

SCHEDULE

Regulation 19

Procedures in connection with appeals to the Scottish Ministers

1. A person who wishes to appeal to the Scottish Ministers under regulation 16 must give to the Scottish Ministers written notice of the appeal together with the documents specified in paragraph 2 and must at the same time send to SEPA a copy of that notice together with copies of the documents specified in paragraph 2(a) and (d).
2. The documents specified in this paragraph are—
 - (a) a statement of the grounds of appeal;
 - (b) a copy of any relevant correspondence between the appellant and SEPA;
 - (c) a copy of the notice which is the subject matter of the appeal; and
 - (d) 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 must 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 relation to an appeal against a remedial measures notice, before the expiry of the period of two months beginning with the day on which the notice was served; and
 - (b) in relation to an appeal against a variation notice, before the expiry of the period of 28 days beginning with the day on which the notice was served.
5. The Scottish Ministers may in a particular case allow notice of appeal to be given after the expiry of the period mentioned in paragraph 4.
6. Subject to paragraph 9, SEPA must, 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 given under paragraph 6 must—
 - (a) state that the notice of appeal has been given;
 - (b) state the name of the appellant and the address of the site to which the notice being appealed against applies;
 - (c) describe the notice 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.
8. SEPA must, within 14 days of giving a notice under paragraph 6—
 - (a) notify the Scottish Ministers of the persons to whom and the date on which the notice was given; 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 must give notice of the withdrawal to every person to whom notice was given under paragraph 6.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Hearing procedure

10. Before determining an appeal under regulation 16, 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 must 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. If the Scottish Ministers cause a hearing to be held under paragraph 10, they must 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 must, at least 21 days before the date fixed for the holding of the hearing—

- (a) publish a copy of the notice given under paragraph 12 in a newspaper circulating in the locality in which the artificial structure which is the subject of the remedial measures notice or the variation notice, as the case may be, is located; and
- (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 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 must 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 prevents the appointed person from permitting any other persons to be heard at the hearing and such permission must not be unreasonably withheld.

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

Procedure for written representations

19. Where the appeal is to be disposed of on the basis of written representations, SEPA must submit any written representations to the Scottish Ministers not later than 28 days after receiving a copy of the documents specified in paragraph 2(a) and (d).

20. The appellant must make any further written representations by way of reply to any representations made by SEPA not later than 28 days after the date of submission of those representations by SEPA under paragraph 19.

21. Any written representations made by the appellant or SEPA must bear the date on which they are submitted to the Scottish Ministers.

22. When SEPA or the appellant submits any written representations to the Scottish Ministers they must at the same time send a copy of them to the other party.

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

24. The Scottish Ministers may in a particular case—

- (a) set later time limits than those mentioned in paragraphs 19, 20 and 23;

- (b) require exchanges of written representations between the parties in addition to those mentioned in paragraphs 19 and 20.

Determination and publication of appeal

25. The Scottish Ministers must give notice to the appellant of their determination of the appeal and their reasons for that determination, and must provide the appellant with a copy of any report made under paragraph 18.

26. The Scottish Ministers must 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 made under paragraph 18 to SEPA and to any person who made representations to the Scottish Ministers during the appeal.