

SCHEDULE 4

Regulation 55(5)

PROVISIONS RELATING TO APPEALS

PART 1

Appeals procedure

1. A person who wishes to appeal under regulation 55 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.
2. The documents specified are—
 - (a) a written 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; and
 - (e) a copy of any decision or notice which is the subject of the appeal.
3. An appellant may withdraw an appeal by notice to the Scottish Ministers in writing, and must send a copy of that notice 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 in relation to a revocation notice issued under regulation 31, before the date on which the revocation notice takes effect;
 - (b) in the case of an appeal in relation to an application for an authorisation deemed to be withdrawn by SEPA under paragraph 6(3) or 8(3) of schedule 1, before the expiry of the period of 28 days beginning with the date of the notice of withdrawal which is the subject of the appeal;
 - (c) in the case of an appeal in relation to an information notice served under regulation 37, before the expiry of the period of 28 days beginning with the date of the notice of determination which is the subject of the appeal;
 - (d) in the case of an appeal by a person whose consent is required for the authorised person to comply with an off-site condition which has been included in an authorisation, before the expiry of the period of 28 days beginning with the date of the notice given to that person under paragraph 3 of schedule 2;
 - (e) in the case of an appeal in relation to a decision by SEPA under regulation 41 or 42 that information is not commercially confidential, before the expiry of the period of 28 days beginning with the date of the notice of determination which is the subject of the appeal;
 - (f) in the case of an appeal in relation to a regulatory notice served under regulation 46, before the expiry of the period of 28 days beginning with the day on which the notice which is the subject of the appeal was given;
 - (g) in the case of an appeal in relation to a costs recovery notice served under regulation 51—
 - (i) before the expiry of the period of 28 days beginning with the date of the notice which is the subject of the appeal; or
 - (ii) if the appellant has requested a breakdown of costs under regulation 51(5), before the expiry of the period of 28 days beginning with the day after the day on which SEPA provided the breakdown;

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- (h) before the expiry of the period of 2 months beginning with the date of the notice which is the subject of the appeal in the case of each of—
 - (i) an appeal in relation to a refusal of a permit or registration under paragraph 9 of schedule 1;
 - (ii) an appeal in relation to a deemed refusal of a permit or registration under paragraph 10(1) of schedule 1;
 - (iii) an appeal in relation to a refusal of an application to vary a permit under regulation 25;
 - (iv) an appeal in relation to the conditions attached to a permit under regulation 22 or 25;
 - (v) an appeal in relation to a refusal or deemed refusal of an application under regulation 27 to transfer a permit;
 - (vi) an appeal in relation to the conditions attached to an authorisation to take account of a transfer;
 - (vii) an appeal in relation to a refusal or a deemed refusal to transfer the duty to comply with a revocation notice under regulation 29;
 - (viii) an appeal in relation to a refusal or deemed refusal of an application under regulation 30 to surrender an authorisation;
 - (ix) an appeal in relation to a step specified in a surrender notice served by SEPA under paragraph 15 of schedule 1;
 - (x) an appeal in relation to the form of authorisation granted.
- 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.
- 6. SEPA must, within 14 days of receipt of the copy of the notice of appeal sent in accordance with paragraph 1, give written notice of it to—
 - (a) where the appeal is against an matter which was subject to public consultation under paragraph 8 of schedule 1, any person who made a representation to SEPA in connection with the matter; and
 - (b) any other person whom SEPA considers it appropriate to notify.
- 7. A notice under paragraph 6 must—
 - (a) describe the subject of the appeal;
 - (b) include a statement that representations with respect to the appeal may be made to the Scottish Ministers in writing within a period of 21 days beginning with the date of the notice;
 - (c) explain that any representations will be made available to the appellant;
 - (d) explain that any representations will not be made available to the public under regulation 38 unless the person requests in writing at the time that representations are made that they are made available to the public and if the representations are not made available, SEPA will make available to the public confirmation that—
 - (i) a representation has been made; and
 - (ii) the person making the representation has requested the representation not to be made public; and
 - (e) explain that if a hearing is to be held wholly or partly in public, a person who makes representations with respect to the appeal will be notified of the date of the hearing.

8. SEPA must within 14 days of sending a notice under paragraph 6 notify the Scottish Ministers of the persons to whom and the date on which the notice was sent.

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

10. SEPA must make any written representations to the Scottish Ministers not later than 28 days (or such longer period as may be set by the Scottish Ministers) after receiving a copy of the documents specified in paragraph 2.

11. The appellant must make any further written representations by way of reply to any representations from SEPA not later than 28 days (or such longer period as may be set by the Scottish Ministers) after receiving a copy of SEPA's representations.

12. When SEPA or the appellant makes any representations to the Scottish Ministers they must at the same time send a copy of the representations to the other party.

13. The Scottish Ministers must send to the appellant and SEPA a copy of any representations made to them by persons to whom notice was given under 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.

14. The Scottish Ministers may require exchanges of written representations between the parties in addition to those mentioned in paragraphs 10 and 11.

PART 2

Public hearings

15. Before determining an appeal under regulation 56, the Scottish Ministers may afford the appellant and SEPA an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers (the "appointed person").

16. A hearing may, if the appointed person so decides, be held wholly or partly in private.

17. Where the Scottish Ministers cause a hearing to be held, 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.

18. Where any part of a hearing is to be held in public, the Scottish Ministers must, at least 21 days before the date fixed for the holding of the hearing—

- (a) publish notice of the date, time and place fixed for the holding of the hearing in a newspaper circulating in the locality in which the regulated activity which is the subject of the appeal is carried on or is to be carried on; and
- (b) give written notice of the date, time and place fixed for the holding of the hearing to every person who received notice under paragraph 6 and who has made representations to the Scottish Ministers.

19. The Scottish Ministers may vary the date fixed for the holding of any hearing, and must give such notice of the variation as appears to them to be reasonable.

20. The persons entitled to be heard at a hearing are—

- (a) the appellant; and
- (b) SEPA.

21. Nothing in paragraph 20 prevents the appointed person from allowing any other persons to be heard at the hearing and such permission must not be unreasonably withheld.

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22. The appointed person must cause notice of the time and place of the hearing to be given to persons appearing to him or her to be interested.

23. The appointed person may—

(a) by notice in writing require—

- (i) a person to attend a hearing, at a time and place stated in the notice, to give evidence;
- (ii) a person to produce any documents, books or other data in the custody or under the control of the person which relate to any matter in question at the hearing; and

(b) take evidence on oath, and for that purpose administer oaths.

24. But the appointed person may not require any person to produce any book or document or to answer any question which that person would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the inquiry were a proceeding in a court of law.

25.—(1) A person who is required to give evidence at a hearing or to produce any such books or other documents is entitled to have such reasonable expenses of attendance and production of books or other documents paid to him or her.

(2) The expenses are to be treated as part of the expenses of the hearing.

26.—(1) The Scottish Ministers or the appointed person may treat as expenses incurred by them or him or her in relation to the hearing—

- (a) the standard amount in respect of each day (or an appropriate proportion of that amount in respect of a part of a day) on which the hearing sits or the appointed person is otherwise engaged on work connected with the hearing;
- (b) expenses actually incurred in connection with the hearing on travelling or subsistence allowances or the provision of accommodation or other facilities for the hearing;
- (c) any expenses attributable to the appointment of an assessor to assist the appointed person;
- (d) any legal expenses or disbursements incurred or made by or on behalf of the Scottish Ministers in connection with the hearing;
- (e) the entire administrative expense of the hearing, including an amount as appears to the Scottish Ministers or the appointed person to be reasonable in respect of general staff expenses and overheads.

(2) In sub-paragraph (1) “the standard amount” means such an amount, if any, as the Scottish Ministers may from time to time determine and make details of publicly available.

27.—(1) The Scottish Ministers or the appointed person may make an order as to the expenses incurred in relation to a hearing (including a hearing for which arrangements have been made and does not take place)—

- (a) by the Scottish Ministers or the appointed person; and
- (b) by the parties to the appeal.

(2) The order may specify the person or persons by whom any of the expenses must be paid.

28.—(1) Where the Scottish Ministers or the appointed person make an order under paragraph 27 requiring a person to pay expenses, the Scottish Ministers or the appointed person must certify the amount of the expenses.

(2) The amount certified is a debt due by that person to the Scottish Ministers or the appointed person and is recoverable accordingly.

29. 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.

PART 3

Determination of appeals

30.—(1) The Scottish Ministers must—

- (a) give written notice to the appellant of their determination of the appeal;
- (b) provide the appellant with the reasons for their determination; and
- (c) provide the appellant with a copy of any report mentioned in paragraph 29.

(2) The Scottish Ministers must at the same time send a copy of the documents mentioned in sub-paragraph (1) to—

- (a) SEPA;
- (b) any person on whom notice was served under paragraph 6 and who made representations to the Scottish Ministers; and
- (c) any other person who made representations in relation to the appeal at the hearing if a hearing was held.