

SCHEDULES

SCHEDULE 17

PROCEDURE FOR DISCHARGE OF REQUIREMENTS ETC. AND APPEALS

Appeals

- 4.—(1) Save as otherwise provided in this Order, the undertaker may appeal in the event that—
- (a) the discharging authority refuses an application for any consent, agreement or approval required or permitted by—
 - (i) a requirement included in this Order; or
 - (ii) a document referred to in any requirement included in this Order (unless such consent, agreement or approval has to be obtained by virtue of any other legal requirement); or
 - (iii) any other provision of this Order;or does not determine such an application within the time period set out; or grants it subject to conditions;
 - (b) the discharging authority issues a notice further to sections 60 and or 61 of the Control of Pollution Act 1974;
 - (c) on receipt of a request for further information pursuant to paragraph 2 of this Schedule, the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
 - (d) on receipt of any further information requested, the discharging 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 shall be as follows—
- (a) any appeal by the undertaker must be made within forty two days of the date of the notice of the decision or determination, or (where no determination has been made) expiry of the time period set out, giving rise to the appeal as referred to in paragraph (1);
 - (b) the undertaker shall submit the appeal documentation to the Secretary of State and shall on the same day provide copies of the appeal documentation to the discharging authority and any requirement consultee and shall on the same date affix a notice to a conspicuous object or objects on or near the site of the works which are the subject of such appeal which shall give details of the decision of the discharging authority and of the application and notice that an appeal has been made together with the address within the locality where appeal documents may be inspected and details of the manner in which representations on the appeal may be made;
 - (c) as soon as is practicable after receiving the appeal documentation, the Secretary of State shall appoint a person to consider the appeal (“the appointed person”) and shall notify the appeal parties of the identity of the appointed person and the address to which all correspondence for their attention should be sent;

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- (d) the discharging authority and any requirement consultee (if applicable) shall submit their written representations together with any other representations received by them pursuant to the notice of application referred to in paragraph 1 (1) or the notice of appeal referred to in paragraph 1 (2) (b) of this Schedule to the appointed person in respect of the appeal within 10 business days of the start date and shall ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties shall make any counter-submissions to the appointed person within 10 business days of receipt of written representations pursuant to paragraph (d) above; and
- (f) the appointed person shall make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.

(3) The appointment of the person pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal they shall as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) shall be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. The appointed person shall notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal shall require submission of written representations to the appointed person within 10 business days of the agreed date but shall otherwise be in accordance with the process and time limits set out in sub-paragraph (2)(c)-(e).

(6) 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 discharging 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.

(7) The appointed person may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in its sole discretion such written representations as have been sent out with the relevant time limits.

(8) 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.

(9) The decision of the appointed person on an appeal shall 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.

(10) If an approval is given by the appointed person pursuant to this Schedule, it shall be deemed to be an approval for the purpose of Schedule 3 (*requirements*) of this Order as if it had been given by the discharging authority. The discharging 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) shall not be taken to affect or invalidate the effect of the appointed person's determination.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person shall be met by the undertaker.

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(12) On application by the discharging 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 shall be made, the appointed person shall have regard to Communities and Local Government Circular 03/2009 or any circular or guidance which may from time to time replace it.