

2009 No. 197

COUNTRYSIDE, ENGLAND

**The Sites of Special Scientific Interest (Appeals)
Regulations 2009**

Made - - - - - *2nd February 2009*

Laid before Parliament *6th February 2009*

Coming into force - - *1st March 2009*

The Secretary of State, in exercise of the powers conferred by sections 28F(6) and 28L(8) of the Wildlife and Countryside Act 1981(a), and, in the case of stop notices(b), section 28F(6) of that Act as applied by paragraph 11(2) of Schedule 11 to the Countryside and Rights of Way Act 2000(c) makes the following Regulations.

Title, application and commencement

1. These Regulations may be cited as the Sites of Special Scientific Interest (Appeals) Regulations 2009, they apply in England and come into force on 1st March 2009.

Appeals relating to consents, management notices and stop notices

2. Appeals relating to consents under section 28E(3)(a) of the Wildlife and Countryside Act 1981, management notices under section 28K of that Act and stop notices under paragraph 9 of Schedule 11 to the Countryside and Rights of Way Act 2000 must be made in accordance with the Schedule to these Regulations.

2nd February 2009

Huw Irranca-Davies
Parliamentary Under-Secretary of State
Department for Environment, Food and Rural Affairs

(a) 1981 c. 69; sections 28F and 28L were inserted by the Countryside and Rights of Way Act 2000 (c. 37), Schedule 9, paragraph 1.
(b) See paragraph 9(3) of Schedule 11 to the Countryside and Rights of Way Act 2000.
(c) 2000 c. 37.

Appeals procedure

PART 1

Introduction

Scope

1. This Schedule relates to appeals brought in connection with—
 - (a) a refusal of a consent relating to a site of special scientific interest under 28E(5) of the Wildlife and Countryside Act 1981 (“the 1981 Act”);
 - (b) a deemed refusal of a consent due to a failure by Natural England to give or refuse a consent in accordance with section 28F(2) of the 1981 Act;
 - (c) any conditions attached to a consent;
 - (d) the period for which a consent is granted;
 - (e) a modification of a consent;
 - (f) a withdrawal of a consent;
 - (g) a management notice under section 28K of the 1981 Act; and
 - (h) a stop notice under paragraph 9 of Schedule 11 to the Countryside and Rights of Way Act 2000.

Provision of documentation

- 2.—(1) Anything required to be supplied under this Schedule must be in writing.
 - (2) If any document supplied refers to any other document (such as a map, photograph or report, whether published or not) a copy of the document referred to must also be supplied.
 - (3) All documents and copies provided by the appellant or Natural England must be supplied in duplicate except that—
 - (a) where they are required to accompany the original notice of appeal, the documents specified in paragraph 7(1)(d) to (e) and 7(2) need not be in duplicate; and
 - (b) if a section 28L(2) party (as specified in paragraph 7) is involved in the appeal, the documents specified in paragraph 7(2) must be in duplicate and everything else must be in triplicate.
 - (4) All documents and copies provided by a section 28L(2) party must be in triplicate.
 - (5) However, if any document has already been supplied for the purposes of the appeal and is readily available to all parties, the Secretary of State may direct that it need not be supplied again.

Electronic delivery of documents

- 3.—(1) Anything required to be provided under this Schedule may be provided electronically if—
 - (a) it is in the same format as it would be if it were in printed form, and
 - (b) the recipient consents to it being provided electronically.
- (2) Requirements for documents to be in duplicate or triplicate do not apply in relation to documents delivered electronically.

Additional copies of documents

4. The Secretary of State may at any time before the determination of an appeal request from any party additional copies of any document, and may specify a time limit for its provision, and the party must provide the copies within that time limit.

Extending deadlines and providing additional information

5. The Secretary of State may—
 - (a) extend any deadline;
 - (b) require any further exchanges of information if this is necessary for the determination of the appeal; or
 - (c) require any party to provide further information relevant to the appeal within a specified time limit.

Viewing papers related to the appeal

6. Natural England must make publicly available at reasonable notice all papers received by it under the appeal and all papers supplied by Natural England in relation to the appeal.

PART 2

Starting the appeal

Contents of the notice of appeal

- 7.—(1) The notice of appeal must include the following—
 - (a) the name, address (including any e-mail address) and telephone number of the appellant and any agent acting for the appellant;
 - (b) a statement of the grounds of appeal;
 - (c) a statement as to whether the appellant wishes to have the appeal dealt with by way of written representations or wishes to exercise the right to be heard;
 - (d) a list of all the documents, including dates, specified in sub-paragraph (2);
 - (e) in the case of an appeal relating to a management notice, if a ground of appeal is that some other owner or occupier of the land should take all or part of the measures specified in the management notice, or should pay all or part of the cost as set out in 28L(2) of the 1981 Act, full details of that owner or occupier (referred to in this Schedule as a ‘section 28L(2) party’).
- (2) It must be accompanied by—
 - (a) in the case of an appeal relating to—
 - (i) the refusal or deemed refusal of an application for a consent, or
 - (ii) conditions attached to a consent,a copy of the original notice served on Natural England under section 28E(1) of the 1981 Act;
 - (b) in the case of an appeal relating to the withdrawal or modification of an existing consent,
 - (i) a copy of the existing consent;
 - (ii) a copy of the decision or notice from Natural England withdrawing or modifying the consent; and
 - (iii) a copy of Natural England’s Statement of Reasons.
 - (c) in the case of an appeal relating to a management notice or stop notice, a copy of the management notice or stop notice;
 - (d) a copy of all correspondence between the appellant and Natural England that the appellant wishes to rely on;
 - (e) if the notice of appeal is served outside the time limits, and the appellant and Natural England have agreed to extend the time limits, a copy of that agreement.

Time limits for the notice of appeal

8.—(1) A notice of an appeal concerning a management notice must reach the Secretary of State within two months from the date of that management notice, or within such longer period as is agreed in writing before that date between Natural England and the appellant(a).

(2) If a notice of appeal is received within the time limits, but without any of the information or documents required by paragraph 7, the Secretary of State may in exceptional circumstances extend those time limits to enable the required information to be provided.

Notification by the Secretary of State to Natural England

9.—(1) When a notice of appeal fully complying with paragraph 7 has been received within the specified time limits, the Secretary of State must as soon as practicable send a copy of the notice of appeal (except the documents specified in paragraph 7(2)) to Natural England.

(2) In the case of an appeal relating to a management notice, the Secretary of State, when notifying Natural England, must also write to any section 28L(2) party enclosing a copy of the notice of appeal and explaining the effect of sub-sections (5) to (7) of section 28L of the 1981 Act.

(3) If Natural England or the section 28L(2) party wish to exercise a right to be heard in connection with the appeal, rather than having it dealt with by way of written representations, a notice to that effect must reach the Secretary of State within two weeks of the date on which the copy of the notice of appeal was received from the Secretary of State.

Start date for the appeal

10.—(1) After the two-week period referred to in paragraph 9(3) the Secretary of State must write to the appellant, Natural England and any section 28L(2) party, informing them whether or not there will be a hearing or inquiry, or whether the appeal will be conducted on the basis of written representations.

(2) The date of this letter is the start date for the appeal.

PART 3

Action following the start date

Notification of interested parties

11.—(1) Within two weeks of the start date Natural England must notify—

- (a) any person (other than the appellant or a section 28L(2) party) who made representations to Natural England in respect of the subject matter of the appeal, and
- (b) any other person it considers likely to have an interest,

that an appeal has been lodged.

(2) The notice must state—

- (a) the name and location of the site of special scientific interest in respect of which the appeal is being made;
- (b) the name of the appellant;

(a) This sub-paragraph deals with time limits for appeals relating to management notices. The relevant time limits for appeals relating to consents and stop notices are set out in section 28F of the 1981 Act and Schedule 11 to the Countryside and Rights of Way Act 2000. For consents, the relevant parts of section 28(F), as construed in accordance with section 27A of the 1981 Act read—

“(2) If Natural England neither give consent nor refuse it within the period of four months beginning with the date on which the notice referred to in section 28E(1)(a) was sent, the person who gave that notice may for the purposes of subsection (1) treat Natural England as having refused consent (and his appeal is to be determined on that basis).

(3) Notice of an appeal must reach the Secretary of State—

- (a) except in a case falling within subsection (2), within the period of two months beginning with the date of the notice giving consent or the notice under section 28E(5) or (6), or
- (b) in a case falling within subsection (2), within the period of two months beginning immediately after the expiry of the four-month period referred to there,

or, in either case, within such longer period as is agreed in writing between Natural England and the appellant.”.

For stop notices the relevant time limits are the same, as modified by paragraph 11(2) of Schedule 11 to the Countryside and Rights of Way Act 2000, which modifies section 28F(3) so that it reads—

“Notice of an appeal must reach the Secretary of State within the period of two months beginning with the date of the stop notice or within such longer period as is agreed in writing between Natural England and the appellant.”.

- (c) in the case of an appeal relating to—
 - (i) the refusal or deemed refusal of an application for a consent, or
 - (ii) conditions attached to a consent,
 a copy of the notice served on Natural England under section 28E(1) of the 1981 Act;
 - (d) in the case of an appeal relating to the refusal of a consent (other than a deemed refusal) or conditions attached to a consent, or a withdrawal or modification of an existing consent,
 - (i) a copy of any consent;
 - (ii) a copy of the decision or notice from Natural England under section 28(E)(5) or (6) of the 1981 Act; and
 - (iii) a copy of Natural England’s Statement of Reasons.
 - (e) in the case of an appeal relating to a management notice or stop notice, a copy of the management notice or stop notice;
 - (f) whether the appeal will be determined by way of a hearing or inquiry or on the basis of written representations;
 - (g) the times and locations at which the papers relating to the appeal may be viewed;
 - (h) that, within a period of four weeks from the date of the notice, the recipient of the notice may make representations in writing to the Secretary of State;
 - (i) that any representations received will be sent to the appellant, Natural England and any section 28L(2) party;
 - (j) that a person mentioned in sub-paragraph (1) (a) or (b) who makes representations will be notified by the Secretary of State of the date of a hearing or inquiry (if one is held).
- (3) Natural England must, within two weeks of the date of the start date—
- (a) notify the Secretary of State, the appellant and any section 28L(2) party of the persons to whom and the date on which that notice was given; and
 - (b) send them copies of all representations referred to in sub-paragraph (1)(a).

Statements of case

- 12.**—(1) Within six weeks of the start date—
- (a) an appellant must provide a statement of case;
 - (b) Natural England must provide a statement of case; and
 - (c) a section 28L(2) party may provide a statement of case.
- (2) In the case of the appellant, the statement of case must consist of the grounds of appeal initially lodged and other documents supplied together with any further representations the appellant wishes to make at this stage.
- (3) In the case of Natural England or a section 28L(2) party, the statement of case must consist of—
- (a) in the case of an appeal to be dealt with by way of written representations or a hearing, the full particulars of the case intended to be put forward, including copies of any supporting documents that will be referred to or put in evidence,
 - (b) in the case of an appeal to be dealt with by way of an inquiry, a summary of the arguments intended to be put before the inquiry and a list of documents that will be referred to.

Notification of representations by the Secretary of State

13. At the end of the six-week period the Secretary of State must as soon as is reasonably practicable send copies of all representations received (including representations made by any interested party) to the appellant, Natural England and any section 28L(2) party.

Comments on the representations

14. The appellant, Natural England and any section 28L(2) party may make comments on the representations within three weeks of the date of the notice enclosing the representations.

Notification of comments by the Secretary of State

15. As soon as is reasonably practicable after the three-week period the Secretary of State must send copies of the comments received to the appellant, Natural England and any section 28L(2) party at the same time.

PART 4

Determination of the appeal

Appeals determined by way of a hearing or inquiry—establishing the hearing or inquiry

16.—(1) This paragraph applies if the appeal is determined by way of hearing or inquiry.

(2) The Secretary of State must set a date for the hearing or inquiry, and notify the appellant, Natural England, any section 28L(2) party and any person who has made written representations concerning the appeal.

(3) The date must be at least six weeks from the date of that notification unless the appellant, Natural England and any section 28L(2) party agree to a shorter period, but any shorter period must not be less than three weeks.

(4) The Secretary of State must, no later than three weeks before the date fixed, publish notice of the appeal in a local newspaper circulating in the area in which the land which is the subject of the appeal is situated.

(5) If the date is changed the procedure in sub-paragraphs (2) to (4) must be repeated.

(6) The Secretary of State may appoint any person to hold a hearing or inquiry (referred to in this Schedule as “the inspector”) but the inspector must make a recommendation to the Secretary of State, who must make the final decision.

Appeals determined by way of a hearing or inquiry—procedure

17.—(1) Once the hearing or inquiry has started the inspector may adjourn it at any time.

(2) The persons entitled to appear are—

- (a) the appellant;
- (b) Natural England;
- (c) any section 28L(2) party; and
- (d) any person who has made written representations concerning the appeal.

(3) Except as otherwise provided in this Schedule, the inspector may determine the proceedings to be followed.

(4) If any person at the hearing or inquiry behaves in a disruptive manner the inspector may—

- (a) require that person to leave;
- (b) prevent that person from participating in the hearing or inquiry, and in particular may refuse to allow that person to give evidence, cross-examine a person giving evidence, or present any matter; or
- (c) permit that person to remain at, or participate in, the hearing or inquiry only on specified conditions.

(5) The inspector may proceed with a hearing or inquiry in the absence of any person entitled to appear at it.

(6) The inspector may permit any other person to appear at a hearing or inquiry, and such permission must not be unreasonably withheld.

(7) Any person entitled or permitted to appear may appear in person or be represented by any other person.

(8) The inspector may take into account any written representations or evidence or any other document received from any person before or during a hearing or inquiry, provided that the inspector discloses it at the hearing or inquiry.

(9) The inspector may, at any stage of a hearing or inquiry, prevent any person from—

- (a) giving evidence,
- (b) cross-examining a person giving evidence, or
- (c) presenting any matter,

if the inspector considers it to be irrelevant or repetitious.

Inquiries—pre-inquiry meeting

18.—(1) Where it has been decided to hold an inquiry, the inspector may, if it is desirable, hold a pre-inquiry meeting to determine the matters to be addressed and the procedure to be followed at the inquiry.

(2) An inspector who decides to hold a pre-inquiry meeting must give not less than two weeks' notice in writing to—

- (a) the appellant, Natural England and any section 28L(2) party;
- (b) any person known at the date of the notice to be entitled to appear at the inquiry; and
- (c) any other person whose presence is considered desirable.

(3) The inspector may, at a pre-inquiry meeting—

- (a) give directions to the appellant, Natural England and any other person wishing to appear at the inquiry about things to be done in preparation for the inquiry; and
- (b) specify a date or dates by which any such directions must be complied with.

Inquiries—proof of evidence

19.—(1) This paragraph applies where an inquiry is to be held and any person entitled to appear intends to give, or to call a witness to give, evidence at the inquiry.

(2) At least four weeks before the date of the inquiry (or such other time as the inspector may direct) the person intending to give evidence or call a witness must send a proof of the evidence intended to be given, together with any written summary accompanying it, to the Secretary of State.

(3) The Secretary of State must, as soon as practicable after receiving a proof of evidence, send a copy to the appellant, Natural England, any section 28L(2) party and any person who has submitted a proof.

(4) A written summary is required if the proof of evidence in question exceeds 1500 words.

(5) Where a written summary is provided, only that summary shall be read at the inquiry, unless the inspector directs otherwise.

Inquiries—common ground

20. The appellant, Natural England and any section 28L(2) party must together prepare a statement of common ground, and Natural England must ensure that the Secretary of State receives it not less than four weeks before the date fixed for the holding of the inquiry.

Inquiries—miscellaneous

21.—(1) At the start of the inquiry the inspector must identify what are, in the inspector's opinion, the main issues to be considered at the inquiry and any matters on which further explanation will be required from any person appearing at the inquiry.

(2) This does not preclude the addition in the course of the inquiry of other issues for consideration or preclude any person entitled or permitted to appear from referring to issues which that person considers relevant to the consideration of the appeal but which were not issues identified by the inspector.

(3) Any person entitled to appear at the inquiry may give, or call any other person to give, oral evidence.

(4) The inspector may permit any other person permitted to appear at the inquiry to give, or call any other person to give, oral evidence.

(5) The appellant, Natural England, any section 28L(2) party and (with the permission of the inspector) any other person appearing at the inquiry may cross-examine persons giving evidence.

(6) If the inspector refuses to permit the giving of oral evidence from any person not entitled to appear at the inquiry, the person wishing to give the evidence may submit any evidence or other matter in writing before the close of the inquiry.

(7) Where a person gives evidence at an inquiry by reading a summary of a proof of evidence—

- (a) the proof of evidence is treated as tendered in evidence, unless the person required to provide the summary notifies the inspector that that person now wishes to rely on the contents of that summary alone; and
- (b) the person whose evidence the proof of evidence contains may then be subject to cross-examination on it to the same extent as if it were evidence given orally.

(8) The inspector may allow any person to alter or add to a proof of evidence or summary sent to the Secretary of State so far as may be necessary for the purposes of the inquiry, but must (if necessary by adjourning the inquiry) give every other person appearing at the inquiry an adequate opportunity of considering any fresh matter or document.

Change to the procedure of an appeal

22.—(1) If an appeal is by way of written representations, but, before the decision on the appeal has been notified, the appellant, Natural England, a 28L(2) party or the Secretary of State wishes the appeal to be dealt with other than by way of written representations, the Secretary of State must arrange for the appeal to proceed by way of a hearing or inquiry.

(2) If an appeal is by way of an inquiry or hearing, but before the inquiry or hearing has opened the appellant, Natural England or any 28L(2) party wishes it to be determined by way of written representations instead, the Secretary of State must consult the other parties, and, if all the parties and the Secretary of State agree to such a change in procedure, the Secretary of State shall arrange for the appeal to be determined by way of written representations.

(3) If an appeal is by way of an inquiry or hearing, but before the inquiry or hearing has opened the appellant, Natural England, any 28L(2) party or the Secretary of State wishes an appeal to be determined—

(a) no longer by way of a hearing but instead by way of an inquiry, or

(b) no longer by way of an inquiry but instead by way of a hearing,

the Secretary of State must, after consulting all the parties, decide whether the hearing or inquiry (as the case may be) should proceed no further and an inquiry or hearing (as appropriate) be held instead.

(4) Where the appeal procedure is changed by the Secretary of State under this paragraph—

(a) the Secretary of State must notify all the parties and any other person who has made representations in respect of the appeal of such change;

(b) any step taken or thing done in relation to the former appeal procedure which could have been done under any corresponding provision of this Schedule relating to the new appeal procedure shall have effect as if taken or done under that corresponding provision; and

(c) the Secretary of State may give consequential directions as to the procedure.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations establish the procedure to be used when there is an appeal to the Secretary of State relating to a consent or management notice relating to a site of special scientific interest under the Wildlife and Countryside Act 1981 or a stop notice under the Countryside and Rights of Way Act 2000.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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