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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2012 No.**

**The Pollution Prevention and  
Control (Scotland) Regulations 2012**

**PART IX**

**INFORMATION AND PUBLICITY**

**Scottish Ministers and SEPA: powers in respect of information**

**63.**—(1) The Scottish Ministers may by written notice require SEPA to provide such information about the discharge of a function of SEPA under these Regulations or the Landfill Regulations as is specified in the notice.

(2) The Scottish Ministers or SEPA may by written notice, for the purposes of the discharge of their functions under these Regulations or the Landfill Regulations, require any person to provide such information as is specified in the notice, in such form and within such period as is specified in the notice.

(3) For the purposes of this regulation the—

- (a) discharge by the Scottish Ministers of an obligation of the United Kingdom under the Union Treaties or any international agreement relating to the environment is treated as a function of theirs under these Regulations, and
- (b) compilation of an inventory of emissions (whether or not from installations or mobile plant) is treated as a function of SEPA under these Regulations.

(4) The information which a person may be required to furnish under paragraph (2) does include information on emissions which, although it is not in the possession of that person or would not otherwise come into the possession of that person, is information which it is reasonable to require that person to compile for the purpose of complying with the notice.

**SEPA: public register**

**64.**—(1) Subject to regulations 65 and 66 and to paragraphs 2 to 4 of Schedule 9, SEPA must maintain a register (“the register”) containing the particulars described in paragraph 1 of that Schedule.

(2) Where, by virtue of regulation 66, information of any description is excluded from the register under this regulation, a statement must be entered in the register indicating the existence of information of that description.

(3) SEPA must—

- (a) secure that the register is available, at all reasonable times, for inspection by the public free of charge, and
- (b) afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges.

(4) The register may be kept in any form.

(5) The Scottish Ministers may give SEPA directions requiring the removal from the register of any specified information—

- (a) not prescribed for inclusion by paragraph 1 of Schedule 9, or
- (b) which, under regulation 66, ought to have been excluded from the register.

**Register: exclusion of information affecting national security**

**65.**—(1) Information must not be included in the register if and so long as a direction by the Secretary of State or the Scottish Ministers<sup>(1)</sup> is in force in relation to that information under section 21 of the 1990 Act.

(2) Information must not be included in the register if and so long as a direction by the Secretary of State is in force in relation to that information under section 20(6) of the 1990 Act.

(3) A direction under section 21(2) of the 1990 Act applies to the register as it applies to the register maintained under section 20 of that Act (“the 1990 Act register”), and no information referred by SEPA under section 21(2)(b) of that Act shall be included in the register until the question of its inclusion is determined for the purposes of that section.

(4) A direction under section 20(6) of the 1990 Act applies to the register as it applies to the 1990 Act register.

(5) Section 21(3) and (4) of the 1990 Act apply to the register as it applies to the 1990 Act register, and no information notified under section 21(4)(b) of that Act may be included in the register until the question of its inclusion is determined for the purposes of section 21 of that Act.

**Register: exclusion of confidential information**

**66.**—(1) No information relating to the affairs of any individual or business may be included in the register without the consent of that individual or the person for the time being carrying on that business, if and so long as the information—

- (a) is, in relation to that individual or person, commercially confidential, and
- (b) is not required to be included in the register in pursuance of a direction under paragraph (9), but information is not commercially confidential for the purposes of this regulation unless it is determined under this regulation to be so by SEPA or, as the case may be, on appeal.

(2) Where information is furnished to SEPA for the purpose of these Regulations, the person furnishing it may apply to SEPA to have the information excluded from the register on the ground that it is commercially confidential (as regards that person or another person) and SEPA must determine whether the information is or is not commercially confidential.

(3) Notice of determination under paragraph (2) must be given to the applicant within the period of 28 days beginning with the date of the application or within such longer period as may be agreed with the applicant.

(4) SEPA is deemed to have determined, at the end of the period referred to in sub-paragraph (a), that information is not commercially confidential if—

- (a) it fails to give notice of determination of an application under paragraph (2) within the period allowed by or under paragraph (3), and
- (b) the applicant notifies SEPA in writing that it has so failed.

(5) Subject to section 113 of the 1995 Act, where it appears to SEPA that any information which has been obtained by it under or by virtue of any provision of these Regulations and is required to be

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(1) The functions of the Secretary of State under section 21(1), (2) and (4) of the Environmental Protection Act 1990 (c.43) so far as they are exercisable in or as regards Scotland may by virtue of Article 3 of S.I. 1999/1750 be exercised by the Scottish Ministers after consultation with the Secretary of State.

included in the register, unless excluded under this regulation, might be commercially confidential, SEPA must (unless the information is the subject of an application under paragraph (2))—

- (a) give to the person to whom or whose business it relates notice that that information is required to be included in the register, unless excluded under this regulation, and
- (b) give that person a reasonable opportunity—
  - (i) of objecting to the inclusion of the information on the ground that it is commercially confidential, and
  - (ii) of making representations to SEPA for the purpose of justifying any such objection, and if representations are made SEPA must, having taken the representations into account, give that person notice of its determination as to whether the information is or is not commercially confidential.

(6) Where, under paragraph (2) or (5), SEPA determines that information is not commercially confidential—

- (a) the information must not be entered in the register until the end of the period of 21 days beginning with the date on which the determination is notified to the person concerned or the determination is deemed to have been made under paragraph (4), as the case may be, and
- (b) that person may, before the end of that period, appeal to the Scottish Ministers against the decision,

and, where an appeal is brought under this regulation in respect of any information, the information must not be entered in the register until the end of the period of 21 days following the day on which the appeal is finally determined or is withdrawn.

(7) A person who wishes to appeal to the Scottish Ministers under paragraph (6) must—

- (a) give the Scottish Ministers notice of the appeal together with—
  - (i) a statement of the grounds of appeal, and
  - (ii) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing, or to be disposed of by way of written representations, and
- (b) send SEPA, at the same time, a copy of that notice and those statements.

(8) The Scottish Ministers—

- (a) may, before giving notice of their determination of an appeal under paragraph (6), afford the appellant and SEPA an opportunity of appearing before and being heard by a person appointed by them and must do so in any case where a request is duly made by the appellant or SEPA to be so heard, and
- (b) must, when issuing their determination, advise the appellant of the right of appeal under paragraph (13).

(9) The Scottish Ministers may give to SEPA a direction as to specified information, or descriptions of information, which the public interest requires to be included in the register notwithstanding that the information may be commercially confidential.

(10) Information excluded from the register ceases to be commercially confidential at the end of—

- (a) the period of four years beginning with the date of the determination by virtue of which it was excluded,
- (b) such shorter period as may be specified in the notice of that determination for the purpose of this paragraph,

provided that the person who provided the information may apply to SEPA for the information to remain excluded on the ground that it should be treated as commercially confidential, and SEPA must determine whether or not that is the case.

(11) Paragraphs (6) to (8) apply in relation to a determination under paragraph (10) as they apply in relation to a determination under paragraph (2) or (5).

(12) Information is, for the purposes of any determination under this regulation, commercially confidential in relation to any individual or other person if including it in the register would prejudice to an unreasonable degree the commercial interests of that individual or person.

(13) SEPA, or the person referred to in paragraph (6)(a), may appeal to the sheriff against the decision of the Scottish Ministers made under that paragraph.

(14) An appeal under paragraph (13) is by summary application, and must be made within 21 days of the decision of the Scottish Ministers under paragraph (6).