

1999 No. 481

ENVIRONMENTAL PROTECTION

The Waste Management Licences (Consultation and Compensation) Regulations 1999

Made - - - - 25th February 1999
Laid before Parliament 5th March 1999
Coming into force 1st April 1999

The Secretary of State for the Environment, Transport and the Regions, as respects England, the Secretary of State for Scotland, as respects Scotland, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred by sections 35A(3) and (4), 36A(5)(b) and 37A(6)(b) of the Environmental Protection Act 1990(a), and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Waste Management Licences (Consultation and Compensation) Regulations 1999 and shall come into force on 1st April 1999.

Interpretation

2. In these Regulations, unless the context otherwise requires—

“the 1961 Act” means the Land Compensation Act 1961(b);

“the 1963 Act” means the Land Compensation (Scotland) Act 1963(c);

“grantor” means a person who has granted, or joined in the granting of, rights pursuant to the requirements of section 35(4) or 38(9A)(d);

“relevant interest” means an interest in land out of which rights have been granted pursuant to the requirements of section 35(4) or 38(9A),

and any reference to a numbered section is a reference to the section bearing that number in the Environmental Protection Act 1990.

Consultations—prescribed period

3. For the purposes of—

(a) subsection (5) of section 36A (consultation before the grant of certain licences) (including that subsection as applied by subsection (9B)(e) of section 38 (revocation and suspension of licences)) the period shall be 3 months; and

(b) subsection (6) of section 37A (consultation before certain variations), the period shall be six weeks.

(a) 1990 c. 43. Sections 35A, 36A and 37A were inserted by the Environment Act 1995 (c. 25), Schedule 22, paragraphs 67, 69 and 71. See also the definition of “regulations” in section 161(1) and (2) of the Environmental Protection Act 1990.

(b) 1961 c. 33 (9 & 10 Eliz. 2).

(c) 1963 c. 51.

(d) Subsection (9A) was inserted by the Environment Act 1995, Schedule 22, paragraph 72(1).

(e) Subsection (9B) was inserted by the Environment Act 1995, Schedule 22, paragraph 72(1).

Compensation following grant of rights

4. Subject to regulation 7(3) and (5)(b), compensation is payable under section 35A (compensation where rights granted pursuant to section 35(4) or 38(9A)) for loss and damage of the following descriptions—

- (a) depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the rights;
- (b) depreciation in the value of any other interest in land to which the grantor is entitled which results from the exercise of the rights;
- (c) loss or damage, in relation to any relevant interest to which the grantor is entitled, which—
 - (i) is attributable to the grant of the rights or the exercise of them;
 - (ii) does not consist of depreciation in the value of that interest; and
 - (iii) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if that interest had been acquired compulsorily under the Acquisition of Land Act 1981(a) or the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947(b) in pursuance of a notice to treat served on the date on which the rights were granted;
- (d) damage to, or injurious affection of, any interest in land to which the grantor is entitled which is not a relevant interest, and which results from the grant of the rights or the exercise of them;
- (e) loss in respect of work carried out by or on behalf of the grantor which is rendered abortive by the grant of the rights or the exercise of them.

Time at which entitlement to compensation arises

5.—(1) Subject to paragraph (2), an entitlement to compensation under section 35A arises on the date of the grant of the rights.

(2) Where, after a grant of rights pursuant to section 35(4) or 38(9A), the conditions of the licence which rendered the grant of rights necessary are upheld on the final determination of an appeal against those conditions, the entitlement to compensation arises on the date of the final determination of the appeal.

Applications for compensation

6.—(1) An application for compensation under section 35A shall be made by the grantor—

- (a) within 12 months from the date on which the entitlement to compensation arises in his case; or, as he may decide,
- (b) within six months from the date on which the rights are first exercised.

(2) An application shall be made in writing to the holder of the licence to whom the rights were granted and delivered at or sent by pre-paid post to the last known address for correspondence of that person.

(3) The application shall contain, or be accompanied by—

- (a) a copy of the grant of rights in respect of which the grantor's entitlement arises, and of any plans attached to that grant,
- (b) a description of the exact nature of any interest in land in respect of which compensation is applied for,
- (c) a statement of the amount of compensation applied for, distinguishing the amounts applied for under each of paragraphs (a) to (e) of regulation 4, and showing how the amount applied for under each paragraph has been calculated, and
- (d) where the date on which the entitlement to compensation arises is ascertained in accordance with regulation 5(2), a copy of the notice of the final determination of the appeal.

(a) 1981 c. 67.

(b) 1947 c. 42.

Basis on which compensation assessed

7.—(1) The amount to be paid by way of compensation under section 35A shall be assessed in accordance with the following paragraphs of this regulation.

(2) The rules set out in section 5 of the 1961 Act and, for Scotland, in section 12 of the 1963 Act (rules for assessing compensation) shall, so far as applicable and subject to any necessary modifications, have effect for the purposes of this regulation as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(3) No account shall be taken of any enhancement of the value of any interest in land, by reason of any building erected, work done or improvement or alteration made on any land in which the grantor is, or was at the time of erection, doing or making, directly or indirectly concerned, if the Lands Tribunal or, as the case may be, the Lands Tribunal for Scotland, is satisfied that the erection of the building, the doing of the work, the making of the improvement or the alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(4) In calculating the amount of any loss under regulation 4(e) expenditure incurred in the preparation of plans or on other similar preparatory matters, shall be taken into account.

(5) Where the interest in respect of which compensation is to be assessed is subject to a mortgage—

- (a) the compensation shall be assessed as if the interest were not subject to the mortgage, and
- (b) no compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage).

(6) Compensation under section 35A shall include an amount equal to the grantor's reasonable valuation and legal expenses.

Payment of compensation and determination of disputes

8.—(1) Compensation payable under section 35A in respect of an interest which is subject to a mortgage shall be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee and shall, in either case, be applied by him as if it were proceeds of sale.

(2) Amounts of compensation determined under these Regulations shall be payable—

- (a) where the holder of the licence and the grantor or mortgagee agree that a single payment is to be made on a specified date, on that date;
- (b) where the holder of the licence and the grantor or mortgagee agree that payment is to be made in instalments at different dates, on the date agreed as regards each instalment;
- (c) in any other case, subject to any direction of the Lands Tribunal, the Lands Tribunal for Scotland, or the court, as soon as reasonably practicable after the amount of the compensation has been finally determined.

(3) Any question of the application of regulation 7(3) or of disputed compensation shall be referred to and determined by the Lands Tribunal or, in Scotland, by the Lands Tribunal for Scotland.

(4) In relation to the determination of any such question—

- (a) in England and Wales, sections 2 and 4 of the 1961 Act (procedure on reference to the Lands Tribunal and costs) shall apply as if—
 - (i) the reference in section 2(1) of that Act to section 1 of that Act were a reference to paragraph (3) of this regulation, and
 - (ii) references in section 4 of that Act to the acquiring authority were references to the holder of the licence; and
- (b) in Scotland, sections 9 and 11 of the 1963 Act (procedures on reference to the Lands Tribunal and expenses) shall apply as if—
 - (i) the reference in section 9(1) of that Act to section 8 were a reference to paragraph (3) of this regulation; and

(ii) references in section 11 of that Act to the acquiring authority were references to the holder of the licence.

Signed by authority of the Secretary of State
for the Environment, Transport and the Regions

19th February 1999

Michael Meacher
Minister of State,
Department of the Environment,
Transport and the Regions

Signed by authority of the Secretary of State for Scotland

23rd February 1999

Calum MacDonald
Parliamentary Under-Secretary of State,
Scottish Office

Signed by authority of the Secretary of State for Wales

25th February 1999

Jon Owen Jones
Parliamentary Under-Secretary of State,
Welsh Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 35(4) of the Environmental Protection Act 1990 (“the 1990 Act”) allows an authority (the Environment Agency in England and Wales and the Scottish Environment Protection Agency in Scotland) to impose on a waste management licence conditions which require the licence holder to carry out works or do other things notwithstanding that he is not entitled to do so. Sections 37(1) and (2)(a), 38(9) and 42(7) of the 1990 Act, as amended by the Environment Act 1995 (“the 1995 Act”), allow those Agencies to impose similar conditions when modifying the conditions of, or suspending, a waste management licence. Where such a condition is imposed, any person whose consent would be required before the works etc. could be carried out must grant to the licence holder, or join in granting, such rights as will enable him to comply with the condition.

Regulation 3 of these Regulations provides that the period for the making of representations, in response to the prior consultation with owners, tenants and occupiers of land in respect of which rights are likely to be required (which is required by new sections 36A and 37A of the 1990 Act and new subsection (9B) of section 38 of that Act, as inserted by the 1995 Act), is 3 months from the date on which the consultation notice was served or, where the consultation relates to the proposed modification of a waste management licence, six weeks.

Regulation 4 defines the descriptions of loss and damage in respect of which compensation is payable following the grant of rights under section 35(4) or the new 38(9A) (inserted by the 1995 Act) of the 1990 Act. Regulation 5 specifies the time at which the entitlement to compensation arises. Regulation 6 prescribes the procedure for making applications for compensation. In particular, paragraph (1) requires a claim to be made either within 12 months of the date on which the entitlement to compensation arises or within six months of the first exercise of the rights, as the grantor decides. Regulation 7 sets out the basis on which compensation is to be assessed. Regulation 8 makes provision for payment and for the determination of disputes by the Lands Tribunal or, in Scotland, the Lands Tribunal for Scotland.

1999 No. 481

ENVIRONMENTAL PROTECTION

**The Waste Management Licences (Consultation and
Compensation) Regulations 1999**

£2.00

© Crown copyright 1999

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo,
Controller of Her Majesty's Stationery Office and Queen's Printer of
Acts of Parliament

WO 4173 3/99 ON (MFK)