



Water Resources Act 1991

1991 CHAPTER 57

PART II

WATER RESOURCES MANAGEMENT

CHAPTER II

ABSTRACTION AND IMPOUNDING

Appeals with respect to decisions on licence applications

43 Appeals to the Secretary of State.

- (1) Where an application has been made to the [F¹appropriate agency] for a licence under this Chapter, the applicant may by notice appeal to the Secretary of State if—
- (a) the applicant is dissatisfied with the decision of the [F¹appropriate agency] on the application; or
 - (b) the [F¹appropriate agency] fails within the period specified in subsection (2) below to give to the applicant either—
 - (i) notice of the [F¹appropriate agency's] decision on the application; or
 - (ii) notice that the application has been referred to the Secretary of State in accordance with any direction under section 41 above.

[F²(1A) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).]

- (2) The period mentioned in subsection (1)(b) above is—
- (a) except in a case falling within paragraph (b) below, such period as may be prescribed; and
 - (b) where an extended period is at any time agreed in writing between the applicant and the [F¹appropriate agency], the extended period.
- (3) A notice of appeal under this section shall be served—

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- (a) in such manner as may be prescribed; and
- (b) within such period as may be prescribed, being a period of not less than twenty-eight days from, as the case may be—
 - (i) the date on which the decision to which it relates was notified to the applicant; or
 - (ii) the end of the period which, by virtue of subsection (2) above, is applicable for the purposes of subsection (1)(b) above.
- (4) Where a notice is served under this section in respect of any application, the applicant shall, within the period prescribed for the purposes of subsection (3)(b) above, serve a copy of the notice on the [F1appropriate agency].
- (5) Where any representations in writing with respect to an application were made within the period specified [F3in any such notice as is referred to in section 37(4)(b)] above, the Secretary of State shall, before determining an appeal under this section in respect of the application, require the [F1appropriate agency] to serve a copy of the notice of appeal on each of the persons who made those representations.

Textual Amendments

- F1** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F2** S. 43(1A) inserted (1.4.1996) by [1995 c. 25](#), s. 120(1), **Sch. 22 para. 134** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**
- F3** Words in s. 43(5) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 14(3)(c)**, 105(3); [S.I. 2006/984](#), art. 2(i) (with Sch. paras. 1, 2)

Modifications etc. (not altering text)

- C1** S. 43: power to delegate functions conferred (1.4.1996) by [1995 c. 25](#), **s. 114(2)(v)** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**
- C2** S. 43 restricted (1.3.2012) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) Regulations 2003 \(S.I. 2003/164\)](#), regs. 1(1), **8(4)**
- C3** S. 43(1)(a) modified (1.4.2005) by [The Water Act 2003 \(Commencement No. 4, Transitional Provisions and Savings\) Order 2005 \(S.I. 2005/968\)](#), art. 4(1)(3), **Sch. 1 para. 5(5)**

44 Determination of appeals.

- (1) Subject to the following provisions of this Chapter, where an appeal is brought under section 43 above, the Secretary of State—
 - (a) may allow or dismiss the appeal or reverse or vary any part of the decision of the [F1appropriate agency], whether the appeal relates to that part of the decision or not; and
 - (b) may deal with the application as if it had been made to him in the first instance; and for the purposes of this section an appeal by virtue of section 43(1)(b) above shall be taken to be an appeal against a refusal of the application.
- (2) Before determining an appeal under section 43 above, the Secretary of State may, if he thinks fit—
 - (a) cause a local inquiry to be held; or

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- (b) afford to the applicant and the [^{F1}appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;
- and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the applicant or the [^{F1}appropriate agency] to be heard with respect to the appeal.
- (3) The Secretary of State, in determining an appeal under section 43 above, shall take into account—
- (a) any further representations in writing received by him, within the prescribed period, from the persons mentioned in section 43(5) above; and
- (b) the requirements of the applicant, in so far as they appear to the Secretary of State to be reasonable requirements.
- (4) [^{F4}Subject to subsection (4A) below,] in determining any appeal under section 43 above and, in particular, in determining what (if any) direction to give under subsection (6) below, the Secretary of State shall consider whether any such direction would require such a grant or variation of a licence as would so authorise—
- (a) the abstraction of water; or
- (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,
- as to derogate from rights which, at the time when the direction in question is given, are protected rights for the purposes of this Chapter.
- [^{F5}(4A) Subsection (1A) of section 39 above applies in relation to subsection (4) above as it applies in relation to section 39(1) above.]
- (5) The provisions of sections 39(2) and 40 above shall apply in relation to any appeal under section 43 above as if—
- (a) any reference in those provisions to the [^{F1}appropriate agency], were a reference to the Secretary of State; and
- (b) the references to sections 38(3) and 39(1) above were references to subsections (3) and (4) above.
- (6) Where the decision on an appeal under section 43 above is that a licence is to be granted or to be varied or revoked, the decision shall include a direction to the [^{F1}appropriate agency], as the case may be—
- (a) to grant a licence containing such provisions as may be specified in the direction;
- (b) to vary the licence so as to contain such provisions as may be so specified; or
- (c) to revoke the licence.
- (7) The decision of the Secretary of State on any appeal under section 43 above shall be final.

Textual Amendments

- F1** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F4** Words in s. 44(4) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(7)(a)**, 105(3); S.I. 2004/641, art. 3(e) (with Sch. 3 para. 7)

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F5 S. 44(4A) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(7)(b)**, 105(3); S.I. 2004/641, art. 3(e) (with [Sch. 3 para. 7](#))

45 Regulations with respect to appeals.

- (1) The Secretary of State may by regulations make provision as to the manner in which appeals against decisions [^{F6}of the [^{F1}appropriate agency] under section 36A above or] on applications for the grant, revocation or variation of licences under this Chapter are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such appeals or decisions on any such appeals.
- (2) Without prejudice to the generality of subsection (1) above, provision shall be made by regulations under this section for securing that, in prescribed circumstances (being circumstances in which it appears to the Secretary of State that applications for licences under this Chapter would be of special concern to National Park ^{F7}. . . authorities)—
- (a) notice of any appeal against the decision on such an application, will be served on any National Park ^{F7}. . . authority who made representations falling within paragraph (b) of section 34(3) above; and
 - (b) the Secretary of State, in determining the appeal, will take account of any further representations made by such an authority within such period and in such manner as may be prescribed.
- [^{F8}(2A) Subsection (2) above does not apply in relation to appeals against decisions of the [^{F1}appropriate agency] under section 36A above.]
- (3) Subsections (4) ^{F7}. . . of section 34 above shall apply for the purposes of this section as they apply for the purposes of that section.

Textual Amendments

- F1** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with [Sch. 7](#))
- F6** Words in s. 45(1) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 13(3)(a)**, 105(3); S.I. 2006/984, art. 2(h) (with [Sch. para. 7](#))
- F7** Words in s. 45 repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**
- F8** S. 45(2A) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 13(3)(b)**, 105(3); S.I. 2006/984, art. 2(h) (with [Sch. para. 7](#))

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