

**2000 No. 432**

**PUBLIC HEALTH**

**WATER SUPPLY**

**The Control of Pollution (Registers) and (Consent for Discharges) (Secretary of State Functions) Amendment Regulations 2000**

*Made* 29th November 2000

*Laid before the Scottish Parliament* 30th November 2000

*Coming into force* 1st January 2001

The Scottish Ministers, in exercise of the powers conferred upon them by sections 39(2), 41, 49B(7), 104(1) and 105(1) of the Control of Pollution Act 1974(a) and of all other powers enabling them in that behalf, hereby make the following regulations:

**Citation, commencement and extent**

1.—(1) These regulations may be cited as the Control of Pollution (Registers) and (Consent for Discharges) (Secretary of State Functions) Amendment Regulations 2000, and shall come into force on 1st January 2001.

(2) These regulations extend to Scotland only.

**Amendment to the Control of Pollution (Consents for Discharges) (Secretary of State Functions) Regulations 1984**

2.—(1) The Control of Pollution (Consents for Discharges) (Secretary of State Functions) Regulations 1984(b) are amended as follows.

(2) Delete paragraph (8) of regulation 7 and substitute the following—

“(8) The Scottish Ministers may, if they think fit, require the appellant or the authority to submit to them within a specified period a further statement in writing in respect of any of the matters to which the appeal relates, and where they exercise this power, the person submitting the statement shall, at the same time, send to the appellant, or as the case may be, the authority, a copy of any statement submitted.”

(3) After regulation 7 insert the following—

“7A.—(1) A person who wishes to appeal to the Scottish Ministers under section 49B(1) shall give notice of appeal, in writing, to the Scottish Ministers, before the expiry of the period of 21 days beginning with the date on which the enforcement notice is received, or before the expiry of such longer period as the Scottish Ministers may allow.

(2) The notice of appeal shall—

(a) specify the grounds of appeal; and

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(a) 1974 c.40. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.I. 1984/865, to which there are amendments not relevant to these Regulations.

- (b) indicate whether the appellant wishes the appeal to be in the form of a hearing or be disposed of on the basis of written representations.
- (3) The notice of appeal shall be accompanied by copies of any application, consent, correspondence, decision, notice or other document relevant to the appeal.
- (4) At the same time as the appellant gives notice of the appeal to the Scottish Ministers, the appellant shall send the authority a copy of the notice of appeal, together with a list of the documents provided to the Scottish Ministers under paragraph (3) above.
- (5) If the appellant wishes at any time to withdraw his appeal he shall do so by notice, in writing, informing the Scottish Ministers and shall send a copy of the notice to the authority.

### **Written representations**

**7B.**—(1) Where an appeal under section 49B(1) is to be disposed of on the basis of written representations, the authority shall submit any written representations to the Scottish Ministers not later than 14 days after receiving a copy of the notice of appeal in accordance with regulation 7A(4).

(2) The appellant shall make any further representations by way of reply not later than 14 days after receiving the authority's representations under paragraph (1) above.

- (3) The Scottish Ministers may in any particular case—
  - (a) set shorter or longer time limits than those mentioned in this regulation;
  - (b) allow the parties to make representations in addition to those mentioned in paragraphs (1) and (2) above.

(4) Any representations made by a party to the appeal shall be dated with the date on which they are submitted to the Scottish Ministers.

(5) Where either party to the appeal submits any representations to the Scottish Ministers they shall at the same time send a copy to the other party.

### **Hearings**

**7C.**—(1) The Scottish Ministers shall give the appellant and the authority at least 28 days notice (unless they agree to a shorter period of notice) of the date, time and place fixed for a hearing in relation to an appeal under section 49B(1).

(2) The Scottish Ministers may vary the date fixed for the hearing and paragraph (1) above shall apply, with necessary modifications, to the variation of the date.

(3) The Scottish Ministers may also vary the time or place for the holding of a hearing but shall give such notice of any such variation as appears to him to be reasonable.

(4) After the conclusion of a hearing, the person appointed to conduct the hearing shall, unless he was appointed under section 114(1)(a) of the Environment Act 1995 (power of the Scottish Ministers to delegate their functions of determining appeals), make a report in writing to the Scottish Ministers which shall include his conclusions and his recommendations or his reasons for not making any recommendations.

### **Notification of determination**

**7D.**—(1) The Scottish Ministers shall notify the appellant in writing of his determination of the appeal and shall provide him with a copy of any report mentioned in regulation 7C(4).

(2) The Scottish Ministers shall at the same time send a copy of the documents mentioned in paragraph (1) above to the authority."

### **Amendment to the Control of Pollution (Registers) (Scotland) Regulations 1993**

3.—(1) The Control of Pollution (Registers) (Scotland) Regulations 1993(a) are amended as follows.

(2) In regulation 2, in the definition of “relevant event” delete “(e)” and substitute “(f), the withdrawal or determination of any appeal referred to in regulation 4B, the conviction or determination of any appeal referred to in regulation 4C, or the determination (whether at first instance or on appeal) of proceedings referred to in regulation 4D.”.

(3) In paragraph (2) of regulation 3 delete “regulation 7(2)” and substitute “regulations 4A(2) and 7(2)”.

(4) After regulation 4, insert the following—

#### **“Notices served under section 49A(1)**

4A.—(1) The particulars to be included in the register in respect of notices served under section 49A(1) (enforcement notices) are—

- (a) the name of the holder of the relevant consent on whom an enforcement notice has been served;
- (b) the date of the enforcement notice;
- (c) particulars of the matters specified under section 49A(2)(b);
- (d) particulars of the steps that must be taken under section 49A(2)(c); and
- (e) particulars of the period within which those steps must be taken under section 49A(2)(d).

(2) The particulars required by this regulation shall be entered on the register not later than 7 days after the day on which the enforcement notice is served.

(3) In this regulation, the expressions “relevant consent” and “the holder” shall have the same meaning as in section 49A.

#### **Conviction for failure to comply with an enforcement notice**

4B.—(1) Subject to paragraphs (2) and (3), the particulars to be included in the register in respect of any conviction for an offence under section 49A(3) (failure to comply with an enforcement notice) are—

- (a) particulars of the steps which required to be taken under section 49A(2)(c) in terms of the enforcement notice;
- (b) the date of the conviction;
- (c) the penalty (if any) imposed; and
- (d) the name of the court before which the offence was tried.

(2) In the event of a successful appeal against conviction the particulars specified in paragraph (1) above shall be deleted.

(3) In the event of a successful appeal against the penalty imposed, the particulars specified in paragraph (1)(c) above shall be deleted and substituted by the penalty (if any) imposed on appeal.

#### **Proceedings for the purpose of securing compliance with an enforcement notice**

4C. The particulars to be included in the register in respect of proceedings taken by SEPA under section 49A(4) (proceedings for the purpose of securing compliance with an enforcement notice) are—

- (a) a copy of any written pleadings on the basis of which the court of first instance, and any court of appeal, made a determination;
- (b) a copy of the extract decree of the court of first instance, and of any court of appeal; and

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(a) S.I. 1993/1155. That instrument was amended by S.I. 1996/973, but those amendments are not relevant to this Order.

- (c) a statement of the amount of expenses (if any) (including outlays (if any)) recovered by SEPA from the person against whom proceedings were taken.”.

St Andrew's House,  
Edinburgh  
29th November 2000

*SAM GALBRAITH*  
A member of the Scottish Executive

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These regulations extend to Scotland only. They amend the Control of Pollution (Consents for Discharges) (Secretary of State Functions) Regulations 1984 so as to make provision in respect of appeals against enforcement notices issued under section 49A(1) of the Control of Pollution Act 1974 (regulation 2).

They also amend the Control of Pollution (Registers) (Scotland) Regulations 1993 to make provision in respect of the inclusion in the registers maintained by SEPA under section 41 of that Act of information relating to enforcement notices, convictions for failure to comply with enforcement notices, and proceedings taken by SEPA to secure compliance with enforcement notices (regulation 3).

A Regulatory Impact Assessment in relation to these Regulations has been placed in the Scottish Parliament Information Centre and copies can be obtained from the Environment Protection Unit, Scottish Executive Rural Affairs Department, Victoria Quay, Edinburgh EH6 6QQ.

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