

## SCHEDULE 4

Regulation 7(12)

### GRANT OF PERMITS

#### PART 1

#### APPLICATIONS FOR PERMITS

1.—(1) An application to SEPA for a permit under regulation 7 shall be in writing (or in electronic form acceptable to it) and, subject to paragraphs 2 and 3, shall contain the following information:—

- (a) the name of the applicant, his telephone number, address (including post code) and e-mail address (if any) and, if different, any address or e-mail address to which correspondence relating to the application should be sent and, if the applicant is a body corporate, its registered number, the address of its registered or principal office and, if that body corporate is a subsidiary of a holding company (within the meaning of section 736 of the Companies Act 1985<sup>(1)</sup>), the name of the ultimate holding company and the address of its registered or principal office;
- (b) in the case of an application for a permit to operate an installation or Part A mobile plant, the address of the site of the installation or mobile plant and its national grid reference, a map or plan showing that site and, in the case of an installation, the location of the installation on that site, and the name of any local authority in whose area the site is situated;
- (c) in the case of an application for a permit to operate a Part B mobile plant, the name of the local authority in whose area the applicant has his principal place of business and the address of that place of business or, where the operator of the mobile plant has his principal place of business outside of Scotland, the name of the local authority in whose area the plant was first operated or, where the plant has not been operated in Scotland, the local authority in whose area it is intended by the operator that the plant will first be operated;
- (d) in the case of an application for a permit to operate a Part A installation or a Part A mobile plant, a site report containing the information required by sub-paragraph (2);
- (e) a description of the installation or mobile plant, the activities listed in Part 1 of Schedule 1 to be carried out in the installation or by means of the mobile plant, and, in the case of an installation, any other directly associated activities to be carried out on the same site as the installation which will have a technical connection with those listed activities and which could have an effect on pollution;
- (f) the raw and auxiliary materials and other substances and the energy to be used in or generated by the carrying out of the activities referred to in paragraph (e);
- (g) the nature, quantities and sources of foreseeable emissions from the installation or mobile plant into each environmental medium, and a description of any foreseeable significant effects of the emissions on the environment;
- (h) the proposed technology and other techniques for preventing or, where that is not practicable, reducing and rendering harmless emissions from the installation or mobile plant;
- (i) the proposed measures to be taken to monitor the emissions;
- (j) a description of the measures to be taken for the prevention and recovery of waste generated by the operation of the installation or mobile plant;

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(1) 1985 c. 6; section 736 was substituted by section 144(1) of the Companies Act 1989 (c. 40).

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- (k) a description of any proposed additional measures to be taken to comply with the general principles set out in regulation 8(2);
- (l) in the case of an application for a permit to operate a Part A installation, any relevant information obtained or conclusion arrived at in relation to the installation pursuant to articles 5, 6 and 7 of Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment<sup>(2)</sup>;
- (m) in the case of an application for a permit to operate an installation or mobile plant covered by general binding rules, a statement as to whether the applicant wishes the aspects of the operation of the installation or mobile plant covered by the requirements in the rules to be subject to those requirements instead of conditions included in the permit pursuant to regulation 9;
- (n) in the case of an application for a permit that will authorise the carrying out of a specified waste management activity at an installation or by means of mobile plant, any information which the applicant wishes SEPA to take into account when considering whether the applicant is a fit and proper person to carry out that activity;
- (o) any additional information which the applicant wishes SEPA to take into account in considering the application;
- (p) a non-technical summary of the information referred to in the previous sub-paragraphs.

(2) The site report required by paragraph 1(d) shall describe the condition of the site of the installation or Part A mobile plant and shall, in particular, identify any substance in, on or under the land which may constitute a pollution risk.

2. Paragraphs 1(1)(f), (j), and (p) shall not apply in relation to an application for a permit to operate a Part B installation or a Part B mobile plant, and, in relation to such an application, the reference to emissions from the installation or mobile plant into each environmental medium in paragraph 1(1)(g) shall be read as a reference to emissions from the installation or mobile plant into the air.

3.—(1) Paragraph 1 shall apply in relation to an application for a permit to operate an installation involving the burning of waste oil in an appliance with a rated thermal input of less than 0.4 megawatts as if, in so far as the installation is concerned with the carrying out of that activity, the following sub-paragraphs were substituted for sub-paragraphs (e) to (h)—

- “(e) the name and number, if any, of the appliance used for the burning of the waste oil, and the name of its manufacturer, its rated thermal input of the appliance and whether or not it is constructed or adapted so as to comply with the specification for fixed, flued fan-assisted heaters in Part 2 of the specification for oil-burning air heaters published by the British Standards Institution and numbered BS 4256 1972;
- (f) details of the type of fuel to be used and its source;
- (g) details of the height and location of any chimney through which waste gases produced by the appliance would be carried away and details of the efflux velocity of the waste gases leaving such a chimney produced by the appliance in normal operation;
- (h) details of the location of the fuel storage tanks of the appliance;”.

(2) In this paragraph and in paragraphs 8 and 10 “waste oil” has the same meaning as in Section 1.1 of Part 1 of Schedule 1.

4. SEPA may, by notice to the applicant, require that person to furnish such further information specified in the notice, within the period so specified, as it may require for the purpose of determining the application and if the applicant fails to furnish the specified information within the period

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(2) O.J. No. L 175, 5.7.85, p. 40 (as amended by Council Directive [97/11/EC](#) (O.J. No. L 73, 14.3.97, p.5)).

specified, the application shall, if SEPA gives notice to the operator that it treats the failure as such, be deemed to have been withdrawn at the end of that period.

5. Subject to paragraph 23, the applicant shall, within a period of 28 days beginning 14 days after the day on which the application is made, advertise the application—

- (a) in the case of an application for a permit to operate an installation or Part A mobile plant, in one or more newspapers circulating in the locality in which the installation or mobile plant covered by the application will be operated; and
- (b) in the case of an application for a permit to operate a Part A installation or Part A mobile plant, in the Edinburgh Gazette.

6. An advertisement required by paragraph 5 shall—

- (a) state the name of the applicant;
- (b) in the case of an application for a permit to operate an installation or Part A mobile plant, state the address of the site of the installation or mobile plant;
- (c) describe briefly the activities in Part 1 of Schedule 1 to be carried out in the installation or mobile plant;
- (d) state that the application contains a description of any foreseeable significant effects of emissions from the installation or mobile plant on the environment;
- (e) state where any register which contains particulars of the application may be inspected and that it may be inspected free of charge;
- (f) explain that any person may make representations to SEPA in writing (or in electronic form acceptable to it) within the period of 28 days beginning with the date of the advertisement and give SEPA's address (including its e-mail address) for receiving the representations;
- (g) explain that any such representations made by any person will be entered in a public register unless that person requests in writing (or in electronic form acceptable to SEPA) that they should not be so entered, and that where such a request is made there will be included in the register a statement indicating only that representations have been made which have been the subject of such a request.

7. Where an application is for a permit to operate more than one installation or mobile plant the application and the advertisement required by paragraph 5 shall contain the information required by paragraphs 1 and 6 respectively in relation to each installation or mobile plant.

8. Paragraph 5 shall not apply in relation to an application for a permit to operate an installation involving only the burning of waste oil in an appliance with a rated thermal input of less than 0.4 megawatts or the carrying out of an activity falling within paragraph (c)(ii) of Part B of Section 1.2 of Part 1 of Schedule 1 (unloading of petrol at service stations).

## PART 2

### DETERMINATION OF APPLICATIONS

9. Subject to paragraph 23, SEPA shall, within 14 days of receiving an application for a permit, give notice of the application, enclosing a copy of it, to the following persons:—

- (a) in the case of an application for a permit to operate an installation or Part A mobile plant, the Health Board in whose area the installation or mobile plant will be operated;
- (b) in the case of an application for a permit to operate a Part A installation or Part A mobile plant —

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- (i) the Food Standards Agency<sup>(3)</sup>;
- (ii) where the operation of the installation or mobile plant may involve the release of any substance into a sewer vested in a water and sewerage authority (established under the Local Government etc. (Scotland) Act 1994<sup>(4)</sup>), that authority;
- (iii) where the operation of the installation or mobile plant 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>(5)</sup>), Scottish Natural Heritage (and where such operation may involve an emission which may affect such a site in England, the Nature Conservancy Council for England);
- (iv) where the operation of the installation or mobile plant 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>(6)</sup>), that harbour authority;
- (c) in the case of an application for a permit to operate a Part B installation where the operation of the installation 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), Scottish Natural Heritage (and where such operation may involve an emission which may affect such a site in England, the Nature Conservancy Council for England);
- (d) in the case of an application for a permit to operate a Part A installation or a Part B installation on a site in respect of which a nuclear site licence is required under section 1 of the Nuclear Installations Act 1965<sup>(7)</sup> or in respect of which a major accident prevention policy document is required under regulation 5 of the Control of Major Accident Hazards Regulations 1999<sup>(8)</sup> or a safety report is required under regulation 7 of those Regulations, the Health and Safety Executive<sup>(9)</sup>;
- (e) in the case of all applications, the local authority in whose area the installation is situated or the mobile plant is intended to be operated and such other persons as the Scottish Ministers may direct.

**10.** Paragraph 9 shall not apply in relation to an application for a permit to operate an installation involving only the burning of waste oil in an appliance with a rated thermal input of less than 0.4 megawatts.

**11.—(1)** If SEPA proposes to grant a permit subject to an off-site condition, it shall, before granting the permit, give a notice which complies with sub-paragraph (2) to every person appearing to it to be a person falling within sub-paragraph (3).

- (2) A notice served under sub-paragraph (1) shall—
  - (a) set out the off-site condition in question;
  - (b) indicate the nature of the works or things which that condition might require the holder of the permit to carry out or do; and
  - (c) specify the period allowed for the purpose of paragraph 12 for making representations to SEPA relating to the condition or its possible effects and the manner in which any such representations are to be made.

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(3) See section 1 of the Food Standards Act 1999 (c. 28).

(4) 1994 c. 39.

(5) S.I.1994/2716.

(6) 1964 c. 40.

(7) 1965 c. 57; section 1 was amended by S.I. 1974/2056 and S.I. 1990/1918.

(8) S.I. 1999/743.

(9) See section 10 of the Health and Safety at Work etc. Act 1974 (c. 37).

- (3) A person falls within this sub-paragraph if—
- (a) that person is the owner, tenant or occupier of the land; and
  - (b) that land is land in relation to which it is likely that, as a consequence of the permit being issued subject to the off-site condition in question, rights will have to be granted by virtue of regulation 9(13) to the holder of the permit.

(4) In sub-paragraph (3), “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 or who, if the land were let, would be entitled to receive, the rents of the land in connection with which the land is used 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.

**12.**—(1) Any representations made by any persons within the period allowed shall be considered by SEPA in determining the application.

- (2) For the purpose of sub-paragraph (1), the period allowed for making representations is—
- (a) in the case of persons to whom notice is given pursuant to paragraph 9 or 11, the period of 28 days beginning with the date on which notice is given under the relevant paragraph;
  - (b) in the case of other persons, the period of 28 days beginning with the date on which the application is advertised pursuant to paragraph 5.

**13.** In the case of an application for a permit to operate a Part A installation, any relevant information obtained or conclusion arrived at pursuant to Articles 5, 6 and 7 of Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment in relation to the installation shall be taken into consideration by SEPA in determining the application.

**14.**—(1) The Scottish Ministers may give directions to SEPA requiring that any particular application or any class of applications for a permit shall be referred to them for determination pending a further direction under sub-paragraph (6).

(2) SEPA shall inform the applicant of the fact that the application is being referred to the Scottish Ministers and forward to them any representations which have been made to SEPA within the period allowed.

(3) Where an application for a permit is referred to them under sub-paragraph (1), the Scottish Ministers may afford the applicant and SEPA an opportunity of appearing before and being heard by a person appointed by them and they shall do so in any case where a request is duly made by the applicant or SEPA to be so heard.

(4) A request under sub-paragraph (3) shall be in writing (or in electronic form) and shall be made within the period of 21 days beginning with the day on which the applicant is informed that the application is being referred to the Scottish Ministers.

(5) Paragraphs 4(2) to (10) of Schedule 8 shall apply to a hearing held under sub-paragraph (3) as they apply to a hearing held under paragraph 4(1) of that Schedule but with the following modifications:—

- (a) with the substitution in sub-paragraph (3) for the reference to the appellant of a reference to the applicant;
- (b) with the substitution in sub-paragraph (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 and 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 every person who was

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required to be given notice under paragraph 9 of this Schedule and to any person who made representations to SEPA with respect to the subject matter of the application;

- (c) with the substitution in sub-paragraph (7)–
  - (i) for the reference in sub-paragraph (7)(a) to the appellant of a reference to the applicant;
  - (ii) for the reference in sub-paragraph (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 9 of this Schedule to be notified of the application.

(6) In relation to SEPA and the applicant, regulation 22(5) and (6) shall apply 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 under regulation 22(1) or (2).

(7) On determining any application transferred under this paragraph the Scottish Ministers shall (or, on determining an appeal, the sheriff, may) give to SEPA such a direction as considered fit as to whether it is to grant the application and, if so, as to the conditions that are to be attached to the permit by means of the variation notice.

**15.—**(1) Except in a case where an application has been referred to the Scottish Ministers under paragraph 14 and subject to paragraph 18, SEPA shall give notice of its determination of an application for a permit within the period of 4 months beginning with the day on which it received the application or within such longer period as may be agreed with the applicant.

(2) For the purpose of calculating the 4 month period mentioned in sub-paragraph (1), no account shall be taken of–

- (a) any period beginning with the date on which notice is served on the applicant under paragraph 4 and ending on the date on which the applicant furnishes the information specified in the notice;
- (b) any period allowed for making representations in relation to a notice given pursuant to paragraph 11 in so far as that period does not overlap with any other period allowed for making representations in accordance with paragraph 12;
- (c) where a matter falls to be determined for the purposes of regulation 28 or under regulation 29, any period beginning with the date on which the period of 28 days referred to in paragraph 5 ends and ending on the date on which the application is advertised in accordance with paragraph 23(a).

**16.** If SEPA fails to give notice of its determination of an application for a permit within the period allowed by or under paragraph 15, the application shall, if the applicant notifies SEPA in writing (or in electronic form acceptable to SEPA) that the applicant treats the failure as such, be deemed to have been refused at the end of that period.

**17.** Where the Scottish Ministers are aware that the operation of an installation carrying out an activity listed in Annex I to the Directive in Scotland is likely to have significant negative effects on the environment of another Member State, or where another Member State likely to be significantly affected so requests, they shall forward to the Secretary of State a copy of the application to operate that installation for onward transmission to the other Member State at the same time as the application is advertised pursuant to paragraph 5 (or as soon as they become so aware or receive such a request, if they become so aware or receive such a request after the application is advertised but before the application is determined) in order that the application may serve as the basis for any consultations necessary in the framework of the bilateral relations between the United Kingdom and the other Member State on a reciprocal and equivalent basis, as referred to in Article 17 of the Directive.

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**18.**—(1) Where an application is forwarded for onward transmission to another Member State pursuant to paragraph 17 the Scottish Ministers shall notify the applicant and SEPA and, in a case where the application has not been referred to them under paragraph 14—

- (a) SEPA shall not determine the application until the Scottish Ministers have notified it in writing (or in electronic form) that the bilateral consultations mentioned in paragraph 17 have been completed and have forwarded to it any representations duly made on the application by persons in the other Member State which have been forwarded to the Scottish Ministers; and
- (b) the 4 month period within which to give notice of determination of the application set out in paragraph 15 shall begin on the date on which SEPA receives notification from the Scottish Ministers that the bilateral consultations have been completed.

(2) In determining an application which is forwarded to another Member State pursuant to paragraph 17, SEPA, or the Scottish Ministers if the application has been referred to them, shall take into consideration any representations duly made in the other Member State which have been forwarded to the Scottish Ministers.

**19.** In paragraphs 17 and 18, “Member State” shall be taken to include Norway, Iceland and Liechtenstein<sup>(10)</sup>.

## PART 3

### NATIONAL SECURITY AND CONFIDENTIAL INFORMATION

**20.** The requirements of paragraph 5 of this Schedule shall not apply in so far as they would require the advertisement of information mentioned in paragraph 6 which is not to be included in the register by virtue of regulation 28 or 29.

**21.** Subject to paragraph 22, the requirements of paragraph 9 of this Schedule shall not apply in so far as they would require a person mentioned in that paragraph to be given information which is not included in the register by virtue of regulation 28 or 29.

**22.** Paragraph 21 does not apply in so far as—

- (a) in the case of an authority mentioned in paragraph 9(b)(ii), the information is about the release of any substance into a sewer vested in that authority;
- (b) in the case of Scottish National Heritage, the information is about the release of any substance 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, Etc.) Regulations 1994);
- (c) in the case of an authority mentioned in paragraph 9(b)(iv), the information is about the release of any substance into a harbour managed by that authority.

**23.** Where a matter falls to be determined for the purposes of regulation 28 or under regulation 29—

- (a) the period within which an advertisement is to be published under paragraph 5 shall be 28 days beginning 14 days after the day on which the matters to be determined for the purposes of regulation 28 or under regulation 29, as the case may be, are finally disposed of;

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<sup>(10)</sup> The Directive is extended to the European Economic Area by the decision of the EEA Joint Committee No. 27/97 of 30th April 1997 (O.J. L 242, 4.9.97, p.76).

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- (b) the period for notification under paragraph 9 of this Schedule shall be the period of 14 days beginning 14 days after the day on which the matters to be determined for the purposes of regulation 28 or under regulation 29, as the case may be, are finally disposed of.

**24.** For the purposes of paragraph 23 and paragraph 13 of Schedule 7, the matters to be determined under regulation 29 are finally disposed of—

- (a) in a case where SEPA determines under regulation 29(2) or (4) that the information in question is commercially confidential, on the date of SEPA's determination;
- (b) in a case where SEPA determines under regulation 29(2) or (4) that the information in question is not commercially confidential, on the date on which any period for bringing an appeal expires without an appeal being brought or, if such an appeal is brought, on the date of the final determination of the appeal or, as the case may be, the date on which the appeal is withdrawn.