

SCHEDULES

SCHEDULE 7

VARIATION OF CONDITIONS

PART 2

VARIATION NOTICES

12.—(1) Subject to paragraph (2), this paragraph applies where the enforcing authority proposes to serve a variation notice under regulation 19(5) where no application was made, and the variation will—

- (a) authorise a substantial change in the operation of an installation or a mobile plant;
- (b) vary the conditions of a permit to operate a Part A installation as a result of a review under regulation 17(2)(a);
- (c) vary the conditions of a permit where regulation 13(3) applies; or
- (d) vary the conditions of a permit and the enforcing authority determines that in the particular circumstances the procedure set out in the following sub-paragraphs should be followed even though heads (a), (b) and (c) do not apply.

(2) This paragraph shall not apply—

- (a) where the enforcing authority proposes to serve a variation notice—
 - (i) which has been modified to take account of representations made in accordance with this paragraph in relation to the enforcing authority's previous proposal to serve the notice without the modifications; or
 - (ii) in order to comply with a direction given by the Department; or
- (b) to a proposed variation notice in relation to an installation carrying out only dry cleaning activities as defined in sub-paragraph (2) of Part C of section 7 of Part 1 of Schedule 1.

(3) Where this paragraph applies the enforcing authority shall, subject to paragraph 24(a)—

- (a) notify the operator in writing that this paragraph applies and of any fee prescribed in respect of the variation under regulation 25;
- (b) serve a copy of the proposed variation notice on the operator;
- (c) give notice in writing of the proposed variation notice, enclosing a copy of it, to the persons to whom notice would have to be given in accordance with paragraph 12 of Schedule 4 in the case of an application for a permit to operate the particular installation or mobile plant; and
- (d) in the case of a proposed variation notice affecting the operation of a Part A installation or Part A mobile plant, provide the operator with—
 - (i) information on the reasons and considerations on which that proposed variation notice is based; and

- (ii) information on any guidance issued by the Department to the enforcing authority relevant to the determination of the proposed variation.

(4) Where this paragraph applies to a variation affecting the operation of a Part A installation, any relevant information obtained or conclusion arrived at pursuant to Articles 5, 6, 7 and 9 of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment in relation to the substantial change shall be taken into consideration by the chief inspector before serving the variation notice.

13. The chief inspector shall notify the operator of a Part A installation or Part A mobile plant which—

- (a) uses, produces or emits hazardous substances;
- (b) has not previously submitted a baseline report;
- (c) carries out or will carry out activities listed in Annex II of the IED; and
- (d) is having a permit varied due to—
 - (i) a review of conditions under regulation 17; or
 - (ii) a substantial change,

of the requirement to submit a baseline report within the time specified by the chief inspector, and shall not serve a variation notice until such time as a baseline report is submitted.

14.—(1) Subject to paragraph 24(b), an operator notified under paragraph 12(3)(a) shall, within 28 days beginning on the day on which the notification is made, advertise the proposed variation notice—

- (a) in the case of a variation affecting the operation of an installation or Part A mobile plant in at least one newspaper circulating in the locality in which the installation or mobile plant is operated; and
- (b) in the case of a Part A installation or Part A mobile plant, in the Belfast Gazette.

(2) An advertisement required by sub-paragraph (1) shall—

- (a) state the name of the operator;
- (b) in the case of a variation affecting the operation of an installation or Part A mobile plant, state the address of the site of the installation or mobile plant concerned;
- (c) describe briefly the activities in Part 1 of Schedule 1 carried out in the installation or by means of the mobile plant and the change in the operation of the installation or mobile plant that will be authorised by the variation;
- (d) state where, and in the case of a variation affecting the operation of a Part A installation, how and at what times, any register which contains—
 - (i) particulars of the proposed variation; and
 - (ii) in the case of a proposed variation notice affecting the operation of a Part A installation, a copy of the proposed variation notice and the information provided by the enforcing authority under paragraph 12(3)(d)(i) on the reasons and considerations on which that proposed variation notice is based,

may be inspected and that it may be inspected free of charge;

- (e) explain that any person may make representations in writing to the enforcing authority within the period of 42 days beginning with the date of the advertisement and give the enforcing authority's address for receiving the representations;
- (f) explain that any such representations made by any person will be entered in a public register unless that person requests in writing 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;

- (g) in the case of a variation affecting the operation of a Part A installation or Part A mobile plant—
- (i) describe the contents of the proposed variation notice;
 - (ii) where applicable, state that the serving of the variation notice is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with paragraph 17; and
 - (iii) where applicable, explain that any guidance issued by the Department to the enforcing authority relevant to the serving of the proposed variation which has been provided to the operator under paragraph 12(3)(d)(ii), has been included in the register.

(3) Sub-paragraph (1) shall not apply in relation to a proposed variation notice relating to an installation which is only used to carry out an activity falling within paragraph (b), (c), (d) or (e) of Part C of section 1.2 of Part 1 of Schedule 1.

(4) Any representations made by any person within the period allowed shall be considered by the enforcing authority before serving the variation notice.

(5) For the purpose of paragraph (4), the period allowed for making representations is—

- (a) in the case of persons notified pursuant to paragraphs 12(3)(c), the period of 42 days beginning with the date on which notice of the proposed variation notice is given under that sub-paragraph; or
- (b) in the case of other persons, the period of 42 days beginning with the date on which the proposed variation notice is advertised pursuant to sub-paragraph (1).

15.—(1) If the enforcing authority proposes to serve a variation notice which will result in the inclusion of an off-site condition in the permit concerned, it shall, before serving the variation notice, give a notice which complies with sub-paragraph (3) to every person appearing to it to be a person falling within sub-paragraph (2).

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

- (a) he is the owner, lessee or occupier of land; and
- (b) that land is land in relation to which it is likely that, as a consequence of the off-site condition in question, rights will have to be granted by virtue of regulation 13(7) to the holder of the permit.

(3) A notice served under sub-paragraph (1) shall—

- (a) be in writing;
- (b) set out the off-site condition in question;
- (c) indicate the nature of the works or things which that condition might require the holder of the permit to carry out or do; and
- (d) specify a period, not being less than 28 days beginning on the date on which the notice is served, in which representations may be made to the enforcing authority relating to the condition or its possible effects and the manner in which any such representations are to be made.

(4) In sub-paragraph (2), “owner” means the person who—

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

but does not include a mortgagee not in possession.

(5) Any representations made by a person notified under sub-paragraph (1) within the period specified under sub-paragraph (3)(d) shall be considered by the enforcing authority before serving the variation notice.

16.—(1) In the case of a proposed variation notice affecting the operation of a Part A installation or Part A mobile plant to which the consultation and advertising procedure set out in paragraphs 12 and 14 applies—

(a) where no representations are made to the enforcing authority within the period specified in paragraph 14(5), and where applicable, by the day on which the enforcing authority receives the Department’s notification that the bilateral consultations have been completed pursuant to paragraph 18(b), the enforcing authority shall—

- (i) serve the variation notice;
- (ii) include in the register a copy of the variation notice, together with a statement confirming that no representations have been received by the enforcing authority on the proposed variation; and
- (iii) where paragraph 17 applies, forward a copy of the variation notice and the information in sub-head (ii) to the Department,

within the period of 7 days starting with the day on which the period allowed by paragraph 14(5) ends or, where applicable and if later, the day on which the enforcing authority receives the Department’s notification that the bilateral consultations have been completed pursuant to paragraph 18(b); or

(b) where representations are made within the period specified in paragraph 14(5) and where applicable, by the day on which the enforcing authority receives the Department’s notification that the bilateral consultations have been completed pursuant to paragraph 18(b), the enforcing authority shall—

- (i) serve the variation notice;
- (ii) include in the register a copy of the variation notice, together with information on the reasons and considerations on which the variation notice is based;
- (iii) advertise the notice on its web-site and, if it considers it appropriate, by any other means; and
- (iv) where paragraph 17 applies, forward a copy of the variation notice and the information in sub-head (ii) to the Department,

within the period of 21 days starting with the day on which the period allowed by paragraph 14(5) ends or, where applicable and if later, the day on which the enforcing authority receives the Department’s notification that the bilateral consultations have been completed pursuant to paragraph 18(b) or within such longer period as may be agreed with the operator.

(2) The Department shall forward to the Member State to which the proposed variation has been forwarded under paragraph 17, a copy of the variation notice and the information specified in sub-paragraph (1)(a)(ii) or (1)(b)(ii), as soon as practicable after the date of receipt.

(3) Where sub-paragraph (1) applies and the enforcing authority fails to serve the variation notice within the period specified in that sub-paragraph, the proposed variation shall, if the operator of the Part A installation to which the variation refers notifies the enforcing authority in writing that he treats the failure as such, be deemed to have been withdrawn at the end of that period.