

SCHEDULE 2

Regulation 22(3)(b) and(7) and 62(7)

OFF-SITE CONDITIONS

PART 1

Procedure

1. For the purposes of this schedule SEPA imposes an off-site condition where it—
 - (a) grants a permit subject to an off-site condition;
 - (b) varies a permit—
 - (i) by including an off-site condition; or
 - (ii) by varying an off-site condition; or
 - (c) issues a notice under—
 - (i) regulation 46 (regulatory notice);
 - (ii) paragraph 14(2) of schedule 1 (surrender notice);
 - (iii) regulation 31 (revocation notices),which includes an off-site condition.

- 2.—(1) SEPA may impose an off-site condition for any of the purposes specified in sub-paragraph (2).
 - (2) The purposes specified are—
 - (a) where SEPA considers it necessary to impose an off-site condition to—
 - (i) prevent or mitigate environmental harm;
 - (ii) monitor the impact of the regulated activity on the environment or on human health; or
 - (iii) restore the environment affected or likely to be affected by the regulated activity; and
 - (b) where SEPA considers that—
 - (i) a condition of a permit has not been complied with; and
 - (ii) steps should be taken in order to remedy the non-compliance.

- 3.—(1) Before imposing an off-site condition, SEPA must (so far as is reasonably practicable) give notice under this paragraph to every person appearing to SEPA to be a person to whom sub-paragraph (3) applies.
 - (2) The notice must—
 - (a) describe the proposed off-site condition;
 - (b) describe the nature of the works or actions which the authorised person under the permit may be required to carry out or complete to comply with the off-site condition; and
 - (c) state the representation period in relation to the condition, and the manner in which representations are to be made.
 - (3) This sub-paragraph applies to a person where—
 - (a) that person is the owner, tenant or occupier of land or property affected by the off-site condition; and

- (b) rights will have to be granted by that person to the authorised person to enable the authorised person to comply with the proposed off-site condition.
- (4) A person notified in accordance with this paragraph may make representations to SEPA regarding the off-site condition during the period of 28 days beginning with the date on which notice is given (“the representation period”).
- (5) SEPA must consider any representations made within the representation period before imposing an off-site condition.
- (6) Sub-paragraphs (4) and (5) do not apply where SEPA intends to issue a regulatory notice in circumstances where it considers that there is an imminent risk of environmental harm.
- 4. Where SEPA imposes an off-site condition, it must provide a copy of the permit or notice containing the condition to every person specified in paragraph 3(3).
- 5. A person (“person A”) whose consent is required for a person (“person B”) to comply with an off-site condition must grant (or join in granting) person B such rights in relation to the land as are necessary for person B to comply with an off-site condition.

PART 2

Compensation for off-site conditions

- 6. This Part applies in any case where either—
 - (a) (i) SEPA has imposed an off-site condition; and
 - (ii) a person has granted a right (an “off-site right”) which, alone or together with any other right, is necessary to enable a person to comply with the off-site condition; or
 - (b) (i) a person whose consent would be required for SEPA to arrange for steps to be taken under regulation 62(1), (2) or (3) has granted an off-site right to SEPA under regulation 62(6); and
 - (ii) the off-site right, or that right together with any other right, is necessary to enable SEPA to arrange for those steps to be taken.
- 7. The person to whom an off-site right has been granted must pay compensation to the person who has granted the right.
- 8. But where a person (other than SEPA) has failed to make payment in accordance with paragraph 7 (“the person liable”)—
 - (a) the compensation is payable by SEPA; and
 - (b) SEPA is entitled to recover any payment of compensation made by it under this paragraph from the person liable.
- 9. Subject to paragraph 12, compensation is payable for—
 - (a) depreciation in the value of any relevant interest which results from the grant of the offsite right;
 - (b) depreciation in the value of any other interest in land to which the grantor is entitled which results from the exercise of the off-site right;
 - (c) loss of or damage to a relevant interest which—
 - (i) is attributable to the grant of the off-site right or the exercise of that right;
 - (ii) does not consist of depreciation in the value of that interest; and
 - (iii) is loss or damage for which the grantor would have been entitled to compensation for disturbance if that interest had been acquired compulsorily under the Acquisition

of Land (Authorisation Procedure) (Scotland) Act 1947(1) under a notice to treat served on the date on which the off-site right is granted;

- (d) damage to, or injurious affection of, any interest in land to which the grantor is entitled which is not a relevant interest, and which results from the grant of the off-site right or the exercise of that right;
- (e) loss in respect of work carried out by or on behalf of the grantor which is rendered abortive by the grant of off-site right or the exercise of that right;
- (f) the amount of any valuation and legal expenses reasonably incurred by the grantor in—
 - (i) granting the off-site right; and
 - (ii) preparing the application for, and negotiating the amount of, compensation (up to the point of referral to the Lands Tribunal for Scotland under paragraph 14(2)).

10.—(1) Subject to sub-paragraph (2), an entitlement to compensation under this schedule arises on the date of the grant of an off-site right.

(2) The entitlement to compensation arises on the date of the final determination of the appeal where, after the grant of an off-site right, the condition of the permit which rendered the grant of that right necessary is upheld on an appeal against that condition.

11.—(1) An application for compensation under this schedule must be made by the person granting an off-site right within a period of—

- (a) six months beginning with the date on which the off-site right is first exercised; or
- (b) 12 months beginning with the date on which the entitlement to compensation arises in the case of that grantor,

whichever ends later.

(2) An application must be made in writing to the person to whom the off-site right is granted at the last known address for correspondence of the person.

(3) The application must contain, or be accompanied by—

- (a) a copy of the grant of the off-site right in respect of which the compensation is payable, and of any plans attached to that grant;
- (b) a description of the exact nature of any interest in land in respect of which the compensation is payable;
- (c) a statement of the amount of compensation applied for, distinguishing the amounts applied for under paragraph 9(a) to (f), and showing how the amount applied for under each sub-paragraph has been calculated; and
- (d) where the date on which the entitlement to compensation arises is ascertained in accordance with paragraph 10(2), a copy of the notice of the final determination of the appeal.

12.—(1) The amount to be paid by way of compensation must be assessed in accordance with this paragraph.

(2) The rules set out in section 12 of the 1963 Act have effect, so far as applicable and subject to any necessary modifications, for the purposes of this paragraph as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(3) No account may be taken of any enhancement of the value of any interest in land, by reason of any building erected, work done or improvement or alteration made on any land in which the

(1) 1947 c.42.

person granting the off-site right is (or was at the time of the enhancement) directly or indirectly concerned if—

- (a) the enhancement was not reasonably necessary; and
- (b) was undertaken with a view to obtaining compensation or increased compensation.

(4) In calculating the amount of any loss under paragraph 9(e), expenditure incurred in the preparation of plans or on other similar preparatory matters must be taken into account.

(5) Where the interest in respect of which compensation is to be assessed is subject to a standard security—

- (a) the compensation is assessed as if the interest were not subject to that security;
- (b) no compensation is payable to the creditor in respect of their interest in the land; and
- (c) any compensation payable in respect of the interest subject to the security must be paid to the—
 - (i) creditor in that security; or
 - (ii) if there is more than one creditor, to the first ranking of such creditors, provided that the sum paid must not be more than the sum due to the creditor, and must be applied by the creditor as if it were proceeds of sale.

13.—(1) Compensation payable carries interest at the rate for the time being prescribed under section 40 of the 1963 Act from the date specified in sub-paragraph (2) until payment.

(2) The specified date is—

- (a) in the case of compensation payable by virtue of paragraph 9(a) or (b), the date of depreciation;
- (b) in the case of compensation payable by virtue of paragraph 9(c), (d) or (e), the date on which the loss is sustained or the damage done or, where injurious affection is sustained, the date of the injurious affection;
- (c) in the case of compensation payable by virtue of paragraph 9(f), the date on which the expenses become payable.

(3) If it appears to any person (“the first person”) that the first person may become liable to pay to another person (“the second person”) compensation or interest under this paragraph the first person may, if the second person requests the first person in writing to do so, make one or more payments on account of such compensation or interest.

(4) If, after a payment on account has been made under sub-paragraph (3)—

- (a) it is agreed or determined that compensation or interest is not liable to be paid; or
- (b) by reason of any agreement or determination, any payment under that sub-paragraph is shown to be excessive,
the payment or, as the case may be, excess is recoverable by the first person.

14.—(1) Compensation that is determined to be due is payable—

- (a) where—
 - (i) the person to whom any off-site right was granted or, where compensation becomes payable by SEPA under paragraph 8, SEPA; and
 - (ii) the grantor or a creditor in a standard security,
agree that a single payment is to be made on a specified date, on that date;
- (b) where—

- (i) the person to whom any off-site right was granted or, where compensation becomes payable by SEPA under paragraph 8, SEPA; and
 - (ii) the grantor or a creditor in a standard security,
agree that payment is to be made in instalments at different dates, on the date agreed as regards each instalment; or
 - (c) in any other case, subject to any direction of the Lands Tribunal for Scotland, as soon as reasonably practicable after the amount of the compensation has been finally determined.
- (2) Any dispute in relation to the payment of compensation or interest must be referred to and determined by the Lands Tribunal for Scotland.
- (3) In relation to the determination of any such question, sections 9 and 11 of the 1963 Act apply as if—
- (a) the reference in section 9(1) of that Act to section 8 of that Act were a reference to sub-paragraph (2); and
 - (b) references in section 11 of that Act to the acquiring authority were references to the person to whom any off-site right was granted.

15. In this schedule—

“1963 Act” means the Land Compensation (Scotland) Act 1963(2);

“granted” includes joining in granting;

“grantor” means a person mentioned in paragraph 5;

“relevant interest” means an interest in land in respect of which rights have been granted by the grantor under paragraph 5; and

“standard security” has the same meaning as in section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970(3).

(2) 1963 c.51. The 1963 Act is amended by the Town and Country Planning (Scotland) Act 1997 (1997 c.8), schedule 15(I) paragraph 6, by the Community Land Act 1975 (1975 c.77), schedule 10, paragraph 5(1) and by the Planning and Compensation Act 1991 (1991 c.34) schedule 19, paragraph 1.

(3) 1970 c.35.