as the Secretary of State considers appropriate;

(b) any person who made representations in respect of a relevant decision (within the meaning of “relevant decision” in regulation 32(16));

(c) any EEA State consulted under regulation 15(6);

(d) any authority or person who forwarded their opinion under regulation 15(5)(b);

(e) any other person who appears to the Secretary of State to have a particular interest in the subject matter of the appeal.

“participants in the appeal” means—

(f) the appellant;

(g) Natural England;

(h) the interested parties;

(i) in the case of a hearing or local enquiry, any other person permitted to take part by the person appointed to conduct the hearing or local inquiry.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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