
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2018 No.

The Environmental Authorisations (Scotland) Regulations 2018

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- (c) whose application for a registration or permit has been deemed withdrawn by SEPA under paragraph 6(3) or 8(3) of schedule 1;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;
- (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.