

## SCHEDULE 4

### GRANT OF PERMITS

#### PART 2

##### DETERMINATION OF APPLICATIONS

**13.** Subject to paragraph 35, SEPA must within 14 days of receiving an application for a permit give notice of the application (enclosing a copy) to—

- (a) in the case of a permit for an installation, the local authority and Health Boards in whose areas the installation will be operated,
- (b) in the case of a permit for an installation where operation may involve an emission which may affect a site of special scientific interest or a European site (within the meaning of regulation 10(1) of the Conservation (Natural Habitats, &c.) Regulations 1994<sup>(1)</sup>)—
  - (i) Scottish Natural Heritage where the emission may affect a site in Scotland,
  - (ii) the appropriate nature conservation body (within the meaning of regulation 4 of those Regulations) where the emission may affect such a site in another part of Great Britain,
- (c) in the case of a permit for a Part A installation—
  - (i) the Food Standards Agency<sup>(2)</sup>, and
  - (ii) where operation may involve the release of any substance into a sewer vested in Scottish Water<sup>(3)</sup>, that body,
  - (iii) where operation may involve the release of any substance into a harbour managed by a harbour authority (within the meaning of section 57(1) of the Harbours Act 1964<sup>(4)</sup>), that harbour authority,
- (d) in the case of a permit for an installation on a site in respect of which—
  - (i) a nuclear site licence is required under section 1 of the Nuclear Installations Act 1965<sup>(5)</sup>,
  - (ii) a major accident prevention policy document is required under regulation 5 of the Control of Major Accident Hazards Regulations 1999<sup>(6)</sup>, or
  - (iii) a safety report is required under regulation 7 of those Regulations, the Health and Safety Executive<sup>(7)</sup>,
- (e) such other persons as the Scottish Ministers may direct.

**14.** Paragraph 13 does not apply to a permit to operate an installation involving only dry cleaning.

**15.** Paragraph 13(a) does not apply to an application for a permit to operate a Part B standard installation which is not a hybrid installation.

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(1) [S.I. 1994/2716](#). Relevant amendments are made by paragraph 15 of schedule 2 to the Land Reform (Scotland) Act 2003 ([asp 2](#)), by [S.I. 1997/3055](#), [2007/1843](#) and [2010/490](#), and by [S.S.I. 2004/475](#), [2007/80](#), [2011/155](#) and [2012/228](#).

(2) See section 1 of the Food Standards Act 1999 ([c.28](#)).

(3) Scottish Water is a body corporate established by section 20 of, and Schedule 3 to, the Water Industry (Scotland) Act 2002 ([asp 3](#)).

(4) [1964 c.40](#), to which there are no relevant amendments.

(5) [1965 c.57](#); section 1 was amended by [S.I. 1974/2056](#) and [S.I. 1990/1918](#).

(6) [S.I. 1999/743](#), as amended by [S.I. 1999/2597](#), [2002/2469](#), [2005/676](#) and [1008](#), [2008/736](#), [960](#), [1087](#) and [2337](#), and [2009/1595](#).

(7) See section 10 of the Health and Safety at Work etc. Act 1974 ([c.37](#)).

*Status: This is the original version (as it was originally made).*

**16.—**(1) SEPA must before granting a permit subject to an off-site condition give notice under sub-paragraph (2) to every person appearing to SEPA to be a person specified in sub-paragraph (3).

(2) The notice must—

- (a) describe the proposed off-site condition,
- (b) describe the nature of the works or things which the holder of the permit might require to carry out or do to comply with the condition, and
- (c) state the representation period in relation to the condition, and the manner in which representations are to be made.

(3) A person is specified if—

- (a) that person is the owner, tenant or occupier of the land, and
- (b) rights will have to be granted by that person under regulation 24(2) to the holder of the permit if the proposed off-site condition is included in the permit,

(4) In this paragraph “owner” means the person (other than a creditor in a heritable security not in possession of the security subjects) for the time being entitled to receive the rents of the land, or who would if the land were let be entitled to receive the rents, and includes a trustee, factor, guardian or curator and in the case of public or municipal land includes the persons to whom management of the land is entrusted.

**17.—**(1) The period allowed for making representations to SEPA (the “representation period”) is—

- (a) in the case of a notice under paragraphs 13 or 16, the period of 28 days beginning with the date on which notice is given,
- (b) in the case of any other notice, the period of 28 days beginning with the date on which the application is advertised under paragraph 8, and
- (c) in the case of a draft determination, the period of 28 days beginning with the date on which the draft is advertised under paragraph 23.

(2) SEPA must consider any representation made within the representation period.

**18.** In the case of an application for a permit for—

- (a) a Part A installation, SEPA must consider in determining the application any relevant information obtained or conclusion arrived for the purposes of—
  - (i) Articles 5, 6, 7 and 9 of the EIA Directive,
  - (ii) a safety report within the meaning of regulation 7 of the Control of Major Accident Hazards Regulations 1999. or
- (b) a solvents installation, any such information or conclusion for the purposes of those Articles of the EIA Directive.

**19.—**(1) The Scottish Ministers may direct SEPA that any application, or any class of applications for a permit, is referred to them for determination (a “called-in case”).

(2) SEPA must on receiving such a direction—

- (a) inform the applicant that the application is a called-in case, and
- (b) provide the Scottish Ministers with any representation made within the representation period.

(3) The Scottish Ministers must on a request by the applicant or SEPA in a called-in case provide an opportunity of appearing before and being heard by a person appointed by the Ministers, and may do so where no request is made.

(4) A request for such a hearing must be in writing and be made within the period of 21 days beginning with the day on which the applicant is informed that the application is a called-in case.

(5) Paragraphs 4(2) to (10) of Schedule 8 apply to such a hearing as they apply to a hearing held under paragraph 4(1) of that Schedule—

- (a) with the substitution in paragraph 4(3) for the reference to the appellant of a reference to the applicant,
- (b) with the substitution in paragraph 4(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 of a reference to every person who was required to be given notice under paragraph 13 of this Schedule, and
  - (iii) for the references to every person mentioned in paragraph 3(1)(b) and (c) of that Schedule who has made representations to the Scottish Ministers of a reference to any person who made representations to SEPA with respect to the application,
- (c) with the substitution in paragraph 4(7)—
  - (i) for the reference in paragraph 4(7)(a) to the appellant of a reference to the applicant,
  - (ii) for the reference in paragraph 4(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 13 of this Schedule to be notified of the application.

(6) In relation to SEPA and the applicant, regulation 56(5) and (6) applies 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 on appeal under regulation 58(1) or (2).

(7) The Scottish Ministers must on determining a called-in case, and the sheriff may on determining an appeal, give SEPA—

- (a) such a direction as they consider fit as to whether to grant the application, and
- (b) if SEPA are directed to grant the application, as to the conditions that are to be attached to the permit.

**20.**—(1) SEPA must, subject to paragraph 27, give notice to the applicant of—

- (a) the determination of an application for a permit (other than a called-in case); or
- (b) in the case a permit for a new Part A installation, the draft determination,

within the period of 4 months beginning with the day on which it received a duly made application, or within such longer period as may be agreed with the applicant.

(2) SEPA must take no account for the purposes of calculating that period—

- (a) of any period beginning with the date on which notice is served under paragraph 7 and ending on the date on which the applicant furnishes the specified information,
- (b) of any period allowed for making representations in relation to a notice under paragraph 16 in so far as that period does not overlap with any representation period,
- (c) if a matter falls to be determined under regulations 65 or 66, of any period beginning with the date on which the 28 period of 28 referred to in paragraph 8 ends, and ending on the date on which the application is advertised under paragraph 35(a),
- (d) if separate applications are made to operate different parts of one installation, of any period beginning with the date on which notice is served on one of the applicants under paragraph 7 and ending on the date on which the applicant furnishes the specified information.

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**21.** SEPA must where separate applications are made to operate different parts of an installation send a copy of any notice served on an applicant under paragraph 7 to the other applicants.

**22.—(1)** SEPA must—

- (a) advertise notice of a draft determination under paragraph 20(1)(b) on the SEPA web site , or if it considers it appropriate, by any other means, within the 3 day period beginning with the date on which that notice is given, and
- (b) take all steps specified in the advertisement as falling to be carried out by SEPA within the periods set out in the advertisement.

(2) If notice of a draft determination has been provided for onward transmission to another Member State under paragraph 26, SEPA must give a copy of the advertisement and of that draft to the Scottish Ministers at the same time as the notice is advertised.

**23.—(1)** An advertisement under paragraph 22 must—

- (a) explain where, how and at what times the register which contains—
  - (i) any additional information relevant to the determination of the application which has become available after the application is advertised under paragraph 8,
  - (ii) information about any BAT reference document relevant to the installation or activity concerned,
  - (iii) information about how emission limit values have been set in relation to best available techniques and emission limit values associated with the techniques
  - (iv) a copy of the draft determination, and
  - (v) information on the arrangements for public participation,
  - (vi) the reasons and considerations on which the draft determination is based,may be inspected, and that it may be inspected free of charge,
- (b) explain where any other information and guidance relevant to the application may be obtained, and that it may be obtained free of charge,
- (c) explain that any person may make written representations to SEPA in a 28 day period beginning with the date of the advertisement, and give the address for receiving such representations,
- (d) explain that where—
  - (i) no representations are made to SEPA within that period, or where applicable under paragraph 28, SEPA must—
    - (aa) give notice of the determination,
    - (bb) include a copy of the determination in the register, together with—
    - (cc) a statement confirming that no representations were made,
    - (dd) information on the reasons and considerations on which the determination is based, and
    - (ee) information about the public participation process, and
    - (ff) advertise the notice on its web site, or if it considers it appropriate advertise the notice by any other means,within the period of 7 days beginning on the day on which the later of the period specified in paragraph (c) or, where applicable, paragraph 28 ends, or
  - (ii) representations are made to SEPA within the period specified in paragraph (c) or, where applicable, paragraph 28, SEPA must subject to paragraph 24—

- (aa) give notice of its determination,
- (bb) include in the register a copy of the final determination, together with information on the reasons and considerations on which the determination is based, including information about the public participation process, and
- (cc) advertise the notice on its web site or, if it considers it appropriate, by any other means,

within the period of 21 days beginning on the day on which the later of the periods specified in subparagraph (c) (or where applicable paragraph 28) ends, or within such longer period as may be agreed with the applicant.

(2) If notice of a draft determination has been provided for onward transmission to another Member State under paragraph 26, the Scottish Ministers must give the Secretary of State—

- (a) a copy of the determination, and
  - (b) the information specified in sub-paragraph (1)(d)(i)(bb) or (ii)(bb) (as the case may be),
- by the date by which SEPA is required to give notice under sub-paragraph (1)(d)(i) or (ii).

**24.** SEPA must take no account for the purposes of calculating the period specified in paragraph 23(1)(d)(ii) of any period beginning with the date on which notice is served under paragraph 7 and ending on the date on which the applicant furnishes the specified information.

**25.** If SEPA fails to give notice of a determination under paragraph 20, or a draft determination under paragraph 23, within the period specified for such a purpose, then the application is deemed to have been refused if the applicant gives notice to that effect to SEPA after the end of the period.

**26.—**(1) This paragraph applies where—

- (a) the Scottish Ministers are aware that the operation in Scotland of an installation carrying out an activity described in Annex I to the Industrial Emissions Directive is likely to have significant negative effects on the environment of another Member State, or
- (b) another Member State whose environment is likely to be so affected requests information about the operation of the installation.

(2) The Scottish Ministers must give the Secretary of State for onward transmission to the other Member State for the purposes of Article 26 of the Industrial Emissions Directive—

- (a) a copy of the application to operate the installation,
  - (b) a copy of the advertisement under paragraph 8, and
  - (c) if applicable, copies of the draft determination in respect of that application and of the advertisement under paragraph 22, at the same time as the application or draft determination is advertised under paragraphs 8 or 22, and
  - (d) any additional information which has become available after the application or draft determination was advertised, and which may be relevant to the determination of the application having regard for that purpose to Article 26.
- (3) The Scottish Ministers must comply with sub-paragraph (2)—
- (a) at the same time as the application, proposed variation or draft determination are advertised under paragraphs 8 or 22, or
  - (b) if this paragraph applies after the date of such advertisement, and the application or proposed variation has not been determined, as soon as possible thereafter.

**27.** The Scottish Ministers must, where paragraph 26 applies, give notice of that fact to SEPA and the applicant, and if the application is not a called-in case—

*Status: This is the original version (as it was originally made).*

- (a) SEPA may not determine the application, or provide a draft determination, until the Scottish Ministers have given SEPA—
  - (i) notice that bilateral consultation under Article 26 of the Industrial Emissions Directive has been carried out, and
  - (ii) a copy of any representations duly received by the Scottish Ministers in respect of the application from a person in the other Member State (a “Member State representation”), and
- (b) the 4 month period within which to give notice of determination or to provide a draft determination of the application set out in paragraph 20 begins on the date SEPA receives notification from the Scottish Ministers that the bilateral consultations have been completed.

**28.**—(1) The Scottish Ministers must give SEPA any Member State representations received in the 35 day period after the date of notification of the draft determination to the Secretary of State under paragraph 26 within the 10 day period of beginning on the day after the end of that 35 day period.

- (2) SEPA, or the Scottish Ministers in a called-in case, must—
  - (a) consider any Member State representation when determining a case to which paragraph 26 applies, and
  - (b) on determining the case provide any other Member State with which bilateral consultation has been carried out with information on the—
    - (i) contents of the decision (including a copy of the permit),
    - (ii) reasons for making the determination, and
    - (iii) results of consultation before making the determination, and on how the results were taken into account by SEPA or the Scottish Ministers.

**29.** In Parts 1 and 2 of this Schedule—

- (a) “called-in case” has the same meaning as in paragraph 17(1)
- (b) “representation period” has the same meaning as in paragraph 19(1), and
- (c) “Member State” includes Iceland, Liechtenstein and Norway<sup>(8)</sup>.

**30.** This Part is subject to Part 3.

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<sup>(8)</sup> See Article 73 of, and Annex XX to, the Agreement on the European Economic Area which entered into force on 1st January 2004.