
DRAFT STATUTORY INSTRUMENTS

2010 No.

The Environmental Permitting
(England and Wales) Regulations 2010

PART 2

Environmental Permits

CHAPTER 5

Appeals in relation to environmental permits

Appeals to an appropriate authority

31.—(1) In this regulation, “application” has the meaning given in paragraph 1 of Part 1 of Schedule 5.

(2) Subject to paragraphs (4) and (5), the following persons may appeal to the appropriate authority—

- (a) a person whose application is refused;
- (b) a person who is aggrieved by a decision to impose an environmental permit condition following that person’s application;
- (c) a person who is aggrieved by a decision to impose a condition on an environmental permit held by that person—
 - (i) as a result of a regulator-initiated variation, or
 - (ii) to take account of the partial transfer, partial revocation or partial surrender of that environmental permit;
- (d) a person who is aggrieved by the deemed withdrawal under paragraph 4(2) of Part 1 of Schedule 5 of that person’s duly-made application;
- (e) a person who is aggrieved by a decision relating to an environmental permit held by that person not to authorise the closure procedure mentioned in—
 - (i) Article 13 of the Landfill Directive after a request referred to in Article 13(a)(ii) of that Directive, or
 - (ii) Article 12 of the Mining Waste Directive after a request referred to in Article 12(2)(b) of that Directive;
- (f) a person on whom an enforcement notice, a revocation notice, suspension notice, prohibition notice, landfill closure notice or mining waste facility closure notice is served.

(3) In paragraph (2), “person” includes a person to whom an environmental permit is transferred after—

- (a) an application or a decision mentioned in that paragraph is made, or
- (b) a notice mentioned in that paragraph is served.

(4) Paragraph (2) does not apply where—

- (a) the relevant decision or notice implements a direction of the appropriate authority given under—
 - (i) regulation 61(1),
 - (ii) regulation 62(1) or (6), or
 - (iii) paragraph (7) of this regulation; or
 - (b) an application for the grant or variation of an environmental permit in relation to a Category A mining waste facility that is an existing mining waste facility is refused pursuant to paragraph 14(2) of Schedule 20.
- (5) Paragraph (2)(f) does not apply to the extent that a revocation notice or suspension notice is served because of a failure to pay a charge prescribed in a scheme made under regulation 65(1) in respect of the subsistence of an environmental permit.
- (6) On the determination of an appeal in respect of a notice, the appropriate authority—
- (a) may quash or affirm the notice; and
 - (b) if it affirms the notice, may affirm it, with or without modifications.
- (7) When determining an appeal in respect of a decision, the appropriate authority has the same powers as the regulator had when making the decision.
- (8) On the determination of an appeal in respect of a decision, unless the appropriate authority affirms the decision the authority must direct the regulator to give effect to its determination when sending a copy of it to the regulator under paragraph 6(2)(a) of Schedule 6.
- (9) Except as otherwise provided by this regulation—
- (a) an appeal does not have the effect of suspending a decision or notice; but
 - (b) if an appeal is brought against a revocation notice, the notice does not take effect until the final determination or the withdrawal of the appeal.
- (10) Subject to paragraph (13), paragraph (9)(b) does not apply if the revocation notice—
- (a) relates to any part of an environmental permit (or if applicable, the whole permit) that authorises the carrying on of a stand-alone water discharge activity; and
 - (b) states that, in the opinion of the regulator, the revocation is necessary for the purpose of preventing or, where that is not practicable, minimising, pollution.
- (11) If an appeal is brought under paragraph (2)(c)(i) in respect of a decision to impose a condition on an environmental permit in relation to a stand-alone water discharge activity, the imposition of the environmental permit condition does not take effect, subject to paragraphs (12) and (13), until the final determination or the withdrawal of the appeal.
- (12) Paragraph (11) does not apply if the notice effecting the decision includes a statement that, in the opinion of the regulator, the imposition of the condition is necessary for the purpose of preventing or, where that is not practicable, minimising, pollution.
- (13) If the appropriate authority, on the application of the appellant, determines that the regulator acted unreasonably in excluding the application of paragraph (9)(b) or (11), then—
- (a) if the appeal is still pending at the end of the day on which the determination is made, paragraph (9)(b) or (11) applies to the decision or notice from the end of that day;
 - (b) the appellant is entitled to recover compensation from the regulator in respect of any loss suffered in consequence of that exclusion; and
 - (c) any dispute as to a person's entitlement to such compensation or as to the amount of it is to be determined by a single arbitrator appointed—
 - (i) by agreement between the parties to the dispute; or
 - (ii) in the absence of agreement, by the appropriate authority.

(14) Schedule 6 (appeals to the appropriate authority) has effect in relation to the making and determination of appeals under this regulation.