

SCHEDULE 8

Regulation 58

APPEALS TO THE SCOTTISH MINISTERS

1.—(1) A person who wishes to appeal to the Scottish Ministers under regulation 58 (an “appellant”) must at the same time—

- (a) give notice of the appeal to the Scottish Ministers notice of the appeal, together with the documents specified in sub-paragraph (2), and
- (b) give SEPA a copy of that notice, together with copies of the documents specified in sub-paragraph (2)(a) and (f).

(2) The specified documents—

- (a) a statement of the grounds of appeal,
- (b) a copy of any relevant application,
- (c) a copy of any relevant permit,
- (d) a copy of any relevant correspondence between the appellant and SEPA,
- (e) a copy of any decision or notice which is the subject matter of the appeal,
- (f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.

(3) An appellant may withdraw an appeal by notifying the Scottish Ministers in writing and must send a copy of that notification to SEPA.

2.—(1) Subject to sub-paragraph (2), notice of appeal in accordance with paragraph 1 is to be given—

- (a) in the case of an appeal under regulation 58(1), before the expiry of the period of six months beginning with the date of the decision or deemed decision which is the subject matter of the appeal,
- (b) in the case of an appeal under regulation 58(2) against a revocation notice, before the date on which the revocation takes effect,
- (c) in the case of an appeal under regulation 58(2) against a variation notice served in connection with a partial transfer under regulation 47, before the expiry of the period of six months beginning with the date of the notice,
- (d) in the case of an appeal under regulation 58(2) against a variation notice (other than a notice described in paragraph (c)), an enforcement notice or a suspension notice, or a closure notice under regulation 18(1) of the Landfill Regulations, before the expiry of the period of two months beginning with the date of the notice which is the subject of the appeal.

(2) The Scottish Ministers may in a particular case allow notice of appeal to be given after the expiry of the periods mentioned in sub-paragraph (1)(a), (c) or (d).

3.—(1) SEPA must, within 14 days of receipt of the copy of the notice of appeal sent in accordance with paragraph 1, give notice of the appeal to—

- (a) any person who was required to be given notice in respect of the application or permit to which the appeal relates under paragraph 13 of Schedule 4 or paragraph 4(4)(c) of Schedule 7,
- (b) any person who made representations to SEPA with respect to the subject matter of the appeal, and
- (c) any person who appears to SEPA to have a particular interest in the subject matter of the appeal.

- (2) A notice under sub-paragraph (1) must—
 - (a) state that notice of appeal has been given,
 - (b) state the name of the appellant and, where the appeal concerns an installation, the address of the site of the installation,
 - (c) describe the application or permit to which the appeal relates,
 - (d) state that representations with respect to the appeal may be made to the Scottish Ministers in writing by any recipient of the notice within a period of 21 days beginning with the date of the notice, and that copies of any representations so made will be furnished to the appellant and to SEPA,
 - (e) explain that any such representations will be entered in the register unless that person making the representation requests in writing that they should not be 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,
 - (f) state that if a hearing is to be held wholly or partly in public, a person mentioned in sub-paragraph (1)(b) or (c) who makes representations with respect to the appeal and any person mentioned in sub-paragraph (1)(a) will be notified of the date of the hearing.
 - (3) SEPA must, within 14 days of sending a notice under sub-paragraph (1), notify the Scottish Ministers of the persons to whom and the date on which the notice was sent.
 - (4) In the event of an appeal being withdrawn, SEPA must give notice of the withdrawal to every person to whom notice was given under sub-paragraph (1).
- 4.—**(1) Before determining an appeal under regulation 58, the Scottish Ministers may afford the appellant and SEPA an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers (the “appointed person”) and they must do so in any case where a request is duly made by the appellant or SEPA to be so heard.
- (2) A hearing may, if the appointed person so decides, be held wholly or partly in private.
 - (3) Where the Scottish Ministers cause a hearing to be held, they must give the appellant and SEPA 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.
 - (4) Where any part of a hearing is to be held in public, the Scottish Ministers must, at least 21 days before the date fixed for the holding of the hearing—
 - (a) where the appeal relates to the operation of an installation, publish a copy of the notice mentioned in sub-paragraph (3) in a newspaper circulating in the locality in which the installation is operated,
 - (b) serve a copy of that notice on every person mentioned in paragraph 3(1)(a) and on every person mentioned in paragraphs 3(1)(b) and (c) who has made representations to the Scottish Ministers.
 - (5) The Scottish Ministers may vary the date fixed for the holding of any hearing, and sub-paragraphs (3) and (4) shall apply to the variation of a date as they applied to the date originally fixed.
 - (6) The Scottish Ministers may also vary the time or place for the holding of a hearing and must give such notice of any such variation as appears to them to be reasonable.
 - (7) The persons entitled to be heard at a hearing are—
 - (a) the appellant,
 - (b) SEPA, and
 - (c) any person required under paragraph 3(1)(a) to be notified of the appeal.

(8) Nothing in sub-paragraph (7) prevents the appointed person from permitting any other persons to be heard at the hearing and such permission must not be unreasonably withheld.

(9) After the conclusion of a hearing, the appointed person must make a report to the Scottish Ministers in writing which must include the conclusions and recommendations of that person or the reasons for not making any recommendation.

(10) Subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973⁽¹⁾ (which relates to the costs of and holding of local inquiries) apply to hearings held under this paragraph by an appointed person as they apply to inquiries held under that section, but with the substitution—

- (a) in subsection (3) (notice of inquiry) for the reference to the person appointed to hold the inquiry of a reference to the appointed person,
- (b) in subsection (4) (evidence) for the reference to the person appointed to hold the inquiry and, in paragraph (b), the reference to the person holding the inquiry of references to the appointed person,
- (c) in subsection (6) (expenses of witnesses etc.) for the references to the Minister causing the inquiry to be held of a reference to the appointed person or the Scottish Ministers,
- (d) in subsection (7) (expenses) for the references to the Minister of references to the appointed person or the Scottish Ministers,
- (e) in subsection (7A) (recovery of entire administrative expense)—
 - (i) for the first reference to the Minister of a reference to the appointed person or the Scottish Ministers,
 - (ii) in paragraph (a), for the reference to the Minister of a reference to the Scottish Ministers, and
 - (iii) in paragraph (b), for the reference to the Minister holding the inquiry of a reference to the Scottish Ministers,
- (f) in subsection (7B) (power to prescribe), in paragraphs (a) and (b) for the references to the person appointed to hold the inquiry of references to the appointed person, and
- (g) in subsection (8) (certification of expenses) for the reference to the Minister, the reference to him and the reference to the Crown of references to the appointed person or the Scottish Ministers.

5.—(1) Where the appeal is to be disposed of on the basis of written representations, SEPA must submit any written representations to the Scottish Ministers not later than 28 days after receiving a copy of the documents mentioned in paragraph 1(2)(a) and (f).

(2) The appellant must make any further representations by way of reply to any representations from SEPA no later than 17 days after the date of submission of those representations by it.

(3) Any representations made by the appellant or SEPA must bear the date on which they are submitted to the Scottish Ministers.

(4) When SEPA or the appellant submits any representations to the Scottish Ministers they must at the same time send a copy of them to the other party.

(5) The Scottish Ministers must send to the appellant and SEPA a copy of any representations made to them by the persons mentioned in paragraph 3(1) and must allow the appellant and SEPA a period of not less than 14 days in which to make representations on them.

(6) The Scottish Ministers may in a particular case—

- (a) set later time limits than those mentioned in this paragraph,

(1) 1973 c.65; section 210 was amended by the Housing and Planning Act 1986 (c.63), Schedule 11, paragraph 39.

- (b) require exchanges of representations between the parties in addition to those mentioned in paragraphs (1) and (2).

6.—(1) The Scottish Ministers must—

- (a) give notice to the appellant of their determination of the appeal,
- (b) provide the appellant with a copy of any report mentioned in paragraph 4(9), and
- (c) advise the appellant of the right of appeal under regulation 58(5).

(2) The Scottish Ministers must at the same time send—

- (a) a copy of the documents mentioned in sub-paragraph (1) to SEPA and to any persons required under paragraph 3(1)(a) to be notified of the appeal, and
- (b) a copy of their determination of the appeal to any person mentioned in paragraph 3(1)(b) and (c) who made representations to the Scottish Ministers and, if a hearing was held, to any other person who made representations in relation to the appeal at the hearing.

7. Where a determination of the Scottish Ministers is quashed on appeal, the Scottish Ministers—

- (a) must send to the persons notified of their determination under paragraph 6, a statement of the matters with respect to which further representations are invited for the purposes of further consideration of the appeal,
- (b) must afford to those persons the opportunity of making, within 28 days of the date of the statement, written representations in respect of those matters, and
- (c) may, as they think fit, cause a hearing to be held or reopened and, if they do so, paragraphs 4(2) to (10) apply to the hearing or the reopened hearing as they apply to a hearing held under paragraph 4(1),

and paragraph 6 applies to the redetermination of the appeal as it applies to the determination of an appeal.