

SCHEDULES

SCHEDULE 12

Article 44

PROCEDURE FOR THE DISCHARGE OF REQUIREMENTS

Interpretation

1. 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; and

“requirement consultee” means any body named in a requirement as a body required to be consulted by the relevant authority in discharging that requirement.

Applications made under requirements

2.—(1) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement (including consent, agreement or approval in respect of part of a requirement) the relevant authority must give notice to the undertaker of their decision on the application within a period of 12 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 sub-paragraph (2); or
- (c) such longer period as may be agreed in writing by the undertaker and the relevant authority,

whichever is the latest.

(2) Subject to paragraph (4), 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) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must:

- (a) include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are; and
- (b) include confirmation that the application has been notified and provided to the requirement consultees in accordance with sub-paragraph (5), if the provision governing or requiring the application specifies that consultation with a requirement consultee is required. Such confirmation to include contact details for the requirement consultees.

(4) Where an application has been made to the relevant authority for any consent, agreement or approval required by a requirement included in this Order, and—

- (a) the relevant authority does not determine the application within the period set out in sub-paragraph (1) and such application is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give

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rise to any materially new or materially different environmental effects compared to those in the environmental statement; or

- (b) the relevant planning authority determines during the period set out in sub-paragraph (1) that it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement,

then the application is to be taken to have been refused by the relevant authority at the end of that period.

(5) At the same time as submitting an application to the relevant planning authority for any consent, agreement or approval required by a requirement, the undertaker must also give notice of such application, and provide a copy of the application, to any requirement consultee, if the provision governing or requiring the application specifies that consultation with a requirement consultee is required. As part of the notification to any requirement consultee, the undertaker must include a statement that refers to:

- (a) the timeframes in which the requirement consultee can request any further information from the undertaker (via the relevant planning authority) as prescribed in paragraph 3(6)(a) and the consequences of the failure to meet those timescales as prescribed in paragraph 3(6)(b); and
- (b) the timeframes in which the requirement consultee must give notice to the relevant planning authority of its comments on the application as prescribed in paragraph 3(6)(d) and the consequences of the failure to meet those timescales as prescribed in paragraph 3(6)(e).

Further information and consultation

3.—(1) In relation to any application to which this Schedule applies, the relevant authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required the relevant authority must, within 14 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant authority must notify the undertaker in writing specifying any further information requested by the requirement consultee within 15 working days of receipt of such a request and in any event within 35 working days of receipt of the application or such longer period as may be agreed in writing by the undertaker and the relevant authority.

(4) In the event that the relevant authority does not give notification as specified in sub-paragraph (2) or (3) it is to be deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

(5) Where further information is requested under this paragraph 3 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 2(1)(b), paragraph 2(4) and paragraph 3.

(6) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required:

- (a) A requirement consultee is required to notify the relevant planning authority in writing specifying any further information it considers necessary in order to comment on the application within 10 working days of receipt of the application pursuant to paragraph 2(5);

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- (b) If a requirement consultee does not give notification as specified in sub-paragraph (a) it is deemed to have sufficient information to comment on the application and is not thereafter entitled to request further information without the prior agreement of the undertaker and relevant planning authority;
- (c) At the same time as providing any further information to the relevant planning authority pursuant to a request under paragraph (2), if the undertaker has been notified of further information requested by a requirement consultee, the undertaker must also give any further information to the requirement consultee;
- (d) A requirement consultee is required to notify the relevant planning authority in writing of any comments on the application within 15 working days of receipt of the application from the undertaker pursuant to paragraph 2(5), or the receipt of any further information pursuant to sub-paragraph (c) (where further information has been requested); and
- (e) If a requirement consultee does not give notification as specified in sub-paragraph (d) it is deemed to have no comments on the application.

Appeals

- 4.—(1) The undertaker may appeal in the event that—
- (a) the relevant authority refuses (including a deemed refusal pursuant to paragraph 2(4)) 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 3 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 requirement consultee required to be consulted pursuant to the article or requirement which is the subject of the appeal (together with the undertaker, these are the “appeal parties”);
 - (b) the Secretary of State is to appoint a person within 20 working days of 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, the date of such notification being the “start date” for the purposes of this sub-paragraph (2);
 - (c) the relevant authority and any consultee required to be consulted pursuant to the article or requirement which is the subject of the appeal must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date 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;
 - (d) the appeal parties must make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to paragraph (c) above;
 - (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 30 working days of the deadline for the receipt of counter-submissions pursuant to paragraph (d); and
 - (f) the appointment of the person pursuant to paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

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(3) In the event that the appointed person considers that further information is necessary to enable him to consider the appeal he must, within five working 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 consultee required to be consulted pursuant to the article or requirement the subject of the appeal 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 10 working days of the specified date but otherwise is to be in accordance with the process and time limits set out in paragraphs (2)(c) to (2)(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 proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(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 to be deemed to be an approval for the purpose of Schedule 2 (requirements) 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.