
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2018 No.

The Environmental Authorisations (Scotland) Regulations 2018

PART 14

SEPA— guidance and public participation statement

SEPA guidance

66.—(1) SEPA must publish guidance about—

- (a) which activities are subject to a requirement to notify;
- (b) which activities subject to a requirement to notify must also be carried on in accordance with general binding rules;
- (c) which activities SEPA is likely to require to be authorised by means of registration;
- (d) which activities SEPA is likely to require to be authorised by means of permit; and
- (e) the criteria which SEPA will apply in determining whether a person is a fit and proper person.

(2) SEPA may publish guidance about the exercise of any other functions it has under these Regulations as it thinks fit.

(3) SEPA may from time to time revise guidance published under this regulation.

(4) SEPA must consult such persons as it thinks fit before publishing or revising guidance under paragraph (1).

(5) The duty in paragraph (4) may be treated as satisfied by a consultation carried out partially or wholly before the coming into force of these Regulations.

(6) SEPA must have regard to the guidance published under paragraph (1)(a) to (d) when—

- (a) determining an application;
- (b) imposing an authorisation under regulation 60; and
- (c) escalating or de-escalating an authorisation under regulation 61.

(7) When carrying out a relevant function which requires SEPA to determine whether a person is a fit and proper person, SEPA must have regard to the guidance published under paragraph (1)(e).

SEPA’s public participation statement

67.—(1) SEPA must publish a statement of its policies for exercising its public participation functions (the “public participation statement”).

(2) “Public participation functions” means the duties and functions in the following provisions—

- (a) regulation 34 (consultation on standard conditions); and
- (b) paragraph 8 of schedule 1 (consultation on an application for permits etc.).

(3) SEPA must have regard to its public participation statement when exercising its public participation functions.

(4) In preparing or revising the public participation statement SEPA must consult such persons as SEPA considers appropriate.

(5) The duty in paragraph (4) may be treated as satisfied by a consultation carried out partially or wholly before the coming into force of these Regulations.

(6) SEPA must—

- (a) keep the public participation statement under review;
- (b) revise the public participation statement when it considers necessary; and
- (c) publish any revised public participation statement.

SEPA guidance – fit and proper person

68.—(1) When SEPA prepares and publishes guidance under regulation 66(1)(e) about the criteria which apply in determining whether a person is a fit and proper person—

- (a) the criteria which must apply include whether the person is likely to comply or secure compliance with the conditions of the authorisation which apply, or would apply, to the carrying on of the activity;
- (b) the criteria that may apply include—
 - (i) whether the person or a relevant associate has been convicted of a relevant offence;
 - (ii) the significance of the offence;
 - (iii) whether the activity will be carried on by someone who is technically competent;
 - (iv) whether the person has made adequate financial provision to protect against any foreseeable or potential environmental harm or effect on the environment likely to result from the activity; and
 - (v) criteria relating to such other matters as SEPA thinks fit.

(2) In this regulation, “relevant associate” includes—

- (a) any body corporate of which the person whose status as a fit and proper person is being considered is or has been a director, manager, secretary or other similar officer;
- (b) any partnership (other than a limited liability partnership) of which the person whose status as a fit and proper person is being considered is, or has been, a partner;
- (c) any limited liability partnership of which the person whose status as a fit and proper person is being considered is, or has been, a member;
- (d) where the person whose status as a fit and proper person is being considered is a partnership (other than a limited liability partnership), a partner or former partner;
- (e) where the person whose status as a fit and proper person is being considered is a limited liability partnership, a member or former member;
- (f) where the person whose status as a fit and proper person is being considered is a body corporate—
 - (i) a current or former director, manager, secretary or other similar officer;
 - (ii) any other body corporate of which a director, manager, secretary or other similar officer of the person is or has been a director, manager, secretary or other similar officer; and
 - (iii) any person who is a member of that body corporate;
- (g) where the person whose status as a fit and proper person is being considered is an unincorporated association, any officer of the association;
- (h) an employee of—

- (i) the person whose status as a fit and proper person is being considered;
 - (ii) a partnership (other than a limited liability partnership) of which the person is or has been a partner;
 - (iii) a limited liability partnership of which the person is or has been a member;
 - (iv) a body corporate of which the person is or was a director, manager, secretary or other officer; and
 - (i) such other persons, or classes of person, as SEPA thinks fit.
- (3) In this regulation, “relevant offence” means an offence which SEPA considers to be relevant to the criteria referred to in paragraph (1)(a).