
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

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

PART VIII

Appeals

Appeals to the Scottish Ministers

- 50.** The following persons may appeal to the Scottish Ministers against the decision of SEPA—
- (a) a person who has been refused the grant of an authorisation in accordance with regulation 15(3) or is deemed to have been refused the grant of an authorisation in accordance with regulation 17(3);
 - (b) a person who has been granted a form of authorisation under regulation 15 which is different from the form of authorisation which that person believes ought to have been granted;
 - (c) a person who is aggrieved by the terms and conditions attached to that person's authorisation in accordance with regulation 7 or 8;
 - (d) a person who has been served with a variation notice under regulation 23(3) or is aggrieved by the conditions attached to that variation notice;
 - (e) a person who has been refused the variation (in whole or in part) of an authorisation on request under regulation 24;
 - (f) a person who has been granted the variation of an authorisation on request under regulation 24 but is aggrieved by the removal, addition or amendment of any condition pursuant to that variation;
 - (g) a person whose application under regulation 25 for SEPA to effect the transfer of an authorisation has been refused; or who is aggrieved by the conditions attached to that person's authorisation to take account of such a transfer;
 - (h) a person whose application to surrender an authorisation under regulation 27(3) has been refused or who is aggrieved by the conditions attached to that authorisation in order to take account of the surrender;
 - (i) a person whose authorisation has been suspended or revoked (in whole or in part) under regulation 29;
 - (j) a person on whom a notice has been served under regulation 32(2), or who is aggrieved by the terms of that notice; and
 - (k) if SEPA has determined that information is not commercially confidential under Part VI, the person to whom, or whose business, that information relates.

Determination of appeals

51. On determining an appeal against a decision of SEPA referred to in regulation 50, the Scottish Ministers may—

- (a) affirm the decision, or any part of it;
- (b) if the decision was a refusal to—
 - (i) grant an authorisation;
 - (ii) grant a form of authorisation; or
 - (iii) vary any condition of an authorisation,

direct SEPA to grant the authorisation or the form of authorisation or vary the conditions of the authorisation, as the case may be;

- (c) if the decision was as to the conditions attached to an authorisation, quash or vary all or any of the conditions of the authorisation;
- (d) if the decision was a refusal to effect the transfer of, or accept the surrender of, an authorisation, direct SEPA to effect the transfer or accept the surrender, as the case may be;
- (e) if the decision was to serve a notice under regulation 23(3), 29 or 32(2), either quash or affirm the notice, and if they affirm it, they may do so in its original form or with such modifications as they may think fit;
- (f) if the decision was a determination that information is not commercially confidential, either affirm the determination or quash it,

and if exercising any of the powers in paragraph (b), (c) or (e) the Scottish Ministers may give directions as to the conditions to be attached to the authorisation or the terms of the notice, as the case may be.

Effect of notices etc. during consideration of appeal

52.—(1) If an appeal is against—

- (a) a notice served under regulation 23(3), the notice will not take effect until the day following the day on which the appeal is finally determined or withdrawn;
- (b) a determination under Part VI that information is not commercially confidential, the information shall not be entered in the register until the day following the day on which the appeal is finally determined or withdrawn.

(2) If an appeal relates to—

- (a) the conditions attached to an authorisation under regulation 7 or 8, the bringing of the appeal shall not have the effect of suspending the operation of the conditions;
- (b) a notice under regulation 29 or 32(2), the bringing of the appeal will not have the effect of suspending the operation of the notice.

Appeals – miscellaneous

53.—(1) The provisions of regulation 15(1) apply if the Scottish Ministers, in exercising any of the powers in regulation 51, give directions as to the conditions to be attached to an authorisation under regulation 7 or 8 as they would apply to SEPA when determining the conditions of the authorisation.

(2) Schedule 9, which makes provision for procedures for appeals under regulation 50, has effect.

(3) Section 114 of the Environment Act 1995⁽¹⁾ (delegation of reference of appeals) applies to this Part and to Schedule 9 as it applies to appeals referred to in that section.

(1) [1995 c.25](#), amended by the Pollution Prevention and Control (Scotland) Regulations 2000 ([S.S.I. 2000/323](#)).