

SCHEDULE 7

VARIATION OF PERMITS

PART 2

DETERMINATION OF VARIATIONS

- 4.—(1) Subject to sub-paragraphs (2) and (3), this paragraph applies where—
- (a) an application for variation is made under regulation 46, and
 - (b) no such application is made, and SEPA—
 - (i) proposes to serve a variation notice for a variation that will authorise—
 - (aa) a substantial change in operation of an installation or mobile plant, or
 - (bb) a variation of a permit for a Part A installation as a result of a review under regulation 44(1)(a), or
 - (ii) makes a determination that this paragraph applies to a proposed variation.
- (2) This paragraph does not apply where SEPA proposes to serve a variation notice—
- (a) which has been modified to take account of representations made in accordance with this paragraph, or
 - (b) in order to comply with a direction given by the Scottish Ministers.
- (3) This paragraph does not apply in relation to a variation relating only to dry cleaning (as defined in Part 5 of Schedule 2).
- (4) Where this paragraph applies, SEPA must—
- (a) notify the operator that the paragraph applies, and of any prescribed fee,
 - (b) in the case of a proposed variation notice, serve a copy of the proposed notice on the operator,
 - (c) give notice of the application or proposed variation notice, enclosing a copy of it, to the persons to whom notice would have to be given in accordance with paragraph 13 of Schedule 4 in the case of an application for a permit to operate the installation or mobile plant, and
 - (d) in the case of a proposed variation notice affecting the operation of a Part A installation, provide—
 - (i) information on the reasons and considerations on which that proposed variation notice is based,
 - (ii) information on any guidance relevant to the determination of the proposed variation.
- (5) SEPA must, subject to paragraph 19(a), comply with sub-paragraph (4) within the 14 day period after receipt of an application for variation.
- (6) For the purposes of calculating the period in sub-paragraph (5), no account may be taken of any period beginning with the date on which notice is served on an operator under paragraph 3 and ending on the date on which the operator provides the information specified in the notice.
- (7) An application for variation is deemed to have been withdrawn if the applicant does not pay any prescribed fee to SEPA within 28 days after the date of notification under sub-paragraph (4)(a).
- (8) Subject to sub-paragraph (10) and to paragraph 19(b), an operator notified under sub-paragraph (4)(a) must, within the 28 day period beginning on the day on which the notification is made, advertise the application or proposed variation notice (as the case may be)—

- (a) in the case of an installation in one or more newspapers circulating in the locality in which the installation is operated, and
 - (b) in the case of a Part A installation other than a landfall described in paragraph (b) of Part A of Section 5.2 of Part 1 of Schedule 1, in the Edinburgh Gazette.
- (9) An advertisement under sub-paragraph (8) must—
- (a) state the name of the operator,
 - (b) state the address of the site of the installation,
 - (c) describe briefly the activities carried out in the installation and the change in the operation of the installation 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, the register which contains—
 - (i) particulars of the application or proposed variation,
 - (ii) in the case of a proposed variation affecting the operation of a Part A installation, a copy of the proposed variation notice and the information provided by SEPA under sub-paragraph (4)(d)(i) on the reasons and considerations on which that proposed variation notice is based,may be inspected, and that it may be inspected free of charge,
 - (e) explain that any person may make representations to SEPA in writing within the period of 28 days beginning with the date of the advertisement and give the address of SEPA for receiving the representations,
 - (f) explain that any such representations made by any person will be entered in the 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—
 - (i) explain that the particulars of the application contained in the register specified in paragraph (d) include a description of the elements listed in paragraph 1,
 - (ii) in the case of a proposed variation notice, describe the contents of that notice,
 - (iii) where applicable, state that the determination of the application or the serving of the variation notice is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with paragraph 13,
 - (iv) where applicable, explain that any guidance relevant to the determination of the proposed variation which has been provided to the operator under sub-paragraph (4)(d)(ii) has been included in the register or otherwise made available.
- (10) Sub-paragraph (8) does not apply to a variation relating to an installation involving only an activity falling within paragraphs (b)(ii), (c), (d) or (e) of Part B of Section 1.2 of Part 1 of Schedule 1.
- (11) Any representations made by any person within the period allowed must be considered by SEPA in determining the application or before serving the variation notice.
- (12) For the purpose of sub-paragraph (11), the period allowed for making representations is—
- (a) in the case of persons notified pursuant to sub-paragraph (4)(c), the period of 28 days beginning with the date on which notice of the application or proposed variation notice was given under that sub-paragraph,
 - (b) in the case of any other person, the period of 28 days beginning with the date on which the application or proposed variation notice was advertised pursuant to sub-paragraph (8),

- (c) in the case of all persons, the period of 28 days beginning with the date on which the draft determination is advertised pursuant to paragraph 9.

(13) Where this paragraph applies to a variation affecting the operation of a Part A installation or a solvents installation, SEPA must consider any relevant information obtained or conclusion arrived at for the purposes of Articles 5, 6, 7 and 9 of the EIA Directive in relation to the change on determining the application or before serving the variation notice.

5.—(1) If SEPA proposes to serve a variation notice which will result in the inclusion of an off-site condition in the permit concerned, it must before serving the variation notice give a notice which complies with sub-paragraph (3) to every person appearing to it to be a person falling within sub-paragraph (2).

(2) A person falls within this sub-paragraph if—

- (a) that person is the owner, tenant or occupier of the land, and
- (b) that land is land in relation to which it is likely that, as a consequence of the off-site condition in question, rights will have to be granted under regulation 24(2) to the holder of the permit.

(3) A notice served under sub-paragraph (1) must—

- (a) set out the off-site condition in question,
- (b) indicate the nature of the works or things which that condition might require the holder of the permit to carry out or do, and
- (c) specify a period, not being less than 28 days beginning on the date on which the notice is served, in which representations may be made to SEPA relating to the condition or its possible effects and the manner in which any such representations are to be made.

(4) In sub-paragraph (2), “owner” has the same meaning as in paragraph 11(4) of Schedule 4.

(5) Any representations made by a person notified under sub-paragraph (1) within the period of 28 days beginning with the date on which notice was given under that sub-paragraph must be considered by SEPA before serving the variation notice.

6.—(1) The Scottish Ministers may give directions to SEPA requiring that any particular application under regulation 46(3) or any class of such applications must be referred to them for determination pending a further direction under sub-paragraph (7).

(2) SEPA must inform the applicant of the fact that the application is being transmitted to the Scottish Ministers, and must forward to the Scottish Ministers any representations which have been made to it within the period allowed.

(3) Where an application for the variation of the conditions of a permit is referred to them under sub-paragraph (1), the Scottish Ministers may afford the applicant and SEPA an opportunity of appearing before and being heard by a person appointed by them and they must do so in any case where a request is duly made by the applicant or SEPA to be so heard.

(4) A request under sub-paragraph (3) must be in writing and must be made within the period of 21 days beginning with the day on which the applicant is informed that the application is being transmitted to the Scottish Ministers.

(5) Paragraphs 4(2) to (10) of Schedule 8 apply to a hearing held under sub-paragraph (3) as they apply to a hearing held under paragraph 4(1) of that Schedule, with the—

- (a) substitution in sub-paragraph (3) for the reference to the appellant of a reference to the applicant,
- (b) substitution in sub-paragraph (4)—
 - (i) for the reference to the appeal of a reference to the application, and

- (ii) for the reference to every person mentioned in paragraph 3(1)(a) of Schedule 8 and every person mentioned in paragraph 3(1)(b) and (c) of that Schedule who has made representations to the Scottish Ministers in writing of a reference to every person who was required to be notified under paragraph 3(4)(b) and to any person who made representations to SEPA with respect to the subject matter of the application,
 - (c) substitution in sub-paragraph (7)—
 - (i) for the reference in sub-paragraph (7)(a) to the appellant of a reference to the applicant,
 - (ii) for the reference in sub-paragraph (7)(c) to any person required under paragraph 3(1)(a) of Schedule 8 to be notified of the appeal of a reference to any person required under paragraph 3(4)(b) to be notified of the application.
- (6) In relation to SEPA and the applicant, regulation 58(5) and (6) applies to any determination by the Scottish Ministers of any application referred to them under sub-paragraph (1) as it applies to decisions made by the Scottish Ministers under regulation 58(1) or (2).
- (7) On determining any application transferred under this paragraph, the Scottish Ministers must (or, on determining an appeal the sheriff may) give SEPA such directions as they consider fit as to whether it is to grant the application and, if so, as to the conditions that are to be attached to the permit by means of the variation notice.
- 7.—(1) In the case of a proposed variation notice affecting the operation of a Part A installation to which the consultation and advertising procedure set out in paragraph 4 applies—
- (a) where no representations are made to SEPA within the period allowed by paragraph 4(12) or, where applicable and if later, paragraph 5 or by the day on which SEPA receives notification by the Scottish Ministers that the bilateral consultations have been completed pursuant to paragraph 14(b), SEPA must—
 - (i) serve the variation notice,
 - (ii) include in the register a copy of the variation notice, together with the statement confirming that no representations have been received by SEPA on the proposed variation and information on the reasons and considerations on which the variation notice is based, and
 - (iii) where paragraph 13 applies, forward a copy of the variation notice and the information specified in sub-paragraph (ii) to the Scottish Ministers,within the period of 7 days beginning on the day on which the period allowed by paragraph 4(12) or, where applicable and if later, paragraph 5 ends or the day on which SEPA receives notification by the Scottish Ministers that the bilateral consultations have been completed pursuant to paragraph 14(b), or
 - (b) where representations are made to SEPA within the period allowed by paragraph 4(12) or, where applicable and if later, paragraph 5 or by the day on which SEPA receives notification by the Scottish Ministers that the bilateral consultations have been completed pursuant to paragraph 14(b), SEPA must—
 - (i) serve the variation notice,
 - (ii) include in the register a copy of the variation notice, together with information on the reasons and considerations on which the variation notice is based, including information about the public participation process,
 - (iii) advertise the notice on its web site or, if it considers it appropriate, by any other means, and

(iv) where paragraph 13 applies, forward a copy of the variation notice and the information specified in sub-paragraph (ii) to the Scottish Ministers,

within the period of 21 days beginning on the day on which the period allowed by paragraph 4(12) or, where applicable and if later, paragraph 5 ends or the day on which SEPA receives notification by the Scottish Ministers that the bilateral consultations have been completed pursuant to paragraph 14(b) or within such longer period as may be agreed with the applicant.

(2) Where the proposed variation has been forwarded to another Member State pursuant to paragraph 13, the Scottish Ministers must forward to the Secretary of State a copy of the variation notice and the information specified in sub-paragraph (1)(a)(ii) or (b)(iv) as the case may be, as soon as practicable.

(3) Where sub-paragraph (1) applies, and SEPA fails to serve the variation notice within the periods specified in that sub-paragraph, the proposed variation is deemed to have been withdrawn at the end of that period if the operator notifies SEPA in writing of such failure.

8.—(1) Except in a case where an application has been referred to the Scottish Ministers under paragraph 6 and, subject to paragraph 14, SEPA must give notice of—

- (a) its determination of an application for variation under regulation 46, or
- (b) in the case of such an application where which paragraph 4(1)(b) applies, and which affects the operation of a Part A installation, its draft determination,

within the period specified in sub-paragraph (2).

(2) The specified period is—

- (a) where the consultation and advertising procedure set out in paragraph 4 applies, the period of 4 months beginning with the day on which SEPA received the application,
- (b) where that procedure does not apply, the period of 3 months beginning with the day on which SEPA received the application,

or 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 is taken of—

- (a) any period beginning with the date on which notice is served on an operator under paragraph 3 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 5 in so far as that period does not overlap with any other period allowed for making representations in accordance with paragraph 4(12),
- (c) where a matter falls to be determined for the purposes of regulation 65 or under regulation 66, any period beginning with the date on which the period of 28 days referred to in paragraph 4(8) ends and ending on the date on which the application is advertised in accordance with paragraph 19(b).

9.—(1) SEPA must—

- (a) within a period of 3 days beginning with the date on which notice of a draft determination is given pursuant to paragraph 8, advertise the notice on its web site or, 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 SEPA, 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 Scottish Ministers to the Secretary of State for onward transmission to another Member State under paragraph 13, SEPA must forward copies of the draft determination and of the advertisement made pursuant to this paragraph to the Scottish Ministers at the same time as the draft determination is advertised.

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

- (a) explain where, how and at what times the 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 4(8),
 - (ii) information about any BAT reference document relevant to the installation or activity concerned,
 - (iii) information about how emission limit values have been set in relation to best available techniques and emission limit values associated with the techniques,
 - (iv) a copy of the draft determination, and
 - (v) 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 be inspected free of charge,
- (b) explain where any other information and guidance relevant to the application may be obtained free of charge,
- (c) explain that any person may make representations to SEPA in writing within the period of 28 days beginning with the date of the advertisement and give the SEPA address for receiving representations,
- (d) explain that where—
 - (i) no representations are made to SEPA within the period specified in paragraph (c) or where applicable, paragraph 16, SEPA must—
 - (aa) give notice of its determination, and
 - (bb) include in the register a copy of the final determination, together with a statement confirming that no representations have been made on the draft determination and information on the reasons and considerations on which the determination is based and information about the public participation process, and
 - (cc) advertise the notice on its web site or, if it considers it appropriate, by any other means,within the period of 7 days beginning on the day on which the period referred to in sub-paragraph (c) or, where applicable, paragraph 16 ends; or
 - (ii) representations are made to SEPA within the period specified in paragraph (c) or paragraph 16 SEPA must subject to paragraph 11—
 - (aa) serve the variation notice, and
 - (bb) include in the register a copy of the final variation, together with information on the reasons and considerations on which the variation is based, including information about the public participation process, and
 - (cc) advertise the notice on its web site or, if it considers it appropriate, by any other means,

within the period of 21 days beginning on the day on which the later of the period specified in sub-paragraph (c) or, where applicable, paragraph 16 ends, or within such longer period as may be agreed with the applicant.

(2) Where the draft determination has been forwarded to the Secretary of State pursuant to paragraph 13 the Scottish Ministers must forward to the Secretary of State a copy of the final determination and the information specified in sub-paragraph (1)(d)(i)(bb) or (ii)(bb) as the case may be, by the date by which SEPA is required to give notice of its determination under sub-paragraph (1)(d)(i) or (ii), for the purpose of its onward transmission as soon as practicable to the Member State to which the draft determination has been forwarded under paragraph 13.

11. For the purpose of calculating the period specified in paragraph 10(1)(d)(ii), no account is taken of any period beginning with the date on which notice is served on the applicant under paragraph 3 and ending on the date on which the applicant provides the information specified in the notice.

12. If SEPA fails to give notice of its determination or draft determination of an application for a variation within the applicable periods allowed by or under paragraph 8 or 10, the application is, if the applicant notifies SEPA in writing that the applicant treats the failure as such, deemed to have been refused at the end of that period.

13.—(1) This paragraph applies where—

- (a) the Scottish Ministers are aware that an application or a proposed variation notice relates to a substantial change in the operation of an installation carrying out activities listed in Annex I to the Industrial Emissions Directive which are likely to have significant negative effects on the environment of another Member State, or
- (b) such a Member State requests information relating to such an application or notice.

(2) Where this paragraph applies the Scottish Ministers must give to the Secretary of State for onward transmission to the other Member State for the purposes of Article 26 of the Industrial Emissions Directive—

- (a) a copy of the application or proposed variation notice,
- (b) a copy of the advertisement made under paragraph 4(8),
- (c) where applicable, a copy of the draft determination in respect of such an application together with a copy of the advertisement under paragraph 9, and
- (d) any additional information which they consider relevant to the determination of the application or proposed variation notice, having regard for that purpose to Article 26.

(3) The Scottish Ministers must comply with sub-paragraph (2)—

- (a) at the same time as the application, proposed variation or draft determination are advertised under paragraphs 4(8) and 9, or
- (b) if this paragraph applies after the date of such advertisement, and the application or proposed variation has not been determined, as soon as possible thereafter.

14. The Scottish Ministers must where paragraph 13 applies given notice of that fact to SEPA and the operator, and—

- (a) SEPA must not determine the application, or provide its draft determination, or serve a variation notice until the Scottish Ministers have given SEPA—
 - (i) notice in writing that the bilateral consultation under Article 26 of the Industrial Emissions Directive has been carried out,

- (ii) a copy of any representations duly received by the Scottish Ministers in respect of the application or the proposed variation from a person in the other Member State (a “Member State representation”), and
- (b) in the case of an application to be determined by SEPA, the time period within which to determine the application or to provide a draft determination set out in paragraph 8 begins on the day on which it receives that notification by the Scottish Ministers that the bilateral consultations have been completed.

15.—(1) The Scottish Ministers must give SEPA any Member State representations received in the 35 day period after the date of notification of the draft determination to the Secretary of State under paragraph 13 within the 10 day period of beginning on the day after the end of that 35 day period.

(2) SEPA must—

- (a) consider any Member State representation when determining a case to which paragraph 13 applies, and
- (b) on determining the case provide any other Member State with which bilateral consultation has been carried out with information on the—
 - (i) contents of the decision (including a copy of the permit),
 - (ii) reasons for making the determination, and
 - (iii) results of consultation before making the determination, and on how the results were taken into account by SEPA or the Scottish Ministers.

16. In paragraphs 13 to 15, “Member State” includes Iceland, Liechtenstein and Norway⁽¹⁾.

(1) See Article 73 of, and Annex XX to, the Agreement on the European Economic Area which entered into force on 1st January 2004.