

## SCHEDULE 6

Article 8

### APPEALS: FURTHER PROVISION

#### Notice of appeal

1.—(1) An appeal under any the following provisions (“the appeal”) must be made by notice (“notice of appeal”) to the Scottish Ministers—

- (a) paragraph 3(1) of Schedule 1 (appeals in relation to stop notices);
- (b) paragraph 4(7) of Schedule 1 (appeals in relation to completion certificates);
- (c) paragraph 5(6) of Schedule 1 (appeals in relation to compensation);
- (d) paragraph 7(1) of Schedule 2 (appeals in relation to further enforcement measures);
- (e) paragraph 10(1) of Schedule 2 (appeals in relation to non-compliance penalties);
- (f) paragraph 2(1) of Schedule 3 (appeals in relation to expenses recovery notices); and
- (g) paragraph 2(1) of Schedule 5 (appeals against enforcement notices).

(2) The notice of appeal must (in addition to any other information required) include—

- (a) the name and contact details of the reservoir manager or, where there is more than one reservoir manager of the controlled reservoir to which the appeal relates, the name and contact details of each reservoir manager and the person (if any) representing them;
- (b) any relevant correspondence between the appellant and SEPA.

(3) The appellant must, at the same time as making any such appeal to the Scottish Ministers, send a copy of the notice of appeal to SEPA.

(4) The appellant may withdraw the appeal by notice to the Scottish Ministers.

(5) The appellant must, at the same time as sending any such withdrawal notice to the Scottish Ministers, send a copy of the notice to SEPA.

#### Representations by SEPA

2.—(1) SEPA must, within a period of 21 days beginning with the day on which it receives a copy of the notice of appeal, make representations in writing to the Scottish Ministers.

(2) SEPA’s representations must include—

- (a) representations as to matters which should be taken into account in determining the appeal; and
- (b) a copy of any documents relating to those matters which are relevant to the appeal.

(3) SEPA must, at the same time as making representations under sub-paragraph (1), send a copy of those representations to the appellant.

#### Representations by the appellant

3.—(1) The appellant may, within a period of 14 days beginning with the day on which the appellant receives a copy of any representations made by SEPA under paragraph 2, make representations in writing to the Scottish Ministers in respect of SEPA’s representations.

(2) The appellant’s representations may include—

- (a) representations as to matters which should be taken into account in determining the appeal; and
- (b) a copy of any documents relating to those matters which are relevant to the appeal.

(3) The appellant must, at the same time as making any such representations to the Scottish Ministers, send a copy of those representations to SEPA.

#### **Appointment of reporter**

4.—(1) The Scottish Ministers may, in relation to an appeal to the Scottish Ministers under any of the provisions referred to in paragraph 1(1), appoint a person (“a reporter”) to—

- (a) exercise, on their behalf, their functions under paragraph 6(2), 7 or 8; or
- (b) advise them on such matters in relation to the appeal (which may include advice on how it ought to be determined) as they may specify.

(2) If the Scottish Ministers appoint a reporter in relation to the appeal, they must notify the appellant and SEPA of the name of the reporter and the functions to be performed by the reporter.

#### **Appointment of advisor**

5.—(1) The Scottish Ministers may appoint a person (“an advisor”) to advise a reporter on such matters (in relation to the appeal) as the Scottish Ministers may specify.

(2) For the purposes of advising the reporter on the matters so specified, an advisor may sit with the reporter at any hearing (in relation to the appeal) held under paragraph 8.

(3) If the Scottish Ministers appoint an advisor in relation to the appeal, they must notify the appellant and SEPA of the name of the advisor and the matters on which the advisor is to advise the reporter.

#### **Determination of appeal without further representation or information**

6.—(1) If the Scottish Ministers consider that no further representation or information is required to enable the appeal to be determined, they may determine the appeal without further procedure.

(2) If the Scottish Ministers consider that further procedure is necessary to determine the appeal, they may determine the manner in which that further procedure is to be conducted.

#### **Further representations or information**

7.—(1) If the Scottish Ministers consider that further representations should be made or further information should be provided by means of written submissions, the Scottish Ministers may request further representations or information by notice to the reservoir manager and SEPA.

(2) The notice must—

- (a) set out the matters on which such further representations or information is requested; and
- (b) specify the date by which such further representations or information are to be submitted to the Scottish Ministers.

(3) Any further representations made or information to be provided (the “further information”) to the Scottish Ministers in response to the notice must be given by the reservoir manager or, as the case may be, SEPA by the date specified in the notice, and—

- (a) where further information is given by the reservoir manager to the Scottish Ministers—
  - (i) the reservoir manager must give a copy of the further information to SEPA; and
  - (ii) SEPA may, within a period of 14 days beginning with the day on which SEPA is given a copy of the further information, give to the Scottish Ministers comments on the further information; and
- (b) where further information is given by SEPA to the Scottish Ministers—

- (i) SEPA must give a copy of the further information to the reservoir manager; and
- (ii) the reservoir manager may, within a period of 14 days beginning with the day on which the reservoir manager is given a copy of the further information, give to the Scottish Ministers comments on the further information.

## Hearings

8.—(1) In determining the appeal, the Scottish Ministers may afford the appellant and SEPA an opportunity of appearing before and being heard by them (or, as the case may be, a reporter).

(2) A hearing held under sub-paragraph (1) may, if the Scottish Ministers so decide, be held wholly, or held to any extent, in private.

(3) If the Scottish Ministers cause a hearing to be held under sub-paragraph (1), they must give the appellant and SEPA at least 28 days' written notice (or such shorter period of notice as they may agree with the appellant and SEPA) of the date, time and place fixed for the holding of the hearing.

(4) In the case of a hearing which is to be held wholly or partly in public, the Scottish Ministers must, at least 21 days before the date fixed for the holding of the hearing publish a copy of the notice mentioned in sub-paragraph (3) in a newspaper circulating in the locality in which the controlled reservoir (to which the matters appealed relate) is located.

(5) The Scottish Ministers may vary the date fixed for the holding of any hearing and sub-paragraphs (3) and (4) apply to the variation of a date as they applied to the date originally fixed.

(6) The Scottish Ministers may 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 any hearing are the appellant (and the person, if any, representing them) and SEPA.

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

(9) Where a reporter is appointed (under paragraph 4(1)) to exercise the functions of the Scottish Ministers under this paragraph, the reporter must give a report in writing ("the report") to the Scottish Ministers after the conclusion of any hearing held by the reporter under this paragraph.

(10) The report under sub-paragraph (9) must include—

- (a) a detailed summary of the representations made at the hearing;
- (b) an evaluation of those representations by the reporter; and
- (c) the advice (including any conclusions and recommendations) of the reporter as to how the appeal ought to be determined, or the reasons for not making any such recommendations.

## Determination of appeal

9.—(1) The Scottish Ministers must give to the reservoir manager—

- (a) notice in writing ("the decision notice") of—
  - (i) their determination of the appeal; and
  - (ii) their reasons for that determination; and
- (b) where paragraph 8(9) applies in relation to the appeal, a copy of the report given to Scottish Ministers under that paragraph ("the report").

(2) Where sub-paragraph (1)(b) applies, the Scottish Ministers must determine the appeal having regard to the report.

(3) The Scottish Ministers must, at the same time as giving the decision notice under sub-paragraph (1), send to SEPA a copy of the notice and, if a hearing was held, a copy of the report.

(4) On determining an appeal against—

(a) a decision of SEPA—

(i) to issue a stop notice under paragraph 1 of Schedule 1;

(ii) to impose a further enforcement measure by restoration notice or by restraint notice under paragraph 1 of Schedule 2; or

(iii) to give a notice under section 69(2) (enforcement notice: safety and other measures) of the Act,

the Scottish Ministers may affirm or quash the decision (or any part of it) and may affirm or quash the notice (or any part of it), and if they affirm the notice (or part of it) they may do so in its original form or with such modifications as they think fit;

(b) a decision of SEPA under paragraph 4 of Schedule 1 not to give a completion certificate, the Scottish Ministers may affirm or quash the decision, and if they quash the decision they may also direct SEPA to give the appellant a completion certificate in such terms as they think fit;

(c) a decision of SEPA under paragraph 5(4) of Schedule 1—

(i) not to award compensation; or

(ii) as to the amount of compensation,

the Scottish Ministers may affirm or quash the decision, and if they quash the decision they may also direct SEPA to award compensation or, as the case may be, as to the amount of compensation to be awarded;

(d) a notice (imposing a non-compliance penalty) under paragraph 9 of Schedule 2, the Scottish Ministers may affirm or quash the notice (or any part of it), and if they affirm the notice (or part of it) they may do so in its original form or with such modifications as they think fit; or

(e) a decision of SEPA (by virtue of an expenses recovery notice) under paragraph 1 of Schedule 3—

(i) to impose a requirement to pay expenses; or

(ii) as to the amount of the expenses,

the Scottish Ministers may affirm or quash the decision (or any part of it) and may affirm or quash the notice (or any part of it), and if they affirm the notice (or part of it), they may do so in its original form or with such modifications as they think fit.

(5) Where the Scottish Ministers affirm a notice (or part of it) with modifications under sub-paragraph (4)(a), (d) or (e), they may direct SEPA to make those modifications to the notice.

(6) Where the Scottish Ministers direct SEPA to make modifications to a notice (“the relevant notice”) under sub-paragraph (5), SEPA may, by notice given to the reservoir manager who was given the relevant notice, make those modifications to the relevant notice.

(7) For the purposes of these Regulations, where SEPA modifies a notice in accordance with sub-paragraph (6), a reference to the notice is to be treated as a reference to the notice as modified.

(8) Where SEPA takes action pursuant to, and in accordance with, a direction under sub-paragraph (4) or (5) the action in question may not be appealed to the Scottish Ministers.