

## SCHEDULE 5

Regulations 13(3) and 15(3)

### Environmental permits

## PART 1

### Grant, variation, transfer and surrender of environmental permits

#### Interpretation

**1.—(1)** In this Part—

“applicant” means—

- (a) in the case of an application for the transfer of an environmental permit in whole or in part, the operator and the proposed transferee,
- (b) in every other case, the operator;

“application” means an application—

- (a) for the grant of an environmental permit under regulation 13(1),
  - (b) by an operator for the variation of an environmental permit under regulation 20(1),
  - (c) for the transfer, in whole or in part, of an environmental permit under regulation 21(1), or
  - (d) for the surrender, in whole or in part, of an environmental permit under regulation 25(2);
- and

“public consultee” means a person whom the regulator considers is affected by, is likely to be affected by, or has an interest in, an application.

#### Making an application

**2.—(1)** An application must—

- (a) be made by the applicant on the form provided by the regulator; and
- (b) include the information specified on the form.

(2) Every application must be accompanied by any fee prescribed in a charging scheme made by the regulator under section 41 of the 1995 Act<sup>(1)</sup> or by the appropriate authority under regulation 65.

#### Withdrawing an application

**3.—(1)** A duly-made application may be withdrawn by the applicant before it is determined.

(2) If an application is withdrawn the applicant is not entitled to the return of any fee which accompanied it.

#### Further information in respect of a duly-made application

**4.—(1)** If the regulator considers that it requires further information to determine a duly-made application, it may serve a notice on the applicant specifying the further information and the period within which it must be provided.

(2) If the applicant fails to provide the further information in accordance with the notice, the regulator may serve a further notice on the applicant stating that the application is deemed to be withdrawn, upon which the application is deemed to be withdrawn.

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(1) Section 41 was amended by S.I. 2005/894, 2005/1806 (W. 138), 2006/937 and 2007/1711.

(3) If an application is deemed to be withdrawn, the applicant is not entitled to the return of any fee which accompanied it.

**Public participation: scope**

**5.—**(1) Paragraph 6 applies to every application for the grant of an environmental permit except an application in relation to—

- (a) mobile plant;
- (b) a radioactive substances activity described in paragraph 5(5) of Part 2 of Schedule 23;
- (c) a standard facility, unless the facility is a Part A installation; or
- (d) a mining waste operation not involving a mining waste facility to which Article 7 of the Mining Waste Directive applies.

(2) Paragraph 6 applies to every application for the variation of an environmental permit if—

- (a) it would entail a substantial change; or
- (b) the regulator determines that the paragraph should apply.

(3) Paragraph 8 applies to every regulator-initiated variation if—

- (a) it would entail a substantial change; or
- (b) the regulator determines that the paragraph should apply.

(4) But paragraphs 6 and 8 do not apply to the extent that the application or regulator-initiated variation relates to—

- (a) the burning of waste oil in an appliance with a rated thermal input of less than 0.4 megawatts;
- (b) dry cleaning;
- (c) the unloading of petrol into stationary storage tanks at a service station if it is an activity within paragraph (c) of Part B of Section 1.2 of Part 2 of Schedule 1; or
- (d) any motor vehicle refuelling activity within paragraph (d) or (e) of Part B of Section 1.2 of Part 2 of Schedule 1.

(5) In this paragraph—

“change in operation” means a change in the nature or functioning, or an extension, of an installation, which may have consequences for the environment;

“co-incineration plant” has the meaning given in Section 5.1 of Part 2 of Schedule 1;

“dry cleaning” has the meaning given in Part B of Section 7 of Part 2 of Schedule 1;

“incineration plant” has the meaning given in Section 5.1 of Part 2 of Schedule 1; and

“substantial change” means a change in operation of an installation which in the regulator’s opinion may have significant negative effects on human beings or the environment and includes—

- (a) in relation to a Part A installation, a change in operation which in itself meets the thresholds, if any, set out in Part 2 of Schedule 1, and
- (b) in relation to an incineration plant or co-incineration plant for non-hazardous waste, a change in operation which would involve the incineration or co-incineration of hazardous waste.

(6) When assessing whether a change in operation of a Part B installation has significant effects on the environment, the regulator must consider only its emissions to air.

### **Public participation in relation to certain applications**

6.—(1) Subject to sub-paragraphs (2) and (3), if this paragraph applies the regulator must, within the consultation communication period—

- (a) take the steps it considers appropriate to inform the public consultees of the application and the place and times its public register can be inspected free of charge;
- (b) invite the public consultees to make representations on the application; and
- (c) specify to the public consultees the address to which and the period within which representations are to be made.

(2) The regulator must not inform the public consultees of information which is to be excluded from a public register in the interests of national security unless the appropriate authority directs that it must do so.

(3) The regulator must not inform the public consultees of information which is to be excluded from a public register because it is confidential information, unless the public consultee is—

- (a) a public authority and the information is necessary for the exercise of its functions; or
- (b) a sewerage undertaker and the information relates to the release of any substance into a sewer vested in that undertaker.

### **Calculation of the consultation communication period**

7.—(1) In paragraph 6, “the consultation communication period” means a period of 30 working days starting on the day the regulator receives a duly-made application.

(2) But if—

- (a) a determination in relation to national security or confidentiality is to be made under regulation 47 or 50; or
- (b) the regulator gives notice under regulation 49(1) that it considers information in an application may be confidential information,

“the consultation communication period” means a period of 30 working days starting on the determination date or on the day the applicant gives notice of consent under regulation 49(2), as the case may be.

(3) In sub-paragraph (2), “determination date” means—

- (a) the date of a determination under regulation 47(3) or (7);
- (b) if the regulator determines under regulation 50 that the information must be excluded from the public register, the date of the determination; or
- (c) if the regulator determines otherwise under that regulation—
  - (i) if an appeal is brought, the date of determination or withdrawal of that appeal, or
  - (ii) if no appeal is brought, the date on which the period for bringing an appeal expires.

### **Public participation in relation to regulator-initiated variations**

8.—(1) If this paragraph applies, the regulator must notify the operator—

- (a) that the public participation procedures in sub-paragraph (2) apply;
- (b) of the variation it proposes to the environmental permit; and
- (c) of any fee prescribed in respect of this paragraph in a charging scheme made by the regulator under section 41 of the 1995 Act or by the appropriate authority under regulation 65.

(2) The regulator must—

- (a) take the steps it considers appropriate to inform the public consultees of the proposed variation;
- (b) invite the operator and the public consultees to make representations on the proposed variation; and
- (c) specify to the operator and the public consultees the address to which and the period within which representations are to be made.

**Consultation: conditions mentioned in regulation 15(1)**

9.—(1) This paragraph applies if the regulator proposes to include a condition mentioned in regulation 15(1) in an environmental permit.

(2) If this paragraph applies, the regulator must serve a notice which complies with sub-paragraph (3) on every person appearing to it to fall within sub-paragraph (4).

(3) The notice must specify—

- (a) the proposed condition;
- (b) the works or other things which the condition would require; and
- (c) the address to which and the period within which representations on the proposed condition are to be made (which period must not expire less than 20 working days after the day the notice is served).

(4) A person falls within this sub-paragraph if—

- (a) the person is the owner, lessee or occupier of land; and
- (b) regulation 15(2) would require the person to grant the rights mentioned there if the proposed condition were included in the environmental permit.

(5) In sub-paragraph (4)(a), “owner” means the person who—

- (a) is receiving the rack-rent of the land, whether on the person’s own account or as agent or trustee for another person; or
- (b) would receive the rack-rent if the land were let at a rack-rent,

but does not include a mortgagee not in possession.

**Consultation with other member States**

10.—(1) This paragraph applies if—

- (a) an appropriate authority is aware that the grant of a relevant application or regulator-initiated variation is likely to have significant negative effects on the environment of another member State; or
- (b) another member State requests information about a relevant application or about a proposal for a regulator-initiated variation.

(2) As soon as is reasonably practicable the appropriate authority must—

- (a) send the particulars of the relevant application or regulator-initiated variation to that member State to serve as the basis for bilateral consultations of the type referred to in the relevant Article;
- (b) inform that member State of the relevant information; and
- (c) notify the operator and the regulator that it has complied with paragraphs (b) and (c).

(3) If a regulator receives notification under sub-paragraph (2)(c), it must not determine the application or make the regulator-initiated variation until the appropriate authority has—

- (a) notified it that the bilateral consultations have been completed; and

(b) sent it any representations made by the member State.

(4) In this paragraph—

“member State” includes Iceland, Liechtenstein and Norway but only to the extent that there is a relevant application or regulator-initiated variation which relates to the carrying on at an installation of an activity listed in the IPPC Directive;

“relevant application” means an application for the grant or variation of an environmental permit in relation to an installation described in sub-paragraph (5) or a Category A mining waste facility;

“relevant Article” means—

- (a) in the case of an application in relation to an installation described in sub-paragraph (5), Article 18 of the IPPC Directive,
- (b) in the case of an application in relation to a Category A mining waste facility, Article 16 of the Mining Waste Directive; and

“relevant information” means—

- (a) where the relevant application or regulator-initiated variation relates to an installation described in sub-paragraph (5), a matter in paragraph 1 of Annex V to the IPPC Directive,
- (b) where it relates to a Category A mining waste facility, the information required under Article 16 of the Mining Waste Directive.

(5) The description in this sub-paragraph is an installation where an activity listed in Annex 1 to the IPPC Directive is carried on.

### **Duty to consider representations**

**11.** Before it determines an application or makes a regulator-initiated variation, the regulator must consider any representation—

- (a) made pursuant to paragraph 6(1)(b), 8(2)(b) or 9(3)(c); or
- (b) sent to it under paragraph 10(3)(b).

### **Duty to determine an application**

**12.—**(1) The regulator must grant or refuse a duly-made application.

(2) Except in the case of an application for the surrender of an environmental permit in whole, the regulator may grant an application subject to such conditions as it sees fit.

(3) But—

- (a) variations of an environmental permit in relation to the grant of an application for variation, transfer in whole or in part, or partial surrender must be in consequence of the variation, transfer or partial surrender, as the case may be; and
- (b) if granting an application for partial transfer, the regulator must grant a new environmental permit to the transferee subject to the same conditions as the original permit, varied in consequence of the partial transfer.

### **Identity and competence of the operator**

**13.—**(1) Subject to sub-paragraph (3), the regulator must refuse an application for the grant of an environmental permit or for the transfer in whole or in part of an environmental permit if it considers that, if the permit is granted or transferred, the requirements in sub-paragraph (2) will not be satisfied.

(2) The requirements are that the applicant for the grant of an environmental permit, or the proposed transferee, on the transfer of an environmental permit (in whole or in part), must—

- (a) be the operator of the regulated facility; and
  - (b) operate the regulated facility in accordance with the environmental permit.
- (3) The requirement in sub-paragraph (2)(b) does not apply to an applicant for the grant of an environmental permit authorising the carrying on of only a stand-alone water discharge activity or stand-alone groundwater activity.

### **Surrender applications**

**14.—**(1) The regulator must accept an application for the surrender of an environmental permit in whole or in part under regulation 25(2) if it is satisfied that the necessary measures have been taken—

- (a) to avoid a pollution risk resulting from the operation of the regulated facility; and
- (b) to return the site of the regulated facility to a satisfactory state, having regard to the state of the site before the facility was put into operation.

(2) Sub-paragraph (1) does not apply to an application for the surrender of any part of an environmental permit (or if applicable, the whole permit) that authorises the carrying on of a radioactive substances activity at a nuclear site.

### **Time limits for determination**

**15.—**(1) If—

- (a) the regulator has not determined an application within the relevant period; and
- (b) the applicant serves a notice on the regulator which refers to this paragraph,

the application is deemed to have been refused on the day on which the notice is served.

(2) Sub-paragraph (1) does not apply—

- (a) to an application for the grant of an environmental permit that, if granted, would authorise the carrying on of a radioactive substances activity at a nuclear site; or
- (b) to an application for the transfer of an environmental permit where the permit authorises the carrying on of a radioactive substances activity at a nuclear site.

(3) In sub-paragraph (1) “the relevant period” means a period, calculated in accordance with paragraph 16, of—

- (a) in the case of an application for the transfer of an environmental permit in whole or in part, 2 months;
- (b) in a case where paragraph 6 applies, 4 months; or
- (c) in any other case, 3 months,

or in any case, a longer period than the period in paragraph (a), (b) or (c), if it is agreed by the regulator and the applicant.

### **Calculation of the relevant period**

**16.—**(1) This paragraph provides for the calculation of a period referred to in paragraph 15(3).

(2) The period starts—

- (a) in the case of an application for the grant or variation of an environmental permit in relation to a Category A mining waste facility—
  - (i) on the day the regulator is notified by the relevant emergency planner of the matters referred to in paragraph 14(1) of Schedule 20, and for these purposes “relevant emergency planner” has the meaning given in paragraph 2 of that Schedule, or

- (ii) if paragraph 10 of this Schedule applies, on the day mentioned in sub-paragraph (i) of this paragraph or, if the day on which the appropriate authority complies with paragraph 10(3) of this Schedule is later, on that day;
  - (b) if paragraph 10 of this Schedule applies and the application is not one covered by paragraph (a), on the day the appropriate authority complies with paragraph 10(3) of this Schedule;
  - (c) in all other cases, on the day the regulator receives a duly-made application.
- (3) In calculating the period the following periods must be ignored—
- (a) a period beginning with the service of a notice requiring further information under paragraph 4(1) to the receipt by the regulator of that information;
  - (b) a period for representations mentioned in paragraph 9(3)(c) to the extent that it does not overlap with a period for representations mentioned in paragraph 6(1)(c);
  - (c) a period during which national security or confidentiality is being considered in relation to the application, that is to say—
    - (i) any period during which a determination under regulation 47(3), 47(7) or 50 is being considered (including any appeal), or
    - (ii) a period of 15 working days after the service of a notice under regulation 49(1);
  - (d) if the regulator informs the public in relation to a draft decision in accordance with paragraph 1(d) of Annex V to the IPPC Directive, a period of 20 working days.

#### **Notification of a determination or decision**

**17.—**(1) As soon as is reasonably practicable after it determines an application or decides to make a regulator-initiated variation, the regulator must comply with sub-paragraph (2).

- (2) The regulator must—
- (a) notify the applicant or, for a regulator-initiated variation, the operator of—
    - (i) its determination or decision,
    - (ii) the rights of appeal the applicant or operator has under regulation 31, and
    - (iii) the requirements relating to the exercise of those rights in paragraphs 2 and 3 of Schedule 6; and
  - (b) if paragraph 10 applies, notify the appropriate authority of the determination or decision.
- (3) In this paragraph, “determination” and “decision” include the reasons for the determination or decision.

#### **Date of effect of certain determinations and decisions**

- 18.—**(1) This paragraph applies to—
- (a) a determination by which the regulator grants an application which—
    - (i) varies an environmental permit in consequence of an application for variation, transfer in whole or in part, or partial surrender, or
    - (ii) grants a new environmental permit in consequence of an application for partial transfer; and
  - (b) a decision to make a regulator-initiated variation.
- (2) The determination or decision must specify any variation and the date it is to take effect.

(3) If the regulator grants an application for the transfer of an environmental permit in whole or in part, the determination must specify the date agreed between the regulator and the applicant that the transfer is to take effect.

### **Form of certain determinations and decisions: consolidation of permits**

**19.**—(1) This paragraph applies to every determination and decision to which paragraph 18 applies.

(2) A determination or decision may comprise—

- (a) a consolidated permit reflecting the variations; and
- (b) a notice specifying the variations included in that consolidated permit.

(3) Only the variations specified are subject to the right of appeal in regulation 31(2)(b) or (c).

## **PART 2**

### **Compensation in relation to conditions affecting certain interests in land**

#### **Interpretation**

**1.** In this Part—

“grantor” means a person who grants the operator rights pursuant to regulation 15(2);

“relevant interest” means an interest in land out of which rights have been granted pursuant to regulation 15(2); and

“rights” means the rights granted by the grantor.

#### **Entitlement to compensation**

**2.** A grantor is entitled to be paid compensation under this Part by the operator.

#### **Loss and damage for which compensation is payable**

**3.**—(1) Subject to paragraph 6(3) and (5)(b), compensation is payable for loss and damage of the following descriptions—

- (a) depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the rights;
- (b) depreciation in the value of any other interest in land to which the grantor is entitled which results from the exercise of the rights;
- (c) loss or damage, in relation to any relevant interest to which the grantor is entitled, which—
  - (i) is attributable to the grant of the rights or the exercise of them,
  - (ii) does not consist of depreciation in the value of that interest, and
  - (iii) is loss or damage for which the grantor would have been entitled to compensation by way of compensation for disturbance if the circumstances specified in subparagraph (2) applied;
- (d) damage to, or injurious affection of, any interest in land to which the grantor is entitled which—
  - (i) is not a relevant interest, and
  - (ii) results from the grant of the rights or the exercise of them;



- (e) loss in respect of work carried out by or on behalf of the grantor which is rendered abortive by the grant of the rights or the exercise of them.
- (2) For the purpose of sub-paragraph (1)(c)(iii), the circumstances are that the relevant interest was acquired compulsorily—
  - (a) under the Acquisition of Land Act 1981<sup>(2)</sup>; and
  - (b) in pursuance of a notice to treat served on the date on which the rights were granted.

#### **Date when entitlement to compensation arises**

- 4.—(1) An entitlement to compensation under this Part arises on the date of the grant of the rights.
- (2) But if an appeal against the conditions of the environmental permit which rendered the grant of rights necessary is refused, the entitlement to compensation arises on the date the appeal is determined.

#### **Application for compensation**

- 5.—(1) An application for compensation under this Part must be made by the grantor—
  - (a) within 12 months after the date on which the entitlement to compensation arises; or
  - (b) within 6 months after the date on which the rights are first exercised.
- (2) An application must be—
  - (a) made in writing;
  - (b) made to the operator to whom the rights were granted; and
  - (c) delivered at or sent by pre-paid post to the last known address for correspondence of that operator.
- (3) The application must contain, or be accompanied by—
  - (a) a copy of the grant of rights in respect of which the grantor's entitlement arises and any plans attached to that grant;
  - (b) a description of the exact nature of any interest in land in respect of which compensation is applied for;
  - (c) a statement of the amount of compensation applied for—
    - (i) distinguishing the amounts applied for under each of paragraphs 3(a) to (e), and
    - (ii) showing how the amount applied for under each paragraph has been calculated; and
  - (d) if the date on which the entitlement to compensation arises is ascertained in accordance with paragraph 4(2), a copy of the notice of the final determination of the appeal.

#### **Assessment of the amount to be paid by way of compensation**

- 6.—(1) The amount to be paid by way of compensation under this Part must be assessed in accordance with this paragraph.
- (2) The rules set out in section 5 of the Land Compensation Act 1961<sup>(3)</sup> have effect for the purposes of this paragraph as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land, so far as applicable and subject to any necessary modifications.

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(2) 1981 c. 67.

(3) 1961 c. 33. Section 5 was amended by the Planning and Compensation Act 1991 (c. 34), sections 70 and 84, and Schedules 15 and 19.

(3) No account is to be taken of any enhancement of the value of an interest in land by reason of any building erected, work done, or improvement or alteration made on land in which the grantor is, or was at the time the building or other work was carried out, directly or indirectly concerned, if the work carried out—

- (a) was not reasonably necessary; and
- (b) was undertaken with a view to obtaining compensation or increased compensation.

(4) In calculating the amount of a loss under paragraph 3(e), expenditure incurred in the preparation of plans or on other similar preparatory matters is to be taken into account.

(5) Where the interest in respect of which compensation is to be assessed is subject to a mortgage—

- (a) the compensation must be assessed as if the interest were not subject to the mortgage; and
- (b) no compensation is payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage).

(6) Compensation must include an amount equal to the grantor's reasonable valuation and legal expenses.

### **Payment of compensation**

7.—(1) Compensation in respect of an interest which is subject to a mortgage must be paid—

- (a) to the mortgagee; or
- (b) if there is more than one mortgagee, to the first mortgagee,

and must, in either case, be applied by the mortgagee as if it were proceeds of sale.

(2) Amounts of compensation determined under this Part are payable—

- (a) where the operator and either the grantor or mortgagee agree that a single payment is to be made on a specified date, on that date;
- (b) where the operator and either the grantor or mortgagee agree that payment is to be made in instalments at different dates, on the date agreed as regards each instalment;
- (c) in any other case, subject to any direction of the Upper Tribunal or the court, as soon as reasonably practicable after the amount of the compensation has been determined.

(3) Any question of the application of paragraph 6(3) or dispute as to the amount of compensation must be referred to and determined by the Upper Tribunal.

(4) In relation to the determination of such a question, section 4 of the Land Compensation Act 1961(4) applies as if the reference in section 2(1) of that Act to section 1 of that Act were a reference to sub-paragraph (3) of this paragraph.

### **Interest payable on compensation**

8.—(1) Compensation payable under this Part carries interest at the rate for the time being prescribed under section 32 of the Land Compensation Act 1961 from the date specified in sub-paragraph (2) to payment.

(2) The date is—

- (a) in the case of compensation payable under paragraph 3(a) or (b), the date of depreciation;
- (b) in the case of compensation payable under paragraph 3(c), (d) or (e), the date on which the loss is sustained, the damage is done, or the injurious affection occurs, as the case may be;

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(4) Section 2 was amended by the Local Government, Planning and Land Act 1980 (c. 65), section 193 and Schedule 33.

- (c) in the case of compensation payable under paragraph 6(6), the date on which the expenses become payable.
- (3) If it appears to a person (“A”) that A may become liable to pay to another person (“B”) compensation under this Schedule or interest under this paragraph, on the written request of B, A may make one or more payments on account of such compensation or interest.
- (4) A may recover the payment or excess if, after A makes a payment under sub-paragraph (3)—
  - (a) it is agreed or determined that A is not liable to pay compensation or interest; or
  - (b) by reason of any agreement or determination, the payment is shown to be excessive.