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SCOTTISH STATUTORY INSTRUMENTS

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**2000 No. 323**

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

**PART VI**

**INFORMATION AND PUBLICITY**

**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).