
SCOTTISH STATUTORY INSTRUMENTS

2000 No. 323

**The Pollution Prevention and
Control (Scotland) Regulations 2000**

**PART I
GENERAL**

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Pollution Prevention and Control (Scotland) Regulations 2000 and shall come into force on the fourteenth day after the date on which they are made.

(2) These Regulations extend to Scotland only.

Interpretation : general

2.—(1) In these Regulations—

“change in operation” means, in relation to an installation or mobile plant, a change in the nature or functioning or an extension of the installation or mobile plant which may have consequences for the environment; and “substantial change in operation” means, in relation to an installation or mobile plant, a change in operation of the installation which, in the opinion of the SEPA, may have significant negative effects on human beings or the environment;

“the Directive” means Council Directive [96/61/EC](#) concerning integrated pollution prevention and control⁽¹⁾;

“emission” means—

- (a) in relation to Part A installations, the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in an installation into the air, water or land;
- (b) in relation to Part B installations, the direct release of substances or heat from individual or diffuse sources in an installation into the air;
- (c) in relation to Part A mobile plant, the direct or indirect release of substances, vibrations, heat or noise from the mobile plant into the air, water or land;
- (d) in relation to Part B mobile plant, the direct release of substances or heat from the mobile plant into the air,

and references to emissions in the definitions of “emission limit value”, “pollution” and “pollutant” shall be construed accordingly for the purpose of the application of those definitions in relation to Part A and Part B installations and Part A and B mobile plant;

(1) O.J. No. L 257, 10.10.96, p.26.

“emission limit value” means the mass, expressed in terms of specific parameters, concentration or level of an emission, which may not be exceeded during one or more periods of time;

“enforcement notice” has the meaning given by regulation 19(1);

“general binding rules” has the meaning given by regulation 10(1);

“installation” means–

- (a) a stationary technical unit where one or more activities listed in Part 1 of Schedule 1 are carried out; and
- (b) any other location on the same site where any other directly associated activities are carried out which have a technical connection with the activities carried out in the stationary technical unit and which could have an effect on pollution,

and, other than in Schedule 3, references to an installation include references to part of an installation;

“mobile plant” means plant which is designed to move or to be moved whether on roads or otherwise and which is used to carry out one or more activities listed in Part 1 of Schedule 1;

“off-site condition” has the meaning given by regulation 9(13);

“operator”, subject to paragraph (2), means, in relation to an installation or mobile plant, the person who has control over its operation;

“Part A installation”, “Part B installation”, “Part A mobile plant” and “Part B mobile plant” shall be interpreted in accordance with Part 3 of Schedule 1;

“permit” means a permit granted under regulation 7;

“pollution” means emissions as a result of human activity which may be harmful to human health or the quality of the environment, cause offence to any human senses, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment; and “pollutant” means any substance, vibration, heat or noise released as a result of such an emission which may have such an effect;

“revocation notice” has the meaning given by regulation 17;

“SEPA” means the Scottish Environment Protection Agency;

“specified waste management activity” means any one of the following activities:–

- (a) the disposal of waste in a landfill, whether or not the disposal falls within Section 5.2 of Part 1 of Schedule 1;
- (b) the disposal of waste falling within Section 5.3 of that Part of that Schedule;
- (c) the recovery of waste falling within paragraphs (c)(i), (v), (vi) or (vii) of Part A of Section 5.4 of that Part of that Schedule;

“substance” includes any chemical element and its compounds and any biological entity or micro-organism, with the exception of radioactive substances within the meaning of Council Directive 80/836/Euratom⁽²⁾, genetically modified micro-organisms within the meaning of Council Directive 90/219/EEC⁽³⁾ and genetically modified organisms within the meaning of Council Directive 90/220/EEC⁽⁴⁾;

“suspension notice” has the meaning given by regulation 20;

“variation notice” has the meaning given by regulation 13.

(2) For the purposes of these Regulations–

(2) O.J. No. L 246, 17.9.80, p.1, as amended by Council Directive 84/467/Euratom (O.J. L265, 5.10.84, p.4).

(3) O.J. No. L 117, 8.5.90, p.1.

(4) O.J. No. L 117, 8.5.90, p.15.

- (a) where an installation or mobile plant has not been put into operation, the person who will have control over the operation of the installation or mobile plant when it is put into operation shall be treated as the operator of the installation or mobile plant;
- (b) where an installation or mobile plant has ceased to be in operation, the person who holds the permit which applies to the installation or mobile plant shall be treated as the operator of the installation or mobile plant.

(3) In these Regulations, a reference to a release into water includes a release into a sewer and a reference to a Council Directive is a reference to that Directive as amended on the date on which these Regulations are made.

(4) Schedule 1 shall have effect and Part 1 of that Schedule shall be interpreted in accordance with the provisions as to interpretation in Part 2 and 3 of that Schedule.

(5) Parts 1 and 2 of Schedule 3 shall have effect and shall be interpreted in accordance with the definition sections in Part 3 of that Schedule.

(6) Any reference in these Regulations to a numbered regulation or Schedule is a reference to the regulation or Schedule so numbered in these Regulations and any reference to a numbered paragraph is a reference to the paragraph so numbered in the regulation or the Schedule (or Section or part of the Schedule) of which that paragraph forms part.

Interpretation : best available techniques

3.—(1) For the purpose of these Regulations, “best available techniques” means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing in principle the basis for emission limit values designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole; and for the purpose of this definition—

- (a) “available techniques” means those techniques which have been developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the cost and advantages, whether or not the techniques are used or produced inside the United Kingdom, as long as they are reasonably accessible to the operator;
- (b) “best” means, in relation to techniques, the most effective in achieving a high general level of protection of the environment as a whole;
- (c) “techniques” includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned.

(2) Schedule 2 shall have effect in relation to the determination of best available techniques.

Fit and proper person

4.—(1) This regulation applies for the purpose of the discharge of any function under these Regulations which requires SEPA to determine whether a person is or is not a fit and proper person to carry out a specified waste management activity.

(2) Whether a person is or is not a fit and proper person to carry out a specified waste management activity shall be determined by reference to the fulfilment of the conditions of the permit which apply or will apply to the carrying out of that activity.

(3) Subject to paragraph (4), a person shall be treated as not being a fit and proper person if it appears to SEPA that—

- (a) that person or another relevant person has been convicted of a relevant offence;
- (b) the management of the specified waste management activity which is or is to be carried on is not or will not be in the hands of a technically competent person; or

- (c) the person who holds or is to hold the permit has not made and either has no intention of making or is in no position to make financial provision adequate to discharge the obligations arising from the permit in relation to the specified waste management activity.
- (4) SEPA may, if it considers it proper to do so in any particular case, treat a person as a fit and proper person, notwithstanding that paragraph (3)(a) applies in his case.
- (5) For the purposes of paragraphs (3) and (6)–
 - (a) “relevant offence” means an offence prescribed under section 74(6) of the Environmental Protection Act 1990⁽⁵⁾ for the purposes of section 74(3)(a) of that Act; and
 - (b) the qualifications and experience required of a person for the purposes of section 74(3)(b) of that Act which are prescribed under section 74(6) of that Act shall be treated as the qualifications and experience required of a person for the purposes of paragraph (3)(b).
- (6) In paragraph (3)(a), “another relevant person” means, in relation to the holder or proposed holder of a permit–
 - (a) any person who has been convicted of a relevant offence committed in the course of that person’s employment by the holder or proposed holder of the permit or, in the course of the carrying on of any business by a partnership, one of the members of which was the holder or proposed holder of the permit;
 - (b) a body corporate which has been convicted of a relevant offence committed when the holder or proposed holder of the permit was a director, manager, secretary or other similar officer of that body corporate (including, where the affairs of the body corporate are managed by its members, one of those members); or
 - (c) where the holder or proposed holder of the permit is a body corporate, a person who is a director, manager, secretary or other similar officer of that body corporate (including, where the affairs of the body corporate are managed by its members, one of those members) and who–
 - (i) has been convicted of a relevant offence; or
 - (ii) was a person holding such an office at a time when a relevant offence for which that body corporate has been convicted was committed.

Applications and duties of SEPA in relation to best available techniques

5.—(1) SEPA may require any application or type of application made to it under any provision of these Regulations to be made on an application form made available by it, in writing or in an electronic form acceptable to SEPA.

(2) An application form made available by SEPA under paragraph (1) shall specify the information required by it to determine the application, which shall include any information required to be contained in the application by the provision of these Regulations under which the application is made.

(3) Where SEPA makes available an application form under paragraph (1) in relation to the making of applications to it under a provision of these Regulations, any application made to it under that provision shall be made on that form.

(4) Where an application which is required to be accompanied by a fee, map or plan is sent electronically, the fee, map or plan may be sent to SEPA separately from the application but the application shall not be treated as having been received by SEPA until the fee, map or plan has also been received.

(5) 1990 c. 43; see regulation 3 of S.I.1994/1056 (amended by S.I. 1994/1137).

(5) An application made under these Regulations may be withdrawn at any time before it is determined.

(6) It shall be the duty of SEPA to follow developments in best available techniques.

PART II

PERMITS

Requirement for permit to operate installation and mobile plant

6.—(1) No person shall operate an installation or mobile plant after the prescribed date for that installation or mobile plant, except under and to the extent authorised by a permit granted by SEPA.

(2) In paragraph (1), the “prescribed date” means the appropriate date set out in or determined in accordance with Schedule 3.

Permits : general provisions

7.—(1) An application for a permit to operate an installation shall be made to SEPA in accordance with paragraphs 1 to 3 of Part I of Schedule 4 and shall be accompanied by any fee prescribed in respect of the application under section 41 of the Environment Act 1995⁽⁶⁾ and paragraphs 4 to 8 of Part 1 of Schedule 4 shall apply with respect to such applications.

(2) Subject to paragraphs (3) and (4), where an application is duly made to SEPA, it shall either grant the permit subject to the conditions required or authorised to be imposed by regulation 9 or refuse the permit.

(3) A permit shall not be granted if SEPA considers that the applicant will not be the person who will have control over the operation of the installation or mobile plant concerned after the grant of the permit or will not ensure that the installation or mobile plant is operated so as to comply with the conditions which would be included in the permit.

(4) In the case of an application for a permit that will authorise the carrying out of a specified waste management activity at an installation, or by means of mobile plant, the permit shall not be granted unless—

- (a) SEPA is satisfied that the applicant is a fit and proper person to carry out that activity; and
- (b) in the case of an installation where the use of the application site for the carrying out of that activity requires planning permission granted under the Town and Country Planning (Scotland) Act 1997⁽⁷⁾, such planning permission is in force in relation to that use of the land.

(5) For the purpose of paragraph (4)(b), a certificate under section 150 of the Town and Country Planning (Scotland) Act 1997 (certificate of lawfulness of existing use or development) in relation to the use of the application site for the carrying out of the specified waste management activity, shall be treated as if it were a grant of planning permission for that use.

(6) A permit may authorise the operation of—

- (a) more than one Part A installation or Part A mobile plant on the same site operated by the same operator;
- (b) more than one Part B installation on the same site operated by the same operator; or
- (c) more than one Part B mobile plant operated by the same operator.

(6) 1995 c. 25; the definition of “environmental licences” in section 56(1) of the 1995 Act, which defines that expression for the purposes of section 41 of that Act, is amended by paragraph 5(2) of Schedule 10 to these Regulations.

(7) 1997 c. 8.

(7) A permit authorising the operation of Part A mobile plant may only authorise the operation of that plant on a site specified in the permit and only one site may be specified in each such permit (and accordingly, the operation of the plant on a different site shall require a separate permit).

(8) A permit authorising the operation of an installation or Part A mobile plant shall include a map or plan showing the site of the installation or plant covered by the permit and in the case of an installation, the location of the installation on that site.

(9) A permit shall be transferred only in accordance with regulation 14 and shall cease to have effect only in accordance with regulation 15 or 16 (surrender) or regulation 17 (revocation).

(10) Where—

- (a) the conditions of a permit have been varied under regulation 13 or affected by a partial transfer, surrender or revocation under regulations 14 to 17; or
- (b) there is more than one permit applying to installations on the same site operated by the same operator or to mobile plant operated by the same operator,

SEPA may replace the permit or permits, as the case may be, with a consolidated permit applying to the same installations or mobile plant and subject to the same conditions as the permit or permits being replaced.

(11) Part 2 of Schedule 3 shall apply in relation to applications for the operation of existing Part B installations and mobile plant.

(12) Schedule 4 shall have effect in relation to applications for permits and the determination of applications for permits and Parts 1 and 2 of that Schedule shall be subject to Part 3 of that Schedule (national security and confidential information).

(13) This regulation is subject to paragraphs 5 and 9 of Schedule 3 (applications for a permit to operate existing installations or mobile plant).

Conditions of permits : general principles

8.—(1) When determining the conditions of a permit, SEPA shall take account of the general principles set out in paragraph (2) and, in the case of permits for the operation of a Part A installation or a Part A mobile plant, the additional general principles set out in paragraph (3).

(2) The general principles referred to in paragraph (1) are that installations and mobile plant should be operated in such a way that—

- (a) all the appropriate preventative measures are taken against pollution, in particular through application of the best available techniques;
- (b) no significant pollution is caused.

(3) The additional general principles referred to in paragraph (1) in relation to permits for the operation of Part A installations or a Part A mobile plant are that these installations should be operated in such a way that—

- (a) waste production is avoided in accordance with Council Directive [75/442/EEC](#) on waste⁽⁸⁾, but where waste is produced, it is recovered or, where that is technically and economically impossible, it is disposed of while avoiding or reducing any impact on the environment;
- (b) energy is used efficiently;
- (c) the necessary measures are taken to prevent accidents and limit their consequences,

and that, upon final cessation of activities, the necessary measures should be taken to avoid any pollution risk and to return the site of the installation or mobile plant to a satisfactory state.

⁽⁸⁾ O.J. No. L 194, 25.7.75, p.39, as amended by Council Directives [91/156/EEC](#) (O.J. No. L 78, 26.3.91, p.32) and [91/692/EEC](#) (O.J. No. L 377, 31.12.91, p.48) and Commission Decision [96/350/EC](#) (O.J. No. L 135, 6.6.96, p.32).

Conditions of permits : specific requirements

9.—(1) Subject to paragraphs (2) and (15) and regulation 10, there shall be included in a permit—

- (a) such conditions as SEPA considers appropriate to comply with paragraphs (3) to (9);
- (b) in relation to any Part A installations or Part A mobile plant authorised by the permit—
 - (i) such other conditions applying in relation to those Part A installations or Part A mobile plant as SEPA considers appropriate to comply with paragraph (10); and
 - (ii) such other conditions (if any) applying in relation to those Part A installations or Part A mobile plant, in addition to those required by sub-paragraphs (a) and (b) (i), as appear to SEPA to be appropriate, when taken with the condition implied by paragraph (11), for the purpose of ensuring a high level of protection for the environment as a whole, taking into account, in particular, the general principles set out in regulation 8(2); and
- (c) in relation to any Part B installation or Part B mobile plant authorised by the permit, such other conditions (if any) applying in relation to the Part B installation or Part A mobile plant as appear to SEPA to be appropriate, when taken with the condition implied by paragraph (11), for the purpose of preventing or, where that is not practicable, reducing emissions into the air, taking into account, in particular, the general principles set out in regulation 8(2).

(2) The Scottish Ministers may give directions to SEPA—

- (a) as to the specific conditions which are, or are not, to be included in all permits, in permits of a specified description or in any particular permit;
- (b) as to the objectives which are to be achieved by conditions included in such permits,

and SEPA shall include in such permits such conditions as are specified or required to comply with such directions.

(3) Subject to paragraph (9), a permit shall include emission limit values for pollutants, in particular those listed in Schedule 5, likely to be emitted from the installation or mobile plant in significant quantities, having regard to their nature and, in the case of emissions from Part A installations or Part A mobile plant, their potential to transfer pollution from one environmental medium to another.

(4) Where appropriate, the emission limit values required by paragraph (3) may apply to groups of pollutants rather than to individual pollutants.

(5) The emission limit values required by paragraph (3) shall normally apply at the point at which the emissions leave the installation or mobile plant, any dilution being disregarded when determining them.

(6) The effect of a waste water treatment plant may be taken into account when determining the emission limit values applying in relation to indirect releases into water from a Part A installation or Part A mobile plant, provided that an equivalent level of protection of the environment as a whole is guaranteed and taking such treatment into account does not lead to higher levels of pollution.

(7) Subject to paragraph (8), the emission limit values required by paragraph (3) shall be based on the best available techniques for the description of installation or mobile plant concerned but shall take account of the technical characteristics of the particular installation or mobile plant being permitted, and, in the case of installation of a Part A mobile plant, its geographical location and the local environmental conditions.

(8) Where an environmental quality standard requires stricter emission limit values than those that would be imposed pursuant to paragraph (7), paragraph (3) shall require those stricter emission limit values; and for the purpose of this paragraph “environmental quality standard” means the set

of requirements which must be fulfilled at a given time by a given environment or particular part thereof, as set out in Community legislation.

(9) Where appropriate, the emission limit values required by paragraph (3) may be supplemented or replaced by equivalent parameters or technical measures.

(10) A permit authorising the operation of a Part A installation or Part A mobile plant shall also include conditions—

- (a) aimed at minimising long distance and transboundary pollution;
- (b) ensuring, where necessary, appropriate protection of the soil and groundwater and appropriate management of waste generated by the installation or mobile plant;
- (c) relating to the periods when the installation or mobile plant is not operating normally where there is a risk that the environment may be adversely affected during such periods, including, in particular, conditions relating to the start up of operations, leaks, malfunctions and momentary stoppages;
- (d) setting out the steps to be taken prior to the operation of the installation or mobile plant and after the final cessation of operations;
- (e) setting out suitable emission monitoring requirements, specifying the measurement methodology and frequency and the evaluation procedure, and ensuring that the operator supplies SEPA with the data required to check compliance with the permit;
- (f) requiring the operator to supply SEPA regularly with the results of the monitoring of emissions and to inform SEPA, without delay, of any incident or accident significantly affecting the environment.

(11) Subject to paragraph (12), there is implied in every permit a condition that, in operating the installation or mobile plant, the operator shall use the best available techniques for preventing or, where that is not practicable, reducing emissions from the installation or mobile plant.

(12) The obligation implied by virtue of paragraph (11) shall not apply in relation to any aspect of the operation of the installation or mobile plant in question which is regulated by a condition imposed under any other paragraph of this regulation.

(13) A permit authorising the operation of an installation or Part A mobile plant may include a condition (an “off-site condition”) requiring an operator to carry out works or do other things in relation to land not forming part of the site of the installation or mobile plant, notwithstanding that such operator is not entitled to carry out the works or do the thing, and any person whose consent would be required shall grant, or join in granting, the operator such rights in relation to that land as will enable the operator to comply with any requirements imposed on that operator by the permit.

(14) A permit may, without prejudice to the generality of the previous provisions of this regulation, include conditions—

- (a) imposing limits on the amount or composition of any substance produced or utilised during the operation of the installation or mobile plant in any period;
- (b) which are supplemental or incidental to other conditions contained in the permit.

(15) Guidance issued by the Scottish Ministers under regulation 24 may sanction reliance by SEPA on any arrangements referred to in the guidance to operate to secure a particular result as an alternative to including a condition in the permit pursuant to this regulation.

(16) Where a Part B mobile plant authorised by a permit is used to carry out an activity on the site of an installation which is authorised by a separate permit, then if different requirements are imposed in the permits as respect the carrying out of the activity the requirements in the permit authorising the operation of the installation shall prevail in the event of any inconsistency.

(17) Schedule 5 shall have effect for the purpose of listing the main polluting substances further to paragraph (3) and Schedule 6 shall have effect in relation to compensation where rights are granted pursuant to paragraph (13).

General binding rules

10.—(1) Subject to paragraph (2), the Scottish Ministers may make rules (“general binding rules”) containing requirements applying to certain types of installation or mobile plant.

(2) The Scottish Ministers shall only make general binding rules under this regulation applying to Part A installations or Part A mobile plants if they are satisfied that the operation of such installations or mobile plant under the rules will result in the same high level of environmental protection and integrated prevention and control of pollution as would result from the operation of the installations or mobile plant under the conditions that would be included in the permits for those installations or mobile plant pursuant to regulation 9 if the rules did not apply.

(3) Where the Scottish Ministers make general binding rules SEPA may, at the request of the operator, include in a permit authorising the operation of an installation or mobile plant covered by the rules a condition (a “general binding rules condition”) providing that the aspects of the operation of the installation or mobile plant covered by the requirements in the rules shall be subject to those requirements instead of to conditions included in the permit pursuant to regulation 9.

(4) Where a permit includes a general binding rules condition the requirements in the general binding rules shall be treated as if they were conditions of the permit for the purpose of regulations 18, 19, and 30(1)(b).

(5) The Scottish Ministers may vary general binding rules by means of a notice of variation specifying the variations and the date on which the variations are to take effect, which shall be not less than 3 months after the date on which notice of the variation is given in the Edinburgh Gazette pursuant to paragraph (9).

(6) The Scottish Ministers may revoke general binding rules by means of a notice of revocation.

(7) Where aspects of the operation of an installation or mobile plant are covered by the requirements in general binding rules which are revoked, SEPA shall vary the permit authorising the operation of the installation or mobile plant under regulation 13 to delete the general binding rules condition and to insert the conditions that will be required by regulations 8 and 9 when the requirements in the general binding rules no longer apply.

(8) Where the Scottish Ministers revoke general binding rules, the requirements in the general binding rules shall continue to be treated under paragraph (4) as if they were conditions of a permit until the variations of the permit required by paragraph (7) take effect.

(9) Where the Scottish Ministers make, vary or revoke general binding rules they shall—

- (a) serve a copy of the rules, notice of variation or notice of revocation on SEPA;
- (b) publish the rules, notice of variation or notice of revocation in such manner as they consider appropriate for the purpose of bringing the rules or notice to the attention of operators likely to be affected by them;
- (c) give notice of the making, variation or revocation of the rules in the Edinburgh Gazette.

Review of conditions of permits

11.—(1) SEPA shall periodically review the conditions of permits and may do so at any time.

(2) Without prejudice to paragraph (1), a review of a permit shall be carried out where—

- (a) the pollution caused by the installation or mobile plant covered by the permit is of such significance that the existing emission limit values of the permit need to be revised or new emission limit values need to be included in the permit;

- (b) substantial changes in the best available techniques make it possible to reduce emissions from the installation or mobile plant significantly without imposing excessive costs; or
- (c) the operational safety of the activities carried out in the installation or mobile plant requires other techniques to be used.

Proposed change in the operation of an installation

12.—(1) Subject to paragraph (4), where an operator of an installation which is permitted under these Regulations proposes to make a change in the operation of that installation the operator shall, at least 14 days before making the change, notify SEPA.

(2) A notification under paragraph (1) shall be in writing (or in electronic form acceptable to SEPA) and shall contain a description of the proposed change in the operation of the installation.

(3) SEPA shall, by notice served on the operator, acknowledge receipt of any notification received under paragraph (1).

(4) Paragraph (1) shall not apply where—

- (a) the operator applies under regulation 13(2) for the variation of the conditions of the permit before making the proposed change; and
- (b) that application contains a description of the change.

Variation of permits

13.—(1) SEPA may at any time vary the conditions of a permit and shall do so if it appears to it at that time, whether as a result of a review under regulation 11, a notification under regulation 12 or otherwise, that regulations 8 and 9 require conditions to be included which are different from the subsisting conditions.

(2) An operator of an installation or mobile plant which is permitted under these Regulations may apply to SEPA for the variation of the conditions of the permit.

(3) An application under paragraph (2) shall be made in accordance with paragraph 1 of Part 1 of Schedule 7 and shall be accompanied by any fee prescribed in respect of the application under section 41 of the Environment Act 1995; and paragraphs 2 and 3 of Part 1 of Schedule 7 shall apply with respect to such applications.

(4) Where an application is duly made under paragraph (2), SEPA shall determine, in accordance with regulations 8 and 9, whether to vary the conditions of the permit.

(5) Where SEPA decides to vary the conditions of the permit, whether on an application under paragraph (2) or otherwise, it shall serve a notice on the operator (a “variation notice”) specifying the variations of the conditions of the permit and the date or dates on which the variations are to take effect and, unless the notice is withdrawn, the variations specified in the notice shall take effect on the date or dates so specified.

(6) A variation notice served under paragraph (5) shall, unless served for the purpose of determining an application under paragraph (2), require the operator to pay, within such period as may be specified in the notice, any fee prescribed in respect of the variation notice under section 41 of the Environment Act 1995.

(7) Where SEPA decides on an application under paragraph (2) not to vary the conditions of the permit, it shall give notice of its decision to the operator.

(8) Schedule 7 shall have effect in relation to applications for variations of conditions, the determination of applications under paragraph (2) and the issuing of variation notices and Parts 1 and 2 of Schedule 7 shall apply subject to Part 3 of that Schedule (national security and confidential information).

(9) This regulation and Schedule 7 apply to the variation of any provision, other than a condition which is contained in a permit, as they apply to the variation of a condition.

Transfer of permits

14.—(1) Where the operator of an installation or mobile plant wishes to transfer, in whole or in part, that operator's permit to another person ("the proposed transferee") the operator and the proposed transferee shall jointly make an application to SEPA to effect the transfer.

(2) An application under paragraph (1) shall be accompanied by the permit and any fee prescribed in respect of the transfer under section 41 of the Environment Act 1995 and shall contain—

- (a) the operator's and the proposed transferee's telephone number, address and e-mail address (if any) and, if different, any address or e-mail address to which correspondence relating to the application should be sent; and
- (b) in the case of an application to effect the transfer of a permit or part of a permit that authorises the carrying out of a specified waste management activity, any information which the applicants wish SEPA to take into account when considering whether the transferee is a fit and proper person to carry out that activity.

(3) Where the operator wishes to retain part of his permit (a "partial transfer"), an application under paragraph (1) shall—

- (a) identify the installation or mobile plant to which the transfer applies (the "transferred unit"); and
- (b) where the transfer applies to the operation of an installation or Part A mobile plant, contain a map or plan identifying the part of the site used for the operation of that installation or mobile plant (the "identified part of the site").

(4) Subject to paragraph (5), SEPA shall effect the transfer unless it considers that the proposed transferee will not be the person who will have control over the operation of the installation or mobile plant covered by the transfer after the transfer or will not ensure compliance with the conditions of the transferred permit.

(5) In the case of an application to effect the transfer of a permit or part of a permit which authorises the carrying out of a specified waste management activity, SEPA shall only effect the transfer if it is satisfied that the proposed transferee is a fit and proper person to carry out that activity.

(6) SEPA shall effect a transfer under this regulation by—

- (a) in the case of a partial transfer—
 - (i) issuing a new permit to the proposed transferee which applies to the transferred unit and, where the transfer applies to the operation of an installation or Part A mobile plant, the identified part of the site covered by the transfer and includes the conditions required by paragraph (7); and
 - (ii) returning the original permit to the operator endorsed to record the transfer and varied to show the installation or installations or mobile plant and, where the transfer applies to the operation of an installation or Part A mobile plant, the site covered by the permit after the transfer and the conditions applying after the transfer required by paragraph (7); and
- (b) in case of a transfer of the whole permit, causing the permit to be endorsed with the name and other particulars of the proposed transferee as the operator of the installation or mobile plant concerned,

and the transfer shall take effect from such date as may be agreed with the applicants and specified in the endorsement and, in the case of a partial transfer, the new permit.

(7) In the case of a partial transfer effected under this regulation, the conditions included in the new permit and original permit after the transfer shall be the same as the conditions included in the original permit immediately before the transfer in so far as they are relevant to any installation, site and mobile plant covered by the new permit or the original permit, as the case may be, but subject to such variations as, in the opinion of SEPA, are necessary to take account of the transfer.

(8) If within the period of two months beginning with the date on which SEPA receives an application under paragraph (1), or within such longer period as SEPA and the applicants may agree in writing (or in electronic form), SEPA has neither effected the transfer nor given notice to the applicants that it has rejected the application, the application shall, if the operator notifies SEPA in writing (or in electronic form) that they treat the failure as such, be deemed to have been refused at the end of that period or that longer period, as the case may be.

Application to surrender a permit for a Part A installation or Part A mobile plant

15.—(1) This regulation applies where an operator of a Part A installation or Part A mobile plant ceases or intends to cease operating the installation (in whole or in part) or the mobile plant.

(2) Where this regulation applies, the operator may—

- (a) if that operator has ceased or intends to cease operating all of the installations and mobile plant covered by the permit, apply to SEPA to surrender the whole permit;
- (b) in any other case, apply to SEPA to surrender the permit in so far as it authorises the operation of the installation or mobile plant (“the surrender unit”) which that operator has ceased or intends to cease operating (a “partial surrender”).

(3) An application under paragraph (2) shall be accompanied by the permit and any fee prescribed in respect of the application under section 41 of the Environment Act 1995, and shall contain the following information:—

- (a) the operator’s telephone number, address and e-mail address (if any) and, if different, any address or e-mail address to which correspondence relating to the application should be sent;
- (b) in the case of a partial surrender, a description of the surrender unit and a map or plan identifying the part of the site used for the operation of the surrender unit (the “identified part of the site”);
- (c) a site report describing the condition of the site or the identified part of the site, as the case may be (“the report site”), identifying, in particular, any changes in the condition of the site as described in the site report contained in the application for the permit; and
- (d) a description of any steps that have been taken to avoid any pollution risk on the report site resulting from the operation of the Part A installation or Part A mobile plant or to return it to a satisfactory state.

(4) If SEPA is satisfied, in relation to the report site, that such steps (if any) as are appropriate to avoid any pollution risk resulting from the operation of the Part A installation or Part A mobile plant and to return the site to a satisfactory state have been taken, it shall accept the surrender and give the operator notice of its determination and the permit shall cease to have effect or, in the case of partial surrender, shall cease to have effect to the extent surrendered, on the date specified in the notice of determination.

(5) If, in the case of a partial surrender, SEPA is of the opinion that it is necessary to vary the conditions included in the permit to take account of the surrender, it shall specify the necessary variations in the notice of determination given under paragraph (4) and the variations specified in the notice shall take effect on the date specified in the notice.

(6) If SEPA is not satisfied as mentioned in paragraph (4), it shall give to the operator a notice of its determination stating that the application has been refused.

(7) SEPA shall give notice of its determination of an application under this regulation within the period of 3 months beginning with the date on which it receives the application or within such longer period as it and the operator may agree in writing (or in electronic form).

(8) If SEPA fails to give notice of its determination accepting the surrender or refusing the application within the period allowed by or agreed under paragraph (7), the application shall, if the operator notifies SEPA in writing (or in electronic form acceptable to it) that the operator treats the failure as such, be deemed to have been refused at the end of that period.

(9) SEPA may, by notice to the applicant, require that applicant to furnish such further information specified in the notice, within the period so specified, as it may require for the purpose of determining an application under this regulation.

(10) Where a notice is served on an operator under paragraph (9)–

- (a) for the purpose of calculating the 3 month period mentioned in paragraph (7), no account shall be taken of the period beginning with the date on which notice is served and ending on the date on which the information specified in the notice is furnished; and
- (b) where the specified information is not furnished within the period specified, the application shall, if SEPA gives notice to the operator that it treats the failure as such, be deemed to have been withdrawn at the end of that period.

(11) For the purpose of deciding whether a pollution risk results from the operation of a Part A installation or Part A mobile plant for the purpose of this regulation–

- (a) where the operation of the installation or plant involved the carrying out of a specified waste management activity, only risks resulting from carrying out that activity after the relevant date for that activity shall be treated as resulting from the operation of the installation or plant;
- (b) where the operation of the installation or mobile plant involved the carrying out of other activities, only risks resulting from the carrying out of those other activities after the date on which the permit applying to the installation or mobile plant was granted shall be treated as resulting from the operation of the installation or mobile plant.

(12) The relevant date for a specified waste management activity for the purpose of paragraph (11) (a) is–

- (a) where the activity was carried out on the site of the installation or mobile plant under a waste management licence which, by virtue of section 35(11A) of the Environmental Protection Act 1990⁽⁹⁾, ceased to have effect in relation to the carrying out of that activity on that site on the granting of the permit applying to the installation or mobile plant, the date on which that waste management licence was granted;
- (b) in any other case, the date on which the permit applying to the installation or mobile plant was granted.

(13) In paragraph (12), “waste management licence” has the same meaning as in section 35(12) of the Environmental Protection Act 1990 (and includes a disposal licence which is treated as a site licence by virtue of section 77(2) of that Act).

Notification of surrender of a permit for a Part B installation or Part B mobile plant

16.—(1) This regulation applies where an operator of a Part B installation or Part B mobile plant ceases or intends to cease operating the installation (in whole or in part) or the mobile plant.

(2) Where this regulation applies, the operator may–

(9) 1990 c. 43; section 35(11A) is inserted by paragraph 3(4)(b) of Schedule 10 to these Regulations.

- (a) if that operator has ceased or intends to cease operating all of the installations and mobile plant covered by the permit, notify SEPA of the surrender of the whole permit;
 - (b) in any other case, notify SEPA of the surrender of the permit in so far as it authorises the operation of the installation or mobile plant (“the surrender unit”) which that operator has ceased or intends to cease operating (a “partial surrender”).
- (3) A notification under paragraph (2) shall contain the following information:–
- (a) the operator’s telephone number, address and e-mail address (if any) and, if different, any address or e-mail address to which correspondence relating to the notification should be sent;
 - (b) in the case of a partial surrender of a permit applying to Part B installations, a description of the surrender unit and a map or plan identifying the part of the site used for the operation of the surrender unit (the “identified part of the site”);
 - (c) in the case of a partial surrender of a permit applying to Part B mobile plant, a list of the mobile plant to which it applies; and
 - (d) the date on which the surrender is to take effect, which shall be at least 28 days after the date on which the notice is served on SEPA.
- (4) Subject to paragraph (5), where a surrender is notified under this regulation, the permit shall cease to have effect on the date specified in the notification or, in the case of partial surrender, shall cease to have effect on that date to the extent surrendered.
- (5) If, in the case of a partial surrender, SEPA is of the opinion that it is necessary to vary the conditions of the permit to take account of the surrender, it shall–
- (a) notify the operator of its opinion; and
 - (b) serve a variation notice under regulation 13 on the operator specifying the variations of the conditions necessitated by the surrender,

and the permit shall cease to have effect to the extent surrendered on the date on which the variations specified in the variation notice take effect if that date is after the date specified in the notification of the surrender.

Revocation of permits

17.—(1) SEPA may at any time revoke a permit (in whole or in part) by serving a notice (“a revocation notice”) on the operator.

(2) Without prejudice to the generality of subsection (1), SEPA may serve a notice under this regulation in relation to a permit where–

- (a) the permit authorises the carrying out of a specified waste management activity and it appears to SEPA that the operator of the installation or mobile plant concerned has ceased to be a fit and proper person to carry out that activity by reason of that operator having been convicted of a relevant offence within the meaning of regulation 4(5)(a) or by reason of the management of that activity having ceased to be in the hands of a technically competent person;
 - (b) the holder of the permit has ceased to be the operator of the installation or plant covered by the permit.
- (3) A revocation notice may–
- (a) revoke a permit entirely;
 - (b) revoke a permit only in so far as it authorises the operation of some of the installations or mobile plant to which it applies;

- (c) revoke a permit only in so far as it authorises the carrying out of some of the activities which may be carried out in an installation or by means of mobile plant to which it applies.
- (4) A revocation notice shall specify—
 - (a) in the case of a partial revocation mentioned in sub-paragraphs (b) or (c) of paragraph (3) (“a partial revocation”), the extent to which the permit is being revoked; and
 - (b) in all cases, the date on which the revocation shall take effect, which shall be at least 28 days after the date on which the notice is served.
- (5) If, in the case of a revocation mentioned in sub-paragraphs (a) or (b) of paragraph (3) applying to a Part A installation or Part A mobile plant, SEPA considers that it is appropriate to require the operator to take steps, once that installation or mobile plant is no longer in operation, to—
 - (a) avoid any pollution risk resulting from the operation of the installation or mobile plant on the site or, in the case of a partial revocation, that part of the site used for the operation of that installation or mobile plant; or
 - (b) return the site, or part of the site, to a satisfactory state,the revocation notice shall also specify that this is the case and, in so far as those steps are not already required to be taken by the conditions of the permit, the steps to be taken.
- (6) Subject to paragraph (7) and to regulation 22(9), a permit shall cease to have effect or, in the case of a partial revocation, shall cease to have effect to the extent specified in the revocation notice, from the date specified in the notice.
- (7) Where paragraph (5) applies, the permit shall cease to have effect to authorise the operation of the Part A installation or Part A mobile plant from the date specified in the revocation notice but shall continue to have effect in so far as the permit requires steps to be taken once it is no longer in operation until SEPA issues a certificate of completion stating that it is satisfied that all such steps have been taken.
- (8) Where a permit continues to have effect as mentioned in paragraph (7), any steps specified in a revocation notice pursuant to paragraph (5) shall be treated as conditions of the permit and regulations 13, 19, and 30 shall apply in relation to such steps, and to any other conditions in the permit which require steps to be taken once the installation is no longer in operation, until SEPA issues a certificate of completion.
- (9) Where SEPA has served a revocation notice it may, before the date on which the revocation takes effect, withdraw the notice.
- (10) Regulation 15(11) shall apply for the purpose of deciding whether a pollution risk results from the operation of a Part A installation or Part A mobile plant for the purpose of this regulation as it applies for the purpose of regulation 15.

PART III

ENFORCEMENT

Duty of SEPA to ensure compliance with conditions

18. While a permit is in force it shall be the duty of SEPA to take such action under these Regulations as may be necessary for the purpose of ensuring that the conditions of the permit are complied with.

Enforcement notices

19.—(1) If SEPA is of the opinion that the operator of an installation has contravened, is contravening or is likely to contravene any condition of a permit, it may serve on that operator a notice (an “enforcement notice”).

- (2) An enforcement notice served under this regulation shall—
- (a) state SEPA’s opinion, as mentioned in paragraph (1);
 - (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
 - (c) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and
 - (d) specify the period within which those steps must be taken.
- (3) The steps that may be specified in an enforcement notice as steps that must be taken to remedy the contravention of any condition of a permit may include both steps that must be taken to make the operation of the installation or mobile plant comply with the conditions of the permit and steps that must be taken to remedy the effects of any pollution caused by the contravention.
- (4) SEPA may withdraw an enforcement notice at any time.

Suspension notices

20.—(1) If SEPA is of the opinion, as respects an installation or mobile plant authorised under these Regulations, that the operation of the installation or mobile plant, or the operation of it in a particular manner, involves a risk of serious pollution, it shall, unless it intends to arrange for steps to be taken under regulation 21(1) in relation to the risk, serve a notice under this regulation (“a suspension notice”) on the operator of the installation or mobile plant.

(2) Paragraph (1) applies whether or not the particular manner of operating the installation or mobile plant in question is regulated by or contravenes a condition of the permit.

(3) If SEPA is of the opinion, as respects the carrying out of specified waste management activities under a permit, that the operator carrying out the activities has ceased to be a fit and proper person in relation to those activities by reason of their management having ceased to be in the hands of a technically competent person, it may serve a suspension notice under this regulation on that operator.

- (4) A suspension notice served under this regulation shall—
- (a) state SEPA’s opinion, as mentioned in paragraph (1) or (3), as the case may be;
 - (b) in the case of a notice served under paragraph (1), specify—
 - (i) the imminent risk involved in the operation of the installation or mobile plant;
 - (ii) the steps that must be taken to remove it and the period within which they must be taken;
 - (c) state that the permit shall, until the notice is withdrawn, cease to have effect to authorise the operation of the installation or mobile plant or the carrying out of specified activities in the installation or by means of the mobile plant; and
 - (d) where the permit is to continue to have effect to authorise the carrying out of activities, state any steps, in addition to those already required to be taken by the conditions of the permit, that are to be taken in carrying out those activities.

(5) Where a suspension notice is served under this regulation, the permit shall, on the service of the notice, cease to have effect as stated in the notice.

(6) SEPA may withdraw a suspension notice at any time and shall withdraw a notice when it is satisfied that—

- (a) in the case of a notice served under paragraph (1), the steps required by the notice to remove the imminent risk of pollution have been taken;
- (b) in the case of a notice served under paragraph (3), the management of the specified waste management activities is in the hands of a technically competent person.

Power of SEPA to prevent or remedy pollution

21.—(1) If SEPA is of the opinion, as respects the operation of an installation or mobile plant authorised under these Regulations, that the operation of the installation or mobile plant, or the operation of it in a particular manner, involves an imminent risk of serious pollution, it may arrange for steps to be taken to remove that risk.

(2) Where the commission of an offence under regulation 30(1)(a), (b) or (d) causes any pollution, SEPA may arrange for steps to be taken towards remedying the effects of pollution.

(3) Where SEPA intends to arrange for steps to be taken under paragraph (2), it shall, at least seven days before the steps are taken, notify the operator of the steps that are to be taken.

(4) Subject to paragraph (5), where SEPA arranges for steps to be taken under this regulation, it may recover the cost of taking those steps from the operator of the installation concerned.

(5) No costs shall be recoverable under paragraph (4) where SEPA arranges for steps to be taken under paragraph (1) if the operator shows that there was no imminent risk of serious pollution requiring any such steps to be taken and no other costs shall be recoverable which the operator shows to have been unnecessarily incurred by SEPA.

PART IV APPEALS

Appeals to the Scottish Ministers and to the sheriff

22.—(1) Subject to paragraph (3), the following persons, namely:—

- (a) a person who has been refused the grant of a permit under regulation 7;
- (b) a person who has been refused the variation of the conditions of a permit on an application under regulation 13;
- (c) a person who is aggrieved by the conditions attached to that person's permit following an application under regulation 7 or by a variation notice following an application under regulation 13;
- (d) a person whose application under regulation 14 for SEPA to effect the transfer of a permit has been refused or who is aggrieved by the conditions attached to that person's permit to take account of such transfer;
- (e) a person whose application under regulation 15 to surrender a permit has been refused or who is aggrieved by the conditions attached to that person's permit to take account of the surrender,

may appeal against the decision of SEPA to the Scottish Ministers.

(2) Subject to paragraph (3), a person on whom a variation notice is served, other than following an application under regulation 13, or on whom a revocation notice, an enforcement notice or a suspension notice is served may appeal against the notice to the Scottish Ministers.

(3) Paragraphs (1) and (2) shall not apply where the decision or notice, as the case may be, implements directions given under regulations 9(2) or 23, under paragraph (4), under paragraph 14(7) of Schedule 4, or under paragraph 6(7) of Schedule 7.

(4) On determining an appeal against a decision of SEPA under paragraph (1), the Scottish Ministers may—

- (a) affirm the decision;
- (b) where the decision was a refusal to grant a permit or to vary the conditions of a permit, direct SEPA to grant the permit or to vary the conditions of the permit, as the case may be;
- (c) where the decision was as to the conditions attached to a permit, quash all or any of the conditions of the permit;
- (d) where the decision was a refusal to effect the transfer or accept the surrender of a permit, direct SEPA to effect the transfer or accept the surrender, as the case may be,

and where they exercise any of the powers in subparagraph (b) or (c) above, the Scottish Ministers may give directions as to the conditions to be attached to the permit.

(5) An appeal may be taken to the sheriff by SEPA or by any of the persons referred to in paragraphs (1) or (2) affected by a decision made by the Scottish Ministers in pursuance of those paragraphs.

(6) The appeal referred to in paragraph (5) shall be by summary application and shall be taken within 21 days of the decision of the Scottish Ministers made under paragraph (4).

(7) In disposing of an appeal taken under paragraph (5), the sheriff may take any steps open to the Scottish Ministers under paragraphs (4) and (12).

(8) On the determination of an appeal pursuant to paragraph (2), the Scottish Ministers (or the sheriff, as the case may be) may either quash or affirm the variation notice and, if affirming it, may do so either in its original form or with such modifications as may in the circumstances be thought fit.

(9) Where an appeal is brought under this regulation against a revocation notice, the revocation shall not take effect until expiry of the period of appeal following final determination or until the withdrawal of the appeal.

(11) Where—

- (a) an appeal is brought pursuant to paragraph (1)(c), (d) or (e) in relation to the conditions attached to a permit, the bringing of the appeal shall not have the effect of suspending the operation of the conditions; and
- (b) an appeal is brought pursuant to paragraph (2) against a variation notice, an enforcement notice or a suspension notice, the bringing of the appeal shall not have the effect of suspending the operation of the notice.

(12) Regulations 8 and 9 (other than paragraph (2)) shall apply where the Scottish Ministers, in exercising any of the powers in sub-paragraph (b) or (c) of paragraph (4), give directions as to the conditions to be attached to a permit as they would apply to SEPA when determining the conditions of the permit.

(13) Schedule 8 shall have effect in relation to the making and determination of appeals by the Scottish Ministers under this regulation.

(14) So far as relating to appeals to the Scottish Ministers, this regulation and Schedule 8 are subject to section 114 of the Environment Act 1995(10) (delegation of reference of appeals).

PART V

POWERS OF THE SCOTTISH MINISTERS

Directions to SEPA

23.—(1) The Scottish Ministers may give a direction to SEPA of a general or specific character with respect to the carrying out of any of their functions under these Regulations.

(2) Without prejudice to the generality of the power conferred by paragraph (1), a direction under that paragraph may direct SEPA—

- (a) to exercise any of their powers under these Regulations or to do so in such circumstances as may be specified in the direction or in such manner as may be so specified; or
- (b) not to exercise those powers, or not to do so in such circumstances nor such manner as may be specified in the direction.

(3) Where the Scottish Ministers receive information pursuant to Article 17(1) of the Directive in relation to the operation of an installation outside of the United Kingdom which is likely to have a significant negative effect on the environment of Scotland, they shall, for the purpose of complying with Article 17(2) of the Directive, direct SEPA to take such steps as they consider appropriate for the purpose of bringing the information to the attention of the persons in Scotland likely to be affected by the operation of the installation and providing them with an opportunity to comment on that information.

(4) Any direction given under these Regulations shall be in writing (or in electronic form) and may be varied or revoked by a further direction.

(5) It shall be the duty of SEPA to comply with any direction which is given to it under these Regulations.

Guidance to SEPA

24.—(1) The Scottish Ministers may issue guidance to SEPA with respect to the carrying out of any of their functions under these Regulations.

(2) In carrying out any of its functions under these Regulations, SEPA shall have regard to any guidance issued by the Scottish Ministers under this regulation.

Plans relating to emissions

25.—(1) The Scottish Ministers may make plans for—

- (a) the setting of limits on the total amount, or the total amount in any period, of emissions from all or any description of source within Scotland;
- (b) the allocation of quotas relating to such emissions.

(2) Where the Scottish Ministers allocate a quota in a plan made under paragraph (1), they may also make a scheme for the trading or other transfer of the quota so allocated.

(3) In this regulation, “emissions” mean the direct or indirect release of any substance from individual or diffuse sources into the air, water or land.

PART VI

INFORMATION AND PUBLICITY

Information

26.—(1) For the purpose of the discharge of their functions under these Regulations, the Scottish Ministers may require SEPA, by notice served on it, to furnish such information about the discharge of its functions under these Regulations as they may require.

(2) For the purposes of the discharge of their functions under these Regulations, the Scottish Ministers or SEPA may, by notice served on any person, require that person to furnish such information as is specified in the notice, in such form and within such period following service of the notice or at such time as is so specified.

(3) For the purposes of this regulation, the discharge by the Scottish Ministers of an obligation of the United Kingdom under the Community Treaties or any international agreement relating to the environment shall be treated as a function of theirs under these Regulations and the compilation of an inventory of emissions (whether or not from installations or mobile plant) shall be treated as a function of the SEPA under these Regulations.

(4) The information which a person may be required to furnish under paragraph (2) shall 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.

Public register of information

27.—(1) Subject to regulations 28 and 29 and to paragraphs 2 to 4 of Schedule 9, it shall be the duty of SEPA, to maintain a register containing the particulars described in paragraph 1 of that Schedule.

(2) Where, by virtue of regulation 29, information of any description is excluded from the register maintained by SEPA under this regulation, a statement shall be entered in the register indicating the existence of information of that description.

(3) It shall be the duty of SEPA—

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

(4) The register maintained by SEPA under this regulation may be kept in any form.

(5) Schedule 9 shall have effect in relation to the register maintained by SEPA under this regulation.

Exclusion from the register of information affecting national security

28.—(1) No information shall be included in the register maintained by SEPA under regulation 27 if and so long as, a direction under section 21 of the Environmental Protection Act 1990⁽¹¹⁾ is issued or has been issued, in relation to that information, to the effect that in the opinion of the Secretary of State (or in the case of a direction issued by the Scottish Ministers with the consent of the Secretary of State, in the opinion of the Scottish Ministers⁽¹²⁾) that information, or information of that description, would be contrary to the interests of national security.

(11) 1990 c. 43.

(12) See S.I. 1999/1750, Schedule 2.

(2) Directions issued under section 21(2) of that Act shall apply to the register maintained by SEPA under regulation 27 as they apply to the register maintained under section 20 of that Act and no information referred by SEPA in pursuance of section 21(2)(b) of that Act shall be included in the register maintained by SEPA under regulation 27 until the question of its inclusion is determined for the purposes of section 21 of that Act.

(3) Section 21(3) and (4) of that Act shall apply to the register maintained by SEPA under regulation 27 as it applies to the register maintained under section 20 of that Act and no information notified under section 21(4)(b) of that Act shall be included in the register maintained by SEPA under regulation 27 until the question of its inclusion is determined for the purposes of section 21 of that Act.

Exclusion from the register of certain confidential information

29.—(1) No information relating to the affairs of any individual or business shall be included in the register maintained by SEPA under regulation 27, 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 shall 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) If SEPA fails to give notice of its determination of an application under paragraph (2) within the period allowed by or under paragraph (3), it shall (if the applicant notifies SEPA in writing that the failure is being treated as such) be deemed to have determined at the end of that period that the information is not commercially confidential.

(5) Subject to section 114 of the Environment Act 1995, 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 included in the register, unless excluded under this regulation, might be commercially confidential, SEPA shall (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 any representations are made, SEPA shall, 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 shall 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 shall 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) shall give to the Scottish Ministers written notice of the appeal (or notice in electronic form acceptable to them) together with a statement of the grounds of appeal and 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 shall, at the same time, send to SEPA a copy of that notice together with those statements.

(8) Before giving notice of their determination of an appeal under paragraph (6), the Scottish Ministers may afford the appellant and SEPA an opportunity of appearing before and being heard by a person appointed by them and they shall do so in any case where a request is duly made by the appellant or SEPA to be so heard.

(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 maintained by it under regulation 27, notwithstanding that the information may be commercially confidential.

(10) Information excluded from the register shall be treated as ceasing to be commercially confidential for the purposes of this regulation at the expiry of the period of four years beginning with the date of the determination by virtue of which it was excluded or at the expiry of such shorter period as may be specified in the notice of that determination for the purpose of this paragraph; but the person who furnished it may apply to the SEPA for the information to remain excluded from the register on the ground that it is still commercially confidential and SEPA shall determine whether or not that is the case.

(11) Paragraphs (6) to (8) shall 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 its being contained in the register would prejudice, to an unreasonable degree, the commercial interests of that individual or other person.

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

(14) The appeal referred to in paragraph (13) shall be by summary application and shall be taken within 21 days of the decision of the Scottish Ministers under paragraph (6).

PART VII

PROVISION AS TO OFFENCES

Offences

30.—(1) It is an offence for a person—

- (a) to contravene regulation 6(1);
- (b) to fail to comply with or to contravene a condition of a permit;

- (c) to fail to comply with regulation 12(1);
 - (d) to fail to comply with the requirements of an enforcement notice or a suspension notice;
 - (e) to fail, without reasonable excuse, to comply with any requirement imposed by a notice under regulation 26(2);
 - (f) to make a statement which that person knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made—
 - (i) in purported compliance with a requirement to furnish any information imposed by or under any provision of these Regulations; or
 - (ii) for the purpose of obtaining the grant of a permit issued under these Regulations to that or any other person, or the variation, transfer or surrender of a permit;
 - (g) intentionally to make a false entry in any record required to be kept under the condition of a permit;
 - (h) with intent to deceive, to forge or use a document issued or authorised to be issued under the condition of a permit or required for any purpose under a condition of such a permit or to make or have in his possession a document so closely resembling any such document as to be likely to deceive;
 - (i) to fail to comply with an order made by a court under regulation 33.
- (2) A person guilty of an offence under sub-paragraph (a), (b), (d) or (i) of paragraph (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding six months, or to both;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding five years, or to both.
- (3) A person guilty of an offence under sub-paragraph (c) and (e) to (h) of paragraph (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.
- (4) Where an offence under this regulation committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity (or, in the case of a partnership, a partner or a person who was purporting to act as such), that person as well as the body corporate or the partnership, as the case may be, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (5) Where the affairs of a body corporate are managed by its members, paragraph (4) shall apply in relation to the acts or defaults of a member in connection with the functions of management of that member as if that member were a director of the body corporate.
- (6) Where the commission by any person of an offence under this regulation is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings for the offence are taken against the first-mentioned person.

Enforcement by the Courts

31. If SEPA is of the opinion that proceedings for an offence under regulation 30(1)(d) would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice or a suspension notice, it may take proceedings in any court of competent jurisdiction for the purpose of securing compliance with the notice.

Admissability of evidence

32. Where—

- (a) by virtue of a condition of a permit, an entry is required to be made in any record as to the observance of any condition of the permit; and
- (b) the entry has not been made,

that fact shall be admissible as evidence that that condition has not been observed.

Power of court to order cause of offence to be remedied

33.—(1) Where a person is convicted of an offence under regulation 30(1)(a), (b) or (d) in respect of any matters which appear to the court to be matters which it is in the power of that person to remedy, the court may, in addition to or instead of imposing any punishment, order that person, within such time as may be fixed by the order of the court, to take such steps as may be specified in that order for remedying those matters.

(2) The time fixed by an order of the court under paragraph (1) may be extended or further extended by a further order of the court on an application made before the end of the time as originally fixed or extended under this paragraph, as the case may be.

(3) Where a person is ordered under paragraph (1) to remedy any matters, that person shall not be liable under regulation 30 in respect of those matters in so far as they continue during the time fixed by the order of the court or any further time allowed under paragraph (2).

PART VIII

GENERAL

Application to the Crown

34.—(1) Subject to the provisions of this regulation, these Regulations bind the Crown.

(2) No contravention by the Crown of any provision of these Regulations shall make the Crown criminally liable under regulation 30 and no proceedings may be taken against the Crown under regulation 31 but the Court of Session may, on an application by SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), the provisions of these Regulations shall apply to persons in the public service of the Crown as they apply to other persons.

(4) If a certification has been or is issued by the Secretary of State to the effect that it appears to the Secretary of State, as respects any premises held or used by or on behalf of the Crown and any powers of entry exercisable under section 108 of the Environment Act 1995 (as are or may be specified in that certification) in relation to functions conferred or imposed by these Regulations, that it is requisite or expedient that, in the interests of national security, those powers of entry should not be exercisable in relation to such premises, those powers shall not be exercisable in relation to those premises.

(5) The following persons shall be treated as if they were the operator of the installation or mobile plant concerned for the purpose of any notice served or given or any proceedings instituted in relation to an installation or mobile plant operated or controlled by any person acting on behalf of the Royal Household, the Duchy of Lancaster or the Duke of Cornwall or other possessor of the Duchy of Cornwall—

- (a) in relation to an installation or mobile plant operated or controlled by a person acting on behalf of the Royal Household, the Keeper of the Privy Purse;
- (b) in relation to an installation or mobile plant operated or controlled by a person acting on behalf of the Duchy of Lancaster, such person as the Chancellor of the Duchy appoints in relation to that installation or mobile plant;
- (c) in relation to an installation or mobile plant operated or controlled by a person acting on behalf of the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints in relation to that installation or mobile plant.

Notices

35.—(1) Any notice served or given under these Regulations by the Scottish Ministers or by SEPA shall be in writing (or in electronic form).

(2) Any such notice may be served on or given to a person by leaving it at that person's proper address or by sending it by post to that person at that address.

(3) Any such notice may—

- (a) in the case of a body corporate, be served on the secretary or clerk of that body;
- (b) in the case of a partnership, be served on or given to a partner or person having the control or management of the partnership business.

(4) For the purpose of this regulation and of section 7 of the Interpretation Act 1978(13) (service of documents by post) in its application to this regulation, the proper address of any person on or to whom any such notice is to be served or given shall be the last known address of that person, except that—

- (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;
- (b) in the case of a partnership or person having the control or management of the partnership business, it shall be the principal office of the partnership,

and for the purposes of this paragraph the principal office of a company registered outside of the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be their principal office within the United Kingdom.

(5) If the person to be served with or given any such notice has specified an address in the United Kingdom other than the proper address of that person within the meaning of paragraph (4) as the one at which that person or someone on behalf of that person will accept notices of the same description as that notice, that address shall also be treated for the purposes of this regulation and section 7 of the Interpretation Act 1978 as the proper address of that person.

Consequential Amendments

36. Schedule 10 shall have effect and the enactments mentioned in that Schedule, so far as they extend to Scotland, shall have effect with the amendments there specified (being minor amendments consequential on provisions of these Regulations).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

St Andrew's House,
Edinburgh
14th September 2000

SARAH BOYACK
A member of the Scottish Executive