

## SCHEDULE 9

Regulation 49

### Procedures in connection with appeals to the Scottish Ministers

1. A person who wishes to appeal to the Scottish Ministers under regulation 46 shall give to the Scottish Ministers written notice of the appeal together with the documents specified in paragraph 2 and shall at the same time send to SEPA a copy of that notice together with copies of the documents specified in paragraph 2(a) and (f).
2. The documents mentioned in paragraph 1 are—
  - (a) a statement of the grounds of appeal;
  - (b) a copy of any relevant application;
  - (c) a copy of any relevant authorisation;
  - (d) a copy of any relevant correspondence between the appellant and SEPA;
  - (e) a copy of any decision or notice which is the subject matter of the appeal; and
  - (f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.
3. An appellant may withdraw an appeal by notifying the Scottish Ministers in writing, and shall send a copy of that notification to SEPA.
4. Subject to paragraph 5, notice of appeal in accordance with paragraph 1 is to be given—
  - (a) in the case of an appeal under regulation 46(a), (b) or (c), before the expiry of the period of three months beginning with the date of the decision or deemed decision which is the subject matter of the appeal;
  - (b) in the case of an appeal under regulation 46(h), before the date on which the revocation takes effect;
  - (c) in the case of an appeal under regulation 46(d), (e), (f), or (g), before the expiry of the period of two months beginning with the date of the notice which is the subject matter of the appeal;
  - (d) in the case of an appeal under regulation 46 (i) or (j), before the expiry of 21 days beginning with the date of the notice which is the subject matter of the appeal.
5. The Scottish Ministers may in a particular case allow notice of appeal to be given after the expiry of the periods mentioned in paragraph 4(a), (c), or (d).
6. Subject to paragraph 9, SEPA shall, within 14 days of receipt of the copy of the notice of appeal sent in accordance with paragraph 1, give notice of it to—
  - (a) any person who made representations to SEPA with respect to the subject matter of the appeal; and
  - (b) any person who appears to SEPA to be affected or likely to be affected by, or have an interest in, the subject matter of the appeal.
7. A notice under paragraph 6 shall—
  - (a) state that the notice of appeal has been given;
  - (b) state the name of the appellant and the address of the site where the controlled activity is being carried on;
  - (c) describe the application or authorisation to which the appeal relates; and
  - (d) state that representations with respect to the appeal may be made to the Scottish Ministers in writing by any recipient of the notice within a period of 21 days beginning with the

date of the notice and that copies of any representations so made will be furnished to the appellant and to SEPA;

- (e) explain that any such representations made by any person will be entered in a public register unless that person requests in writing 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;
- (f) state that if a hearing is to be held wholly or partly in public, a person mentioned in paragraph 6(a) or (b) who makes representations with respect to the appeal will be notified of the date of the hearing.

8. SEPA shall, within 14 days of sending a notice under paragraph 6–

- (a) notify the Scottish Ministers of the persons to whom and the date on which the notice was sent; and
- (b) indicate whether it wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.

9. In the event of an appeal being withdrawn, SEPA shall give notice of the withdrawal to every person to whom notice was give under paragraph 6.

### **Hearing procedure**

10. Before determining an appeal under regulation 47, the Scottish Ministers may afford the appellant and SEPA an opportunity of appearing before and being heard by a person appointed by them (“the appointed person”) and they shall do so in any case where a request is made by the appellant or SEPA to be so heard.

11. A hearing held under paragraph 10 may, if the appointed person so decides, be held wholly, or held to any extent, in private.

12. Where the Scottish Ministers cause a hearing to be held under paragraph 10, they shall give the appellant and SEPA at least 28 days' written notice (or such shorter period of notice as they may agree with the appellant and SEPA) of the date, time and place fixed for the holding of the hearing.

13. In the case of a hearing which is to be held wholly or partly in public, the Scottish Ministers shall, at least 21 days before the date fixed for the holding of the hearing–

- (a) publish a copy of the notice mentioned in paragraph 12 in a newspaper circulating in the locality in which the controlled activity is carried on or is to be carried on;
- (b) serve a copy of that notice on every person mentioned in paragraph 6 who has made representations to the Scottish Ministers.

14. The Scottish Ministers may vary the date fixed for the holding of any hearing and paragraphs 12 and 13 shall apply to the variation of a date as they applied to the date originally fixed.

15. The Scottish Ministers may also vary the time or place for the holding of a hearing and shall give such notice of any such variation as appears to them to be reasonable.

16. The persons entitled to be heard at any hearing are the appellant and SEPA.

17. Nothing in paragraph 16 shall prevent the appointed person from permitting any other persons to be heard at the hearing and such permission shall not be unreasonably withheld.

18. After the conclusion of a hearing, the appointed person shall make a report to the Scottish Ministers in writing which shall include the conclusions and recommendations of that person or the reasons for not making any recommendation.

**19.** Subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973<sup>(1)</sup> (which relates to the costs of and holding of local inquiries) shall apply to hearings held under this paragraph by an appointed person as they apply to inquiries held under that section, but with the following modifications, that is to say:—

- (a) with the substitution in subsection (3) (notice of inquiry) for the reference to the person appointed to hold the inquiry of a reference to the appointed person;
- (b) with the substitution in subsection (4) (evidence) for the reference to the person appointed to hold the inquiry and, in paragraph (b), the reference to the person holding the inquiry of references to the appointed person;
- (c) with the substitution in subsection (6) (expenses of witnesses etc.) for the references to the Minister causing the inquiry to be held of a reference to the appointed person or the Scottish Ministers;
- (d) with the substitution in subsection (7) (expenses) for the references to the Minister of references to the appointed person or the Scottish Ministers;
- (e) with the substitution in subsection (7A) (recovery of entire administrative expense)—
  - (i) for the first reference to the Minister of a reference to the appointed person or the Scottish Ministers;
  - (ii) in paragraph (a), for the reference to the Minister of a reference to the Scottish Ministers; and
  - (iii) in paragraph (b), for the reference to the Minister holding the inquiry of a reference to the Scottish Ministers;
- (f) with the substitution in subsection (7B) (power to prescribe daily amount)—
  - (i) for the first reference to the Minister of a reference to the Scottish Ministers;
  - (ii) in paragraphs (a) and (c), for the references to the person appointed to hold the inquiry of references to the appointed person; and
  - (iii) in paragraph (d), for the reference to the Minister of a reference to the appointed person or the Scottish Ministers; and
- (g) with the substitution in subsection (8) (certification of expenses) for the reference to the Minister, the reference to him and the reference to the Crown of references to the appointed person or the Scottish Ministers.

#### **Procedure for written representations**

**20.** Where the appeal is to be disposed of on the basis of written representations, SEPA shall submit any written representations to the Scottish Ministers not later than 28 days after receiving a copy of the documents mentioned in paragraph 2(a) and (f).

**21.** The appellant shall make any further representations by way of reply to any representations made from SEPA not later than 28 days after the date of submission of those representations by SEPA under paragraph 20.

**22.** Any representations made by the appellant or SEPA shall bear the date on which they are submitted to the Scottish Ministers.

**23.** When SEPA or the appellant submits any representations to the Scottish Ministers they shall at the same time send a copy of them to the other party.

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(1) 1973 c. 65.

24. The Scottish Ministers shall send to the appellant and SEPA a copy of any representations made to them by the persons mentioned in paragraph 6 and shall allow the appellant and SEPA a period of not less than 14 days in which to make representations on them.

25. The Scottish Ministers may in a particular case—

- (a) set later time limits than those mentioned in paragraphs 20, 21 and 23;
- (b) require exchanges of representations between the parties in addition to those mentioned in paragraphs 20 and 21.

#### **Determination and publication of appeal**

26. The Scottish Ministers shall give notice to the appellant of their determination of the appeal and their reasons for that determination, and shall provide the appellant with a copy of any report mentioned in paragraph 18.

27. The Scottish Ministers shall at the same time send—

- (a) a copy of the documents mentioned in paragraph 25 to SEPA and to any persons required under paragraph 3(1)(a) to be notified of the appeal; and
- (b) a copy of their determination of the appeal to any person mentioned in paragraph 6 who made representations to the Scottish Ministers and, if a hearing was held, to any other person who made representations in relation to the appeal at the hearing.