

## SCHEDULE 12

Article 47

Procedure in relation to certain approvals etc.

### Determination of applications for specified consents

1.—(1) Subject paragraph (2), where an application has been made to the discharging authority for any specified consent, the discharging authority must give notice to the undertaker of its decision on the application within a period of 8 weeks beginning with—

- (a) where no further information is requested under paragraph (3), the day immediately following that on which the application is received by the discharging authority;
- (b) where further information is requested under paragraph (3), the day immediately following that on which further information has been supplied by the undertaker; or

(2) For the 8 weeks in paragraph (1), a longer period may be substituted where agreed in writing between the undertaker and the discharging authority.

(3) Where an application has been made under paragraph (1) the discharging authority may request such reasonable further information from the undertaker as it considers is necessary to enable it to consider the application.

(4) If the discharging authority considers further information is necessary and this Order does not specify that consultation with a consultee is required, the discharging authority may notify the undertaker in writing specifying the further information required.

(5) If a provision of this Order relating to a specified consent specifies that consultation with a consultee is required, the discharging authority must issue the consultation to the consultee and may notify the undertaker in writing specifying any further information requested by the consultee.

#### Commencement Information

**11** Sch. 12 para. 1 in force at 15.9.2016, see [art. 1](#)

### Fees

2.—(1) Where an application is made to a relevant planning authority for any consent, agreement or approval required by a requirement listed in Schedule 3 (requirements) to this Order, a fee of £97 (or such other fee as may be prescribed in regulations made pursuant to sections 303 (fees for planning applications etc.) and 333(2A) (regulations and orders) of the 1990 Act for the confirmation by a local planning authority of compliance with a condition attached to a planning permission) must be paid to the discharging authority.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 4 weeks of the discharging authority failing to determine the application within 8 weeks or the period agreed under paragraph 1(2) from the date on which it is received, unless within that period the undertaker agrees in writing that the fee may be retained by the discharging authority and credited in respect of a future application.

#### Commencement Information

**12** Sch. 12 para. 2 in force at 15.9.2016, see [art. 1](#)

## Appeals

- 3.—(1) The undertaker may appeal if—
- (a) the discharging authority refuses an application for any specified consent or grants it subject to conditions;
  - (b) the discharging authority does not give notice of its decision to the undertaker within the period specified in sub-paragraph 1(1);
  - (c) having received a request for further information under paragraph 1(3) 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) having received 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 procedure for appeals is as follows—
- (a) the undertaker must submit to the Secretary of State a copy of the application submitted to the discharging authority and any supporting documents which the undertaker may wish to provide (“the appeal documents”);
  - (b) the undertaker must on the same day provide copies of the appeal documents to the discharging authority and (if applicable) the consultee;
  - (c) as soon as is practicable after receiving the appeals documents the Secretary of State must appoint a person to determine the appeal (“the appointed person”) and notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person should be sent;
  - (d) the discharging authority and (if applicable) the consultee may submit any written representations in respect of the appeal to the appointed person within 10 business days beginning with the first day immediately following the date on which the appeal parties are notified of the appointment of the appointed person 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;
  - (e) the appeal parties may make any counter-submissions to the appointed person within 10 business days beginning with the first day immediately following the date of receipt of written representations pursuant to paragraph (d) above; and
  - (f) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable.
- (3) If the appointed person considers that further information is necessary to consider the appeal, the appointed person must 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 must be submitted.
- (4) Any further information required pursuant to sub-paragraph (3) must 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.
- (5) The appeal parties may submit written representations to the appointed person concerning matters contained in the further information.
- (6) Any such representations must be submitted to the appointed person and made available to all appeal parties within 10 business days of the date mentioned in sub-paragraph (3).

**Commencement Information**

**I3** Sch. 12 para. 3 in force at 15.9.2016, see [art. 1](#)

**Outcome of Appeals**

4.—(1) On an appeal under paragraph 2, 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 the appointed person in the first instance.

(2) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed or set by the appointed person under this paragraph.

(3) The appointed person may proceed to a decision even though no written representations have been made within those time limits if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(4) The decision of the appointed person on an appeal is 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.

(5) Any approval given by the appointed person pursuant to this Schedule is deemed to be an approval for the purposes of this Order and any other enactment which required the specified consent as if it had been given by the discharging authority.

(6) 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) does not affect or invalidate the effect of the appointed person's determination.

(7) Except where a direction is given pursuant to sub-paragraph (8) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

(8) 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.

(9) In considering whether to make any such direction and the terms on which it is made, the appointed person must have regard to Communities and Local Government Circular 03/2009 or any circular or guidance which may from time to time replace it.

(10) Where the undertaker appeals under paragraph 2—

- (a) this Schedule applies instead of article 46 (arbitration); and
- (b) in respect of any specified consent required pursuant to sections 54 to 106 of the 1991 act, this Schedule applies instead of section 99 (arbitration) of that Act.

**Commencement Information**

**I4** Sch. 12 para. 4 in force at 15.9.2016, see [art. 1](#)

## Interpretation of this Schedule

### 5. In this Schedule—

“the appeal parties” means the discharging authority, the consultee and the undertaker;

“business day” means Monday to Friday excluding bank holidays;

“consultee” means any body named in a provision of this Order relating to a specified consent which is the subject of an appeal as a body to be consulted by the discharging authority in determining that specified consent;

“discharging authority” means the body responsible for determining whether a specified consent should be given or the local authority in the exercise of functions set out in sections 60 or 61 of the 1974 Act;

“specified consent” means any—

- (a) agreement, certificate, consent, permission, expression of satisfaction or other approval required by—
  - (i) a requirement listed in Schedule 3 (requirements) of this Order;
  - (ii) a document referred to in any requirement listed in Schedule 3 to this Order; and
  - (iii) article 41(3)(b) (felling or lopping of trees or shrubs); or
- (b) agreement, certificate, consent, permission, expression of satisfaction or other approval of the highway authority, street authority (where it is also the highway authority for the same area) or traffic authority required pursuant to articles—
  - (i) 11 (street works) (including pursuant to sections 54 to 106 of the 1991 Act as applied by article 11(3));
  - (ii) 12 (power to alter layout, etc. of streets);
  - (iii) 13 (construction and maintenance of new, altered or diverted streets);
  - (iv) 14 (temporary stopping up of streets and public rights of way);
  - (v) 16 (traffic regulation); or
  - (vi) 19 (authority to survey and investigate the land).

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### Commencement Information

**15** Sch. 12 para. 5 in force at 15.9.2016, see [art. 1](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The River Humber Gas Pipeline Replacement Order 2016, SCHEDULE 12.