

## SCHEDULE 7

### PART 2

#### DETERMINATION OF APPLICATIONS FOR VARIATIONS AND VARIATION NOTICES

- 4.—(1) Subject to paragraphs (3) and (4), this paragraph applies where—
- (a) an application is made for the variation of the conditions of a permit under regulation 13(2) which will authorise a substantial change in the operation of an installation or mobile plant; or
  - (b) SEPA proposes to serve a variation notice under regulation 13(5) otherwise than for the purposes of determining an application mentioned in paragraph (a) and the variation will authorise a substantial change in the operation of an installation or mobile plant.
- (2) Subject to sub-paragraphs (3) and (4), this paragraph shall also apply where an application is made for the variation of the conditions of a permit under regulation 13(2) or SEPA proposes to serve a variation notice under regulation 13(5) and SEPA determine that in the particular circumstances the procedure set out in the following sub-paragraphs should be followed even though no substantial change is involved (so that paragraph (1) does not apply).
- (3) This paragraph shall not apply where SEPA proposes to serve a variation notice—
- (a) which has been modified to take account of representations made in accordance with this paragraph in relation to the SEPA's previous proposal to serve the notice without the modifications; or
  - (b) in order to comply with a direction given by the Scottish Ministers.
- (4) This paragraph shall not apply in relation to an application for the variation of the conditions of a permit or a proposed variation notice relating to an installation involving only the burning of waste oil (as defined in Section 1.1 of Part 1 of Schedule 1) in an appliance with a rated thermal input of less than 0.4 megawatts.
- (5) Where this paragraph applies, SEPA shall—
- (a) notify the operator that the paragraph applies by virtue of sub-paragraph (1) or a determination under sub-paragraph (2) and of any fee prescribed in respect of the variation on the application of this paragraph under section 41 of the Environment Act 1995;
  - (b) in the case of a proposed variation notice, serve a copy of the proposed notice on the operator;
  - (c) give notice of the application or proposed variation notice, enclosing a copy of it, to the persons to whom notice would have to be given in accordance with paragraph 9 of Schedule 4 in the case of an application for a permit to operate the installation or mobile plant.
- (6) In the case of an application to which this paragraph applies—
- (a) SEPA shall, subject to paragraph 15(a), comply with sub-paragraph (5) within 14 days of receiving the application;
  - (b) if the applicant does not pay to SEPA any fee notified under sub-paragraph (5)(a) within 28 days of the notification, the application shall be deemed to have been withdrawn.
- (7) For the purpose of calculating the 14 day period mentioned in sub-paragraph (6)(a), no account shall be taken of any period beginning with the date on which notice is served on an operator under paragraph 3 and ending on the date on which the operator furnishes the information specified in the notice.

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(8) Subject to paragraph 15(b), an operator notified under sub-paragraph (5)(a) shall, within 28 days beginning on the day on which the notification is made, advertise the application or proposed variation notice, as the case may be—

- (a) in the case of a variation affecting the operation of an installation or Part A mobile plant, in one or more newspapers circulating in the locality in which the installation or mobile plant is operated; and
- (b) in the case of a Part A installation or Part A mobile plant, in the Edinburgh Gazette.

(9) An advertisement required by sub-paragraph (8) shall—

- (a) state the name of the operator;
- (b) in the case of a variation affecting the operation of an installation or Part A mobile plant, state the address of the site of the installation or mobile plant concerned;
- (c) describe briefly the activities in Part 1 of Schedule 1 carried out in the installation or by means of the mobile plant and the change in the operation of the installation or mobile plant that will be authorised by the variation;
- (d) state where any register containing particulars of the application or proposed variation notice may be inspected and that it may be inspected free of charge;
- (e) explain that any person may make representations to SEPA in writing (or in electronic form acceptable to it) within the period of 28 days beginning with the date of the advertisement and give the address of SEPA for receiving the representations;
- (f) explain that any such representations made by any person will be entered in a public register unless that person requests in writing (or in electronic form) that they should not be so entered, and that where such a request is made there will be included in the register a statement indicating only that representations have been made which have been the subject of such a request.

(10) Sub-paragraph (8) shall not apply in relation to an application for the variation of the conditions of a permit or a proposed variation notice relating to an installation which is only used to carry out an activity falling within paragraph (c)(ii) of Part B of Section 1.2 of Part 1 of Schedule 1 (unloading of petrol at service stations).

(11) Any representations made by any person within the period allowed shall be considered by SEPA in determining the application or before serving the variation notice.

(12) For the purpose of sub-paragraph (11), the period allowed for making representations is—

- (a) in the case of persons notified pursuant to sub-paragraph (5)(c), the period of 28 days beginning with the date on which notice of the application or proposed variation notice was given under that sub-paragraph;
- (b) in the case of other persons, the period of 28 days beginning with the date on which the application or proposed variation notice was advertised pursuant to sub-paragraph (8).

(13) Where this paragraph applies by virtue of sub-paragraph (1) to a variation affecting the operation of a Part A installation, any relevant information obtained or conclusion arrived at pursuant to Articles 5, 6 and 7 of Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment in relation to the substantial change shall be taken into consideration by SEPA in determining the application or before serving the variation notice.

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

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

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- (a) that person is the owner, tenant or occupier of the land; and
  - (b) that land is land in relation to which it is likely that, as a consequence of the off-site condition in question, rights will have to be granted by virtue of regulation 9(13) to the holder of the permit.
- (3) A notice served under sub-paragraph (1) shall—
- (a) set out the off-site condition in question;
  - (b) indicate the nature of the works or things which that condition might require the holder of the permit to carry out or do; and
  - (c) specify a period, not being less than 28 days beginning on the date on which the notice is served, in which representations may be made to SEPA relating to the condition or its possible effects and the manner in which any such representations are to be made.
- (4) In sub-paragraph (2), “owner” has the same meaning as in paragraph 11(4) of Schedule 4.
- (5) Any representations made by a person notified under sub-paragraph (1) within the period of 28 days beginning with the date on which notice was given under that sub-paragraph shall be considered by SEPA before serving the variation notice.

**6.—(1)** The Scottish Ministers may give directions to SEPA requiring that any particular application under regulation 13(2) or any class of such applications shall be referred to them for determination pending a further direction under sub-paragraph (6).

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

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

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

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

- (a) with the substitution in sub-paragraph (3) for the reference to the appellant of a reference to the applicant;
- (b) with the substitution in sub-paragraph (4)—
  - (i) for the reference to the appeal of a reference to the application; and
  - (ii) for the reference to every person mentioned in paragraph 3(1)(a) of Schedule 8 and every person mentioned in paragraph 3(1)(b) and (c) of that Schedule who has made representations to the Scottish Ministers in writing of a reference to every person who was required to be notified under paragraph 3(4)(b) of this Schedule and to any person who made representations to SEPA with respect to the subject matter of the application;
- (c) with the substitution in sub-paragraph (7)—
  - (i) for the reference in sub-paragraph (7)(a) to the appellant of a reference to the applicant;

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- (ii) for the reference in sub-paragraph (7)(c) to any person required under paragraph 3(1) (a) of Schedule 8 to be notified of the appeal of a reference to any person required under paragraph 3(4)(b) of this Schedule to be notified of the application.

(6) In relation to SEPA and the applicant, regulation 22(5) and (6) shall apply to any determination by the Scottish Ministers of any application referred to them under sub-paragraph (1) as it applies to decisions made by the Scottish Ministers under regulation 22(1) or (2).

(7) On determining any application transferred under this paragraph, the Scottish Ministers shall (or, on determining an appeal, the sheriff, may) give to SEPA such a direction as considered fit as to whether it is to grant the application and, if so, as to the conditions that are to be attached to the permit by means of the variation notice.

7.—(1) Except in a case where an application has been referred to the Scottish Ministers under paragraph 6 and, subject to paragraph 10, SEPA shall give notice of its determination of an application under regulation 13(2)—

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

or, in either case, within such longer period as may be agreed with the applicant.

(2) For the purpose of calculating the periods mentioned in sub-paragraphs (1)(a) and (b) no account shall be taken of—

- (a) any period beginning with the date on which notice is served on an operator under paragraph 3 and ending on the date on which the operator furnishes the information specified in the notice;
- (b) any period allowed for making representations in relation to a notice given pursuant to paragraph 5 in so far as that period does not overlap with any other period allowed for making representations in accordance with paragraph 4(12);
- (c) where a matter falls to be determined for the purposes of regulation 28 or under regulation 29, any period beginning with the date on which the period of 28 days referred to in paragraph 4(8) ends and ending on the date on which the application is advertised in accordance with paragraph 15(b).

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

9. Where the Scottish Ministers are aware that an application or proposal to serve a variation notice mentioned in paragraph 4(1) relates to a substantial change in the operation of an installation carrying out activities listed in Annex I to the Directive which is likely to have significant negative effects on the environment of another Member State, or where another Member State likely to be significantly affected so requests, the Scottish Ministers shall, at the same time as the application or proposed variation notice is advertised pursuant to paragraph 4(8) (or as soon as they become so aware or receive such a request, if they become so aware or receive such a request after the application or proposed variation notice is published but before the application is determined or the variation notice is served), forward a copy of the application or proposed variation notice to the Secretary of State for onward transmission to the other Member State, in order that the application or proposed variation notice may serve as the basis for any consultations necessary in the framework of the bilateral relations between the United Kingdom and the other Member State on a reciprocal and equivalent basis, as referred to in Article 17 of the Directive.

**10.** Where an application or proposal to serve a variation notice is forwarded to the Secretary of State for onward transmission to another Member State pursuant to paragraph 9, the Scottish Ministers shall notify the operator of the installation concerned and SEPA and—

- (a) SEPA shall not determine the application (where the application has not been referred to the Scottish Ministers under paragraph 6) or serve the variation notice until the Scottish Ministers have notified it in writing (or in electronic form) that the bilateral consultations required by paragraph 9 have been completed and have forwarded to it any representations duly made on the application or proposed variation by persons in the other Member State which have been forwarded to the Scottish Ministers; and
- (b) in the case of an application to be determined by SEPA, the time period within which to determine the application set out in paragraph 7 shall begin on the day on which it receives that notification by the Scottish Ministers that the bilateral consultations have been completed.

**11.** In determining an application or before serving a variation notice which has been forwarded to another Member State pursuant to paragraph 7, SEPA, or, in the case of an application, the Scottish Ministers if the application has been referred to them, shall take into consideration any representations duly made in the other Member State which have been forwarded to the Scottish Ministers.

**12.** In paragraphs 9 to 11, “Member State” shall be taken to include Norway, Iceland and Liechtenstein.