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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 219**

**The Environmental Authorisations (Scotland) Regulations 2018**

**PART 1**

**General**

**Citation and commencement**

1. These Regulations may be cited as the Environmental Authorisations (Scotland) Regulations 2018 and come into force on 1st September 2018.

**Interpretation**

2.—(1) In these Regulations—

“authorise”, in relation to regulated activities, means authorise the carrying on of the activities in accordance with a permit, subject to registration, subject to notification or subject to compliance with general binding rules; and related expressions are to be construed accordingly;

“authorised person” has the meaning given in regulation 5;

“authorised place” means the place at which a regulated activity is authorised, and may be a geographical area;

“charging scheme” means a charging scheme made in accordance with section 41 of the Environment Act 1995(1);

“consolidated authorisation” has the meaning given in regulation 64(2);

“electronic communication” has the same meaning as given in section 15(1) of the Electronic Communications Act 2000(2);

“enforcing officer” means a person authorised under section 108 of the Environment Act 1995(3) and includes a person designated under paragraph 2 of schedule 18 of that Act;

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- (1) 1995 c.25. Section 41 is relevantly amended by (1) the Landfill (Scotland) Regulations 2003 (S.S.I. 2003/235) schedule 6, paragraph 1(2) the Transfrontier Shipment of Waste Regulations 2007 (S.I. 2007/1711) Part 9, regulation 46(1)(a)(3) the Flood and Water Management Act 2010 (2010 c.29) schedule 4, paragraph 39(4) the Persistent Organic Pollutants Regulations 2007 (S.I. 2007/3106) regulation 9(1)(a)(5) the Transfrontier Shipment of Waste Regulations 2007 (S.I. 2007/1711) Part 9, regulation 46(1)(b)(6) the Transfrontier Shipment of Waste (Amendment) Regulations 2014 (S.I. 2014/861) regulation 22(7) the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008 (S.I. 2008/3087) Part 3, regulation 17(1)(a)(8) the Persistent Organic Pollutants Regulations 2007 (S.I. 2007/3106) regulation 9(1)(b)(8) the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008 (S.I. 2008/3087) Part 3, regulation 17(1)(b)(9) the Climate Change (Scotland) Act 2009 (2009 asp 12) schedule 2, paragraph 2(10) the Waste Batteries and Accumulators Regulations 2009 (S.I. 2009/890) schedule 8, paragraph 1(2)(11) the Greenhouse Gas Emissions Trading Scheme (Amendment) (Registries and Fees etc.) Regulations 2011 (S.I. 2011/2911) schedule 1, paragraph 22(a)(12) the Greenhouse Gas Emissions Trading Scheme (Amendment) (Charging Schemes) Regulations 2012 (S.I. 2012/2788) Part 2, regulation 4(a)(13) the Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043) Part 2, article 6(1)(a) and (14) the British Waterways Board (Transfer of Functions) Order 2012 (S.I. 2012/1659) schedule 3, Part 1, paragraph 13.
- (2) 2000 c.7. Section 15(1) is amended by paragraph 158 of schedule 17 of the Communications Act 2003 (c.21).
- (3) 1995 c.25. Section 108 is amended by regulation 81, and paragraph 3 of Part 1 of schedule 7 of these Regulations in accordance with powers conferred by section 58(1) and (2) of the Regulatory Reform (Scotland) Act 2014 (2014 asp 3).

“fit and proper person” means a person SEPA considers to be a fit and proper person having regard to guidance published under regulation 66(1)(e);

“general binding rules” has the meaning given in regulation 10;

“inland water” has the same meaning given in section 3(6) of the Water Environment and Water Services (Scotland) Act 2003(4);

“non-consolidated authorisation” means, as appropriate, a permit or registration which is to be replaced or has been replaced with a consolidated permit or registration in accordance with regulation 64;

“off-site condition” means—

- (a) a condition to which a permit is subject; or
- (b) a step specified in a notice issued under these Regulations,

which requires a person to carry out works or do other things in relation to land outwith the ownership or control of that person;

“owner” means a 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 person to whom management of the land is entrusted;

“provision” means, in relation to a registration or permit, anything specified in a registration or permit, including as a requirement of regulations 17 and 22, which is not a condition or standard condition;

“publish” means publish on SEPA’s website, unless otherwise indicated;

“radioactive substances activity” has the meaning given in regulation 4 and schedule 8;

“register” means the register maintained by SEPA under regulation 38;

“regulated activity” has the meaning given in regulation 3;

“regulatory notice” has the meaning given in regulation 46;

“relevant function” means a function of SEPA under these Regulations;

“revocation notice” has the meaning given in regulation 31;

“SEPA” means the Scottish Environment Protection Agency(5);

“standard conditions” means conditions determined by SEPA under Part 7 of these Regulations and to which a permit or registration may be subject in accordance with regulation 17 or 22;

“surrender notice” means a notice issued under paragraph 14(2) of schedule 1;

“technical schedule” has the meaning given in regulation 6;

“waste” means any substance or object which the holder discards or intends or is required to discard.

(2) In these Regulations a reference to anything done in writing includes reference to an electronic communication as long as it is capable of being reproduced in written form.

### **Interpretation: regulated activity**

3.—(1) In these Regulations, “regulated activity” means a radioactive substances activity.

(2) A person does not carry on a regulated activity where the activity is a domestic activity carried on in connection with—

(4) 2003 asp 3.

(5) SEPA is established by section 20 of the Environment Act 1995 (c.25).

- (a) the person's private dwelling; or
  - (b) a place where the person is resident (whether temporarily or otherwise).
- (3) In these Regulations—
- (a) a reference to a regulated activity includes part of a regulated activity;
  - (b) a reference to an "activity" is a reference to a regulated activity, or any class or description of such an activity.

**Interpretation: radioactive substances activity**

4. In these Regulations, "radioactive substances activity" means an activity involving either or both—

- (a) radioactive material;
- (b) radioactive waste.

**Interpretation: authorised person**

5.—(1) In these Regulations, "authorised person" means—

- (a) any person to whom—
    - (i) a permit has been granted or transferred in accordance with regulation 23 or 27; or
    - (ii) a registration has been granted or transferred in accordance with regulation 18 or 27;
  - (b) any person in control of the carrying on of a regulated activity—
    - (i) which is subject to general binding rules; or
    - (ii) which has been notified in accordance with regulation 12.
- (2) The definition of authorised person in paragraph (1) includes—
- (a) where an authorised person has been adjudged bankrupt or the estate of the authorised person is sequestrated, the trustee in bankruptcy;
  - (b) where an executor has been appointed to an authorised person's estate, the executor;
  - (c) where the authorised person is a body corporate, and—
    - (i) a receiver has been appointed, the receiver;
    - (ii) an administrator has been appointed, the administrator;
    - (iii) a liquidator has been appointed, the liquidator;
  - (d) where an authorised person is a partnership which is dissolved, any person who was a partner immediately before dissolution.
- (3) Where a person becomes an authorised person—
- (a) as a result of the operation of paragraph (2); and
  - (b) in respect of an activity which is carried on in accordance with a permit or a registration or which has been notified,

that person must notify SEPA that the person is an authorised person as soon as is practicable.

**Interpretation: technical schedule**

- 6.—(1) The technical schedule is schedule 8 (Radioactive substances activities).
- (2) If a provision of the technical schedule is inconsistent with any other provision of these Regulations, the provision in the technical schedule prevails to the extent of that inconsistency.
- (3) Schedule 8 has effect.

### **Prohibition**

7. A person must not carry on a regulated activity except in so far as it is—
- (a) authorised under these Regulations; and
  - (b) carried on in accordance with, and to the extent authorised by, that authorisation.

### **Responsibility of authorised person**

8. Where a regulated activity is authorised under these Regulations, an authorised person must ensure that the activity is carried on in accordance with, and to the extent authorised by, the authorisation.

### **General aims**

- 9.—(1) SEPA must take the general aims into account when carrying out a relevant function.
- (2) The general aims are that all appropriate measures are taken—
- (a) to prevent or, where that is not practicable, to minimise environmental harm;
  - (b) to prevent and to limit the consequences of accidents which could have an impact on the environment; and
  - (c) to use resources in a sustainable way,

in the carrying on, and decommissioning, of regulated activities and following cessation of the carrying on of the regulated activity.

## **PART 2**

### **General binding rules**

#### **General binding rules**

10.—(1) A regulated activity specified in column 1 of Part 1 of schedule 9 is authorised under these Regulations if it is carried on in compliance with the rules (“general binding rules”) specified for that activity in column 2 of Part 1 of that schedule.

(2) Parts 2 and 3 of schedule 9 have effect for the purposes of the interpretation of that schedule.

(3) Where SEPA requires that a regulated activity is to be authorised by means of notification in accordance with regulation 12, the activity is not authorised unless—

- (a) it is carried on in compliance with the general binding rules specified for that activity; and
- (b) a notification of the type required is in effect.

## **PART 3**

### **Notifications**

#### **Notification and application of general binding rules**

11. SEPA may require that a regulated activity is to be authorised by means of notification whether or not the carrying on of the regulated activity is also subject to general binding rules.

## **Notifications**

- 12.**—(1) A regulated activity to which paragraph (2) applies is authorised where—
- (a) SEPA has been notified, in accordance with this Part, that the activity is being, or is proposed to be, carried on (“notification”); and
  - (b) the activity is carried on in compliance with any general binding rules specified for that activity.
- (2) This paragraph applies to an activity specified in guidance published under regulation 66(1)
- (a) as being subject to a requirement to notify.
  - (3) A notification must—
    - (a) be made by a person who is, or will be, in control of the activity;
    - (b) be in such form as SEPA may from time to time require; and
    - (c) contain—
      - (i) the name and address of the person making the notification;
      - (ii) a description of the regulated activity;
      - (iii) the place at which the activity will be carried on;
      - (iv) any particulars required by virtue of the technical schedule; and
      - (v) any such other particulars as SEPA may reasonably require.
  - (4) A notification must be accompanied by any fee that is payable under a charging scheme.
  - (5) Where a notification is made in accordance with this regulation, SEPA must—
    - (a) place the particulars specified in paragraph (3)(c) on the register within 7 days of the notification being made;
    - (b) inform the authorised person within 7 days of the notification being made—
      - (i) that the notification has been placed on the register;
      - (ii) of the date, if any, on which the notification ceases to have effect.

## **Effect and cessation of notifications**

- 13.**—(1) A notification has effect from the date on which SEPA informs the authorised person that it has been placed on the register.
- (2) A notification ceases to have effect on—
- (a) the date the notification is surrendered; or
  - (b) the date, if any, of which the authorised person was informed under regulation 12(5)(b)(ii) as being the date on which the notification ceases to have effect.

## **Surrender of notifications**

- 14.**—(1) An authorised person who has notified an activity may surrender the notification by giving notice to SEPA.
- (2) A notice under this regulation must be in a form specified by SEPA and must include such information as SEPA may reasonably require.
- (3) Where SEPA is notified of a surrender in accordance with paragraph (1), SEPA must—
- (a) remove the associated entry from the register; and
  - (b) inform the authorised person of the date on which it does so,
- within 7 days of the notice being given.

(4) The notification ceases to have effect on the date on which SEPA informs the authorised person that it has removed the associated entry from the register.

## PART 4

### Registrations

#### Registrations

15. A regulated activity is authorised under these Regulations where an authorised person has been granted a registration by SEPA for the carrying on of the activity.

#### Application for a registration

16. An application to SEPA for a registration must be made in accordance with schedule 1 by a person who has, or will have, control over the regulated activity sought to be authorised.

#### Form and content of a registration

17.—(1) A registration granted by SEPA must be in writing and must specify—

- (a) the activity authorised;
- (b) the authorised person;
- (c) the standard conditions to which the registration is subject;
- (d) the date on which the registration takes effect; and
- (e) the authorised place.

(2) A registration has effect subject to the standard conditions specified in accordance with paragraph (1)(c) and (5) and regulation 19(4).

(3) A reference in a registration to standard conditions is to the conditions as revised from time to time.

(4) SEPA may specify in a registration that the registration ceases to have effect on a specified date.

(5) SEPA may, after a registration is granted, from time to time specify in writing that a registration is to be subject to either or both—

- (a) different standard conditions;
- (b) additional standard conditions.

#### Grant of a registration

18.—(1) SEPA may grant a registration authorising the carrying on of one or more regulated activities.

(2) SEPA may grant a registration authorising a regulated activity at one or more than one place.

(3) SEPA must not grant a registration unless it is satisfied that the applicant—

- (a) is the person who has or will have control over the regulated activity; and
- (b) is a fit and proper person to be in control of the activity.

### **Variation of registrations**

**19.**—(1) SEPA may vary a registration in accordance with schedule 1 on the application of the authorised person (“an application for variation”) for one of the purposes specified in paragraph (2).

(2) The purposes are to—

- (a) increase the number of regulated activities authorised by the registration;
- (b) increase the extent of the site of an authorised place;
- (c) increase the number of places at which the authorised activity may be carried on.

(3) SEPA must not grant an application for variation unless it is satisfied that the authorised person—

- (a) is the person who will have control over the regulated activities which would be authorised by the registration if the application for variation were granted; and
- (b) is a fit and proper person to be in control of the regulated activities which would be authorised by the registration if the application for variation were granted.

(4) Where SEPA grants an application for variation, it may—

- (a) specify that the registration is to be subject to different standard conditions; and
- (b) specify that the registration is to be subject to additional standard conditions,

to take account of the variation.

## **PART 5**

### **Permits**

#### **Permits**

**20.** A regulated activity is authorised under these Regulations where an authorised person has been granted a permit by SEPA for the carrying on of the activity.

#### **Applications for permits**

**21.** An application to SEPA for a permit must be made in accordance with schedule 1 by a person who has, or will have, control over the regulated activity sought to be authorised.

#### **Form and content of permits**

**22.**—(1) A permit must be granted by SEPA in writing and must specify—

- (a) the activity authorised;
- (b) the authorised person;
- (c) any conditions (including any standard conditions) to which the permit is subject;
- (d) the date on which the permit takes effect; and
- (e) the authorised place.

(2) SEPA may specify in a permit that the permit ceases to have effect on a specified date.

(3) In granting a permit, SEPA may impose such conditions as it thinks fit including, in particular, either or both—

- (a) standard conditions;
- (b) an off-site condition in accordance with schedule 2.

(4) SEPA may impose standard conditions in a permit by specifying the standard conditions which are to be conditions of the permit.

(5) A reference in a permit to standard conditions is to the conditions as revised from time to time.

(6) Where a standard condition is inconsistent with any other condition of a permit, the other condition shall prevail to the extent of that inconsistency.

(7) Schedule 2 has effect in relation to off-site conditions.

### **Grant of permit**

**23.**—(1) SEPA may grant a permit authorising the carrying on of one or more regulated activities.

(2) SEPA may grant a permit authorising the carrying on of a regulated activity at one or more than one place.

(3) SEPA must not grant a permit unless it is satisfied that the applicant—

(a) is the person who has, or will have, control over the regulated activity; and

(b) is a fit and proper person to be in control of the activity.

### **Review of permits**

**24.** SEPA may review the conditions of a permit at any time.

### **Variation of permits**

**25.**—(1) SEPA may vary a permit at any time in accordance with schedule 1, either on the application of the authorised person (“an application for variation”) or on its own initiative (“a SEPA initiated variation”).

(2) A variation under this regulation must not reduce the geographical extent of an authorised place.

(3) A variation under this regulation must not reduce the number of regulated activities authorised by the permit.

(4) This regulation applies to a variation of a provision of a permit in the same manner as it applies to the variation of a condition.

(5) SEPA must not grant an application for variation unless it is satisfied that the authorised person—

(a) is the person who will have control over the regulated activities which would be authorised by the permit if the application for variation were granted; and

(b) is a fit and proper person to be in control of the regulated activities which would be authorised by the permit if the application for variation were granted.

## **PART 6**

### **Provisions relating to registrations and permits**

#### **Schedule 1**

**26.** Schedule 1 has effect.



### **Transfer of a registration or permit**

27.—(1) Subject to paragraphs (2), (3) and (4), a registration or permit may not be transferred by the authorised person.

(2) SEPA may transfer (in whole or in part) a registration or permit to a person (“the proposed transferee”) on the joint application of the authorised person or authorised persons and the proposed transferee.

(3) SEPA may transfer (in whole or in part) a registration or permit on the application of the proposed transferee where the proposed transferee has demonstrated to SEPA’s satisfaction that no authorised person can be found.

(4) SEPA may transfer (in whole or in part) a registration or permit on the joint application of those authorised persons who can be found and the proposed transferee where—

- (a) there is more than one authorised person; and
- (b) the proposed transferee has demonstrated to SEPA’s satisfaction that one or more of those persons cannot be found.

(5) The authorised person or, where there is more than one authorised person, all the authorised persons and the proposed transferee must make an application to SEPA for transfer of a registration or permit where—

- (a) the authorised person intends to cease or has ceased to be the person in control of the carrying on of the activity; and
- (b) the proposed transferee is, or will be, in control of the carrying on of the activity.

(6) SEPA must not grant an application for transfer of a registration or permit unless it is satisfied that the proposed transferee—

- (a) has or will have control over the regulated activity; and
- (b) is a fit and proper person or persons to be in control of the activity.

(7) SEPA may vary the registration or permit if it considers it necessary to do so to take account of the transfer.

### **Effect of transfer**

28.—(1) With effect from the date on which SEPA grants an application for transfer of a registration or permit, the person who was the authorised person immediately before the transfer ceases to be an authorised person (in respect of the part of the permit being transferred).

(2) Where—

- (a) a regulatory notice or a surrender notice is in force in respect of a permit or registration; and
  - (b) the permit or registration is transferred to the proposed transferee, either in whole or in part,
- the duty to comply with the notice is also transferred to the proposed transferee to the extent that it relates to the permit or registration (or part of the permit or registration) transferred.

### **Transfer of revocation notice**

29.—(1) Where a revocation notice is in force in respect of a permit or registration, SEPA may transfer (in whole or in part) the duty to comply with the revocation notice to a person (“the proposed transferee”) on the joint application of the authorised person or authorised persons and the proposed transferee.

(2) SEPA may transfer (in whole or in part) the duty to comply with a revocation notice on the application of the proposed transferee where the proposed transferee has demonstrated to SEPA’s satisfaction that no authorised person can be found.

(3) SEPA may transfer (in whole or in part) the duty to comply with a revocation notice on the joint application of those authorised persons who can be found and the proposed transferee where—

- (a) there is more than one authorised person; and
- (b) the proposed transferee has demonstrated to SEPA's satisfaction that one or more of those persons cannot be found.

(4) SEPA must not grant an application to transfer the duty to comply with a revocation notice unless it is satisfied that the proposed transferee—

- (a) has or will have control over the regulated activity;
- (b) will ensure that the steps specified in the revocation notice are complied with; and
- (c) is a fit and proper person or persons to be in control of the activity.

(5) Where SEPA grants an application to transfer the duty to comply with a revocation notice, the duty to comply with the notice is transferred from the authorised person to the proposed transferee to the extent notified to the proposed transferee and the authorised person by SEPA.

#### **Surrender of registration or permit**

**30.**—(1) This paragraph applies where a registration or permit is in force and—

- (a) it is intended that the regulated activity (in whole or in part) will cease, or has ceased, to be carried on;
- (b) it is intended that the geographical extent of an authorised place will be reduced; or
- (c) the authorised person—
  - (i) is no longer the person who has control over the activity; and
  - (ii) has not made an application for the transfer of the registration.

(2) Where paragraph (1) applies, the authorised person must apply to SEPA to surrender (in whole or in part) the registration or permit, and SEPA must grant or refuse that application.

#### **Revocation of permits and registrations**

**31.** SEPA may at any time revoke (in whole or in part) a permit or a registration by serving a notice (a “revocation notice”) on the authorised person.

#### **Subsistence of a registration or permit**

**32.**—(1) A registration or permit ceases to have effect only on a date specified in paragraph (2).

(2) The dates specified are—

- (a) in the case of a registration or permit, the date on which it is—
  - (i) surrendered in whole in accordance with regulation 30; or
  - (ii) revoked in whole in accordance with regulation 31,
- (b) in the case of a registration, the date, if any, which SEPA specifies in the registration in accordance with regulation 17(4); and
- (c) in the case of a permit, the date, if any, which SEPA specifies in the permit in accordance with regulation 22(2).

## PART 7

### Standard conditions procedure

#### **Determining and revising standard conditions**

- 33.**—(1) SEPA may determine standard conditions in accordance with this Part.
- (2) SEPA may revise standard conditions at any time.
- (3) In this Part, a reference to revising standard conditions means—
- (a) replacing conditions;
  - (b) amending conditions;
  - (c) removing conditions; and
  - (d) adding new conditions.

#### **Standard conditions: consultation**

- 34.**—(1) In determining or revising standard conditions SEPA must consult such persons as it considers appropriate.
- (2) But SEPA is not required to consult if it considers that a revision makes only minor administrative changes to standard conditions.
- (3) The duty in paragraph (1) may be treated as satisfied by a consultation carried out partially or wholly before the coming into force of these Regulations.

#### **Standard conditions: publication**

- 35.**—(1) SEPA must publish any standard conditions it determines or revises.
- (2) But SEPA is not required to publish details of a revision which removes standard conditions (“the removed conditions”) after the expiry of the period of 1 year beginning with the date on which the last authorisation which specified the removed conditions ceased to have effect.
- (3) A standard condition may be specified in a permit or registration from the day following the date of publication of the standard condition.

#### **Notification of revisions of standard conditions**

- 36.**—(1) This regulation applies where SEPA revises standard conditions.
- (2) Before publishing the revised conditions in accordance with regulation 35(1), SEPA must inform any person who has been granted a relevant authorisation—
- (a) of the proposed revision;
  - (b) of the date on which the revised conditions are expected to be published;
  - (c) of the date on which the revised conditions are expected to take effect (in accordance with paragraph (3));
  - (d) whether SEPA considers the revisions to be minor administrative changes; and
  - (e) that on the date on which the revised conditions take effect the person’s authorisation will have effect subject to the revised conditions.
- (3) The revised conditions take effect—
- (a) where the revision makes only minor administrative changes, on the day following the date of publication; or

(b) in any other case, three months after the date of publication.

(4) In this regulation, “relevant authorisation” means a registration or permit which will be affected by the proposed revisions if the revisions were made.

## PART 8

### Information and publicity

#### Power to require the provision of information

**37.**—(1) For the purposes of exercising or discharging its functions under these Regulations, SEPA or the Scottish Ministers may, by notice served on a person (whether or not the person is carrying on a regulated activity), require that person to provide such information in such form and within such period as is specified in the notice.

(2) For the purposes of this regulation the—

(a) discharge by the Scottish Ministers of an obligation of the United Kingdom under the EU Treaties or any international agreement relating to the environment is treated as a function of the Scottish Ministers under these Regulations; and

(b) compilation of information (for an inventory or otherwise)—

(i) on emissions;

(ii) on energy consumption or the efficiency with which energy is used;

(iii) on waste and on the origins and destinations of waste,

is treated as a function of SEPA or the Scottish Ministers (as applicable) under these Regulations.

(3) The information which a person may be required to provide under paragraph (1) includes information which, although it is not in the possession of that person or would not otherwise come into the possession of that person, is information which it is reasonable to require that person to obtain for the purposes of complying with the notice.

(4) Nothing in this regulation authorises the Scottish Ministers or SEPA to require disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

#### Register

**38.**—(1) SEPA must maintain a register (“the register”) containing the information described in Table 1 of schedule 3.

(2) SEPA must make the register available for inspection by the public—

(a) free of charge; and

(b) at all reasonable times.

(3) The register may be kept in any form (including electronic form).

(4) Schedule 3 has effect.

#### Register – exclusions

**39.**—(1) In any case where SEPA does not include on the register a representation made to it in response to a consultation or to a notice advising of an appeal on request of the person who made it, SEPA must include on the register confirmation that—

- (a) a representation has been made; and
  - (b) the person has not requested it be made public.
- (2) SEPA must not include on the register a confirmation which would allow identification of the person.
- (3) Where an application is withdrawn by the applicant, or is deemed withdrawn, before it is determined, SEPA must not include on the register any particulars of that application after a period of 3 months has passed beginning with the date on which the application was withdrawn or deemed withdrawn.
- (4) Nothing in regulation 38(1) requires SEPA to include on the register—
- (a) particulars relating to an authorisation (including applications and any other information relating to the authorisation) if a period longer than 12 months has passed beginning with the last date on which the authorisation was in force;
  - (b) particulars relating to an application if a period longer than 12 months has passed beginning with the later of the dates on which—
    - (i) SEPA refused the application; or
    - (ii) the Scottish Ministers affirmed SEPA's refusal of the application on appeal;
  - (c) monitoring information provided by an authorised person relating to a particular regulated activity if a period longer than 6 years has passed beginning with the date on which the measurement to which the monitoring information relates was made;
  - (d) information relating to a regulated activity which has been superseded by new information relating to that activity for a period longer than 6 years after that new information is made available; or
  - (e) information contained in an application form relating to convictions for offences by an individual subject to the Rehabilitation of Offenders Act 1974<sup>(6)</sup>.
- (5) Paragraph (4)(c) does not apply to any aggregated monitoring data relating to activities generally or for any class of activities.

### **Commercially confidential information**

**40.**—(1) For the purposes of these Regulations, information is commercially confidential to the extent that its disclosure would, or would be likely to, prejudice substantially the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest.

(2) Information which is commercially confidential may only be included in the register if the person giving the information to SEPA consents to its inclusion.

(3) Nothing in this regulation prevents SEPA from including information in the register where it is contained in or otherwise held with other information not made available unless the information is not reasonably capable of being separated for the purposes of inclusion.

### **Application for commercial confidentiality**

**41.**—(1) Where information is given to SEPA for the purposes of these Regulations, the person giving it may apply to SEPA, at the same time the information is given to SEPA, to have the information excluded from the register on the ground that it is commercially confidential (as regards that person or another person).

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<sup>(6)</sup> 1974 c.53.

(2) The application under paragraph (1) must include representations indicating why the applicant considers the information commercially confidential, together with such further information in support of the application as the applicant considers appropriate.

(3) The provisions of paragraph 6(2) and (3) of schedule 1 apply to an application under paragraph (1) as they do to any other application.

(4) SEPA must decide whether the information is commercially confidential and must give notice of its decision to the applicant within 28 days beginning with the date on which the application is received or within such longer period as SEPA may agree with the applicant in writing.

(5) If SEPA fails to give notice of its decision within the period allowed under paragraph (4), the information must be treated as commercially confidential.

### **Review of decision on commercial confidentiality**

**42.**—(1) SEPA may review a decision under this Part that information is commercially confidential.

(2) In carrying out a review under paragraph (1), SEPA must—

- (a) give the person to whom the decision relates notice that it is reviewing that decision; and
- (b) give the person a reasonable opportunity of making representations regarding the commercial confidentiality of the information, including an indication of why the person may consider that the information remains commercially confidential, together with such further information in support of those representations as the person considers appropriate.

(3) The provisions of paragraph 6(2) of schedule 1 apply to representations made under paragraph (2) as they do to an application.

(4) SEPA must decide whether or not the information remains commercially confidential and must give notice of its decision to the person.

### **Effect of decision**

**43.** Subject to regulation 57(2)(d), if SEPA has decided under this Part that information is not commercially confidential, the information must not be included on the register until the end of the period of 28 days beginning with the date on which the decision was notified.

### **Information relating to criminal proceedings**

**44.** Nothing in this Part requires SEPA to include information on the register to the extent that its disclosure would, or would be likely to, prejudice substantially the course of justice, the ability of a person to receive a fair trial or the ability of any public authority to conduct an inquiry of a criminal or disciplinary nature.

### **Register – exclusion of information affecting national security**

**45.**—(1) Information must not be included in the register if and so long as a direction by the Secretary of State or the Scottish Ministers<sup>(7)</sup> is in force in relation to that information under section 21 of the 1990 Act (exclusion from registers of information affecting national security).

(2) Information must not be included in the register if and so long as a direction by the Secretary of State is in force in relation to that information under section 20(6) of the 1990 Act.

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(7) The functions of the Secretary of State under section 21(1), (2) and (4) of the Environmental Protection Act 1990 (c.43) so far as they are exercisable in or as regards Scotland may by virtue of Article 3 of S.I. 1999/1750 be exercised by the Scottish Ministers after consultation with the Secretary of State.

(3) A direction under section 21(2) of the 1990 Act applies to the register as it applies to the register maintained under section 20 of that Act (“the 1990 Act register”), and no information referred by SEPA under section 21(2)(b) of the 1990 Act is to be included in the register until the question of its inclusion is determined for the purposes of that section.

(4) A direction under section 20(6) of the 1990 Act applies to the register as it applies to the 1990 Act register.

(5) Section 21(3) and (4) of the 1990 Act applies to the register as it applies to the 1990 Act register, and no information notified under section 21(4)(b) of the 1990 Act may be included in the register until the question of its inclusion is determined for the purposes of section 21 of the 1990 Act.

(6) In this regulation, “the 1990 Act” means the Environmental Protection Act 1990(8).

## PART 9

### Enforcement

#### Regulatory notices

**46.**—(1) This regulation applies where SEPA is of the opinion that—

- (a) a person has carried on or is carrying on a regulated activity or is in control of or has been in control of the carrying on of a regulated activity; and
- (b) at least one of the following apply—
  - (i) steps are required to be taken to prevent or mitigate environmental harm caused, being caused or likely to be caused by the regulated activity;
  - (ii) steps are required to be taken to restore the environment affected or likely to be affected by the regulated activity;
  - (iii) the person has contravened, is contravening, or is likely to contravene a condition, or other provision, of a permit or registration or a general binding rule;
  - (iv) the person has committed an offence under these Regulations;
  - (v) the person has ceased to be a fit and proper person.

(2) Where this regulation applies SEPA may serve a notice (a “regulatory notice”) on—

- (a) a person who has carried on or is carrying on a regulated activity;
- (b) a person who is in control of or has been in control of the carrying on of a regulated activity.

(3) A regulatory notice must specify—

- (a) the activity;
- (b) if SEPA is of the opinion that steps are required to be taken to prevent or mitigate environmental harm caused, being caused or likely to be caused by the regulated activity, the reasons why SEPA is of that opinion;
- (c) if SEPA is of the opinion that steps are required to be taken to restore the environment affected or likely to be affected by the regulated activity, the reasons why SEPA is of that opinion;
- (d) if SEPA is of the opinion that the carrying on of the activity has contravened, is contravening, or is likely to contravene any condition, or other provision, of a permit or registration or a general binding rule, the matters constituting the contravention or likely contravention;

- (e) if SEPA is of the opinion that the person has committed an offence under these Regulations, the matters constituting the offence;
  - (f) if SEPA is of the opinion that the person has ceased to be a fit and proper person, the reasons why SEPA is of that opinion;
  - (g) the steps to be taken by the person which SEPA considers to be necessary or appropriate to—
    - (i) prevent or mitigate environmental harm caused, being caused or likely to be caused by the regulated activity;
    - (ii) restore the environment affected, being affected or likely to be affected by the regulated activity;
    - (iii) comply with a condition, or other provision, of a permit or registration or a general binding rule;
    - (iv) stop or prevent the commission of an offence under these Regulations;
    - (v) ensure that person is a fit and proper person; and
  - (h) the date from which the notice has effect.
- (4) Where a regulatory notice is served on more than one person it must—
- (a) identify each recipient; and
  - (b) specify whether each step is to be undertaken—
    - (i) by an individual recipient and, if so, which recipient; or
    - (ii) jointly by two or more recipients and, if so, which recipients.
- (5) The steps referred to in paragraph (3)(g) may include any or all of the following—
- (a) steps to remedy or mitigate any environmental harm caused by the contravention or offence or the carrying on of the activity;
  - (b) the removal of waste deposited on, in or under, land or in inland water;
  - (c) the cessation of the carrying on of an activity for such period as SEPA considers necessary or appropriate.
- (6) SEPA may impose such time limits as it considers appropriate in a regulatory notice and may describe a time limit by reference to the completion of steps or any other requirement specified in that notice.
- (7) A person on whom a regulatory notice is served must comply with the notice from the date on which it has effect (as stated in the notice).

### **SEPA: regulatory notices requiring cessation**

**47.—**(1) Where SEPA serves a regulatory notice requiring the cessation of an activity authorised by a permit, registration or notification—

- (a) the permit, registration or notification ceases to have effect to authorise the activity on the date and to the extent specified in the notice; and
- (b) the notice must specify—
  - (i) the extent to which the permit, registration or notification ceases to have effect;
  - (ii) that the permit, registration or notification shall, until the regulatory notice is withdrawn, cease to have effect to authorise the activity to the extent specified;
  - (iii) the limitations or conditions to which any permit or registration that is not wholly suspended is to be subject until the regulatory notice is withdrawn; and



- (iv) the date on which the notice takes effect (which must not be earlier than the date on which the notice is served).
- (2) Where SEPA serves a regulatory notice on a person requiring the cessation of an activity to which general binding rules apply—
  - (a) regulation 10(1) has no effect to authorise the carrying on of the activity by the person from the date specified in the notice; and
  - (b) the notice must specify—
    - (i) that the activity ceases to be authorised until the regulatory notice is withdrawn;
    - (ii) the date on which the notice takes effect (which must not be earlier than the date on which the notice is served).

### **Withdrawing regulatory notices**

- 48.**—(1) SEPA must withdraw a regulatory notice if it is satisfied that the steps required by the notice have been taken.
- (2) A notice withdrawing a regulatory notice must specify—
    - (a) the date on which the withdrawal takes effect; and
    - (b) the reasons for the withdrawal of the notice.

### **Regulatory notices: off-site conditions**

- 49.** SEPA may impose an off-site condition in a regulatory notice.

### **Enforcement by the courts**

**50.** SEPA may take proceedings in any court of competent jurisdiction for the purpose of securing compliance (whether or not it has taken other steps for that purpose) with any or all of the following:

- (a) these Regulations;
- (b) a general binding rule;
- (c) an authorisation;
- (d) a regulatory notice;
- (e) a surrender notice;
- (f) a revocation notice.

## **PART 10**

### **Costs recovery notices**

#### **Costs recovery notices**

**51.**—(1) SEPA may serve a notice on a person specified in paragraph (2) requiring that person to pay the costs necessarily incurred by SEPA in relation to, and up to the time of, service of the notice (a “costs recovery notice”).

- (2) The persons specified are—
  - (a) a person on whom a regulatory notice has been served;

- (b) a person on whom a revocation notice has been served;
  - (c) where SEPA takes steps, or arranges for steps to be taken, to remove or reduce a risk of significant environmental harm under regulation 62(1), the authorised person;
  - (d) where SEPA takes steps, or arranges for steps to be taken, under regulation 62(2) or (3), the person on whom the regulatory notice, surrender notice or revocation notice was served or would have been served.
- (3) In this regulation, “costs” include—
- (a) investigation costs (including the costs of monitoring the environment to determine the harm to which the notice relates);
  - (b) costs incurred by SEPA in taking steps, or arranging for steps to be taken, under regulation 62 (including any compensation paid to the grantors of any rights as were necessary for SEPA to take the steps, or arrange for the steps to be taken);
  - (c) administration costs; and
  - (d) costs of obtaining expert advice (including legal advice).
- (4) The costs recovery notice must specify—
- (a) the amount required to be paid;
  - (b) how payment may be made;
  - (c) the period within which payment must be made;
  - (d) that SEPA may be required to provide a detailed breakdown of the amount (unless such a breakdown is provided by SEPA with the notice itself);
  - (e) the rights of appeal; and
  - (f) the consequences of non-payment as set out in regulation 53.
- (5) The person on whom the notice is served may require SEPA to provide a detailed breakdown of the amount required to be paid (unless such a breakdown has already been provided).
- (6) SEPA must take such steps as are reasonable to ensure that the detailed breakdown is sent to the person requesting it within a period of 21 days beginning with the date of the request.

#### **Payment requirements for costs recovery notices**

**52.**—(1) The amount required to be paid under the costs recovery notice must be paid by the person on whom the notice is served within such period as SEPA may specify in the notice.

(2) In the case of an appeal, any costs which fall to be paid (whether because the penalty was upheld or because the appeal was withdrawn) are payable within—

- (a) the period referred to in the costs recovery notice by virtue of regulation 51(4)(c);
- (b) the period of 28 days beginning with the day the appeal is determined or withdrawn; or
- (c) such period as the Scottish Ministers may, in determining the appeal, specify,

whichever period ends the latest.

#### **Recovery of payments**

**53.** SEPA may recover as a civil debt any costs required to be paid under a costs recovery notice.

## PART 11

### Notices

#### Notices – general provisions

- 54.**—(1) Any notice served or given under these Regulations by the Scottish Ministers or SEPA—
- (a) must be in writing; and
  - (b) may be withdrawn, varied or revoked by a further notice in writing (whether before or after the notice has come into effect).
- (2) Any notice may be served on or given to a person by leaving it at that person’s proper address or by sending it by post to that person at that address.
- (3) Any such notice may—
- (a) in the case of a body corporate, be served on a director, secretary, clerk or other officer of that body;
  - (b) in the case of a partnership (other than a limited liability partnership), be served on or given to a partner or person having the control or management of the partnership business; and
  - (c) in the case of a limited liability partnership, be served on a member of the partnership.
- (4) For the purpose of this regulation the proper address of a person is to be construed in accordance with section 26(4) of the Interpretation and Legislative Reform (Scotland) Act 2010<sup>(9)</sup>.

## PART 12

### Appeals

#### Appeals to the Scottish Ministers

- 55.**—(1) A person—
- (a) who has been refused, in whole or in part, the grant of a registration or permit under paragraph 9 of schedule 1;
  - (b) who is deemed to have been refused the grant of a registration or permit under paragraph 10(1) of schedule 1;
  - (c) whose application for a registration or permit has been deemed withdrawn by SEPA under paragraph 6(3) or 8(3) of schedule 1;
  - (d) who is aggrieved by the conditions attached to the person’s permit (including the specification of standard conditions, but not the standard conditions themselves)—
    - (i) following an application for a permit under regulation 21;
    - (ii) by variation, either following an application under regulation 25 or otherwise;
  - (e) who has been granted a form of authorisation under regulation 60 or 61 which is different from the form of authorisation which that person believes ought to have been granted;
  - (f) whose application for variation of an authorisation under regulation 25 has been refused (in whole or in part) or deemed refused;
  - (g) on whom a notice requiring the provision of information under regulation 37 has been served;

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<sup>(9)</sup> 2010 asp 10.

- (h) whose application for transfer of an authorisation under regulation 27 has been refused or deemed refused, or who is aggrieved by the conditions attached to the person's authorisation to take account of a transfer;
- (i) whose application to surrender an authorisation under regulation 30 has been refused or deemed refused;
- (j) who is aggrieved by a step specified in the surrender notice served by SEPA under paragraph 15 of schedule 1;
- (k) on whom a revocation notice has been served;
- (l) whose application for the transfer of a duty to comply with a revocation notice under regulation 29 has been refused or deemed refused;
- (m) on whom a regulatory notice has been served;
- (n) on whom a costs recovery notice has been served and either or both of the following apply—
  - (i) the person is aggrieved by service of the notice;
  - (ii) the person believes that some or all of the costs were not incurred or were unnecessarily incurred;
- (o) who has applied under regulation 41(1) to have information excluded from the register on the ground that it is commercially confidential and SEPA has decided the information is not commercially confidential;
- (p) who is aggrieved by a decision by SEPA under regulation 42(4) that information is no longer commercially confidential;
- (q) whose consent is required for the authorised person to comply with an off-site condition which has been included in an authorisation; and
- (r) whose authorisation or authorisations have been consolidated by a SEPA initiated consolidation under regulation 64(2),

may appeal to the Scottish Ministers against the decision or determination.

(2) Paragraph (1) does not apply where the decision or notice (as the case may be) gives effect to a direction under regulation 56(1) or paragraph 23(3) of schedule 1.

(3) Paragraph (1)(d) does not apply to a condition attached to a permit following variation of the permit under regulation 25 or consolidation under regulation 64 if the condition (or an equivalent condition) was attached to the permit immediately prior to the variation or to a non-consolidated authorisation immediately prior to consolidation.

(4) In this regulation, “person” includes a person to whom a permit or registration has been transferred after the decision which is the subject of the appeal has been made or the notice which is the subject of the appeal has been served.

(5) Schedule 4 has effect.

### **Determination of appeals**

**56.**—(1) On determining an appeal against a decision of SEPA referred to in regulation 55(1), the Scottish Ministers may—

- (a) affirm the decision, or any part of it;
- (b) where the decision is a refusal to—
  - (i) grant an authorisation;
  - (ii) grant a form of authorisation; or
  - (iii) vary a condition of an authorisation,

- direct SEPA to grant the authorisation or the form of authorisation or vary the conditions of the authorisation, as the case may be;
- (c) where the decision relates to the conditions attached to an authorisation, direct SEPA to vary any or all of the conditions of the authorisation;
  - (d) if the decision is a refusal to effect the transfer of, or accept the surrender of, an authorisation, direct SEPA to effect the transfer or accept the surrender, as the case may be;
  - (e) where the decision is to serve a notice—
    - (i) direct SEPA to withdraw the notice;
    - (ii) affirm the notice in its original form; or
    - (iii) direct SEPA to vary the notice as the Scottish Ministers think fit;
  - (f) where the decision is a decision that information is not commercially confidential, either affirm the decision or direct SEPA to treat the information as commercially confidential.
- (2) SEPA must comply with a direction given to it under this regulation.
- (3) A determination of an appeal by the Scottish Ministers is final.
- (4) The determination or disposal of an appeal which relates to a decision to specify standard conditions in a permit does not affect the continued validity of the standard conditions published under regulation 35.

#### **Effect of notices etc. during consideration of appeal**

- 57.**—(1) An appeal does not have the effect of suspending—
- (a) a decision of SEPA;
  - (b) a notice;
  - (c) the operation of any conditions attached to an authorisation;
  - (d) the refusal (or deemed refusal) of an application.
- (2) But if an appeal is against a—
- (a) SEPA initiated variation notice under regulation 25, the notice does not take effect until the day following the day on which—
    - (i) the appeal is withdrawn; or
    - (ii) the appeal is finally determined and service of the notice is affirmed (with or without modifications);
  - (b) notice requiring the provision of information under regulation 37, the notice does not take effect until the day following the day on which—
    - (i) the appeal is withdrawn; or
    - (ii) the appeal is finally determined and service of the notice is affirmed (with or without modifications);
  - (c) revocation notice, the notice does not take effect until the day following the day on which—
    - (i) the appeal is withdrawn; or
    - (ii) the appeal is finally determined and service of the notice is affirmed (with or without modifications);
  - (d) decision under regulation 41(4) or 42(4) that information is not commercially confidential, the information must not be made available to the public until the day following the day on which—

- (i) the appeal is withdrawn; or
  - (ii) the appeal is finally determined and the decision that the information is not commercially confidential is affirmed;
- (e) costs recovery notice under regulation 51, the notice does not take effect until the day following the day on which—
- (i) the appeal is withdrawn; or
  - (ii) the appeal is finally determined and the service of the notice is affirmed (with or without modifications);
- (f) SEPA initiated consolidation under regulation 64(2), the consolidation does not take effect until the day following the day on which—
- (i) the appeal is withdrawn; or
  - (ii) the appeal is finally determined and the consolidation is affirmed.

#### **Appeals – miscellaneous**

- 58.**—(1) This regulation applies to a function of the Scottish Ministers in connection with—
- (a) the determination of an appeal under these Regulations; and
  - (b) any other matter connected with an appeal.
- (2) Where this regulation applies, the Scottish Ministers may—
- (a) appoint a person to exercise any such function on their behalf, with or without payment; or
  - (b) refer a matter to a person they may appoint for the purpose, with or without payment.

## **PART 13**

### **Duties and functions of SEPA**

#### **Duty on SEPA to exercise its functions in accordance with the technical schedule**

- 59.** SEPA must exercise its relevant functions in accordance with the technical schedule.

#### **Power of SEPA to impose authorisations**

**60.**—(1) Where it appears to SEPA that a person is carrying on (or is likely to carry on) a regulated activity which has not been authorised, SEPA may treat the activity as an activity—

- (a) which has been notified;
- (b) in respect of which an application for a registration has been made; or
- (c) in respect of which an application for a permit has been made,

as SEPA thinks fit.

(2) Where SEPA decides to treat an activity as being notified, or as an activity in respect of which an application for a registration or permit has been made, in accordance with paragraph (1)—

- (a) any fee payable under a charging scheme for that notification or application, is payable; and
- (b) these Regulations apply as if such a notification or application had been made.

(3) SEPA must give notice to the person who appears to SEPA to be in control of the carrying on of the activity or to the person carrying on the activity, that it is treating the activity in accordance with paragraph (1).

(4) Where SEPA treats an activity in accordance with paragraph (1), SEPA must grant an authorisation to the person or persons it considers to be in control of the carrying on of the activity.

### **Power of SEPA to escalate or de-escalate authorisations**

**61.**—(1) Where it appears to SEPA that a person is carrying on (or is likely to carry on) a regulated activity under an authorisation (“the original authorisation”), but that it should be authorised by a different type of authorisation (“the replacement authorisation”), SEPA may treat the activity as an activity—

- (a) which has been notified;
- (b) in respect of which an application for a registration has been made; or
- (c) in respect of which an application for a permit has been made,

as SEPA thinks fit.

(2) Where SEPA decides to treat an activity as being notified, or as an activity in respect of which an application for a registration or permit has been made, in accordance with paragraph (1)—

- (a) any fee payable under a charging scheme for that notification or application is payable;
- (b) these Regulations apply as if such a notification or application had been made; and
- (c) the original authorisation is replaced by the replacement authorisation when—
  - (i) SEPA informs the authorised person that the replacement authorisation has been placed on the register, if it is a notification; or
  - (ii) SEPA grants the replacement authorisation, if it is a registration or permit.

(3) Where SEPA decides to treat an activity as being notified, or as an activity in respect of which an application for a registration or permit has been made, SEPA must give notice that it is treating the activity in accordance with paragraph (1) to the person it considers will be the authorised person in the event that the replacement authorisation is granted or placed on the register.

### **Action by SEPA**

**62.**—(1) SEPA may take steps or arrange for steps to be taken to remove or reduce a risk of significant environmental harm (whether or not it has taken other steps for that purpose) if it considers that the—

- (a) carrying on of a regulated activity;
- (b) carrying on of a regulated activity in a particular manner; or
- (c) cessation of a regulated activity,

involves such a risk.

(2) Where SEPA considers that a regulatory notice should be served, SEPA may take steps or arrange for any steps that would have been identified in that notice to be taken (whether or not it has taken other steps for that purpose), if it appears to SEPA, after reasonable inquiry, that no person can be found on whom to serve the notice.

(3) Where paragraph (4) applies, SEPA may take or arrange for any or all of the steps specified in the notice to be taken (whether or not it has taken other steps for that purpose), on giving at least 7 days’ notice of the steps to be taken to the person on whom the notice was served.

(4) This paragraph applies where—

- (a) SEPA has served any of a—
    - (i) regulatory notice;
    - (ii) surrender notice;
    - (iii) revocation notice; and
  - (b) the person on whom the notice was served has failed to comply with it (in whole or in part).
- (5) Where SEPA has taken steps or arranged for steps to be taken under paragraph (1), (2) or (3), SEPA may recover by costs recovery notice the costs of doing so (including any compensation paid to the grantors of any rights) from the authorised person or the person on whom—
- (a) SEPA served, or would have served, a regulatory notice; or
  - (b) SEPA served a surrender or revocation notice.
- (6) A person whose consent would be required for steps under paragraph (1), (2) or (3) to be taken must grant (or join in granting) such rights as are necessary for SEPA to take or arrange for those steps to be taken.
- (7) A person who grants, or joins in granting, any rights necessary for SEPA to take steps or arrange for steps under paragraph (1), (2) or (3) to be taken may apply for compensation, in accordance with schedule 2, of such amount and in such manner as may be determined under that schedule.

### **Accelerated applications**

- 63.**—(1) This paragraph applies where SEPA considers that, by reason of an emergency—
- (a) an application for a registration or permit requires to be determined within a shorter period of time than the procedures specified in schedule 1 allow; or
  - (b) a variation of a permit or registration (whether on the application of the authorised person or initiated by SEPA) requires to be determined within a shorter time than the procedures specified in schedule 1 allow.
- (2) Where paragraph (1) applies, regulations 17(1) and 22(1), and paragraphs 1, 5, 7, 8, 10, 11, 12 and 13 of schedule 1 and paragraph 3 of schedule 2, do not apply.
- (3) Where paragraph (1) applies, SEPA must comply with regulations 18(3), 19(3), 23(3) and 25(5) only insofar as it is practicable to do so.
- (4) Where paragraph (1) applies, an application—
- (a) must be made in such form and must be accompanied by such information as SEPA may require (and, if SEPA so determines, need not be in writing); and
  - (b) must be accompanied by any fee payable in accordance with a charging scheme.
- (5) SEPA must decide whether to grant or refuse (in whole or in part) an accelerated application within such time period as it considers appropriate in all the circumstances.
- (6) Where SEPA decides to grant an accelerated application, it must notify the authorised person in so far as it is practicable to do so of—
- (a) the activity authorised;
  - (b) the authorised person;
  - (c) any conditions or standard conditions to which the authorisation is subject;
  - (d) the date on which the authorisation takes effect; and
  - (e) the authorised place.
- (7) Where SEPA determines the variation of an authorisation under this regulation (whether or not initiated by SEPA), it must notify the authorised person of—



- (a) the variations being made to the authorisation; and
  - (b) the date on which the variations are to take effect.
- (8) Where SEPA notifies a person other than in writing of a determination under paragraph (6) or (7), SEPA must also notify the person in writing when it is practicable to do so.
- (9) In this regulation—
- “accelerated application” means an application or SEPA initiated variation to which this regulation applies in accordance with paragraph (1)(a) or (b); and
  - “emergency” has the same meaning as it does in section 1 of the Civil Contingencies Act 2004(10).

### **Consolidation of permits and registrations**

64.—(1) Paragraph (2) applies where an authorised person holds more than one non-consolidated authorisation.

(2) SEPA may replace the non-consolidated authorisations at any time with a single authorisation (“a consolidated authorisation”) in accordance with paragraph (3).

(3) Where the non-consolidated authorisations consist of—

- (a) permits only, SEPA may replace the permits with a consolidated permit;
- (b) registrations only, SEPA may replace the registrations with a consolidated registration;
- (c) a combination of permits and registrations, SEPA may replace the non-consolidated authorisations with a consolidated permit.

(4) SEPA may replace a non-consolidated authorisation which has been—

- (a) varied;
- (b) partially transferred;
- (c) partially revoked; or
- (d) partially surrendered,

with a consolidated authorisation.

(5) Subject to paragraph (6), a consolidated authorisation is subject to the same conditions as the non-consolidated authorisations or the non-consolidated authorisation.

(6) SEPA may vary a consolidated authorisation as it thinks fit to take account of the consolidation.

(7) Where SEPA varies a consolidated authorisation in accordance with paragraph (6)—

- (a) schedules 1 and 2 apply to the variation; and
- (b) where the consolidated authorisation is a permit, paragraphs 7 and 8 of schedule 1 (public participation and the duty to consider representations) apply as if the variation were an application for variation of a permit.

(8) SEPA may replace a non-consolidated authorisation with a consolidated authorisation under paragraph (2) or (4) either on the application of the authorised person (“an application for consolidation”) or on its own initiative (“a SEPA initiated consolidation”).

(9) An application made under this regulation must be—

- (a) made in writing and in such form as SEPA may from time to time require; and
- (b) accompanied by any fee payable in accordance with a charging scheme.

(10) SEPA must grant or refuse an application made under this regulation and notify the applicant of its decision in accordance with regulation 65.

### **Communication of consolidation**

**65.** Where SEPA makes a determination to replace an non-consolidated authorisation with a consolidated authorisation under regulation 64(2) or (4), SEPA must, as soon as is reasonably practicable after it makes that determination, notify the authorised person of—

- (a) its determination (including the reasons for it);
- (b) the non-consolidated authorisation or non-consolidated authorisations affected;
- (c) any variation of the non-consolidated authorisation or non-consolidated authorisations resulting from the determination;
- (d) the date from which the consolidated authorisation is to have effect;
- (e) the rights of appeal the authorised person has under regulation 55.

## **PART 14**

### **SEPA— guidance and public participation statement**

#### **SEPA guidance**

**66.**—(1) SEPA must publish guidance about—

- (a) which activities are subject to a requirement to notify;
- (b) which activities subject to a requirement to notify must also be carried on in accordance with general binding rules;
- (c) which activities SEPA is likely to require to be authorised by means of registration;
- (d) which activities SEPA is likely to require to be authorised by means of permit; and
- (e) the criteria which SEPA will apply in determining whether a person is a fit and proper person.

(2) SEPA may publish guidance about the exercise of any other functions it has under these Regulations as it thinks fit.

(3) SEPA may from time to time revise guidance published under this regulation.

(4) SEPA must consult such persons as it thinks fit before publishing or revising guidance under paragraph (1).

(5) The duty in paragraph (4) may be treated as satisfied by a consultation carried out partially or wholly before the coming into force of these Regulations.

(6) SEPA must have regard to the guidance published under paragraph (1)(a) to (d) when—

- (a) determining an application;
- (b) imposing an authorisation under regulation 60; and
- (c) escalating or de-escalating an authorisation under regulation 61.

(7) When carrying out a relevant function which requires SEPA to determine whether a person is a fit and proper person, SEPA must have regard to the guidance published under paragraph (1)(e).

### **SEPA's public participation statement**

**67.**—(1) SEPA must publish a statement of its policies for exercising its public participation functions (the “public participation statement”).

(2) “Public participation functions” means the duties and functions in the following provisions—

(a) regulation 34 (consultation on standard conditions); and

(b) paragraph 8 of schedule 1 (consultation on an application for permits etc.).

(3) SEPA must have regard to its public participation statement when exercising its public participation functions.

(4) In preparing or revising the public participation statement SEPA must consult such persons as SEPA considers appropriate.

(5) The duty in paragraph (4) may be treated as satisfied by a consultation carried out partially or wholly before the coming into force of these Regulations.

(6) SEPA must—

(a) keep the public participation statement under review;

(b) revise the public participation statement when it considers necessary; and

(c) publish any revised public participation statement.

### **SEPA guidance – fit and proper person**

**68.**—(1) When SEPA prepares and publishes guidance under regulation 66(1)(e) about the criteria which apply in determining whether a person is a fit and proper person—

(a) the criteria which must apply include whether the person is likely to comply or secure compliance with the conditions of the authorisation which apply, or would apply, to the carrying on of the activity;

(b) the criteria that may apply include—

(i) whether the person or a relevant associate has been convicted of a relevant offence;

(ii) the significance of the offence;

(iii) whether the activity will be carried on by someone who is technically competent;

(iv) whether the person has made adequate financial provision to protect against any foreseeable or potential environmental harm or effect on the environment likely to result from the activity; and

(v) criteria relating to such other matters as SEPA thinks fit.

(2) In this regulation, “relevant associate” includes—

(a) any body corporate of which the person whose status as a fit and proper person is being considered is or has been a director, manager, secretary or other similar officer;

(b) any partnership (other than a limited liability partnership) of which the person whose status as a fit and proper person is being considered is, or has been, a partner;

(c) any limited liability partnership of which the person whose status as a fit and proper person is being considered is, or has been, a member;

(d) where the person whose status as a fit and proper person is being considered is a partnership (other than a limited liability partnership), a partner or former partner;

(e) where the person whose status as a fit and proper person is being considered is a limited liability partnership, a member or former member;

- (f) where the person whose status as a fit and proper person is being considered is a body corporate—
    - (i) a current or former director, manager, secretary or other similar officer;
    - (ii) any other body corporate of which a director, manager, secretary or other similar officer of the person is or has been a director, manager, secretary or other similar officer; and
    - (iii) any person who is a member of that body corporate;
  - (g) where the person whose status as a fit and proper person is being considered is an unincorporated association, any officer of the association;
  - (h) an employee of—
    - (i) the person whose status as a fit and proper person is being considered;
    - (ii) a partnership (other than a limited liability partnership) of which the person is or has been a partner;
    - (iii) a limited liability partnership of which the person is or has been a member;
    - (iv) a body corporate of which the person is or was a director, manager, secretary or other officer; and
  - (i) such other persons, or classes of person, as SEPA thinks fit.
- (3) In this regulation, “relevant offence” means an offence which SEPA considers to be relevant to the criteria referred to in paragraph (1)(a).

## PART 15

### Provisions relating to offences

#### Offences

- 69.**—(1) A person commits an offence if the person—
- (a) contravenes regulation 7;
  - (b) is an authorised person and fails to comply with regulation 8;
  - (c) fails to comply with or contravenes a general binding rule;
  - (d) fails to comply with or contravenes a condition of a registration;
  - (e) fails to comply with or contravenes a condition of a permit;
  - (f) fails to comply with the requirements of a regulatory notice;
  - (g) fails to comply with the requirements of a revocation notice;
  - (h) fails to comply, without reasonable excuse, with the requirements of a notice issued under regulation 37(1) (power to require provision of information);
  - (i) fails to comply with an order made by a court under regulation 75;
  - (j) makes a statement which that person knows to be false or misleading in a material particular, or recklessly makes a statement which is false or misleading in a material particular, if the statement is made—
    - (i) in purported compliance with a requirement by an enforcing officer in exercise of that officer’s powers or duties;
    - (ii) in purported compliance with a requirement imposed by or under these Regulations;
- or

- (iii) for the purpose of obtaining an authorisation, or securing the variation, transfer or surrender of an authorisation;
  - (k) intentionally makes a false entry in any record required to be kept—
    - (i) as a condition of an authorisation; or
    - (ii) in compliance with a requirement imposed by or under these Regulations;
  - (l) with intent to deceive, forges or uses an authorisation or a document issued or authorised to be issued under a condition of a registration or permit or required for any purpose under a condition of such a registration or permit or makes or possesses a document so closely resembling any such authorisation or document so as to be likely to deceive; or
  - (m) causes or permits any other person to commit an offence under sub-paragraphs (a) to (k).
- (2) A person commits an offence if the person—
- (a) refuses, wilfully neglects, or fails without reasonable excuse to attend a hearing which they are required to attend by a notice under paragraph 23 of schedule 4 to give evidence;
  - (b) wilfully alters, suppresses, conceals, destroys or refuses to produce any book or other document which the person is required, or is liable to be required, to produce by a notice under paragraph 23 of schedule 4; or
  - (c) causes or permits any other person to commit an offence under sub-paragraph (a) or (b).
- (3) A person who commits an offence under paragraph (1) is liable—
- (a) on summary conviction—
    - (i) to a fine not exceeding £40,000 or to imprisonment for a term not exceeding 12 months, or to both; and
    - (ii) in the case of a continuing offence, to a further fine not exceeding £250 for every day during which the offence is continued after conviction;
  - (b) on conviction on indictment—
    - (i) to a fine or to imprisonment for a term not exceeding 5 years, or to both; and
    - (ii) in the case of a continuing offence to a further fine not exceeding £1,000 for every day during which the offence is continued after conviction.
- (4) A person who commits an offence under paragraph (2) is liable on summary conviction to a fine not exceeding level 2 on the standard scale or to imprisonment for a term not exceeding three months, or to both.

### **Offences by bodies corporate**

**70.**—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
  - (i) a relevant individual; or
  - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—

- (i) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity;
- (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner;
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

### **Offences — acts or default of third person**

**71.** Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings for the offence are taken against the first-mentioned person.

### **Offences – more than one authorised person**

**72.** Where there is more than one person who is the authorised person in relation to an activity—

- (a) each person is jointly and severally liable for acts or omissions arising in respect of the activity during the period in which that person is authorised; and
- (b) each person may be charged with and convicted of an offence under these Regulations whether or not proceedings for the offence are taken against any of the other persons who are authorised in relation to the activity.

### **Offences – defences**

**73.—(1)** A person does not commit an offence under regulation 69(1)(a) to (e) or (m) where all of the following apply—

- (a) either—
  - (i) the contravention, failure or (as the case may be) causing or permitting was necessary to avoid, prevent or limit an imminent risk of serious harm to human health in circumstances which are the result of natural causes which are exceptional and could not reasonably have been foreseen; or
  - (ii) the person was acting in their capacity as a Category 1 responder or a Category 2 responder and the contravention was necessary to protect people, the environment or property from the imminent risk of serious harm;
- (b) the person has taken all practicable steps to minimise environmental harm;
- (c) the person has taken all practicable steps as soon as was reasonably practicable to restore the environment to its condition prior to the contravention, failure or (as the case may be) causing or permitting; and
- (d) the person provided particulars of the contravention, failure or (as the case may be) causing or permitting to SEPA as soon as practicable after it occurs.

(2) In this regulation, “Category 1 responder” and “Category 2 responder” have the same meanings as in section 3 of the Civil Contingencies Act 2004<sup>(11)</sup>.

(11) 2004 c.36.

### **Admissibility of evidence**

74.—(1) Where—

- (a) by virtue of a condition of an authorisation, an entry is required to be made in any record as to the observance of any condition of the authorisation; and
- (b) the entry has not been made,

that fact is admissible as evidence that that condition has not been observed.

(2) Information provided or obtained pursuant to or by virtue of a condition of an authorisation including information so provided, obtained or recorded, by means of any apparatus, is admissible in evidence in any proceedings, whether against the person subject to the condition, or any other person.

(3) For the purposes of paragraph (2), apparatus is presumed in any proceedings to register or record accurately, unless the contrary is shown, or the authorisation otherwise provides.

### **Power of court to order offence to be remedied**

75.—(1) If—

- (a) a person is convicted of an offence under regulation 69(1)(a) to (l) in respect of any regulated activity which has resulted in environmental harm; and
- (b) it appears to the court that it is in the power of that person to mitigate or remedy that harm,

the court may, in addition to or instead of imposing any punishment, order the person, within such time as may be fixed by the order of the court, to take such steps as may be specified in the order to remedy or mitigate the harm.

(2) Before making such an order, the court must have regard to any representations by SEPA as to the steps required to remedy or mitigate the environmental harm.

(3) The time fixed by an order of the court under paragraph (1) may be extended or further extended by a further order of the court on an application made before the end of the time originally fixed or extended under this paragraph, as the case may be.

(4) Where a person is ordered under paragraph (1) to remedy any matter, the person is not liable under regulation 69 in respect of the matter if it continues during the time fixed by the order of the court or any further time allowed under paragraph (3).

## **PART 16**

### **Duties and functions of the Scottish Ministers**

#### **Guidance to SEPA**

76.—(1) The Scottish Ministers may issue guidance to SEPA with respect to the carrying out of its functions under these Regulations, and SEPA must have regard to any guidance issued by the Scottish Ministers under this regulation.

(2) The Scottish Ministers may give guidance to SEPA under paragraph (1) only after consultation with SEPA.

#### **Application of the Regulations to SEPA**

77. If SEPA is in control, or intends to be in control, of the carrying on of a regulated activity, SEPA must comply with guidance issued by the Scottish Ministers in that regard.

## PART 17

### Miscellaneous

#### **Crown application**

**78.**—(1) Subject to the provisions of this regulation, these Regulations bind the Crown.

(2) Paragraph (1) does not apply in relation to a radioactive substances activity carried on at premises—

- (a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence; or
- (b) occupied by or for the purposes of a visiting force.

(3) No contravention by the Crown of any provision of these Regulations makes the Crown criminally liable.

(4) But—

- (a) the Court of Session may, on the application of the Scottish Ministers or SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention;
- (b) these Regulations apply to persons in the public service of the Crown as they apply to other persons; and
- (c) paragraph (3) does not affect the liability of the Crown to any civil penalties or other civil enforcement measures arising from such a contravention.

(5) For the purposes of these Regulations, persons in the service of the Crown are to be treated as employees of the Crown (whether or not they would be so treated apart from this paragraph).

(6) Nothing in this regulation authorises proceedings to be brought against Her Majesty in her private capacity (within the meaning of the Crown Proceedings Act 1947(**12**)).

(7) The following persons are treated as if they were the authorised person for the purpose of any notice served or given or any proceedings instituted in relation to a regulated activity carried on by any person acting on behalf of the Royal Household, the Duchy of Lancaster or the Duke of Cornwall or other possessor of the Duchy of Cornwall—

- (a) in relation to an activity carried on by a person acting on behalf of the Royal Household, the Keeper of the Privy Purse;
- (b) in relation to an activity carried on by a person acting on behalf of the Duchy of Lancaster, such person as the Chancellor of the Duchy appoints in relation to that activity;
- (c) in relation to an activity carried on by a person acting on behalf of the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints in relation to that activity.

(8) In this regulation, “visiting force” means any such body, contingent, or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952(**13**).

#### **Transitional and savings provisions**

**79.** Schedule 5 has effect.

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(12) 1947 c.44.

(13) 1952 c.67.



**Consequential amendments**

**80.** Schedule 6 has effect.

**Repeals and revocations**

**81.** Schedule 7 has effect.

St Andrew's House,  
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28th June 2018

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