
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

The Water Environment (Controlled Activities) (Scotland) Regulations 2011

PART III

Applications and Application Procedure

Form and content of applications for authorisation

11.—(1) An application to SEPA for an authorisation to carry on one or more controlled activities must be made in writing, in such form as SEPA may from time to time require, and must be accompanied by—

- (a) any charge prescribed in accordance with Schedule 5; and
- (b) such information in such form as SEPA may reasonably require.

(2) If SEPA considers that the controlled activity is likely to have a significant adverse impact on the water environment, SEPA shall, subject to paragraph (3), require that the application be accompanied by the following information:

- (a) a description of the controlled activity comprising information on its siting, design and size;
- (b) a description of the measures envisaged in order to mitigate and, if possible, remedy significant adverse impacts on the water environment;
- (c) the data reasonably required by SEPA to identify and assess the main impacts which the controlled activity is likely to have on the water environment;
- (d) an outline of the main alternatives studied by the applicant and an indication of the main reasons for the choice made, taking into account the environmental effects;
- (e) a non technical summary of the information provided under sub-paragraphs (a) to (d); and
- (f) such other information specified in Annex IV of the EIA Directive as SEPA considers relevant to determination of the application.

(3) SEPA must only require an application to be accompanied by the information referred to in paragraph (2) insofar as SEPA considers that information—

- (a) reasonably necessary to determine the application; and
- (b) reasonably capable of being compiled by the applicant having regard, among other factors, to current knowledge and methods of assessment.

(4) Before making an application, the applicant may request that SEPA provide an opinion on what information must accompany the application and SEPA must, subject to paragraphs (6) and (7), provide such an opinion to the applicant if so requested.

- (5) A request for an opinion under paragraph (4) must be accompanied by—
 - (a) information sufficient to identify the location of the controlled activity;

- (b) a brief description of the nature and purpose of the controlled activity and of its possible effects on the environment; and
- (c) such other information or representations as the person making the request may wish to provide or make.

(6) Upon receiving a request under paragraph (4) for an opinion, SEPA may, if it considers that it has not been provided with sufficient information to provide an opinion, notify the applicant in writing of the points on which further information is required.

(7) If the applicant fails to provide the further information requested by SEPA under paragraph (6), SEPA is not obliged to provide an opinion under paragraph (4).

(8) If SEPA considers that the controlled activity is likely to have a significant adverse impact on the water environment, SEPA must, in preparing its opinion under paragraph (4), consult with the applicant and any public authorities which in SEPA's opinion are likely, by virtue of their specific environmental responsibilities, to have an interest in the application.

(9) SEPA must, upon request, make available to the public a statement of the reasons for its assessment of whether or not the controlled activity in respect of which authorisation has been applied for is likely to have a significant adverse impact on the water environment and must inform the applicant that it has done so.

Consultation with public authorities

12.—(1) If SEPA receives an application in respect of a controlled activity that it considers likely to have a significant adverse effect on the water environment or on the interests of other users of the water environment, it must consult any public authorities as appear to it to have an interest in the application.

(2) The public authorities referred to in paragraph (1) may provide information or make representations in writing to SEPA within 21 days (or such other period as they may agree with SEPA) beginning with the date when they were consulted.

(3) SEPA must consider all information provided or representations made under paragraph (2).

(4) SEPA must ensure that, during the 28-day period referred to in regulation 13(4), any information provided or written representations made under paragraph (2) is made available to the public.

Advertisement of application

13.—(1) If SEPA receives an application it may, if it considers that the controlled activity has or is likely to have a significant adverse impact on the water environment or the interests of other users of the water environment, require the application to be advertised in accordance with this regulation.

(2) SEPA must serve notice requiring the applicant to advertise the application, and to send SEPA a copy of any such advertisement, within 28 days beginning with the date on which the notice was served.

(3) SEPA must specify in a notice under paragraph (2)—

- (a) the form of the advertisement;
- (b) the text to be included in the advertisement;
- (c) the publications or locations in which the advertisement should be placed; and
- (d) the dates between which the advertisement should be placed.

(4) An advertisement under paragraph (2) must, as a minimum—

- (a) describe the application, the assessment procedure, and the potential determinations of the application by SEPA;

- (b) state whether further information is available and, if so, how that information may be obtained or accessed;
 - (c) explain that any person affected or likely to be affected by, or having an interest in, the application may make representations to SEPA in writing within 28 days beginning with the date of the advertisement; and
 - (d) give the address to which such representations should be sent.
- (5) SEPA must consider all written representations made under paragraph (4).
- (6) The requirements of this regulation do not apply insofar as they would require the advertisement of information which, by virtue of regulation 38, is not to be included in the register maintained under regulation 37.

Further information etc.

14.—(1) SEPA may request such additional information in relation to any application as it reasonably requires.

(2) SEPA may request such additional information within such period as it may specify, or agree in writing with the applicant, or as the case may be, person making representations under regulation 13(4) or public authority providing information or making representations under regulation 12(2).

(3) SEPA may carry out such examination and investigation as it considers necessary to allow it to make a determination in respect of the application.

(4) SEPA may require an applicant to nominate a person who will be responsible for securing compliance with the terms of any authorisation to be granted in accordance with regulation 8, within such period as it may specify.

(5) If, under this regulation, SEPA obtains further information in relation to an application, it must consider, in light of that further information, whether the controlled activity is likely to have a significant adverse impact on the water environment and, if it considers it likely to do so, regulation 11(2) applies.

Determination of application

15.—(1) Before determining an application SEPA must—

- (a) assess the risk to the water environment posed by the carrying on of the activity referred to in the application;
- (b) if the application is in respect of an activity that it considers has or is likely to have a significant adverse impact on the water environment—
 - (i) assess the indirect effects of that impact on any other aspects of the environment likely to be significantly affected;
 - (ii) consider any likely adverse social and economic effects of that impact and of any indirect environmental effects identified in accordance with sub-paragraph (i); and
 - (iii) consider the likely environmental, social and economic benefits of the activity;
- (c) assess the impact of the controlled activity on the interests of other users of the water environment;
- (d) assess what steps may be taken to ensure efficient and sustainable water use;
- (e) apply the requirements of the legislation referred to in Part 1 of Schedule 4, including, in particular, the provisions of Article 4 of the Directive and Article 6 of the Groundwater Directive 2006; and

- (f) have regard to the provisions of the legislation referred to in Part 2 of Schedule 4.
- (2) If an application is in respect of the carrying on of more than one controlled activity, SEPA may grant or refuse to grant it in relation to any one or more of those activities.
- (3) Subject to regulation 16, SEPA must consider an application and must either grant or refuse to grant an authorisation to carry on the activity, or, as the case may be, each of the activities referred to in that application, and shall notify the applicant of its decision.
- (4) If SEPA refuses to grant an application (in whole or in part) it must, when notifying the applicant of that refusal, give its reasons for doing so.
- (5) If SEPA decides to grant an authorisation, it must, having considered the matters referred to in paragraph (1), grant it in the form of an authorisation under either—
- (a) regulation 7; or
 - (b) regulation 8.
- (6) If SEPA determines an application in respect of a controlled activity that SEPA considers likely to have a significant adverse impact on the water environment, SEPA must make available to the public—
- (a) its decision;
 - (b) the main reasons for it;
 - (c) the matters considered in making it; and
 - (d) if the application is granted, details of any measures which will be taken to mitigate the significant adverse impact.

Consideration of third party representations

- 16.—**(1) This regulation applies to an application (or matter treated as an application in accordance with these Regulations) which SEPA proposes to determine under regulation 15(3), 23(2), 24(3) or 27(3) in respect of which a third party representation has been made.
- (2) Before it determines an application to which this regulation applies SEPA must—
- (a) serve notice of its proposed determination on any person who has made a third party representation in respect of the application specifying that that person may, within the period of 21 days beginning with the date of service of the notice, notify the Scottish Ministers in writing that that person objects to SEPA's proposed determination; and
 - (b) send a copy of the notice served under sub-paragraph (a) to the applicant (or any person who is treated by these Regulations as the applicant in respect of the application).
- (3) SEPA must not determine the application during the period specified in paragraph (2)(a).
- (4) Any person notifying the Scottish Ministers of an objection under paragraph (2)(a) must send a copy of that notification to SEPA within the period specified in that paragraph.
- (5) If the Scottish Ministers receive notification under paragraph (2)(a) and SEPA receive a copy of that notification under paragraph (4), SEPA must not determine the application to which the notification relates until either—
- (a) SEPA has received written notice from the Scottish Ministers confirming that they do not intend to direct SEPA to refer the application to them for their determination under regulation 20(1)(b); or
 - (b) no such notice has been received from the Scottish Ministers and a period of 63 days beginning with the date of the service of the notice given by SEPA under paragraph (2)(a) has expired.

(6) In this regulation “third party representation” means a written representation in respect of an application made to SEPA under regulation 12(2) or 13(4)(c).

Time limits for determining applications

17.—(1) SEPA must determine an application—

- (a) for an authorisation under regulation 7, within 30 days; and
- (b) for an authorisation under regulation 8 within 4 months,

beginning with the date on which it receives the application; but may determine it within such other period as may be agreed in writing with the applicant.

(2) For the purposes of calculating the periods mentioned in paragraph (1), SEPA must disregard any periods—

- (a) beginning with the date on which it serves notice under regulation 13(2) and ending with the last date by which any written representations must be made under regulation 13(4);
- (b) beginning with the date it requests information under regulation 14(1) and ending with the date it receives the information requested or the date of the expiry of the period specified or agreed under regulation 14(2), whichever is the earlier; and
- (c) in excess of 35 days during which it is prohibited from making a determination by virtue of regulation 16.

(3) The application will be treated as if it were refused at the end of the period provided for in paragraph (1) if—

- (a) SEPA fails to determine the application within the period provided for in paragraph (1); and
- (b) the applicant notifies SEPA in writing that the applicant wishes the failure to be treated as a refusal.

Accelerated determination of applications, variations and suspensions

18.—(1) This regulation applies if SEPA considers that, by reason of an emergency—

- (a) an application for an authorisation requires to be determined within a shorter period of time than the procedures provided in regulations 11 to 17 permit;
- (b) the variation of an authorisation (whether proposed by SEPA under regulation 22 or applied for by a responsible person or operator under regulation 24) requires to be determined within a shorter period of time than the procedures provided in regulations 23 and 24 permit; or
- (c) an authorisation requires to be suspended (whether in whole or in part) within a shorter period of time than the procedures provided in regulation 29 permit.

(2) If this regulation applies, regulations 11, 12, 13, 15(3), (4) and (5), 16, 17, 23, 24(2), (3) and (4), and 29(2)(b) do not apply.

(3) If this regulation applies, regulations 14, 15(1) and (6), and 20 apply to any variation proposed by SEPA under regulation 22 or applied for by a responsible person or operator under regulation 24 as if it were an application and the responsible person or operator, as the case may be, were the applicant.

(4) If this regulation applies, an application—

- (a) must be made in such form and must be accompanied by such information as SEPA may from time to time require (and, if SEPA so determines, need not be in writing);
- (b) must be subject to such charges as SEPA may prescribe in accordance with Schedule 5.

(5) SEPA must determine whether to grant or refuse (in whole or in part) an application to which this regulation applies within such time period as it considers appropriate in all the circumstances.

(6) When determining an application to which this regulation applies, SEPA must comply with regulation 15(1) only insofar as it is reasonably practicable for it to do so.

(7) If SEPA decides to grant the variation of an authorisation under this regulation (whether or not proposed by SEPA under regulation 22), it must notify the responsible person or operator (as the case may be) of—

- (a) the variations being made to the authorisation; and
- (b) the date on which the variations are to take effect.

(8) In this Part, “emergency” has, subject to paragraph (9), the same meaning as it does in section 1 of the Civil Contingencies Act 2004(1);

(9) The Scottish Ministers may direct that a specified event or situation, or class of event or situation, is to be treated as an “emergency” for the purposes of this regulation, regulation 19(1), or regulation 20(6).

Directions to SEPA regarding accelerated applications, variations and suspensions

19.—(1) If, by reason of an emergency, the Scottish Ministers consider that an application requires to be determined within a particular timescale or in a particular manner, the Scottish Ministers may direct SEPA to—

- (a) determine an application or a specified class of applications within a particular timescale, in a particular manner, and subject to such conditions (if any) as the Scottish Ministers may specify;
- (b) vary an authorisation or a specified class of authorisations within a particular timescale, in a particular manner, and subject to such conditions (if any) as the Scottish Ministers may specify; or
- (c) suspend an authorisation or a specified class of authorisations within a particular timescale, on such notice, and for such period as they may specify in the direction.

(2) If the Scottish Ministers issue a direction under paragraph (1), regulations 11 to 17, 23, 24 and 29(2)(b) only apply insofar as the Scottish Ministers direct.

(3) Before giving a direction under paragraph (1), the Scottish Ministers must—

- (a) consider the matters referred to in regulation 15(1); and
- (b) consult—
 - (i) SEPA;
 - (ii) any responsible authorities that the Scottish Ministers consider are likely to be affected by the direction; and
 - (iii) such other persons as they think fit.

Determinations of applications by the Scottish Ministers

20.—(1) The Scottish Ministers may direct SEPA to refer to them for their determination—

- (a) applications under these Regulations of any class or description specified in the direction;
- (b) any particular application, or any part of any particular application,

and the provisions of this regulation apply to any application referred to the Scottish Ministers for their determination in accordance with this paragraph; and in this regulation references to

(1) 2004 c.36.

“application” or “applications” includes reference to any matter which is treated as an application in accordance with these Regulations.

(2) The Scottish Ministers must consult SEPA before issuing a direction under paragraph (1).

(3) The Scottish Ministers may cause a local inquiry to be held in relation to any such application, and the provisions of subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973⁽²⁾ (power to direct inquiries) apply to inquiries held in accordance with this provision.

(4) The provisions of regulations 12, 13, 14 and 15(1) to (3) apply to the Scottish Ministers in respect of an application referred in accordance with paragraph (1) as they do to SEPA in respect of an application made under regulation 11.

(5) When they have made a determination under this regulation, the Scottish Ministers must direct SEPA—

(a) to grant or refuse to grant an application for—

- (i) an authorisation to carry on the activity, or any of the activities referred to in the application or the relevant part of the application;
- (ii) a variation of the authorisation or part of the application for it made under regulation 24;
- (iii) a surrender of the authorisation or part of it,

or to vary or not to vary an authorisation under regulation 23(1), as the case may be; and

(b) if the determination is—

- (i) that an authorisation is to be granted under regulation 7 or 8, to grant that authorisation in accordance with that regulation;
- (ii) that an authorisation is to be varied under regulation 22, to vary that authorisation in accordance with that regulation and regulation 23 or 24, as the case may be;
- (iii) that an authorisation is to be surrendered under regulations 27 and 28, to grant that surrender in accordance with those regulations;
- (iv) that an authorisation or a partial surrender of an authorisation is to be granted subject to conditions, to grant that authorisation or partial surrender, specifying the conditions on which that authorisation or partial surrender is to be granted, and, if appropriate, to identify the person responsible for it;
- (v) to refuse to grant an application for authorisation, variation or surrender, or not to vary an authorisation under regulation 23(1), to notify the applicant of that refusal or determination not to vary as the case may be, specifying the reasons for that determination.

(6) If, by reason of an emergency, the Scottish Ministers consider that an application they have directed SEPA to refer to them under paragraph (1) requires to be determined urgently, the Scottish Ministers may—

- (a) dispense with consultation with public authorities as would otherwise be required by regulation 12;
- (b) dispense with advertisement of the application as would otherwise be required by regulation 13;
- (c) determine the application within such timescale as they consider appropriate.

(2) 1973 c.65; amended by the Criminal Procedure (Scotland) Act 1975 (c.4) and the Housing and Planning Act 1986 (c.63).