

## SCHEDULE 1

Regulations 16, 19, 21,25 and 26

### REGISTRATIONS AND PERMITS: PROCEDURES

#### PART 1

##### General provisions

###### **Form of application**

1. An application under these Regulations must be in writing and in such form as SEPA may from time to time require.

###### **Accompanying information**

2.—(1) An application must be accompanied by—

- (a) any fee payable under a charging scheme;
- (b) any information required by virtue of the technical schedule; and
- (c) any other information in such form as SEPA may reasonably require.

(2) SEPA may decline to accept an application where SEPA considers any one or more of the requirements in sub-paragraph (1) are not met.

(3) Where SEPA declines to accept an application—

- (a) it must inform the applicant in writing;
- (b) the applicant is entitled to a refund of the fee which accompanied the application or such part of the fee as is specified in a charging scheme; and
- (c) the provisions of this schedule, other than paragraphs 1 and 2, do not apply to the application.

###### **Withdrawing an application**

3.—(1) An application may be withdrawn by the applicant before it is determined.

(2) Where an application is withdrawn the applicant is not entitled to the refund of any fee which accompanied it.

###### **Modifying an application**

4. An application may be modified by the applicant before it is determined if SEPA agrees in writing to the modification.

###### **Notifications relating to certain applications**

5.—(1) This sub-paragraph applies where SEPA receives an application for a—

- (a) permit;
- (b) transfer of a permit;
- (c) variation of a permit;
- (d) surrender of a permit; or
- (e) transfer of a revocation notice.

(2) Where sub-paragraph (1) applies, SEPA must notify the applicant of—

- (a) the determination period that applies in respect of the application;
- (b) any consultation that is required by virtue of paragraphs 7 and 8 of this schedule (including details of the consultation period); and
- (c) any steps that the applicant is required to take in relation to consultation in accordance with paragraph 8(2).

#### **Further information in respect of an application**

6.—(1) This paragraph applies where SEPA receives an application for—

- (a) a permit;
- (b) the transfer, variation or surrender of a permit;
- (c) a registration; or
- (d) the transfer, variation or surrender of a registration.

(2) Where SEPA considers that it requires further information to determine an application, it may serve a notice on the applicant specifying the further information and the period within which it must be provided.

(3) Where the applicant fails to provide the information in accordance with the notice, SEPA may by further notice deem the application to be withdrawn.

(4) Where an application is deemed to be withdrawn, the applicant is not entitled to the refund of any fee which accompanied it.

(5) SEPA may carry out such examination and investigation as it considers necessary to allow it to make a determination in respect of the application.

#### **Public Consultation: scope**

7.—(1) Paragraph 8 applies to any application for a—

- (a) permit;
- (b) variation of a permit; or
- (c) surrender of a permit (in whole or in part),

where any of the criteria in sub-paragraph (3) is met.

(2) Paragraph 8 applies to a SEPA initiated variation of a permit where any of the criteria in sub-paragraph (3) is met.

(3) The criteria are—

- (a) consultation is required by the technical schedule;
- (b) the permit or variation, where granted, will authorise for the first time, a regulated activity which has the potential to cause significant environmental harm;
- (c) where SEPA determines paragraph 8 should apply.

#### **Public consultation requirements**

8.—(1) Subject to sub-paragraphs (2) and (3), if this paragraph applies SEPA must ensure that—

- (a) the application or proposed SEPA initiated variation is publicised in such manner as SEPA thinks fit;
- (b) public consultees are invited to make representations;
- (c) the address to which and period within which such representations may be made is specified to the public consultees; and

- (d) copies of the application or proposed SEPA initiated variation are made available to the public for such period, being a period of at least 28 days, as SEPA may determine (“the consultation period”).
- (2) In fulfilling the duties in sub-paragraph (1)(a) or (b), SEPA may require the applicant or authorised person to take such steps as SEPA considers appropriate.
- (3) Where the applicant fails to take the steps required by SEPA, SEPA may by further notice deem the application to be withdrawn.
- (4) Where an application is deemed to be withdrawn under sub-paragraph (3), the applicant is not entitled to the refund of any fee which accompanied it.
- (5) Where an authorised person fails to take the steps required by SEPA in the case of a SEPA initiated variation, SEPA may take those steps and may recover the costs it reasonably incurs in doing so from that person.
- (6) SEPA must consider all representations made in connection with an application or SEPA initiated variation which are received during the consultation period.
- (7) SEPA must not inform the public consultees of information which is to be excluded from the register in the interests of national security or commercial confidentiality unless the Scottish Ministers direct that it must do so.
- (8) In this paragraph, “public consultee” means—
  - (a) a person whom SEPA considers is affected by, is likely to be affected by, the application;
  - (b) a statutory body—
    - (i) required to be consulted by SEPA in terms of the technical schedule; or
    - (ii) whom SEPA thinks fit to consult.

#### **Duty to determine an application**

- 9.—(1) SEPA must grant or refuse (in whole or in part) an application.
- (2) SEPA must notify the applicant of its determination and, where the application is refused, provide—
  - (a) grounds for the refusal; and
  - (b) details of any right of appeal.

#### **Time limits for determining applications**

- 10.—(1) Where—
  - (a) SEPA fails to determine an application within the determination period; and
  - (b) the applicant serves notice on SEPA that the applicant wishes the failure to be treated as a refusal,the application is deemed to have been refused on the day on which the notice is served.
- (2) SEPA may determine an application after the end of the determination period unless the application has been deemed refused in accordance with sub-paragraph (1).
- (3) In this paragraph, “the determination period” means—
  - (a) for an application for—
    - (i) registration;
    - (ii) variation of a registration;
    - (iii) transfer of a registration;

- (iv) surrender of a registration; or
- (v) transfer of a revocation notice relating to a registration,  
the period of 28 days beginning with the date on which SEPA receives an application;
- (b) for an application for—
  - (i) transfer of a permit; or
  - (ii) transfer of a revocation notice relating to a permit,  
the period of two months beginning with the date on which SEPA receives the application,  
or such longer period as may be agreed with the applicant in writing;
- (c) for an application for—
  - (i) a permit;
  - (ii) the variation of a permit; or
  - (iii) the surrender of a permit,  
the period of four months beginning with the date on which SEPA receives the application,  
or such longer period as may be agreed with the applicant in writing.

#### **Extension of determination periods**

- 11.**—(1) Subject to sub-paragraph (2), any determination period may be extended by agreement in writing between SEPA and the applicant.
- (2) The determination periods specified in paragraph 10(3)(a) cannot be extended.

#### **Calculating the determination period**

- 12.**—(1) In calculating the determination periods specified in paragraph 10, or extended under paragraph 11, the following periods are not counted—
- (a) any period during which an application for commercial confidentiality under regulation 41 is being considered;
  - (b) any period during which an appeal under regulation 55(1)(o) against a decision not to exclude information on the grounds of commercial confidentiality is being considered;
  - (c) any period beginning with the first day of a 21 day period and ending on the day on which the call-in process ends in accordance with paragraph 21.
- (2) In this paragraph “21 day period” has the same meaning as in paragraph 20.

#### **Variation Notices**

- 13.**—(1) SEPA must, on varying a permit or registration, give notice (a “variation notice”) to the authorised person specifying—
- (a) the variation being made;
  - (b) the date on which the variation is to take effect (being not earlier than the date of service of the notice); and
  - (c) the rights of appeal available to the authorised person.
- (2) Unless the variation notice is withdrawn it has effect on the date so specified in the notice.

## Surrender applications

14.—(1) In deciding whether to grant or refuse (in whole or in part) an application for surrender of a registration or permit, SEPA must consider—

- (a) the impact on the environment resulting from the—
  - (i) carrying on of the activity; and
  - (ii) cessation of the carrying on of the activity; and
- (b) whether it is satisfied that all reasonable steps have been taken by the authorised person to—
  - (i) prevent environmental harm arising as a result of the activity having been carried on;
  - (ii) prevent environmental harm arising as a result of the cessation of the activity; and
  - (iii) restore the environment affected by the activity to a satisfactory state.

(2) Where SEPA grants an application for surrender (in whole or in part) SEPA must serve notice (a “surrender notice”) on the applicant in accordance with paragraph 15.

(3) An authorisation ceases to have effect on the date specified in the notice and to the extent specified in the notice.

(4) An authorisation may continue to have effect only to the extent necessary to require the taking of steps specified in a notice.

## Notice of surrender

15.—(1) A surrender notice must—

- (a) specify any steps which SEPA considers must be taken by the authorised person to—
  - (i) ensure compliance with the technical schedule;
  - (ii) prevent environmental harm arising as a result of the regulated activity having been carried on;
  - (iii) prevent environmental harm arising as a result of the cessation of the activity;
  - (iv) restore the environment affected by the activity to a satisfactory state; and
  - (v) remove any equipment, plant, articles, waste or substances associated with the activity which adversely affect the amenity of the authorised place and surrounding area; and
- (b) either—
  - (i) provide that the authorisation ceases to have effect on the date on which SEPA confirms to the applicant in writing that the steps have been completed to its satisfaction; or
  - (ii) specify the date on which the authorisation ceases to have effect (being not less than 28 days from the date of service of the notice (unless a shorter period is agreed between SEPA and the authorised person)).

(2) SEPA may impose an off-site condition in a surrender notice.

(3) Where SEPA grants the application for surrender in part, a surrender notice must also specify—

- (a) the extent to which the application is being granted; and
- (b) any variations which are necessary to the authorisation as a result of the partial surrender.

(4) Where SEPA specifies steps to be taken by the authorised person, those steps are deemed to be conditions of the authorisation.

- (5) An authorisation ceases to have effect on—
- (a) the date specified in the surrender notice; or
  - (b) the date on which SEPA confirms to the applicant in writing that the steps specified in a surrender notice have been completed to its satisfaction.

### **Revocation of permits or registrations**

- 16.—(1) A revocation notice must—
- (a) specify any steps which SEPA considers must be taken by the authorised person, and the period within which those steps must be completed, to—
    - (i) ensure compliance with the technical schedule;
    - (ii) prevent environmental harm arising as a result of the activity having been carried on;
    - (iii) prevent environmental harm arising as a result of the cessation of the activity;
    - (iv) restore the environment affected by the activity to a satisfactory state; and
    - (v) remove any equipment, plant, articles, waste or substances associated with the activity or otherwise preserve the amenity of the authorised place and surrounding area;
  - (b) specify the reasons for the revocation;
  - (c) in the case of a partial revocation specify—
    - (i) the extent to which the permit or registration is being revoked; and
    - (ii) any variations which are necessary to the permit or registration as a result of the partial revocation; and
  - (d) specify the date on which the authorisation ceases to have effect which—
    - (i) may be the date on which SEPA confirms to the authorised person in writing that the steps have been completed to SEPA's satisfaction; or
    - (ii) must be at least 28 days after the date on which the notice is served.
- (2) An authorisation ceases to have effect on the date specified in the revocation notice.

### **Interpretation: satisfactory state**

- 17.—(1) When considering whether it is satisfied that the environment affected by an activity has been restored to a satisfactory state, SEPA may have regard to—
- (a) the state of the environment as at the date the authorisation (or other licence) was granted;
  - (b) the state of the environment as described in any report submitted to SEPA;
  - (c) the remediation of any environmental harm which SEPA considers could reasonably have been caused by the activity; and
  - (d) such other matters as SEPA thinks fit.
- (2) In this paragraph—
- (a) “other licence” includes a licence, permit, registration, exemption permission, or consent issued under another regulatory regime; and
  - (b) “report” includes a report written for the purposes of these Regulations or for another regulatory regime.

## PART 2

### Call-in procedure

**18.**—(1) This Part applies to—

- (a) an application for—
  - (i) grant of a permit;
  - (ii) variation of a permit; or
  - (iii) surrender of a permit; and
- (b) a SEPA initiated variation,

in respect of which a third party representation has been made.

**19.**—(1) The Scottish Ministers may direct SEPA that an application or a SEPA initiated variation to which this Part applies is referred to the Scottish Ministers for determination.

(2) SEPA must comply with a direction made under sub-paragraph (1).

(3) The Scottish Ministers must determine a matter referred to them for determination under this paragraph in accordance with Part 3.

**20.** Before granting an application or issuing a variation to which this Part applies SEPA must—

- (a) serve notice of its proposed determination on any person who has made a representation under paragraph 8(6) in respect of the application or SEPA initiated variation specifying that the person may, within the period of 21 days beginning with the date of service of the notice (“the 21 day period”), notify the Scottish Ministers in writing that that person objects to SEPA’s proposed determination; and
- (b) notify the applicant that—
  - (i) it has made a proposed determination, and make a copy of the proposed determination available to the applicant;
  - (ii) the 21 day period has commenced; and
  - (iii) the application will be granted as soon as practicable following the occurrence of one of the days specified in paragraph 22, unless Scottish Ministers direct otherwise.

**21.** SEPA must not determine an application or SEPA initiated variation to which this Part applies before the occurrence of one of the days specified in paragraph 22.

**22.** The days specified are—

- (a) where every person who made a third party representation has waived (in writing) his or her opportunity to object before the end of the 21 day period, the day on which the last person waived his or her opportunity;
- (b) where no objections have been made to the Scottish Ministers, the day on which the 21 day period expires;
- (c) where Scottish Ministers have received an objection within the 21 day period—
  - (i) the day on which SEPA receives written notice from the Scottish Ministers confirming that the Scottish Ministers do not intend to direct SEPA to refer the application or SEPA initiated variation to them for their determination; or
  - (ii) where no such notice has been received from the Scottish Ministers, the day falling 28 days after the day on which the 21 day period expired;

- (d) where the Scottish Ministers have directed SEPA to refer the matter to them for determination, the day on which SEPA receives a direction from Scottish Ministers under paragraph 19(1) to determine the matter in a particular way.

## PART 3

### Determinations of applications by the Scottish Ministers

**23.**—(1) This paragraph applies where Scottish Ministers have directed SEPA to refer to them for their determination an application, or any part of an application, or SEPA initiated variation, or any part of a SEPA initiated variation, under paragraph 19(1).

(2) The following provisions apply to the Scottish Ministers in respect of an application referred to them in accordance with paragraph 19(1) as they do to SEPA in respect of an application made under these Regulations—

- (a) regulation 63;
  - (b) paragraph 6(2) and (5) of schedule 1; and
  - (c) paragraphs 7 and 8 of schedule 1 to the extent that SEPA has not taken the steps required by paragraph 8.
- (3) When they have made a determination under this schedule, the Scottish Ministers must—
- (a) direct SEPA to grant or refuse (in whole or in part) the application; or
  - (b) where the determination relates to a SEPA initiated variation, either—
    - (i) affirm SEPA’s decision (in whole or in part); or
    - (ii) direct SEPA to withdraw the variation.
- (4) The Scottish Ministers may direct SEPA to grant an application subject to conditions.
- (5) The Scottish Ministers must specify to SEPA the reasons for their determination.

**24.** In this schedule—

“application” or “applications” includes reference to any matter which SEPA treats as having been made in terms of regulation 60 or 61;

“third party representation” means a written representation in respect of an application made to SEPA under paragraph 8.