

2006 No. 553

ENVIRONMENTAL PROTECTION

WATER

The Water Environment (Controlled Activities) (Third Party Representations etc) (Scotland) Regulations 2006

Made - - - - - *21st November 2006*
Laid before the Scottish Parliament *22nd November 2006*
Coming into force - - - *14th December 2006*

The Scottish Ministers, in exercise of the powers conferred by section 20 of and Schedule 2 to, the Water Environment and Water Services (Scotland) Act 2003(a), and of all other powers enabling them in that behalf, after consulting the persons specified in section 21(1) of that Act, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Water Environment (Controlled Activities) (Third Party Representations etc) (Scotland) Regulations 2006 and shall come into force on 14th December 2006.

Amendments to the Water Environment (Controlled Activities) (Scotland) Regulations 2005

2.—(1) The Water Environment (Controlled Activities) (Scotland) Regulations 2005(b) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 13(1) (advertisement of application), after “environment” insert “or the interests of other users of the water environment”.

(3) In regulation 14(2) (further information etc.), for “with the applicant in writing” substitute “in writing with the applicant, or as the case may be, person making representations under regulation 13(4)”.

(4) At the beginning of regulation 15(3) (determination of application) insert “Subject to regulation 15A,”.

(a) 2003 asp 3; Schedule 2 was amended by section 66 and paragraph 6 of Schedule 2 to the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8).
(b) S.S.I. 2005/348.

(5) Immediately after regulation 15 insert–

“Consideration of third party representations

15A.—(1) This regulation applies to an application (or matter treated as an application in accordance with these Regulations) which SEPA proposes to determine under regulations 15(3), 20(1A), 21(3) or 25(1) in respect of which a third party representation has been made.

(2) Before it determines an application to which this regulation applies SEPA shall–

- (a) serve notice of its proposed determination on any person who has made a third party representation in respect of the application specifying that they may, within the period of 21 days beginning with the date of service of the notice, notify the Scottish Ministers in writing that they object to SEPA’s proposed determination; and
- (b) send a copy of the notice served under sub-paragraph (a) to the applicant (or any person who is treated by these Regulations as the applicant in respect of the application).

(3) SEPA shall not determine the application during the period specified in paragraph (2)(a).

(4) Any person notifying the Scottish Ministers of their objection under paragraph (2)(a) shall send a copy of that notification to SEPA within the period specified in that paragraph.

(5) Where the Scottish Ministers have received notification under paragraph (2)(a) and SEPA has received a copy of that notification under paragraph (4), SEPA shall not determine the application to which the notification relates until either–

- (a) SEPA has received written notice from the Scottish Ministers confirming that they do not intend to direct SEPA to refer the application to them for their determination under regulation 17(1)(b); or
- (b) no such notice has been received from the Scottish Ministers and a period of 63 days beginning with the date of the service of the notice given by SEPA under paragraph (2)(a) has expired.

(6) In this regulation “third party representation” means a written representation in respect of an application made to SEPA under regulation 13(4).”.

(6) In regulation 16(2) (time-limits for determining applications)–

- (a) in sub-paragraph (a)–
 - (i) after “ending with the”, insert “last”; and
 - (ii) omit “and” where it occurs at the end of that paragraph; and
- (b) at the end of sub-paragraph (b) insert–
 - “; and
- (c) in excess of 35 days during which it is prohibited from making a determination by virtue of regulation 15A.”.

(7) In regulation 17 (determinations of applications by the Scottish Ministers)–

- (a) at the end of paragraph (1) insert–
 - “; and in this regulation references to “application” or “applications” includes reference to any matter which is treated as an application in accordance with these Regulations.”; and
- (b) for paragraph (5) substitute–
 - “(5) When they have made a determination under this regulation, the Scottish Ministers shall direct SEPA–
 - (a) to grant or refuse to grant an application for–

- (i) an authorisation to carry on the activity, or any of the activities referred to in the application or the relevant part of the application;
 - (ii) a variation of the authorisation or part of the application for it made under regulation 21;
 - (iii) a surrender of the authorisation or part of it,
- or to vary or not to vary an authorisation under regulation 20(1), as the case may be; and
- (b) where the determination is–
 - (i) that an authorisation is to be granted under regulation 8 or 9, to grant that authorisation in accordance with that regulation;
 - (ii) that an authorisation is to be varied under regulation 19, to vary that authorisation in accordance with that regulation and regulation 20 or 21, as the case may be;
 - (iii) that an authorisation is to be surrendered under regulations 24 and 25, to grant that surrender in accordance with those regulations;
 - (iv) that an authorisation or a partial surrender of an authorisation is to be granted subject to conditions, to grant that authorisation or partial surrender, specifying the conditions on which that authorisation or partial surrender is to be granted, and, if appropriate, to identify the person responsible for it;
 - (v) to refuse to grant an application for authorisation, variation or surrender, or not to vary an authorisation under regulation 20(1) to notify the applicant of that refusal or determination not to vary as the case may be, specifying the reasons for that determination.”.
- (8) In regulation 20 (procedure for variation)–
- (a) after paragraph (1) insert–
 - “(1A) Subject to regulation 15A, SEPA must determine whether–
 - (a) to grant; or
 - (b) not to grant,
 the variation of an authorisation under paragraph (1).”; and
 - (b) for paragraph (2) substitute–
 - “(2) Where SEPA determines to grant the variation of an authorisation under paragraph (1), it shall serve notice on the applicant specifying–
 - (a) the variations being made to the authorisation; and
 - (b) the date on which the variations are to take effect which shall not be less than 3 months from the date on which the notice was served.
 (2A) Where SEPA determines not to grant the variation of an authorisation which it has proposed under paragraph (1) it must give reasons for that determination to the applicant.”.
- (9) In regulation 21 (request for variation)–
- (a) in paragraph (2) for “and 15(1)” substitute “, 15(1) and 16”; and
 - (b) at the beginning of paragraph (3) insert “Subject to regulation 15A,”.
- (10) At the beginning of regulation 25(1) (determination of application for surrender) insert “Subject to regulation 15A,”.
- (11) In regulation 26 (suspension and revocation of authorisation)–
- (a) in paragraph (3), after “notice” insert “under paragraph (1)”; and
 - (b) after paragraph (3) insert–
 - “(4) SEPA may at any time lift the suspension of an authorisation under paragraph (1) (in whole or in part) by serving a notice on the responsible person or operator, as the case may be.

(5) A notice under paragraph (4) shall specify–

- (a) in the case of a partial lifting of the suspension, the extent to which the authorisation remains suspended;
- (b) the date on which the lifting of the suspension or partial lifting of the suspension shall take effect; and
- (c) the reasons for the lifting or partial lifting of the suspension.

(6) An authorisation shall have effect (in whole or in part) from the date specified in the notice under paragraph (4).”.

(12) In regulation 46 (appeals to the Scottish Ministers)–

- (a) in paragraph (e) after “variation” insert “(in whole or in part)”; and
- (b) after paragraph (e) insert–

“(ee) a person who has been granted the variation of an authorisation on request under regulation 21 but is aggrieved by the removal, addition or amendment of any condition pursuant to that variation;”.

(13) In Schedule 8 (register), in paragraph 1(h), after “of” insert “, or cessation of activity permitted under,”.

(14) In Schedule 9 (procedures in connection with appeals to the Scottish Ministers)–

- (a) in paragraph 9, for “give” in the second place it occurs substitute “given”;
- (b) in paragraph 25(a) for “23” substitute “24”; and
- (c) for paragraph 27 substitute–

“27. The Scottish Ministers shall at the same time send a copy of the notice of the determination of the appeal, their reasons for that determination and a copy of any report mentioned in paragraph 18 to SEPA and to any person who made representations to the Scottish Ministers during the appeal.”.

RHONA BRANKIN

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
21st November 2006

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (S.S.I. 2005/348) (“the 2005 Regulations”).

They amend the 2005 Regulations so as to insert a new regulation 15A. This requires SEPA to notify third parties who have made representations in respect of applications for authorisations or their variation or surrender under the 2005 Regulations of its proposed decision. Third parties may then notify their objection to the proposed decision to the Scottish Ministers (regulation 2(5)). The Scottish Ministers may direct SEPA to refer applications to them for determination under regulation 17 of the 2005 Regulations. Regulation 2(7) extends the application of the Scottish Ministers’ powers under regulation 17 to applications for variation and surrender of authorisations.

They also provide for–

- (a) the lifting of a suspension of an authorisation by SEPA (regulation 2(11));
- (b) for a right of appeal to the Scottish Ministers against a partial refusal of a request for a variation of authorisation, and against the conditions imposed in such a variation (regulation 2(12));
- (c) the noting of the cessation of an authorised activity in the Register maintained by SEPA under regulation 33 of the 2005 Regulations (regulation 2(13));
- (d) consequential and supplementary amendments to regulations 13 (advertisement of application), 14 (further information), 15 (determination of application), 16 (time-limits for determining applications), 17 (determinations of applications by the Scottish Ministers), 20 (procedure for variation), 21 (request for variation) and 25 (determination of applications for surrender) of the 2005 Regulations (regulation 2(2) to (4), (6) and (8) to (10)); and
- (e) amending paragraph 27 of Schedule 9 to the 2005 Regulations to require the Scottish Ministers to send copies of certain documents to SEPA and to those persons who made representations in an appeal (regulation 2(14)).

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