
STATUTORY INSTRUMENTS

2003 No. 164

The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003

PART III

**RELEVANT PROJECTS WHICH REQUIRE
CONSENT UNDER THESE REGULATIONS**

Restriction on abstracting or impounding water

- 9.**—(1) Subject to paragraphs (2) and (3), no person shall—
- (a) begin a relevant project except in pursuance of a consent granted under regulation 10 by the Agency, or
 - (b) carry it out except in accordance with the provisions of that consent.
- (2) Consent under regulation 10 is not needed in relation to a project if an abstraction or impounding licence is required.
- (3) A person may rely on a consent granted under regulation 10 even though he is not the person to whom the consent was granted.
- (4) A person who contravenes paragraph (1) shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.

Agency's decision on an application for consent

10. On an application made in writing to the Agency for a consent for the purposes of regulation 9, the Agency may, subject to the requirements of Part II—

- (a) grant a consent containing such provisions as it considers appropriate; or
- (b) refuse consent,

taking into account any significant effects the relevant project is likely to have on the environment.

Appeals in relation to consents

11.—(1) Subject to the following provisions of this regulation, where an application has been made to the Agency for a consent under regulation 10, the applicant may by notice in writing appeal to the appropriate Minister if—

- (a) the applicant is dissatisfied with the decision of the Agency on the application; or
- (b) the Agency fails to give notice to the applicant of the Agency's decision within a period of three months from the date of receipt of the application or within such extended period as may be agreed in writing between the applicant and the Agency.

(2) A notice of appeal under paragraph (1) shall be served within a period of twenty-eight days from—

- (a) the date on which the decision to which it relates was notified to the applicant; or
- (b) the end of the period referred to in paragraph (1)(b),

whichever is the later.

(3) The applicant shall serve a copy of the notice of appeal on the Agency before the expiry of the period of twenty-eight days referred to in paragraph (2).

(4) Where any representations in writing with respect to the application were made within the period specified in accordance with regulation 7(1)(d), the Agency shall serve a copy of the notice of appeal on each of the persons who made those representations; and any person so served with a copy of the notice of appeal may make further representations to the appropriate Minister in writing within a period of twenty-one days from the date on which the copy of the notice is served on him.

(5) No appeal shall be brought by virtue of paragraph (1)(b) before the expiry of a period of four months commencing with—

- (a) the date on which an environmental statement is furnished in accordance with regulation 6(1), or
- (b) the date on which any further information requested by the Agency is provided in accordance with regulation 6(7),

whichever is the later.

(6) The appropriate Minister—

- (a) may allow or dismiss the appeal or reverse or vary any part of the decision of the 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 the appropriate Minister in the first instance.

(7) Before determining the appeal, the appropriate Minister may—

- (a) cause a local inquiry to be held; or
- (b) afford to the applicant and the Agency an opportunity of appearing before, and being heard by, a person appointed by the appropriate Minister for the purpose;

and the appropriate Minister shall act as mentioned in sub-paragraph (a) or (b) if so requested by the applicant or the Agency.

(8) Subsections (2) to (5) of section 250 of the Local Government Act 1972(1) (local inquiries, evidence and costs) apply in relation to inquiries or other hearings under this regulation as they apply to inquiries under that section, but as if—

- (a) the references to the Minister were references to the appropriate Minister; and
- (b) the reference in subsection (4) of that section to a local authority were a reference to the Agency.

(9) The appropriate Minister, in determining the appeal, shall take into account—

- (a) any further representations in writing received by the appropriate Minister from the persons and within the period referred to in paragraph (4);
- (b) the requirements of the applicant, in so far as they appear to the appropriate Minister to be reasonable requirements.

(1) 1972 c. 70; section 250(4) was amended by Part II of Schedule 12 to the Housing and Planning Act 1986 (c. 63).

(10) Where the decision on the appeal is that a consent is to be granted, the decision shall include a direction to the Agency to grant a consent containing such provisions as may be specified in the direction.

Validity of decisions of appropriate Minister

12.—(1) Except as provided by the following provisions of this regulation, the validity of a decision of the appropriate Minister on any appeal under regulation 11 shall not be questioned in any legal proceedings whatsoever,

(2) If the Agency or the applicant desires to question the validity of the decision of the appropriate Minister on the grounds—

- (a) that the decision is not within the powers of these Regulations; or
- (b) that any of the requirements of these Regulations which are applicable to the appeal have not been complied with,

the Agency or, as the case may be, the applicant may, at any time within the period of six weeks beginning with the date on which the decision is made, make an application to the High Court under this regulation.

(3) On any application under paragraph (2), the High Court may by interim order suspend the operation of the decision to which the application relates until the final determination of the proceedings.

(4) If the High Court is satisfied, on an application under paragraph (2)—

- (a) that the decision to which the application relates is not within the powers of these Regulations; or
- (b) that the interests of the person making the application under this regulation have been substantially prejudiced by a failure to comply with any of the requirements mentioned in paragraph (2)(b) above,

the High Court may quash the decision.