

Draft Regulations laid before Parliament under paragraph 25(3) of Schedule 3 to the Flood and Water Management Act 2010, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2012 No. [XXXX]

WATER INDUSTRY, ENGLAND AND WALES

**The Sustainable Drainage (Appeals) (England)
Regulations 2012**

Made - - - -

Coming into force - -

1st October 2012

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The Secretary of State, in relation to drainage systems in England, in exercise of the powers conferred by sections 32 and 48(2) of, and paragraphs 4 and 25 of Schedule 3 to, the Flood and Water Management Act 2010(a), makes the following Regulations.

A draft of this instrument has been approved by a resolution of each House of Parliament pursuant to paragraph 25(3) of that Schedule.

PART 1 Introduction

Citation, application, commencement, expiry and review

1.—(1) These Regulations—

- (a) may be cited as the Sustainable Drainage (Appeals) (England) Regulations 2012;
- (b) apply in relation to drainage systems in England;
- (c) come into force on 1st October 2012; and
- (d) cease to have effect at the end of 30th September 2019.

(2) Before the end of the review period, the Secretary of State must—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) In this regulation, “review period” means the period of 5 years beginning with the day on which these Regulations come into force.

Interpretation

2. In these Regulations—

- “the Act” means the Flood and Water Management Act 2010;
- “appellant” means a developer who makes an appeal under these Regulations;
- “application for approval” means—
 - (a) an application for approval under paragraph 9 of Schedule 3, or

(a) 2010 c. 29.

- (b) that part of an application under paragraph 10 of Schedule 3 that seeks approval;
- “approval” means the approval required under paragraph 7(1) of Schedule 3 for a drainage system for construction work;
- “construction work” means construction work which has drainage implications;
- “consultee” means any person consulted by the approving body before determining an application for approval;
- “decision” means a decision of an approving body under Schedule 3 about—
 - (a) an application for approval (including a decision about conditions), or
 - (b) the duty to adopt;
- “developer”—
 - (a) in relation to a decision about an application for approval, means the person who applied for approval under paragraph 7 of Schedule 3, or
 - (b) in relation to a decision about the duty to adopt, has the meaning given in paragraph 23(2)(b) of Schedule 3;
- “notice of appeal” means a notice that complies with regulation 4(1);
- “planning appeal” means an appeal under section 78 of the Town and Country Planning Act 1990(a) in relation to an application for planning permission;
- “planning authority” means the authority which determines an application for planning permission;
- “request to adopt” means a request under paragraph 23(2)(b) of Schedule 3; and
- “Schedule 3” means Schedule 3 to the Act.

PART 2

Appeals against decisions

Appeals to the Minister

- 3.—(1) A developer may by notice appeal to the Minister(b) against a decision.
- (2) Appeals must be made in accordance with this Part.

Making an appeal

- 4.—(1) Notice of an appeal must—
 - (a) be in writing, on a form obtained from the Minister;
 - (b) state the grounds of appeal; and
 - (c) include the name, address (including any email address) and telephone number of the appellant and any agent acting for the appellant.
- (2) The notice must be sent to the Minister accompanied by—
 - (a) a statement as to whether the appellant wishes to have the appeal dealt with by way of written representations, a hearing or an inquiry; and
 - (b) a copy of whichever of the following are relevant—
 - (i) the application for approval and any plan or other information that accompanied the application,
 - (ii) the request to adopt,

(a) 1990 c. 8.

(b) See paragraph 4 of Schedule 3 for the definition of “the Minister”.

- (iii) the notification of the decision,
- (iv) any certificate issued under paragraph 12(2) of Schedule 3,
- (v) any correspondence between the appellant and the approving body or planning authority in relation to the application, request or certificate.

(3) A developer who sends a notice of appeal to the Minister must, at the same time, send a copy of the notice of appeal and accompanying documents to the approving body.

(4) Within 3 weeks after receiving a copy of the notice of appeal and accompanying documents, the approving body must send—

- (a) to any consultees, a copy of the notice of appeal and a copy of the Minister’s decision under regulation 8(1); and
- (b) to the Minister and the appellant—
 - (i) a list of the consultees, and a copy of any correspondence between the approving body and the consultees,
 - (ii) a copy of any correspondence between the approving body and the planning authority, and
 - (iii) a copy of any correspondence between the approving body and the appellant in relation to the application, request or certificate that was not submitted with the accompanying documents.

(5) In this regulation, “accompanying documents” means the relevant documents in paragraph (2)(b).

Notice of appeal given by electronic communication

5.—(1) A developer who gives notice of an appeal using electronic communication is taken to have agreed—

- (a) to the use of electronic communication for all purposes relating to the appeal which are capable of being carried out electronically; and
- (b) that the developer’s email address is the address for the purposes of communication relating to the appeal.

(2) A developer may revoke an agreement under paragraph (1) by written notice to the Minister and the approving body, specifying the date on which the revocation takes effect.

(3) The date of revocation must be at least 7 days after the date on which the notice is given.

(4) In this regulation, “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(a).

Time limit for making an appeal

6. An appeal must be made within the period of 6 months beginning with—

- (a) for an appeal against a decision about an application for approval (other than a decision about a condition)—
 - (i) the date of the decision, or
 - (ii) if the appeal is against the deemed refusal of the application arising from the failure of the approving body to determine the application within a period prescribed for the purpose of paragraph 11(5) of Schedule 3, the last day of that period;
- (b) for an appeal against a decision about a request to adopt—
 - (i) the date of the decision, or

(a) 2000 c. 7. Section 15 was amended by the Communications Act 2003 (c. 21), section 406(1), Schedule 7, paragraph 158.

- (ii) if the appeal is against the deemed refusal of the request arising from the failure of the approving body to determine the request within the period prescribed for the purpose of paragraph 23(4)(a) of Schedule 3, the last day of that period;
- (c) for an appeal against a decision about a condition specifying a non-performance bond^(a)—
 - (i) the date approval is granted, or
 - (ii) the date on which the approving body gives a certificate under paragraph 12(2) of Schedule 3; or
- (d) for an appeal against a decision about any other condition, the date approval is granted.

Appeal relating to a non-performance bond

7. An appeal against a decision about a condition specifying a non-performance bond may be made on the grounds that a certificate is given under paragraph 12(2) of Schedule 3.

PART 3

Procedure for determining an appeal

Decision about procedure

8.—(1) Within 7 working days after the date of receipt of a valid appeal, the Minister must decide whether an appeal is to be dealt with by way of a hearing, inquiry or written representations.

(2) As soon as is practicable after making a decision under paragraph (1), the Minister must notify the appellant and the approving body of—

- (a) the decision; and
- (b) details of the procedure for dealing with the appeal.

(3) The Minister must publish the criteria that are to be applied in making a decision under paragraph (1).

(4) In this regulation—

“valid appeal” means a notice of appeal—

- (a) that is sent to the Minister—
 - (i) within the time limit specified in regulation 6, and
 - (ii) in accordance with regulation 4(2), and
- (b) that the appellant certifies has been sent to the approving body in accordance with regulation 4(3); and

“working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday.

Procedure for hearings

9.—(1) The Town and Country Planning (Hearings Procedure) (England) Rules 2000^(b) apply with the modifications described in paragraph (2) to a hearing under these Regulations as they apply to a hearing in respect of a non-transferred appeal held under those Rules for the purposes of a planning appeal.

(2) The modifications are—

(a) See paragraph 12 of Schedule 3 to the Flood and Water Management Act 2010 for the meaning of “non-performance bond”.
 (b) S.I. 2000/1626.

- (a) any reference to the local planning authority is to be read as a reference to the approving body;
- (b) any reference to the starting date is to be read as a reference to the date on which a notification under regulation 8(2) is given; and
- (c) any reference to a statutory party is to be read as a reference to a consultee.

(3) Any provision in those Rules relating to procedure before or after a hearing does not apply if it is inconsistent with these Regulations.

Procedure for inquiries

10.—(1) The Town and Country Planning (Inquiries Procedure) (England) Rules 2000(a) apply with the modifications described in paragraph (2) to an inquiry under these Regulations as they apply to a local inquiry held under those Rules for the purposes of a planning appeal.

(2) The modifications are—

- (a) any reference to the Secretary of State is to be read as a reference to the Minister;
- (b) any reference to the local planning authority is to be read as a reference to the approving body;
- (c) any reference to the starting date is to be read as a reference to the date on which a notification under regulation 8(2) is given;
- (d) any reference to a notice under rule 3A is to be read as a reference to a notification under regulation 8(2); and
- (e) any reference to a statutory party is to be read as a reference to a consultee.

(3) Any provision in those Rules relating to procedure before or after an inquiry does not apply if it is inconsistent with these Regulations.

Procedure for written representations

11.—(1) The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009(b) apply with the modifications described in paragraph (2) to the determination of an appeal by way of written representations under these Regulations as they apply to the consideration under those Regulations of a planning appeal on the basis of representations in writing.

(2) The modifications are—

- (a) any reference to the Secretary of State is to be read as a reference to the Minister;
- (b) any reference to the local planning authority is to be read as a reference to the approving body;
- (c) any reference to the starting date is to be read as a reference to the date on which a notification under regulation 8(2) is given;
- (d) any reference to a determination under section 319A of the Act is to be read as a decision under regulation 8(1);
- (e) any reference to a person notified or consulted in accordance with the Act or a development order is to be read as a reference to a consultee;
- (f) “appellant” and “notice of appeal” have the meaning given by regulation 2;
- (g) “application” means an application for approval; and
- (h) “relevant time limits” includes any time limit under these Regulations.

(3) Any provision in those Regulations relating to procedure does not apply if it is inconsistent with these Regulations.

(a) S.I. 2000/1624.

(b) S.I. 2009/452.

PART 4

Determination of an appeal

Appeals powers

12.—(1) When determining an appeal against a decision, the Minister—

- (a) may affirm the decision or substitute the decision; and
- (b) has the same powers and is subject to the same duties as the approving body when making the decision.

(2) In affirming a decision about an application for approval, the Minister may modify the decision by removing, substituting or imposing conditions of approval.

(3) A substituted decision or a condition substituted or imposed by the Minister is taken to be a decision made, or a condition imposed, by the approving body.

Specific duties

13.—(1) In substituting or modifying a decision about an application for approval, the Minister must have regard to—

- (a) the national standards for sustainable drainage; and
- (b) any guidance issued under paragraph 15 of Schedule 3.

(2) In substituting a decision about a request to adopt, the Minister when considering whether or not satisfied as to Condition 2 in paragraph 17 of Schedule 3 must have regard to any guidance issued under sub-paragraph (4) of that paragraph.

(3) In substituting or imposing a condition, the Minister must have regard to—

- (a) for a condition that specifies a non-performance bond, any guidance issued under paragraph 12(6) of Schedule 3; and
- (b) the national standards for sustainable drainage.

Giving effect to the determination of an appeal

14.—(1) As soon as is practicable after determining an appeal, the Minister must notify the appellant and the approving body in writing of the determination.

(2) The Minister may notify any other person who, in the Minister's opinion, is affected by the determination.

Effect of appeal

15.—(1) An appeal against a decision does not have the effect of suspending the decision.

(2) If a developer appeals a decision about the imposition of a condition of approval, construction work must not be commenced or continued until the appeal is determined or withdrawn.

PART 5

Miscellaneous

Evidence and costs

16.—(1) Subsections (2) to (5) of section 250 of the Local Government Act 1972(a) (local inquiries: evidence and costs) apply with the modifications described in paragraph (2) to a hearing or inquiry under these Regulations as they apply to local inquiries under that section.

(2) The modifications are—

- (a) any reference to the person appointed to hold the inquiry is to be read as a reference to the Minister; and
- (b) any reference to a local authority is to be read as a reference to an approving body.

(3) Section 322A of the Town and Country Planning Act 1990(b) (orders as to costs where no hearing or inquiry takes place) applies in relation to a hearing or inquiry under these Regulations as it applies in relation to a hearing or local inquiry referred to in that section.

(4) Subject to paragraphs (1) and (3), the costs of a hearing or inquiry held under these Regulations must be defrayed by the Minister.

Name
Parliamentary Under Secretary of State

Date Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations—

- (a) provide a right of appeal against decisions under Schedule 3 to the Flood and Water Management Act 2010 about applications for approval of drainage systems and the duty of an approving body to adopt sustainable drainage systems (Part 2);
- (b) confer jurisdiction on the Minister to determine appeals (regulation 3);
- (c) make provision about notice of appeal, grounds of appeal and time limits for making an appeal (Part 2);
- (d) apply the procedure for determining planning appeals to the determination of appeals under these Regulations (Part 3); and
- (e) make further provision about determination and effect of appeals (Part 4).

Regulation 1(1)(d) provides that these Regulations are to cease to have effect 7 years after they come into force. Regulation 1(2) requires the Secretary of State to review the operation and effect of these Regulations and to publish a report within 5 years after these Regulations come into force.

An impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the website of the Department for Environment, Food and Rural Affairs at www.defra.gov.uk and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

(a) 1972 c. 70. Section 250 has been amended by the Criminal Justice Act 1982 (c. 48), sections 37, 38 and 46, by the Housing and Planning Act 1986 (c. 63), section 49(2) and Schedule 12, and by the Statute Law (Repeals) Act 1989 (c. 43).

(b) 1990 c. 8. Section 322A was inserted by the Planning and Compensation Act 1991 (c. 34), section 30(1), and subsection (1A) of section 322A was inserted by the Planning Act 2008 (c. 29), section 196(4) and Schedule 10, paragraphs 1 and 11.