

SCHEDULES

SCHEDULE 7

VARIATION OF CONDITIONS

PART 1

APPLICATIONS FOR VARIATION OF CONDITIONS

1. An application under regulation 19(2) for the variation of the conditions of a permit shall be in writing and shall contain the following information—

- (a) the name of the operator, his telephone number and address (including post code) and, if different, the address to which correspondence relating to the application should be sent;
- (b) in the case of a permit to operate a Part A installation or Part A mobile plant, the address of the site of the installation or mobile plant to which the permit applies;
- (c) if appropriate, a description of the proposed change in the operation of the installation or mobile plant requiring the variation and a statement of any changes as respects the matters dealt with in paragraph 1(1)(e) to (i) of Schedule 4, and, for Part A installations and Part A mobile plant, paragraph 1(2)(b) and (c) of that Schedule, which would result if the proposed change were made;
- (d) in the case of a variation required by a proposed substantial change in the operation of a Part A installation, any relevant information obtained or conclusion arrived at in relation to the proposed change pursuant to Articles 5, 6, 7 and 9 of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment;
- (e) a description of the variations to the conditions of the permit which the operator wishes the enforcing authority to make;
- (f) any additional information which the operator wishes the enforcing authority to take into account in considering his application; and
- (g) in the case of an application for the variation of the conditions of a permit in respect of a waste incineration installation, the information specified in paragraph 2 of Schedule 4, or where such information has previously been included in an application made under these Regulations, a statement of any changes as respects the matters dealt with in paragraph 2 of that Schedule which would result if the proposed change in the operation of the installation or mobile plant requiring the variation were made.

2. If a proposed change in the operation of a Part A installation or Part A mobile plant, which is used to carry out an activity listed in Annex II of the IED, will result in additional land being included within the site of the installation or mobile plant, the application shall also contain a site report for that additional land describing the condition of the land, in particular, identifying any substance in, on or under the land which may constitute a pollution risk.

3. An application under regulation 19(2) for the variation of the conditions of a permit for a Part A installation or Part A mobile plant which—

- (a) uses, produces or emits hazardous substances;

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- (b) has not previously submitted a baseline report; and
- (c) is used to carry out activities listed in Annex II of the IED,

shall also contain a baseline report.

4. The enforcing authority may, by notice in writing to the operator, require him to furnish such further information specified in the notice, within the period so specified, as the enforcing authority may require for the purpose of determining the application and if the operator fails to furnish the specified information within the period specified the application shall, if the enforcing authority gives notice in writing to the operator that it treats the failure as such, be deemed to have been withdrawn at the end of that period.

5.—(1) Subject to sub-paragraph (2), this paragraph shall apply where an application is made for the variation of the conditions of a permit under regulation 19(2) which will authorise—

- (a) a substantial change in the operation of an installation or mobile plant;
- (b) a variation of the conditions of a permit where regulation 13(3) applies; or
- (c) a variation of the conditions of a permit in any other case where the enforcing authority determines that the procedure set out in sub-paragraph (3) should apply even though heads (a) and (b) do not apply.

(2) This paragraph shall not apply to an application for the variation of conditions of a permit in relation to an installation carrying out only dry cleaning activities as defined in sub-paragraph (2) of Part C of section 7 of Part 1 of Schedule 1.

(3) The enforcing authority shall, subject to paragraph 24(a), within the period of 14 days from the date of receiving the application—

- (a) notify the operator in writing that this paragraph applies and of any fee prescribed in respect of the application for variation under regulation 25;
- (b) give notice in writing of the application, enclosing a copy of it, to the persons to whom notice would have to be given in accordance with paragraph 12 of Schedule 4 in the case of an application for a permit to operate the particular installation or mobile plant;

(4) For the purpose of calculating the period of 14 days mentioned in sub-paragraph (3) no account shall be taken of any period beginning with the date on which notice is served on an operator under paragraph 4 and ending on the date on which the operator furnishes the information specified in the notice.

(5) If the applicant does not pay to the enforcing authority any fee notified under sub-paragraph (3)(a) within 28 days of the notification the application shall be deemed to have been withdrawn.

6.—(1) Subject to paragraph 24(b), an operator notified under paragraph 5(3)(a) shall, within the period of 28 days from the date on which the notification is made, advertise the application—

- (a) in the case of a variation affecting the operation of an installation or Part A mobile plant in at least one newspaper circulating in the locality in which the installation or mobile plant is operated; and
- (b) in the case of a Part A installation or Part A mobile plant, in the Belfast Gazette.

(2) An advertisement required by sub-paragraph (1) shall—

- (a) state the name of the operator;
- (b) in the case of a variation affecting the operation of a Part A installation or Part A mobile plant, state the address of the site of the installation or mobile plant concerned;

- (c) describe briefly the activities in Part 1 of Schedule 1 carried out in the installation or by means of the mobile plant and the change in the operation of the installation or mobile plant that will be authorised by the variation;
- (d) state where, and in the case of a variation affecting the operation of a Part A installation, how and at what times, any register which contains particulars of the application may be inspected and that it may be inspected free of charge;
- (e) explain that any person may make representations in writing to the enforcing authority within the period of 42 days beginning with the date of the advertisement and give the enforcing authority's address for receiving the representations;
- (f) explain that any such representations made by any person will be entered in a public register unless that person requests in writing that they should not be so entered, and that where such a request is made there will be included in the register a statement indicating only that representations have been made which have been the subject of such a request;
- (g) in the case of a variation affecting the operation of a Part A installation or Part A mobile plant—
 - (i) explain that the particulars of the application contained in the register specified in head (d) include the information listed in paragraph 1; and
 - (ii) where applicable, state that the determination of the application is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with paragraph 17.

(3) Sub-paragraph (1) shall not apply in relation to an application for the variation of the conditions of a permit relating to an installation which is only used to carry out an activity falling within paragraph (b), (c), (d) or (e) of Part C of section 1.2 of Part 1 of Schedule 1.

(4) Any representations made by any person within the period allowed shall be considered by the enforcing authority in determining the application.

(5) For the purpose of sub-paragraph (4), the period allowed for making representations is—

- (a) in the case of persons notified pursuant to paragraphs 5(3)(b), the period of 42 days beginning with the date on which notice of the application is given under that sub-paragraph;
- (b) in the case of other persons—
 - (i) for applications, the period of 42 days; and
 - (ii) for draft determinations, the period of 20 working days,

beginning with the date on which the application, or the draft determination is advertised pursuant to sub-paragraph (1) or paragraph 9.

7.—(1) The Department may give directions to the enforcing authority requiring that any particular application under regulation 19(2) or any class of such applications shall be referred to it for determination pending a further direction under sub-paragraph (13).

(2) The enforcing authority shall inform the operator of the fact that his application is being referred to the Department and forward to the Department any representations which have been made to the enforcing authority within the period allowed.

(3) Where an application for the variation of the conditions of a permit is referred to it under sub-paragraph (1) the Department may afford the operator and the enforcing authority an opportunity of appearing before and being heard by a person appointed by it (the “appointed person”) and it shall do so in any case where a request is duly made by the operator or the enforcing authority to be so heard.

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(4) A request under sub-paragraph (3) shall be in writing and shall be made within the period of 21 days beginning with the day on which the operator is informed that his application is being referred to the Department.

(5) A hearing held under sub-paragraph (3) shall, if the appointed person so decides, be held wholly or to any extent directed by the appointed person, in private.

(6) Where the Department causes a hearing to be held under sub-paragraph (3), it shall give the operator and the enforcing authority at least 28 days notice (or such shorter period of notice as they may agree) of the date, time and place fixed for the holding of the hearing.

(7) In the case of a hearing under sub-paragraph (3) which is to be held wholly or partly in public, the Department shall, at least 21 days before the date fixed for the holding of the hearing—

- (a) where the application relates to the operation of an installation or Part A mobile plant, publish a copy of the notice mentioned in sub-paragraph (6) in at least two newspapers circulating in the locality in which the installation or mobile plant is operated; and
- (b) serve a copy of that notice on every person required to be notified under paragraph 5(3) (b) and on every person who made representations to the enforcing authority with respect to the subject matter of the application.

(8) The Department may vary the date fixed for the holding of any hearing under sub-paragraph (3) and sub-paragraphs (6) and (7) shall apply to the variation of a date as they applied to the date originally fixed.

(9) The Department may also vary the time or place for the holding of a hearing under sub-paragraph (3) and shall give such notice of any variation as appears to it to be reasonable.

(10) The persons entitled to be heard at a hearing under sub-paragraph (3) are—

- (a) the operator;
- (b) the enforcing authority; and
- (c) any person required under paragraph 5(3)(b) to be notified of the application.

(11) Nothing in sub-paragraph (10) shall prevent the appointed person from permitting any other persons to be heard at the hearing and such permission shall not be unreasonably withheld.

(12) After the conclusion of a hearing, the appointed person shall make a report in writing to the Department which shall include his conclusions and recommendations or his reasons for not making any recommendations.

(13) The Department shall, on determining any application referred to it under this paragraph, give to the enforcing authority such a direction as it thinks fit as to whether the enforcing authority is to vary the conditions of the permit and, if so, as to the conditions that are to be attached to the permit by means of the variation notice.

8.—(1) Except in a case where an application under regulation 19(2) has been referred to the Department under paragraph 7 and subject to paragraph 18, the enforcing authority shall give notice of—

- (a) its determination of an application under regulation 19(4); or
- (b) in the case of an application affecting the operation of a Part A installation or Part A mobile plant, to which paragraph 5 applies, its draft determination in accordance with paragraph 9, within the period specified in sub-paragraph (2).

(2) The period for the purposes of sub-paragraph (1) is as follows—

- (a) where paragraph 5 applies, the period of six months beginning with the day on which the enforcing authority received the application;

- (b) where paragraph 5 does not apply, the period of three months beginning with the day on which the enforcing authority received the application; or
 - (c) in either case, such longer period as may be agreed with the operator.
- (3) For the purpose of calculating the periods mentioned in sub-paragraph (2) no account shall be taken of—
- (a) any period beginning with the date on which notice is served on an operator under paragraph 4 and ending on the date on which the operator furnishes the information specified in the notice;
 - (b) any period allowed for making representations in relation to a notice given pursuant to paragraph 6 in so far as that period does not overlap with any other period allowed for making representations in accordance with paragraph 6(5); and
 - (c) where the matter falls to be determined under regulation 34 or 35, any period beginning with the date on which the period of 28 days referred to in paragraph 6(1) ends and ending on the date on which the application is advertised in accordance with paragraph 24(b).

9.—(1) The enforcing authority shall give notice of their draft determination of an application for a Part A installation or Part A mobile Plant, to which paragraph 5 applies, and shall—

- (a) within the period of 3 working days beginning with the date on which notice of a draft determination is given, advertise the draft variation notice on its web-site and, if it considers it appropriate, by any other means; and
- (b) take all relevant steps specified in the advertisement as falling to be carried out by the enforcing authority, within the time periods set out in that advertisement.

(2) In the case of a notice of a draft determination in respect of an application which has been forwarded by the Department to another Member State under paragraph 17, the enforcing authority shall forward copies of the draft determination and of the advertisement made pursuant to this paragraph to the Department at the same time as the draft determination is advertised.

10.—(1) An advertisement required by paragraph 9 shall—

- (a) explain where, how and at what times any register which contains—
 - (i) any additional information which is relevant to the determination of the application which has become available after the application is advertised pursuant to paragraph 6(1);
 - (ii) a copy of the draft determination;
 - (iii) information on any guidance issued by the Department to the enforcing authority relevant to the application; and
 - (iv) information on the arrangements for public participation and the reasons and considerations on which the draft determination is based,may be inspected and that it may inspected free of charge;
- (b) explain that any person may make representations in writing to the enforcing authority within the period of 20 working days beginning with the date of the advertisement and give the enforcing authority's address for receiving representations;
- (c) explain that where—
 - (i) no representations are made to the enforcing authority within the period referred to in head (b) and, where applicable, within the period specified under paragraph 20 for the Department to forward representations to the enforcing authority, the enforcing authority shall—
 - (aa) give notice of its determination; and

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- (bb) include in the register a copy of the final determination, together with a statement confirming that no representations have been received by the enforcing authority on the draft determination,

within the period of 5 working days beginning on the day on which the period referred to in head (b) ends or, where applicable, the day on which the period specified under paragraph 20 for the Department to forward representations to the enforcing authority ends; or

- (ii) representations are made within the period referred to in head (b) and, where applicable, within the period specified under paragraph 20 for the Department to forward representations to the enforcing authority, the enforcing authority shall—

- (aa) give notice of its determination;
- (bb) include in the register a copy of the variation, together with information on the reasons and considerations on which the variation is based, including information on the public participation process; and
- (cc) advertise the notice on its web-site and, if it considers it appropriate, by any other means,

within the period of 15 working days beginning with the day on which the period referred to in head (b) ends or, where applicable, the day on which the period specified under paragraph 20 for the Department to forward representations to the enforcing authority ends or within such longer period as may be agreed with the applicant.

- (2) Where the draft determination has been forwarded to the Department pursuant to paragraph 9(2)—

- (a) the enforcing authority shall forward to the Department a copy of the final determination and the information specified in sub-paragraph (1)(c)(i)(bb) or (1)(c)(ii)(bb) as the case may be, by the date by which it is required to give notice of its determination under sub-paragraph (1)(c)(i) or (1)(c)(ii); and
- (b) the Department shall forward to the Member State to which the draft determination has been forwarded under paragraph 17, copies of the documents specified in the previous head as soon as possible after the date of receipt.

11. If the enforcing authority fails to give notice of its determination or draft determination of an application for a variation of the conditions of a permit within the applicable period allowed by or under paragraph 8 or 10, the application shall, if the operator notifies the authority in writing that he treats the failure as such, be deemed to have been refused at the end of that period.