

## SCHEDULES

### SCHEDULE 10

Article 37

#### PROCEDURE FOR DISCHARGE OF REQUIREMENTS

1.—(1) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement (including agreement or approval in respect of part of a requirement) included in this Order the relevant authority must give notice to the undertaker of their decision on the application within a period of eight weeks beginning with—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 2; or
- (c) such longer period as may be agreed by the undertaker and the relevant authority in writing.

(2) Subject to sub-paragraph (3), in the event that the relevant authority does not determine an application within the period set out in sub-paragraph (1), the relevant authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Where—

- (a) an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included in this Order;
- (b) the relevant planning authority does not determine such application within the period set out in sub-paragraph (1); and
- (c) such application is accompanied by a report that considers it likely that the subject matter of such application will give rise to any materially new or materially different environmental effects in comparison with the authorised development as approved, then the application is to be taken to have been refused by the relevant planning authority at the end of that period.

(4) Where any application is made as described in sub-paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by sub-paragraphs (1), (2) and (3).

(5) Where an application is made to the relevant planning authority for any consent, agreement or approval required by requirements 3(1), 4(1), 5(1), 12(1) or 13(1) (including agreement or approval in respect of part of a requirement), the undertaker must at the same time as making the application send a copy of the materials provided in support of the application to NRW and, in respect of requirement 12(1) only, Dŵr Cymru Cyfyngedig, and must draw NRW and Dŵr Cymru Cyfyngedig's attention to the procedure set out in paragraphs 1 to 3 of this Schedule and state that any comments must be provided to the relevant planning authority within 21 days if they are to be considered by the relevant planning authority.

(6) Where an application is made to the relevant planning authority for any consent, agreement or approval required by requirements 3(1), 4(1), 5(1), 12(1) or 13(1) (including agreement or approval in respect of part of a requirement), the relevant planning authority is not required to consider comments received from NRW and, in respect of requirement 12(1) only, Dŵr Cymru Cyfyngedig more than 21 days after the date of the application.

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(7) Where an application is made to the relevant planning authority for any consent, agreement or approval required by an article or requirement in this Order and the relevant planning authority intends to consult NRW and Dŵr Cymru Cyfyngedig in relation to that application, the undertaker must as soon as reasonably practicable comply with any direction from the relevant planning authority to provide a copy of the materials provided in support of the application to each body specified in the direction.

### **Further information**

2.—(1) In relation to any part of the application to which this Schedule applies, the relevant authority has the right to request such further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that it considers such further information to be necessary the relevant authority must, within twenty one days of receipt of the application, notify the undertaker in writing specifying the further information required and (if applicable) to which part of the application it relates. In the event that the relevant authority does not give such notification within this twenty one day period it is deemed to have sufficient information to consider the application and thereafter is not entitled to request further information without the prior agreement of the undertaker.

(3) Where further information is requested under this paragraph 2 in relation to part only of an application, that part is to be treated as separate from the remainder of the application for the purposes of calculating time periods in paragraph 1(1)(b), paragraph 1(3) and this paragraph 2.

### **Appeals**

3.—(1) The undertaker may appeal in the event that—

- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 1(3)) an application for any consent, agreement or approval required by an article or requirement included in this Order or grants it subject to conditions;
- (b) on receipt of a request for further information pursuant to paragraph 2 the undertaker considers that either the whole or part of the specified information requested by the relevant authority is not necessary for consideration of the application; or
- (c) on receipt of any further information requested, the relevant authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is to be as follows—

- (a) The undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant authority and any article or requirement consultee (together with the undertaker, these are the “appeal parties”);
- (b) The Secretary of State must appoint a person as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for his attention should be sent;
- (c) The relevant authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within twenty six days of the appointment of the person pursuant to sub-paragraph (b) and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

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- (d) The appeal parties must make any counter-submissions to the appointed person within twenty six days of receipt of written representations pursuant to sub-paragraph (c) above; and
- (e) The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within forty days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d).

The appointment of the person pursuant to sub-paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within twelve days of his appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant authority and any requirement consultee on the date specified by the appointed person (the “specified date”), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within fourteen days of the specified date but must otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c) to (e).

(5) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(6) The appointed person may take into account written representations that have been sent outside of the relevant time limits but the appointed person must proceed to a decision within the time limits set by this Schedule.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to him that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 1 (authorised development) of this Order as if it had been given by the relevant authority. The relevant authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the appointed person’s determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to Planning Practice Guidance: Appeals (March 2014) or any circular or guidance which may from time to time replace it.

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4. In this Schedule “relevant authority” means the relevant planning authority, relevant highway authority, traffic authority, street authority, or the owner of a watercourse, sewer or drain as may be appropriate to the consent, agreement or approval sought.