

## SCHEDULE 7

### VARIATION OF CONDITIONS

#### PART 2

#### DETERMINATION OF APPLICATIONS FOR VARIATIONS AND VARIATION NOTICES

4.—(1) Subject to sub-paragraphs (3) and (4), this paragraph applies where—

- (a) an application is made for the variation of the conditions of a permit under regulation 17(2) which will authorise a substantial change in the operation of an installation or mobile plant; or
- (b) the enforcing authority proposes to serve a variation notice under regulation 17(5) otherwise than for the purposes of determining an application mentioned in paragraph (a) and the variation will authorise a substantial change in the operation of an installation or mobile plant.

(2) Subject to sub-paragraphs (3) and (4), this paragraph shall also apply where an application is made for the variation of the conditions of a permit under regulation 17(2) or the enforcing authority proposes to serve a variation notice under regulation 17(5) and the enforcing authority determines that in the particular circumstances the procedure set out in the following sub-paragraphs should be followed even though no substantial change is involved (so that paragraph (1) does not apply).

(3) This paragraph shall not apply where the enforcing authority proposes to serve a variation notice—

- (a) 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
- (b) in order to comply with a direction given by the Department.

(4) This paragraph shall not apply in relation to an application for the variation of the conditions of a permit or a proposed variation notice relating to an installation involving only the burning of waste oil (as defined in Section 1.1 of Part 1 of Schedule 1) in an appliance with a rated thermal input of less than 0.4 megawatts.

(5) Where this paragraph applies the enforcing authority shall—

- (a) notify the operator in writing that the paragraph applies by virtue of sub-paragraph (1) or a determination under sub-paragraph (2), as the case may be, and of any fee prescribed in respect of the variation on the application of this paragraph under regulation 22;
- (b) in the case of a proposed variation notice, serve a copy of the proposed notice on the operator;
- (c) give notice in writing of the application or proposed variation notice, enclosing a copy of it, to the persons to whom notice would have to be given in accordance with paragraph 9 of Schedule 4 in the case of an application for a permit to operate the installation or mobile plant.

(6) In the case of an application to which this paragraph applies—

- (a) the enforcing authority shall, subject to paragraph 15(a), comply with sub-paragraph (5) within 14 days of receiving the application;

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- (b) if the applicant does not pay to the enforcing authority any fee notified under sub-paragraph (5)(a) within 28 days of the notification the application shall be deemed to have been withdrawn.
- (7) For the purpose of calculating the period of 14 days mentioned in sub-paragraph (6)(a) no account shall be taken of any period beginning with the date on which notice is served on an operator under paragraph 3 and ending on the date on which the operator furnishes the information specified in the notice.
- (8) Subject to paragraph 15(b), an operator notified under sub-paragraph (5)(a) shall, within 28 days beginning on the day on which the notification is made, advertise the application or proposed variation notice, as the case may be—
- (a) in the case of a variation affecting the operation of an installation or Part A mobile plant, in at least two newspapers circulating in the locality in which the installation or mobile plant is operated;
  - (b) in the case of a Part A installation or Part A mobile plant, in the Belfast Gazette.
- (9) An advertisement required by sub-paragraph (8) 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 any register which contains particulars of the application or proposed variation notice 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.
- (10) Sub-paragraph (8) shall not apply in relation to an application for the variation of the conditions of a permit or a proposed variation notice relating to an installation which is only used to carry out an activity falling within paragraph (b) of Part C of Section 1.2 of Part 1 of Schedule 1 (unloading of petrol at service stations).
- (11) Any representations made by any person within the period allowed shall be considered by the enforcing authority in determining the application or before serving the variation notice.
- (12) For the purpose of sub-paragraph (11), the period allowed for making representations is—
- (a) in the case of persons notified pursuant to sub-paragraph (5)(c), the period of 42 days beginning with the date on which notice of the application or proposed variation notice is given under that sub-paragraph;
  - (b) in the case of other persons, the period of 42 days beginning with the date on which the application or proposed variation notice is advertised pursuant to sub-paragraph (8).
- (13) Where this paragraph applies by virtue of sub-paragraph (1) to a variation affecting the operation of a Part A installation, any relevant information obtained or conclusion arrived at pursuant to Articles 5, 6 and 7 of Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment in relation to the substantial change shall be taken into

consideration by the chief inspector in determining the application or before serving the variation notice.

5.—(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 12(12) 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.

6.—(1) The Department may give directions to the enforcing authority requiring that any particular application under regulation 17(2) or any class of such applications shall be referred to it for determination pending a further direction under sub-paragraph (13).

(2) The enforcing authority shall inform the operator of the fact that his application is being referred to the Department and forward to the Department any representations which have been made to the enforcing authority within the period allowed.

(3) Where an application for the variation of the conditions of a permit is referred to it under sub-paragraph (1) the Department may afford the operator and the enforcing authority an opportunity of appearing before and being heard by a person appointed by it (the “appointed person”) and it shall do so in any case where a request is duly made by the operator or the enforcing authority to be so heard.

(4) A request under sub-paragraph (3) shall be in writing and shall be made within the period of 21 days beginning with the day on which the operator is informed that his application is being transmitted to the Department.

(5) A hearing held under sub-paragraph (3) may, if the appointed person so decides, be held wholly or to any extent, in private.

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(6) Where the Department causes a hearing to be held under sub-paragraph (3) it shall give the operator and the enforcing authority at least 28 days notice (or such shorter period of notice as they may agree) of the date, time and place fixed for the holding of the hearing.

(7) In the case of a hearing under sub-paragraph (3) which is to be held wholly or partly in public, the Department shall, at least 21 days before the date fixed for the holding of the hearing—

- (a) where the application relates to the operation of an installation or Part A mobile plant, publish a copy of the notice mentioned in sub-paragraph (6) in at least two newspapers circulating in the locality in which the installation or mobile plant is operated;
- (b) serve a copy of that notice on every person required to be notified under paragraph 4(5)(c) of this Schedule and on any person who made representations to the enforcing authority with respect to the subject matter of the application.

(8) The Department may vary the date fixed for the holding of any hearing under sub-paragraph (3) and sub-paragraphs (6) and (7) shall apply to the variation of a date as they applied to the date originally fixed.

(9) The Department may also vary the time or place for the holding of a hearing under sub-paragraph (3) and shall give such notice of any variation as appears to it to be reasonable.

(10) The persons entitled to be heard at a hearing under sub-paragraph (3) are—

- (a) the operator;
- (b) the enforcing authority; and
- (c) any person required under paragraph 4(5)(c) of this Schedule to be notified of the application.

(11) Nothing in sub-paragraph (10) shall prevent the appointed person from permitting any other persons to be heard at the hearing and such permission shall not be unreasonably withheld.

(12) After the conclusion of a hearing, the appointed person shall make a report in writing to the Department which shall include his conclusions and recommendations or his reasons for not making any recommendations.

(13) The Department shall, on determining any application referred to it under this paragraph, give to the enforcing authority such a direction as it thinks fit as to whether it is to grant the application and, if so, as to the conditions that are to be attached to the permit by means of the variation notice.

7.—(1) Except in a case where an application has been referred to the Department under paragraph 6 and subject to paragraph 10, the enforcing authority shall give notice of its determination of an application under regulation 17(2)—

- (a) where the consultation and advertising procedure set out in paragraph 4 applies, within the period of six months beginning with the day on which the enforcing authority received the application;
- (b) where that procedure does not apply, within the period of three months beginning with the day on which the enforcing authority received the application,

or, in either case, within such longer period as may be agreed with the operator.

(2) For the purpose of calculating the periods mentioned in sub-paragraphs (1)(a) and (b) no account shall be taken of—

- (a) any period beginning with the date on which notice is served on an operator under paragraph 3 and ending on the date on which the operator furnishes the information specified in the notice;

- (b) any period allowed for making representations in relation to a notice given pursuant to paragraph 5 in so far as that period does not overlap with any other period allowed for making representations in accordance with paragraph 4(12);
- (c) where a matter falls to be determined under regulation 31 or 32 any period beginning with the date on which the period of 28 days referred to in paragraph 4(8) ends and ending on the date on which the application is advertised in accordance with paragraph 15(b).

8. If the enforcing authority fails to give notice of its determination of an application for a variation of the conditions of a permit within the period allowed by or under paragraph 7, the application shall, if the operator notifies the authority in writing that he treats the failure as such, be deemed to have been refused at the end of that period.

9. Where the Department is aware that an application or proposal to serve a variation notice mentioned in paragraph 4(1) relates to a substantial change in the operation of an installation carrying out activities listed in Annex I to the Directive in Northern Ireland which is likely to have significant negative effects on the environment of another Member State, or where another Member State likely to be significantly affected so requests, the Department shall forward a copy of the application or proposed variation notice to the other Member State at the same time as it is advertised pursuant to paragraph 4(8) (or as soon as it becomes so aware or receives such a request, if it becomes so aware or receives such a request after the application or proposed variation notice is published but before the application is determined or the variation notice is served) in order that the application or proposed variation notice may serve as the basis for any consultations necessary in the framework of the bilateral relations between the United Kingdom and the other Member State on a reciprocal and equivalent basis, as referred to in Article 17 of the Directive.

10. Where an application or proposal to serve a variation notice is forwarded to another Member State pursuant to paragraph 9 the Department shall notify the operator of the installation concerned and the chief inspector and—

- (a) the chief inspector shall not determine the application (where the application has not been referred to the Department under paragraph 6) or serve the variation notice until the Department has notified him in writing that the bilateral consultations required by paragraph 9 have been completed and has forwarded to him any representations duly made on the application or proposed variation by persons in the other Member State which have been forwarded to the Department; and,
- (b) in the case of an application to be determined by the chief inspector, the period within which to determine the application set out in paragraph 7(1)(a) shall begin on the day on which the chief inspector receives the Department's notification that the bilateral consultations have been completed.

11. In determining an application or before serving a variation notice which has been forwarded to another Member State pursuant to paragraph 9, the chief inspector, or, in the case of an application, the Department if the application has been referred to it, shall take into consideration any representations duly made in the other Member State which have been forwarded to the Department.

12. In paragraphs 9 to 11, "Member State" shall be taken to include Norway, Iceland and Liechtenstein.