
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2018 No.

The Environmental Authorisations (Scotland) Regulations 2018

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⁽¹⁾.

Consolidation of permits and registrations

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

(1) 2004 c.36.

(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.