
STATUTORY INSTRUMENTS

1996 No. 2971

**The Control of Pollution (Applications,
Appeals and Registers) Regulations 1996**

Citation, commencement and interpretation

1. –

(1) These Regulations may be cited as the Control of Pollution (Applications, Appeals and Registers) Regulations 1996 and shall come into force on 31st December 1996.

(2) In these Regulations—

“discharge consent” has the same meaning as in section 91(8)(1) of the Water Resources Act 1991;

“register” means a register maintained by the Agency under section 190 of that Act (pollution control registers).

Advertisements

2. –

(1) Subject to regulation 4, an application for—

- (a) a discharge consent or the variation of a discharge consent;
- (b) a consent for the purposes of section 89(4)(a) of the Water Resources Act 1991 (consents for the deposit of solid refuse from mines or quarries on land near inland freshwaters); or
- (c) a consent for the purposes of section 90(1) or (2) of that Act (consents for the removal of deposits or for the cutting or uprooting of vegetation in or near inland freshwaters),

shall be advertised in accordance with the following provisions of this regulation and regulation 3.

(2) Notice of the application shall be published—

- (a) in one or more newspapers circulating in—
 - (i) the locality in which the activities which are the subject matter of the application are proposed to be carried on; and
 - (ii) the locality in which the controlled waters which may be affected by the proposed activities are situated; and
- (b) in the London Gazette.

(3) Subject to paragraph (4) below, the notice shall—

- (a) state the name of the applicant;
- (b) specify where the activities which are the subject matter of the application are proposed to be carried on;
- (c) describe briefly the nature of the proposed activities;

- (d) state where the register containing information about the application may be inspected, the times at which the register is open for inspection and that the register may be inspected free of charge; and
- (e) explain that any person may make representations in writing to the Agency, specify when the period allowed for making representations ends and give the address of the Agency to which representations are to be sent.

(4) Nothing in paragraph (3) above shall require the disclosure of any information which is not to be included in a register by virtue of section 191A or 191B of the Water Resources Act 1991⁽⁹⁾ (exclusion from registers of information affecting national security and of certain confidential information).

Timing of advertisements

3. –

(1) An application to which regulation 2 applies shall be advertised in accordance with paragraph (2) of that regulation within the period of 28 days beginning 14 days after the relevant date.

(2) Subject to paragraphs (3) to (5) below, the relevant date in relation to an application shall be the date on which the application is received by the Agency.

(3) In a case where the Agency has notified the applicant within 14 days of the receipt of the application that it refuses to proceed with the application until information required by section 90A(4)⁽¹⁰⁾ of, or paragraph 1(3) or (4) of Schedule 10⁽¹¹⁾ to, the Water Resources Act 1991 (duty to provide Agency with information) is provided, the relevant date shall be the date on which the Agency is finally provided with the information required.

(4) In a case where a matter falls to be determined under section 191A of the Water Resources Act 1991 (exclusion from registers of information affecting national security), the relevant date shall be the date on which the Secretary of State notifies the applicant of his determination.

(5) In a case where a matter falls to be determined under section 191B of the Water Resources Act 1991 (exclusion from registers of certain confidential information), the relevant date shall be—

- (a) if the Agency is treated by virtue of section 191B(3) of that Act as having determined that the information in question is commercially confidential, the date on which the period of 14 days mentioned in section 191B(3) expires;
- (b) if the Agency determines under section 191B(2) or (4) of that Act that the information in question is commercially confidential, the date on which the Agency notifies the applicant of its determination;
- (c) if the Agency determines under section 191B(2) or (4) of that Act that the information in question is not commercially confidential—
 - (i) the date on which the period for appealing expires without an appeal having been made;
 - (ii) the date on which the Secretary of State notifies the applicant of his final determination of the appeal; or
 - (iii) the date on which the appeal is withdrawn.

(6) Where the relevant date for the purposes of this regulation in relation to an application is later than the date on which the application is received, a period of four months beginning with the relevant date shall be substituted for the period of four months specified in paragraph 3(2) of

⁽⁹⁾ Inserted by paragraph 170 of Schedule 22 to the Environment Act 1995.

⁽¹⁰⁾ Inserted by paragraph 142 of Schedule 22 to the Environment Act 1995.

⁽¹¹⁾ Substituted by paragraph 183 of Schedule 22 to the Environment Act 1995.

Schedule 10 to the Water Resources Act 1991 (failure to determine application within four months or longer period agreed with applicant).

Exemption from advertising requirements

4. The Agency may determine that an application is not required to be advertised if it appears to the Agency that it is appropriate to dispense with advertising the application because—

- (a) section 191A of the Water Resources Act 1991 (exclusion from registers of information affecting national security) applies; or
- (b) the Agency considers that the activities which are the subject matter of the application are unlikely to have an appreciable effect on controlled waters in the locality in which those activities are proposed to be carried on; or
- (c) the application is made before 1st April 1997 and it relates to discharges of a kind which the applicant, or a predecessor of his, was authorised to make by virtue of a consent to which paragraph 21 of Schedule 23 to the Environment Act 1995 applied but notice in accordance with sub-paragraph (2)(b)(ii) of that paragraph was not given by him or his predecessor,

and, in any case where the Agency so determines, the application shall be exempt from the requirements of section 90A(1)(b) of, or, as the case may be, paragraph 1(1)(b) of Schedule 10 to, the Water Resources Act 1991 (requirement to advertise applications).

Consultation

5. –

(1) Subject to paragraph (3) below, the persons to be consulted under paragraph 2 of Schedule 10 to the Water Resources Act 1991 (consultation in connection with applications) in relation to an application for, or for the variation of, a discharge consent are—

- (a) every local authority or water undertaker within whose area any of the proposed discharges are to be made;
- (b) each of the Ministers if any of the proposed discharges are to be made into coastal waters, relevant territorial waters or waters outside the seaward limits of relevant territorial waters;
- (c) the harbour authority within the meaning of section 57(1) of the Harbours Act 1964⁽²⁾ if any of the proposed discharges are to be made into a harbour managed by the authority; and
- (d) the local fisheries committee, if any of the proposed discharges are to be made into relevant territorial waters or coastal waters within the sea fisheries district of that committee.

(2) The specified period for notification of those persons under paragraph 2 of Schedule 10 to the Water Resources Act 1991 (consultation in connection with applications) is the period of 14 days beginning with the relevant date and, for this purpose, “relevant date” has the same meaning as in regulation 3.

(3) The requirements of paragraph 2 of Schedule 10 to the Water Resources Act 1991 (consultation in connection with applications) shall not apply in relation to any of the bodies mentioned in paragraph (1)(a), (c) or (d) above—

- (a) in so far as they would require the disclosure of any information which is not to be included in a register by virtue of section 191A or 191B of the Water Resources Act 1991 (exclusion from registers of information affecting national security and of certain confidential information);

(2) 1964 c. 40; to which there are amendments not relevant to these Regulations.

(b) in relation to an application for, or for the variation of, a discharge consent which need not be advertised as a result of an exemption under regulation 4.

(4) A period of six weeks beginning with the last date on which the making of the application was advertised in pursuance of paragraph 1(1)(b) of Schedule 10 to the Water Resources Act 1991 shall be substituted for the period specified in paragraph 2(6)(b) of that Schedule (period allowed for making representations).

Transmitted applications

6. –

(1) The following provisions of this regulation shall apply where an application for, or for the variation of, a discharge consent is transmitted to the Secretary of State under paragraph 5(1) of Schedule 10 to the Water Resources Act 1991 (reference to the Secretary of State of certain applications for consent).

(2) Paragraph 2 of Schedule 10 to the Water Resources Act 1991 (consultation in connection with applications) shall apply subject to the modification that representations made to the Agency within the period allowed for making representations shall, instead of being considered by the Agency, be sent by the Agency to the Secretary of State and shall be considered by him along with any representations made by the Agency.

(3) Any request to be heard by the applicant or the Agency with respect to the application shall be made in writing to the Secretary of State within the period of 28 days beginning with the day on which the applicant is informed by the Agency of the transmission of his application to the Secretary of State.

Discharge consents without applications

7. The provisions of Schedule 1 to these Regulations shall apply where the Agency gives a discharge consent under paragraph 6 of Schedule 10 to the Water Resources Act 1991 (discharge consents without applications).

Appeals

8.—(1) A person who wishes to appeal to the Secretary of State under section 91(12) or 191B(5) of the Water Resources Act 1991 (appeals in respect of consents under Chapter II of Part III and appeals in relation to information which the Agency has determined is not commercially confidential) shall give the Secretary of State notice of the appeal.

(2) The notice of appeal shall—

- (a) specify the grounds of appeal; and
- (b) indicate whether the appellant wishes the appeal to be determined on the basis of a hearing or written representations.

(3) The notice of appeal shall be accompanied by copies of any application, consent, correspondence, decision, notice or other document relevant to the appeal.

(4) At the same time as the appellant gives notice of the appeal to the Secretary of State, the appellant shall send the Agency a copy of his notice of appeal, together with a list of the documents provided to the Secretary of State under paragraph (3) above.

(5) If the appellant wishes at any time to withdraw his appeal he shall do so by notice informing the Secretary of State and shall send a copy of the notice to the Agency.

(12) Relevant amendments were made by paragraph 143 of Schedule 22 to the Environment Act 1995.

Time limit for bringing appeal

9.—(1) Subject to the following provisions of this regulation, notice of appeal in accordance with regulation 8(1) shall be given—

- (a) in the case of an appeal against the revocation of a consent, before the revocation takes effect;
- (b) in the case of an appeal against an enforcement notice, before the expiry of the period of 21 days beginning with the date on which the enforcement notice is received;
- (c) in the case of an appeal against a determination under section 191B(2) or (4) of the Water Resources Act 1991 (exclusion from registers of certain confidential information) that information is not commercially confidential, before the expiry of the period of 21 days beginning with the date on which the appellant is notified of the determination; and
- (d) in any other case, before the expiry of the period of three months beginning with—
 - (i) the date on which the appellant is notified of the decision which is the subject matter of the appeal; or
 - (ii) if paragraph 3(2) of Schedule 10 to the Water Resources Act 1991(3) (failure to determine application within 4 months or longer period agreed with applicant) applies, the date on which the applicable period under paragraph 3(2) expires.

(2) Subject to paragraph (3) below, the Secretary of State may allow notice of appeal to be given after the expiry of the relevant period mentioned in paragraph (1) above.

(3) Paragraph (2) above shall not apply in the case of an appeal against—

- (a) a decision to revoke a discharge consent;
- (b) a decision to modify the conditions of any such consent;
- (c) a decision to provide that any such consent which was unconditional shall be subject to conditions;
- (d) a determination under section 191B(2) or (4) of the Water Resources Act 1991 (exclusion from registers of certain confidential information) that information is not commercially confidential.

Action upon receipt of notice of appeal

10.—(1) Subject to paragraph (5) below, the Agency shall, within 14 days of receipt of the copy of the notice of appeal in accordance with regulation 8(4)—

- (a) in the case of an appeal against a decision—
 - (i) to revoke a discharge consent; or
 - (ii) to modify the conditions of any such consent, or to provide that any such consent which was unconditional shall be subject to conditions, unless in either case the decision was made in response to an application for a variation,give notice of the appeal to any person who appears to the Agency likely to have a particular interest in its subject matter; and
- (b) in any other case give notice of the appeal—
 - (i) to any person who made representations or objections to the Agency with respect to the grant or variation of the consent; and

(3) Paragraph 3(2) applies in relation to applications for a variation of a discharge consent as well as to applications for a discharge consent (see paragraph 10(2) of Schedule 10 to the Water Resources Act 1991 and see paragraph 183 of Schedule 22 to the Environment Act 1995 (c. 25) for the substituted Schedule 10).

- (ii) to any person who was required to be consulted in relation to the grant or variation of the consent under paragraph 2(1) or 6(4) of Schedule 10 to the Water Resources Act 1991 pursuant to regulation 5(1) or paragraph 3(1) of Schedule 1 to these Regulations.
- (2) A notice under paragraph (1) above shall—
- (a) inform the person on whom it is served that an appeal to the Secretary of State has been made; and
 - (b) state—
 - (i) that any representations made to the Secretary of State in writing by the recipient of the notice will be considered by the Secretary of State if they are made within the period of 21 days beginning with the date of receipt of the notice;
 - (ii) that copies of the representations will be sent to the appellant and the Agency;
 - (iii) that copies of the representations will be placed on registers maintained under section 190 of the Water Resources Act 1991 (pollution control registers);
 - (iv) that any person who makes any such representations will be informed about the hearing of the appeal if there is to be a hearing held wholly or partly in public, and shall be accompanied by a copy of the notice of appeal.
- (3) The Agency shall, within 14 days of sending a notice under paragraph (1) above, notify the Secretary of State of the name and address of every person who was sent such a notice in relation to the appeal and the date on which it was sent.
- (4) Where an appeal is withdrawn after a notice under paragraph (1) above has been sent, the Agency shall inform every person who was sent such a notice in relation to the appeal.
- (5) This regulation shall not apply in relation to an appeal under section 91(1)(h)(**13**) or 191B(5) of the Water Resources Act 1991 (appeals against enforcement notices and appeals against determinations that information is not commercially confidential).

Written representations

- 11.**—(1) Where the appellant informs the Secretary of State that he wishes the appeal to be disposed of on the basis of written representations, the Agency shall submit any written representations to the Secretary of State—
- (a) in the case of an appeal against an enforcement notice, not later than 14 days after receiving a copy of the notice of appeal in accordance with regulation 8(4); and
 - (b) in all other cases, not later than 28 days after receiving a copy of the notice of appeal in accordance with regulation 8(4).
- (2) The appellant shall make any further representations by way of reply not later than 14 days after receiving the Agency’s representations under paragraph (1) above.
- (3) The Secretary of State shall send to the appellant and the Agency copies of any representations made to him in relation to the appeal under regulation 10 and shall allow them each a period of 14 days from the date of the receipt of those copies in which to make representations thereon.
- (4) The Secretary of State may in any particular case—
- (a) set shorter or longer time limits than those mentioned in this regulation;
 - (b) allow the parties to make representations in addition to those mentioned in paragraphs (1) to (3) above.

(5) Any representations made by a party to the appeal shall be dated with the date on which they are submitted to the Secretary of State.

(6) Where either party to the appeal submits any representations to the Secretary of State they shall at the same time send a copy to the other party.

Hearings

12.—(1) The Secretary of State shall give the appellant and the Agency at least 28 days notice (unless they agree to a shorter period of notice) of the date, time and place fixed for a hearing in relation to an appeal under section 91 or 191B(5) of the Water Resources Act 1991 (appeals in respect of consents under Chapter II of Part III and appeals in relation to information which the Agency has determined is not commercially confidential).

(2) Subject to paragraph (4) and (5) below, in the case of a hearing which is to be held wholly or partly in public, the Secretary of State shall, at least 21 days before the date fixed for the hearing—

- (a) publish a copy of the notice given under paragraph (1) above in a newspaper circulating in the locality which he considers may be affected by any matter which falls to be determined in relation to the appeal; and
- (b) serve a copy of the notice given under paragraph (1) above on every person who has made representations or objections in writing to the Secretary of State under regulation 10 in relation to the appeal.

(3) The Secretary of State may vary the date fixed for the hearing and paragraphs (1) and (2) above shall apply, with necessary modifications, to the variation of the date.

(4) The Secretary of State may also vary the time or place for the holding of a hearing but shall give such notice of any such variation as appears to him to be reasonable.

(5) Paragraph (2) above shall not apply in the case of a hearing in relation to an appeal under section 191B(5) of the Water Resources Act 1991 (appeals in relation to information which the Agency has determined is not commercially confidential).

(6) The persons entitled to be heard at a hearing are—

- (a) the appellant;
- (b) the Agency; and
- (c) any person required under regulation 10(1)(b)(ii) to be notified of the appeal.

(7) Nothing in paragraph (6) above shall prevent the person appointed to conduct the hearing of the appeal from permitting any other person to be heard at the hearing and such permission shall not be unreasonably withheld.

(8) After the conclusion of a hearing, the person appointed to conduct the hearing shall, unless he was appointed under section 114(1)(a) of the Environment Act 1995 (power of Secretary of State to delegate his functions of determining appeals), make a report in writing to the Secretary of State which shall include his conclusions and his recommendations or his reasons for not making any recommendations.

Notification of determination

13.—(1) The Secretary of State shall notify the appellant in writing of his determination of the appeal and shall provide him with a copy of any report mentioned in regulation 12(8).

(2) The Secretary of State shall at the same time send—

- (a) a copy of the documents mentioned in paragraph (1) above to the Agency and to any persons required under regulation 10(1)(b)(ii) to be notified of the appeal; and

- (b) a copy of his determination of the appeal to any other person who made representations to the Secretary of State under regulation 10 and, if a hearing was held, to any other person who made representations in relation to the appeal at the hearing.

Consents for discharges by the Agency

14.—(1) Section 88 of the Water Resources Act 1991 (defence to principal offences in respect of authorised discharges) shall have effect in relation to cases in which consents for the purposes of subsection (1)(a) of that section are required by the Agency as if for subsection (2) there were substituted—

“(2) Schedule 2 to the Control of Pollution (Applications, Appeals and Registers) Regulations 1996 shall apply with respect to the making of applications by the Agency for consents under this Chapter for the purposes of subsection (1)(a) above and with respect to the giving, revocation and modification of such consents.”

(2) Schedule 2 to these Regulations (which deals with consents for discharges by the Agency) shall have effect.

Pollution control registers

15. Subject to sections 191A and 191B of the Water Resources Act 1991 and regulations 16 and 17, registers maintained by the Agency under section 190(14) of that Act (pollution control registers) shall contain full particulars of—

- (a) notices of water quality objectives and other notices served under section 83 of that Act;
- (b) applications made for consents, or for the variation of consents, under Chapter II of Part III of that Act, together with information provided in connection with such applications;
- (c) consents given under that Chapter, the conditions to which the consents are subject and any variation of the consents;
- (d) the date and time of each sample of water or effluent taken by the Agency for the purposes of the water pollution provisions of that Act (including details of the place where it was taken) and the result of the analysis of each sample and the steps, if any, taken in consequence by the Agency;
- (e) information corresponding to that mentioned in paragraph (d) above with respect to samples of water or effluent taken by any other person, and the analysis of those samples, acquired by the Agency from that person under arrangements made by the Agency for the purposes of any of the water pollution provisions of that Act, including any steps taken by that person in consequence of the results of the analysis of any sample;
- (f) prohibition notices served under section 86(1) of that Act;
- (g) enforcement notices served under section 90B(15) of that Act;
- (h) revocations of discharge consents under paragraph 7 of Schedule 10 to that Act;
- (i) notices of appeal under section 91 of that Act, correspondence provided to the Secretary of State under regulation 8(3), the decisions or notices which are the subject matter of the appeals, representations made under regulation 10, written notifications of the Secretary of State’s determination of appeals and reports accompanying any such notification;
- (j) directions given by the Secretary of State in relation to the Agency’s functions under the water pollution provisions of that Act, with the exception of directions under

(14) Relevant amendments were made by paragraph 169 of Schedule 22 to the Environment Act 1995.

(15) Inserted by paragraph 142 of Schedule 22 to the Environment Act 1995.

section 191A(2) of that Act (directions in relation to information affecting national security);

- (k) convictions, for offences under Part III of that Act, of persons who have the benefit of discharge consents, including the name of the offender, the date of conviction, the penalty imposed, the costs, if any, awarded against the offender and the name of the Court;
- (l) returns and other information about the nature, origin, composition, temperature, volume and rate of discharges provided to the Agency in pursuance of conditions of discharge consents; and
- (m) information which was entered on the registers under the Control of Pollution (Registers) Regulations 1989(4).

Entry of particulars on register, removal of certain particulars and indexing of registers

16.—(1) Subject to sections 191A and 191B of the Water Resources Act 1991 and paragraph (2) below, where registers are by virtue of regulation 15 to contain any particulars, those particulars shall be entered on the registers—

- (a) if they relate to an application or notice which is to be advertised under regulation 2(2), paragraph 1(1) of Schedule 1 or paragraph 1(2) of Schedule 2, before the beginning of the period of 28 days during which the application or notice is required to be advertised;
- (b) if they relate to an enforcement notice served under section 90B of that Act, not later than 7 days after it is served;
- (c) in all other cases, not later than 28 days after those particulars become available to the Agency.

(2) Where an application for a consent, or for the variation of a consent, is withdrawn at any time before it is determined—

- (a) no further particulars relating to the application shall be entered on the registers after the application is withdrawn; and
- (b) all particulars relating to the application shall be removed from the registers not less than 2 months, and not more than 3 months, after the application is withdrawn.

(3) The Agency shall keep records in each register showing the dates on which particulars are entered on that register.

(4) Each register shall be indexed in a way which facilitates access to particulars entered on it.

Period after which information may be removed from pollution control registers

17.—(1) Nothing in regulation 15 shall require the Agency to keep on a register—

- (a) monitoring information more than four years after that information was entered on the register; or
- (b) other information which has been superseded by later information more than four years after that later information was entered on the register.

(2) In this regulation “monitoring information” means information entered on the register by virtue of regulation 15(d), (e) or (l).

Revocation of existing regulations

- 18.—(1) Subject to paragraph (2) below, the following regulations⁽⁵⁾ are hereby revoked—
- (a) the Control of Pollution (Consents for Discharges etc.) (Secretary of State Functions) Regulations 1989⁽⁶⁾;
 - (b) the Control of Pollution (Discharges by the National Rivers Authority) Regulations 1989⁽⁷⁾;
 - (c) the Control of Pollution (Registers) Regulations 1989⁽⁸⁾.
- (2) Subject to paragraph (3) below, nothing in paragraph (1)(a) or (b) above shall affect—
- (a) the application of the Control of Pollution (Discharges by the National Rivers Authority) Regulations 1989, and regulations 2 to 6 of the Control of Pollution (Consents for Discharges etc.) (Secretary of State Functions) Regulations 1989, in relation to any application made under paragraph 1 of Schedule 10 to the Water Resources Act 1991 (applications for discharge consents) before 31st December 1996 or any consent given under paragraph 5 of that Schedule (discharge consents granted without applications) before that date; or
 - (b) the application of regulations 2 and 7 of the Control of Pollution (Consents for Discharges etc.) (Secretary of State Functions) Regulations 1989 (appeals in respect of consents under Chapter II of Part III of that Act), in relation to any appeal under that section made in relation to a decision taken before 31st December 1996.
- (3) Paragraph (2)(a) above shall not apply in relation to an application made under paragraph 1 of Schedule 10 to the Water Resources Act 1991 before 31st December 1996 if—
- (a) the application relates to discharges of a kind which the applicant, or a predecessor of his, was authorised to make by virtue of a consent to which paragraph 21 of Schedule 23 to the Environment Act 1995 (transitional provisions in relation to discharge consents) applied; and
 - (b) notice in accordance with sub-paragraph (2)(b)(ii) of that paragraph was not given by him or his predecessor.

Signed by authority of the Secretary of State for the Environment

Department of the Environment
25th November 1996

Robert Jones
Minister of State,

⁽⁵⁾ Relevant amendments were made to the listed regulations by paragraph 233 of Schedule 22 to the Environment Act 1995 (c. 25) and see also paragraph 1(1) and (3) of Schedule 2, and Part I of Schedule 3, to the Water Consolidation (Consequential Provisions) Act 1991 (c. 60) and article 4 of S.I. 1996/2909 (C. 87).

⁽⁶⁾ S.I. 1989/1151.

⁽⁷⁾ S.I. 1989/1157.

⁽⁸⁾ S.I. 1989/1160.

Signed by authority of the Secretary of State for Wales

Welsh Office
26th November 1996

Jonathan Evans
Parliamentary Under Secretary of State,