

2012 No. 1945

COAST PROTECTION, ENGLAND
ENVIRONMENTAL PROTECTION, ENGLAND
FLOOD RISK MANAGEMENT, ENGLAND

The Designation of Features (Appeals) (England) Regulations
2012

Made - - - - - *23rd July 2012*

Coming into force in accordance with Regulation 1(b)

The Secretary of State in exercise of the powers conferred by sections 30 and 48(2) of, and paragraph 15 of Schedule 1 to, the Flood and Water Management Act 2010(a), makes the following Regulations.

A draft of these Regulations has been approved by a resolution of each House of Parliament pursuant to paragraph 15(5) of Schedule 1 to that Act.

The Administrative Justice and Tribunals Council has been consulted in accordance with section 44 of, and paragraph 24 of Schedule 7 to, the Tribunals, Courts and Enforcement Act 2007(b).

Citation, commencement and application

1. These Regulations—
 - (a) may be cited as the Designation of Features (Appeals) (England) Regulations 2012;
 - (b) come into force on the day after the date on which they are made; and
 - (c) apply in relation to designations of structures or features in England.

Interpretation

2. In these Regulations—

“consent decision” means a decision in connection with consent on an application under paragraph 6 of Schedule 1;

“enforcement notice” means an enforcement notice given under paragraph 11 of Schedule 1;

and

(a) 2010 c. 29. Paragraph 15 of Schedule 1 to the Flood and Water Management Act 2010 confers powers on “the Minister”, and paragraph 17 of Schedule 1 to that Act defines “the Minister” for the purposes of that Schedule.
(b) 2007 c. 15.

“Schedule 1” means Schedule 1 to the Flood and Water Management Act 2010.

Right to appeal a designation

3.—(1) An owner who is given a notice under paragraph 8(1) of Schedule 1 may appeal on any ground to the First-tier Tribunal against the designation.

(2) On deciding an appeal under paragraph (1), the First-tier Tribunal must confirm or cancel the designation.

Right to appeal a decision on an application for consent to alter, remove or replace

4.—(1) An owner who is given notice of a consent decision may appeal on any ground to the First-tier Tribunal against the decision.

(2) For the purpose of paragraph (1), a responsible authority which, at the end of the last day of the notice period, has not given an owner notice of a consent decision which it has made is taken to have given the owner notice on that day refusing to give consent.

(3) On deciding an appeal under paragraph (1), the First-tier Tribunal must confirm the consent decision or substitute it.

(4) In this regulation, “notice period” means the period of 2 months beginning with the day following that on which a responsible authority receives an application for consent under paragraph 6 of Schedule 1.

Right to appeal a refusal to cancel a designation

5.—(1) An owner who is given notice of refusal of an application may appeal on any ground to the First-tier Tribunal against the refusal to cancel the designation.

(2) For the purpose of paragraph (1), a responsible authority which, at the end of the last day of the notice period, has not given an owner notice of a decision which it has made on an application is taken to have given the owner notice on that day refusing the application.

(3) On deciding an appeal under paragraph (1), the First-tier Tribunal must confirm the refusal or cancel the designation.

(4) In this regulation—

“application” means an application under paragraph 9 of Schedule 1; and

“notice period” means the period of 2 months beginning with the day following that on which a responsible authority receives an application.

Right to appeal an enforcement notice

6.—(1) A person who is given an enforcement notice may appeal on any ground to the First-tier Tribunal against the notice.

(2) On deciding an appeal under paragraph (1), the First-tier Tribunal must—

- (a) confirm the enforcement notice; or
- (b) determine that the notice is to cease to have effect.

Review

7.—(1) The Secretary of State must from time to time—

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

(2) The report must in particular—

- (a) set out the objectives intended to be achieved 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.

(3) The first report under this regulation must be published before the end of the period of 5 years beginning with the day on which these Regulations come into force.

(4) Reports under this regulation are afterwards to be published at intervals not exceeding 5 years.

23rd July 2012

Taylor of Holbeach
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

Under Section 30 of, and Schedule 1 to, the Flood and Water Management Act 2010 (c. 29) (“the Act”), the Environment Agency, a local authority or an internal drainage board (the “Designating Authority”) may designate structures or environmental features that affect a flood or coastal erosion risk, though they may not necessarily have been designed or constructed for that purpose. Once designated, the owner of the designated feature cannot alter, remove or replace it without consent. Paragraph 15 of Schedule 1 to the Act requires the Minister to provide the right of appeal for people affected by the use of these designation powers by a Designating Authority.

These Regulations provide a right of appeal against—

- (a) designations and enforcement notices under Schedule 1 to the Act; and
- (b) related decisions made under paragraphs 6 and 9 of that Schedule.

They confer jurisdiction on the First-tier Tribunal to consider appeals made under these Regulations. They make provision for procedure and for the powers of the First-tier Tribunal in determining the appeal.

Regulation 7 requires the Secretary of State to review the operation and effect of these Regulations in relation to designations of structures or features and to publish a report within 5 years after these Regulations come into force.

Appeals under these Regulations and the process for bringing an appeal are also governed by the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (S.I. 2009/1976).

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.

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STATUTORY INSTRUMENTS

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