

BERMUDA STATUTORY INSTRUMENT

SR&O 25/1976

**WATER RESOURCES (APPEALS TO THE MINISTER)
REGULATIONS 1976**

*[made under section 39 of the Water Resources Act 1975 [title 20 item 14]
and brought into operation on 6 March 1976]*

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PART I

INTRODUCTORY

Interpretation

- 1 In these Regulations, unless the context otherwise requires—
- "the Act" means the Water Resources Act 1975 [*title 20 item 14*];
- "appeal" means an appeal under section 31 of the Act;
- "applicant" means the applicant for a water right;
- "appointed person" means the person appointed under section 31(4) of the Act;
- "inquiry" means the hearing of an appeal by an appointed person;
- "parties to the appeal" means—
- (a) the appellant;
 - (b) where he is not the appellant—
 - (i) the Environmental Engineer;
 - (ii) the applicant;
 - (iii) any person who is an objector to the application under section 11(3) of the Act;
 - (c) any person upon whom the notice of appeal was served in accordance with a direction under regulation 4(2);
- "prescribed fee" means the fee prescribed under the Government Fees Act 1965 [*title 15 item 18*].

[*regulation 1 amended by 1998:19 effective 18 June 1998*]

PART II

APPEALS: GENERAL PROVISIONS

Time limit

- 2 (1) A person aggrieved by a decision of the Authority may give notice of his intention to appeal—
- (a) in the case of an applicant and of an objector, within twenty-one days of being notified of the decision;
 - (b) in all other cases, within twenty-one days after notice of the decision has been displayed on the notice board

situated at the offices of the Department of the Environment.

(2) Where an applicant or objector is notified by post of a decision of the Authority such notice shall be deemed to have been effected at the time when it would be delivered in the ordinary course of post.

[regulation 2 amended by 1998:19 effective 18 June 1998]

Manner of giving notice

3 A notice of appeal shall be addressed to the Minister and to the Chairman of the Authority, signed by the appellant or his representative and accompanied by—

- (a) the prescribed fee;
- (b) where the appellant desires that the appeal should be heard by an appointed person, a statement to that effect;
- (c) a statement setting out—
 - (i) the grounds of appeal;
 - (ii) the appellant's submissions thereon, and such statement shall be called "the appellant's case".

Service of notice

4 (1) Service of the notice of appeal may be effected by personal delivery to the Offices of the Department of the Environment between the hours of 9 a.m. and 4.30 p.m. on any day other than a Saturday or public holiday.

(2) Copies of the notice of appeal shall be served by the Environmental Engineer on all other parties to the appeal and on such other persons as the Minister or the appointed person may at any time require.

[regulation 4 amended by 1998:19 effective 18 June 1998]

Director's case

5 (1) Within twenty-one days of the receipt of the notice of appeal the Environmental Engineer shall serve upon the appellant a statement setting out any submission which he proposes to put forward at the inquiry or, if there is no inquiry, which he Proposes to make to the Minister, and such statement shall be called "the Environmental Engineer's case".

(2) Where the Environmental Engineer is the appellant paragraph (1) and the next following regulation shall apply as though for

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references to the Environmental Engineer there were substituted references to the applicant.

[regulation 5 amended by 1998:19 effective 18 June 1998]

Documents

6 The appellant's and Environmental Engineer's case shall be accompanied by a list of any documents (including maps and plans) which are not included in the record and which the appellant or Environmental Engineer intend to refer to or put in evidence at the inquiry or, as the case may be, submit to the Minister, and any party to the appeal shall be afforded a reasonable opportunity by the Environmental Engineer or appellant, as the case may be, to inspect and, where practicable, take copies of such documents.

[regulation 6 amended by 1998:19 effective 18 June 1998]

Record of proceedings

7 (1) Any party to an appeal and any person entitled to appeal may obtain from the Department of the Environment on payment of the prescribed fee the record of the proceedings of the Authority which are the subject of the appeal or, as the case may be, may be the subject of an appeal.

(2) The record shall consist of the following documents, together with any plans or drawings annexed thereto—

- (a) the application to the Authority;
- (b) where the application has been advertised, the advertisement thereof;
- (c) any notice of objection received by the Authority and considered by them;
- (d) any recommendation made to the Authority in the matter by the Department of the Environment or its officers and considered by the Authority;
- (e) the minutes of the Authority relevant to the application;
- (f) the notification to the applicant of the results of the application;
- (g) the report, if any, of the Chairman of the Authority;
- (h) such further documents as the Chairman of the Authority may direct or which the parties to the appeal may agree to be included.

(3) There may be excluded from copies of the record, other than that transmitted to the Minister or the appointed person, any plans,

drawings or other documents the copying of which is not reasonably practicable in the circumstances, but a list of any documents so excluded shall be included in the record and any party to the appeal shall be afforded a reasonable opportunity by the Minister to inspect and, where practicable, take copies of such documents.

[regulation 7 amended by 1998:19 effective 18 June 1998]

Appeals where no inquiry is to be held

8 (1) The Minister may, where no inquiry is to be held, on receipt of the appellant's and Environmental Engineer's (or, as the case may be, applicant's) cases, require—

- (a) any party to the appeal who is not required by these Regulations to submit his case, to make such written submissions in the matter or produce such written or documentary evidence as such party may think fit;
- (b) any party to the appeal who has submitted any submissions to submit further submissions or written or documentary evidence,

within such time and in such manner as he may specify.

(2) The Minister may thereafter determine the appeal on the basis of the record, written submissions and written and documentary evidence.

(3) The Minister may require any evidence submitted to him under this regulation to be given in the form of or verified by an affidavit.

[regulation 8 amended by 1998:19 effective 18 June 1998]

Appeal may be dismissed despite irregularities

9 Without derogation from the discretion vested in the Minister by the Act the Minister may dismiss an appeal notwithstanding that he may be of the view that the proceedings of the Authority in coming to the decision appealed against were in breach of any of the rules of natural justice or that there has been any failure to comply with any provision of the Act or any statutory instrument thereunder (being a provision of a procedural character) if he is satisfied that the appellant has had a proper opportunity of putting his case at the inquiry, or where there is no inquiry, to the Minister.

Enlargement of time

10 The Minister may, in his discretion and upon cause shown, enlarge any period of time prescribed by these Regulations for the doing of any act.

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Abandonment of appeal

11 In any case where an appellant wishes to abandon his appeal he may do so by giving notice in writing to the Minister.

PART III

ENQUIRIES

Application of Part III

12 The provisions of this Part shall apply to inquiries.

Notification of inquiry

13 A date, time and place for the holding of the inquiry shall be fixed and may be varied by the Minister who shall give not less than twenty-one days' notice in writing of such date, time and place to the parties to the appeal:

Provided that—

(a) with the consent of the appellant, (and where the applicant is not the appellant, the applicant) the Minister may give such lesser period of notice as shall be agreed between the Minister, the appellant and, as the case may be, the applicant;

(b) where it becomes necessary or advisable to vary the time or place fixed for the inquiry, the Minister shall give such notice of the variation as may appear to him to be reasonable in the circumstances.

Who may appear

14 (1) A party to an appeal may appear at the inquiry either in person or through his duly authorized representative.

(2) Any other person may appear at the inquiry at the discretion of the appointed person.

Procedure

15 (1) Except as provided in these Regulations, the procedure at the inquiry shall be such as the appointed person shall in his discretion determine.

(2) The appellant shall have the right to begin and of final reply; and other persons entitled or permitted to appear shall be heard in such order as the appointed person may determine.

(3) The appellant, the Environmental Engineer and, if he is not the appellant, the applicant shall be entitled to call evidence and cross-examine persons giving evidence, but any other person appearing at the inquiry may do so only to the extent permitted by the appointed person.

(4) The appointed person may allow the Environmental Engineer, applicant or the appellant to alter or add to their cases, but shall give the Environmental Engineer, applicant or appellant, as the case may be, an adequate opportunity of considering any such submission and replying thereto.

(5) If any person entitled to appear at the inquiry fails to do so, the appointed person may proceed with the inquiry at his discretion.

(6) The appointed person shall be entitled (subject to disclosure thereof at the inquiry) to take into account any written representatives or statements received by him before the inquiry from any party to the appeal.

(7) The appointed person may from time to time adjourn the inquiry and, if the date, time and place of the adjourned inquiry are announced before the adjournment, no further notice shall be required.

[regulation 15 amended by 1998:19 effective 18 June 1998]

Site inspection

16 The appointed person may make an inspection of the land before, during or after the inquiry as he may think fit and may be accompanied by the parties to the appeal or unaccompanied as he may think fit.

Procedure after close of inquiry

17 If, after the close of the inquiry, the appointed person proposes to take into consideration any new evidence or any new issue of fact which was not raised at the inquiry and which he considers material to his decision, he shall not come to a decision without first notifying the appellant, the Environmental Engineer and any party to the appeal who appeared at the inquiry of the substance of the new evidence or of the new issue of fact and affording them an opportunity of making representations thereon in writing within such time, being a time reasonable in the circumstances, as he may think fit.

[regulation 17 amended by 1998:19 effective 18 June 1998]

Costs

18 (1) Where any person makes application at any inquiry for the award of costs, the appointed person shall report in writing the proceedings on such application to the Minister and may in such report draw attention to any considerations which appear to him to be relevant to the Minister's decision in the matter.

(2) The Minister may pay any such costs out of moneys appropriated by the Legislature to the purpose.

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Report and recommendations

19 (1) The appointed person shall as soon as practicable after the close of an inquiry submit his report and recommendations to the Minister.

(2) Any person aggrieved by the decision of the Minister upon the appeal may, for the purposes of an appeal under section 32 of the Act, be afforded a reasonable opportunity by the Minister to inspect and take a copy of the report and recommendations of the appointed person.

[Amended by:

1988 : 19

1998 : 19]