

1984 No. 865

**PUBLIC HEALTH, ENGLAND AND WALES
PUBLIC HEALTH, SCOTLAND**
**The Control of Pollution (Consents for Discharges) (Secretary of
State Functions) Regulations 1984**

<i>Made</i> - - - -	22nd June 1984
<i>Laid before Parliament</i>	4th July 1984
<i>Coming into Operation</i>	26th July 1984

The Secretary of State, in exercise of his powers under sections 35(2), 36(5) and (6)(b), 39(4) and (5), 40(5), 42(1)(a) and 104(1) of the Control of Pollution Act 1974(a) and of all other powers enabling him in that behalf, hereby makes the following regulations:—

Citation and Commencement

1. These regulations may be cited as the Control of Pollution (Consents for Discharges) (Secretary of State Functions) Regulations 1984, and shall come into operation on 26th July 1984.

Application and Interpretation

2.— (1) These regulations prescribe procedures to be followed in connection with the consideration of applications made under section 34(1) of the Control of Pollution Act 1974 to a water authority in England or Wales or a river purification authority in Scotland for consent to discharge effluent or other matter; and make provision as respects related matters.

(2) In these regulations, unless the context otherwise requires—

“application for consent to discharge” means such an application as is mentioned in paragraph (1);

“authority” means the relevant water authority or river purification authority, as the case may be;

“transmitted application for consent to discharge” means an application for consent to discharge which is transmitted pursuant to directions under section 35(1) to the Secretary of State for determination; and references to sections are references to sections of the said Act.

(a) 1974 c.40.

Requests for directions to transmit

3.— (1) A request to the Secretary of State pursuant to section 36(6)(b) to direct under section 35(1) that an authority transmit an application for consent to discharge to him for determination shall be made in writing.

(2) Such a request shall be accompanied by a written statement of the grounds on which it is made.

(3) There shall be sent with such a request either—

(a) a copy of the notice served by the authority pursuant to section 36(6)(a) on the person making the request and a copy of any notice of the application published pursuant to section 36(1)(a); or

(b) a statement—

(i) of the name of the applicant and of the name of the authority concerned;

(ii) of a reference number or letter identifying the relevant application for consent;

(iii) identifying the land from which, and the waters into or land on to which, the discharge for which consent is sought is to be made;

(iv) describing the effluent or other matter to which the consent is to relate;

(v) of the date on which the person making the request was served by the authority with notice under section 36(6)(a) (notice of right to request a direction).

(4) A copy of any request and of the documents or statement sent therewith shall be sent to the water authority at the same time as the request is made.

Publicity for transmitted applications

4.— (1) In relation to a transmitted application for consent to discharge, section 36(1) to (4) shall have effect with the following modifications:—

(a) where at the date of the giving of the direction to transmit the application to the Secretary of State for determination by him the authority has not discharged its duty under section 36(1)(a), that paragraph shall apply as if it referred to a duty to publish, if so directed by the Secretary of State, a notice in the form set out in the Schedule hereto or substantially in that form (a “notice of reference”), and not a duty to publish notice of the application or instrument;

(b) where the authority publishes a notice of reference—

(i) section 36(1)(b) shall apply as if it referred to copies of that notice and of the application; and

(ii) section 36(1)(c) shall apply as if it imposed a duty on the Secretary of State to consider all representations made to him within a period of six weeks beginning with the date on which the said notice is published in the London Gazette; and

(c) where the authority does not publish a notice of reference, section 36(1)(c) shall apply as if it imposed a duty on the authority to send to the Secretary of State within such period as he may specify any such

representations as are mentioned in that paragraph, together with any statement which it may wish to make with respect to the application or the representations, and imposed a duty on the Secretary of State to consider those representations and any such statement.

(2) Section 36(3) shall apply as if it referred to a notice published in accordance with section 36(1)(a), as modified by paragraph (1)(a) above, and section 36(4) shall not apply.

Requests to be heard

5. A request pursuant to section 35(2) to be heard in relation to a transmitted application for consent to discharge (whether made by the applicant or the authority) shall be—

- (i) made in writing; and
- (ii) sent to the Secretary of State before the expiry of a period of 28 days beginning with the day on which the authority, in accordance with section 35(1), has notified the relevant applicant that the application has been transmitted to the Secretary of State for determination.

Publicity: prescribed period for applying for an exemption certificate

6.— (1) Subject to paragraphs (2) and (3) below, the prescribed period within which application under section 42(1)(a) for a certificate under that paragraph (exemption from certain publicity and disclosure requirements) must be made shall be a period of 28 days beginning with the day 21 days before the application for consent to discharge is made.

(2) In the case of an application pending immediately before section 32(1) comes into force which by virtue of section 40(3) falls to be treated after that day as an application for consent to discharge in pursuance of section 34, the said prescribed period shall be the period of 21 days beginning with the day on which section 32(1) comes into force.

(3) In the case of an application to which the provisions of section 40(4) apply, the said prescribed period shall be the period beginning with the day on which application is made for consent to discharge in pursuance of section 34 and ending with the day 21 days after section 32(1) comes into force.

Appeals

7.— (1) In this regulation, “appeal” means the reference of a question to the Secretary of State for determination under section 39(1) (appeals against unreasonable withholding of consent, unreasonable conditions etc.), and “appellant” shall be construed accordingly.

(2)(a) In relation to any question which is by virtue of section 39(2) to be determined by the Secretary of State and the Minister of Agriculture, Fisheries and Food acting jointly, this regulation shall apply as if references to the Secretary of State were references to him and that Minister.

(b) The provisions of this paragraph extend to England only.

(3) Notice of appeal, with a statement of the grounds of appeal, shall be given in writing to the Secretary of State before the expiry of the period of three months beginning with the day on which—

- (a) the water authority notified the appellant of its decision to withhold consent or to give consent subject to conditions: or
- (b) the authority was deemed under section 34(2) to have refused consent; or
- (c) notice was served by the authority on the person making the discharge under section 37(1); or

before the expiry of such longer period as the Secretary of State may allow (as the case may be).

(4) The Secretary of State may require the appellant to give him within 28 days of giving notice of appeal (or such longer period as the Secretary of State may allow) a copy of any or all of the following documents:—

- (a) any relevant application;
- (b) any relevant maps, plans or other documents submitted in support of the application;
- (c) any relevant record, consent, determination, notice or other notification given, made, issued or served by the authority; and
- (d) any other relevant correspondence between the appellant and the authority.

(5) The Secretary of State shall—

- (a) send the authority a copy of the notice of appeal and of the statement of the grounds of appeal given to him under paragraph (3) above; and
- (b) in a case arising by virtue of section 39(1)(a), require the authority to serve notice in writing, within 14 days of the receipt by the authority of the copy of the notice of appeal mentioned in the preceding paragraph, on any person who made representations under section 36(1)(c) relating to the application for the relevant consent.

(6) A notice required to be served under paragraph (5)(b) above shall state that an appeal has been made, and that further representations may be made to the Secretary of State in respect of the application within a period of twenty-one days of service of the notice.

(7) The Secretary of State shall send to the appellant and the authority a copy of any representations received by him in pursuance of paragraph (6) above.

(8) The Secretary of State may, if he thinks fit, require the appellant or the authority to submit to him within a specified period a further statement in writing in respect of any of the matters to which the appeal relates, and where he exercises this power he shall send to the appellant or, as the case may be, the authority a copy of any statement made by the other.

(9)(a) If, after considering the grounds of the appeal and the documents before him, the Secretary of State is satisfied that he is sufficiently informed to reach a decision upon the question referred to him he may, not earlier than fourteen days after giving notice of his intention

to the appellant and the authority, determine the matter before him without further investigation unless such investigation is required by a party pursuant to paragraph (10) below.

- (b) Where any requirement by the Secretary of State under paragraph (4) or (8) above has not been complied with by the expiry of the relevant period the Secretary of State may, after allowing a further specified period which appears to him reasonable, determine the appeal without further investigation.

(10) If either the appellant or the authority within a period of fourteen days after service of notice under paragraph (9)(a) above request the Secretary of State not to determine the question without further investigation, the Secretary of State shall either—

- (a) cause a local inquiry to be held under section 96(1), or
(b) afford the appellant and the authority the right of appearing before and being heard by a person appointed by the Secretary of State for that purpose.

(11) Any appeal which, immediately before the day on which section 32(1) comes into force, is pending in pursuance of the Rivers (Prevention of Pollution) Acts 1951 to 1961, the Rivers (Prevention of Pollution) (Scotland) Acts 1951 and 1965 or section 72(3) of the Water Resources Act 1963(a) shall be treated on and after that day as an appeal in pursuance of section 39(1).

(a) 1963 c.38.

SCHEDULE

Regulation 4(1)(a)

Form of Notice

CONTROL OF POLLUTION ACT 1974
NOTICE OF REFERENCE OF APPLICATION TO SECRETARY OF STATE

Notice is hereby given that, in pursuance of section 35(1), the Secretary of State has directed the (a) to transmit to him for determination an application made by (b) for consent to discharge (c) of (d) to (e) at (f) from (g)

Any person who wishes to make representations about the application should do so in writing to the Secretary of State (h) by (i) quoting (j)

A copy of the application may be inspected free of charge at (k) at all reasonable hours.

Signed

* Delete where inappropriate

*On behalf of

Date

- (a) Insert name of Water Authority (or, in Scotland, River Purification Authority—see section 106(2) of the Act).
- (b) Insert name of applicant.
- (c) Insert maximum quantity of the matter which it is proposed to discharge on any one day.
- (d) Insert nature of matter to be discharged (for example sewage effluent, trade effluent etc.).
- (e) Insert name or description of waters (for example, river or tributary thereof, whether tidal or non tidal, estuarial, coastal or underground) or land into or on to which matter is proposed to be discharged.
- (f) Specify (by reference to identifiable geographical features or to Ordnance Map national grid co-ordinates, followed by name of district) the place at which it is proposed to make the discharge.
- (g) Insert address of the premises from which the discharge will be made.
- (h) Insert address to which representations should be made.
- (i) Insert the date six weeks from the date on which the notice is published in the London Gazette (or, in Scotland, the Edinburgh Gazette—see section 106(8) of the Act).
- (j) Insert reference number and/or letters.
- (k) Insert the address of a place within the locality of the point of discharge.

2538

PUBLIC HEALTH, ENGLAND AND WALES
PUBLIC HEALTH, SCOTLAND

19th June 1984.

Patrick Jenkin,
Secretary of State for
the Environment.

21st June 1984.

Nicholas Edwards,
Secretary of State for
Wales.

22nd June 1984.

George Younger,
Secretary of State for
Scotland.

EXPLANATORY NOTE

(This note is not part of the regulations.)

Part II of the Control of Pollution Act 1974 is concerned with pollution of water. It provides for the giving of consent for discharges of effluent and other matter.

These regulations make ancillary provision in connection with such consents.

Applications for consent are generally to be made to, and determined by, water authorities in England and Wales and river purification authorities in Scotland: but under section 36(6)(b) of the Act a person who has made representations about an application may ask the Secretary of State to direct that the application in question be referred to him for decision. Regulation 3 prescribes the manner in which such a request is to be made.

Section 36 of the Act requires an authority to give publicity to applications for consent. Regulation 4 modifies the operation of section 36 where the Secretary of State has directed that an application be referred to him for decision. For example, the water authority is, in certain circumstances, required to publish in newspapers a notice in the form set out in the Schedule in respect of the application.

Regulation 5 is concerned with requests to the Secretary of State by an applicant or an authority to be heard upon any application which the Secretary of State is to determine. A request to be heard must be made in writing within 28 days of the day on which the applicant is informed by the authority that his application has been transmitted to the Secretary of State for decision.

Regulation 6 lays down a prescribed period for applying to the Secretary of State under section 42 for exemption from the statutory publicity requirements relating to applications and consents. In general, applications must be made within a 28 day period beginning 21 days before the making of the application for consent, but for transitional purposes a longer period is allowed.

Regulation 7 lays down the procedure for appeals to the Secretary of State against decisions of a water authority or a river purification authority on the grounds, for example, that it has withheld consent unreasonably or imposed unreasonable conditions upon a consent or has failed to reach a decision within the period laid down by the Act. The Secretary of State may reach a conclusion on the documents put before him by the interested parties. He is, however, required to hold a local inquiry or give the appellant and the authority the right to be heard by a person appointed by him if either party requires him not to determine the case without further investigation.

Transitional provision is made as respects certain cases under existing legislation.

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