

SCHEDULE 10

Article 111

Appeals

1. Except where paragraph 4, 5 or 6 applies, the appeal body means the body provided under paragraph 2 in respect of an appeal referred to in article 111.

2. Under paragraph 1, where the determination, notice or penalty is made or given by—

(a) the Environment Agency and the determination, notice or penalty relates—

(i) only to Wales, the appeal body is the Welsh Ministers;

(ii) other than only to Wales, the appeal body is the Secretary of State;

(b) the Scottish Environment Protection Agency, the appeal body is the Scottish Ministers;

(c) the Chief inspector, the appeal body is the relevant Northern Ireland department.

3. Paragraph 4 applies where an appeal is made by an applicant or participant which is or includes—

(a) a government department;

(b) the Scottish Ministers;

(c) the Welsh Assembly Government.

4. Where this paragraph applies, the appeal body is an independent person which the following appoints in writing—

(a) the Secretary of State, in respect of an appeal by a government department;

(b) the Scottish Ministers, in respect of an appeal by those Ministers;

(c) the Welsh Ministers, in respect of an appeal by the Welsh Assembly Government.

5. Where an appeal is made by an applicant or participant which is or includes a Northern Ireland department, the appeal body is an independent person which the Department of the Environment appoints in writing.

6. Where a determination, notice or penalty is made or given by—

(a) the Secretary of State;

(b) the Scottish Ministers; or

(c) the Department of the Environment,

the appeal body is an independent person which that body appoints in writing.

7. An appellant must give written notice of the appeal together with a statement of the grounds of appeal to the appeal body and the appeal body must as soon as is reasonably practicable send to the administrator a copy of that notice together with the statement of the grounds of appeal.

8. An appeal must be received by the appeal body no later than 40 days after the date of—

(a) the determination referred to in article 74(1);

(b) service of an enforcement notice;

(c) imposition of the civil penalty.

9. The appeal body may decide an appeal received late.

10. An appellant may withdraw an appeal by notifying the appeal body, and as soon as is reasonably practicable the appeal body must notify the administrator.

11. The bringing of an appeal—

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- (a) except where the appeal body has given the appellant notice under paragraph 15, suspends an enforcement notice, financial penalty or publication taking effect;
- (b) does not suspend a determination referred to in article 74(1) or a civil penalty not described in sub-paragraph (a) taking effect.

12. The appeal body may—

- (a) in respect of a determination, enforcement notice or civil penalty—
 - (i) cancel or affirm it; and
 - (ii) if it affirms it, may do so either in its original form or with such modifications as the appeal body sees fit;
- (b) instruct the administrator to do or not to do any thing which is within the power of the administrator.

13. The appeal body may publicise the appeal where it considers it appropriate to do so.

14. The appeal body may—

- (a) adopt such procedures as it sees fit to determine an appeal, taking into account any requests of the parties to the appeal;
- (b) appoint a person to hear an appeal on behalf of that body;
- (c) request a person to make a recommendation in relation to any subject matter of the appeal.

15. On request by the administrator, the appeal body may award the administrator its reasonable costs of an appeal where the appeal body has given the appellant written notice that in its opinion—

- (a) the appeal is frivolous or vexatious or otherwise has no reasonable prospects of success; or
- (b) the appeal is conducted in an unreasonable or vexatious manner.

16. The costs under paragraph 15—

- (a) are those agreed by the parties to the appeal or in default of agreement, as found by the appeal body;
- (b) if unpaid, are recoverable as a civil debt by the administrator.

17. In this Schedule, “independent person” means a person who has no individual interest in the matter subject to the appeal and is independent of the parties to the appeal.