

SCHEDULE 5

Article 7

ENFORCEMENT NOTICES: REVIEWS AND APPEALS

Reviews of decisions to give notice under section 69(2) of the Act

1.—(1) A reservoir manager to whom a notice (“the notice”) is given under section 69(2) of the Act, may apply to SEPA for a review of its decision to give the notice.

(2) The application—

- (a) must be made in writing; and
- (b) must be given to SEPA within a period of 28 days beginning with the day on which the notice was given to the reservoir manager.

(3) On receipt of any such application, SEPA must as soon as practicable—

- (a) review its decision to give the notice; and
- (b) decide whether to—
 - (i) confirm the notice;
 - (ii) confirm the notice with modifications; or
 - (iii) withdraw the notice.

(4) SEPA must by notice (a “decision notice”) inform the applicant of its decision under sub-paragraph (3)(b).

(5) The decision notice must include information as to—

- (a) SEPA’s decision under sub-paragraph (3)(b);
- (b) the reasons for its decision; and
- (c) rights of appeal.

(6) Where, under sub-paragraph (1), a reservoir manager applies to SEPA for a review of its decision to give a notice under section 69(2) of the Act, the notice is suspended from the day on which the application is made until the day on which the applicant is, under sub-paragraph (4), informed of SEPA’s decision (in respect of the application).

Appeals against decisions to give notice under section 69(2) of the Act

2.—(1) A reservoir manager to whom a notice (“the notice”) is given under section 69(2) of the Act may, subject to sub-paragraph (2), appeal to the Scottish Ministers against the decision of SEPA to give the notice.

(2) An appeal may be made under sub-paragraph (1) only if—

- (a) the reservoir manager applied under paragraph 1 for a review of the decision of SEPA to give the notice; and
- (b) a decision notice was given under paragraph 1(4) informing the reservoir manager of SEPA’s decision to confirm the notice (with or without modifications).

(3) The appeal must be made within a period of 28 days beginning with the day on which the applicant was informed under paragraph 1(4) of the decision to which the appeal relates.

(4) The appeal may be made on any grounds including that—

- (a) the decision to give the notice was based on an error of fact;
- (b) the decision was wrong in law;
- (c) a requirement imposed by the notice is unreasonable;

- (d) the decision was unfair or unreasonable for any other reason.
- (5) The “notice of appeal” (construed in accordance with paragraph 1(1) of Schedule 6) must include—
 - (a) a statement of the grounds of appeal;
 - (b) a copy of the notice given by SEPA under section 69(2) of the Act to which the appeal relates; and
 - (c) a copy of the safety report or, as the case may be, the inspection report containing the direction to which the notice given by SEPA relates.
- (6) Where, under paragraph 2(1), a reservoir manager appeals against a decision of SEPA to give a notice under section 69(2) of the Act, the notice is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.