

SCHEDULE 4

PROVISIONS RELATING TO APPEALS

PART 2

Public hearings

15. Before determining an appeal under regulation 56, the Scottish Ministers may afford the appellant and SEPA an opportunity of appearing before and being heard by a person appointed by the Scottish Ministers (the “appointed person”).

16. A hearing may, if the appointed person so decides, be held wholly or partly in private.

17. Where the Scottish Ministers cause a hearing to be held, they must give the appellant and SEPA at least 28 days’ written notice (or such shorter period of notice as they may agree with the appellant and SEPA) of the date, time and place fixed for the holding of the hearing.

18. Where any part of a hearing is to be held in public, the Scottish Ministers must, at least 21 days before the date fixed for the holding of the hearing—

- (a) publish notice of the date, time and place fixed for the holding of the hearing in a newspaper circulating in the locality in which the regulated activity which is the subject of the appeal is carried on or is to be carried on; and
- (b) give written notice of the date, time and place fixed for the holding of the hearing to every person who received notice under paragraph 6 and who has made representations to the Scottish Ministers.

19. The Scottish Ministers may vary the date fixed for the holding of any hearing, and must give such notice of the variation as appears to them to be reasonable.

20. The persons entitled to be heard at a hearing are—

- (a) the appellant; and
- (b) SEPA.

21. Nothing in paragraph 20 prevents the appointed person from allowing any other persons to be heard at the hearing and such permission must not be unreasonably withheld.

22. The appointed person must cause notice of the time and place of the hearing to be given to persons appearing to him or her to be interested.

23. The appointed person may—

- (a) by notice in writing require—
 - (i) a person to attend a hearing, at a time and place stated in the notice, to give evidence;
 - (ii) a person to produce any documents, books or other data in the custody or under the control of the person which relate to any matter in question at the hearing; and
- (b) take evidence on oath, and for that purpose administer oaths.

24. But the appointed person may not require any person to produce any book or document or to answer any question which that person would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the inquiry were a proceeding in a court of law.

25.—(1) A person who is required to give evidence at a hearing or to produce any such books or other documents is entitled to have such reasonable expenses of attendance and production of books or other documents paid to him or her.

(2) The expenses are to be treated as part of the expenses of the hearing.

26.—(1) The Scottish Ministers or the appointed person may treat as expenses incurred by them or him or her in relation to the hearing—

- (a) the standard amount in respect of each day (or an appropriate proportion of that amount in respect of a part of a day) on which the hearing sits or the appointed person is otherwise engaged on work connected with the hearing;
- (b) expenses actually incurred in connection with the hearing on travelling or subsistence allowances or the provision of accommodation or other facilities for the hearing;
- (c) any expenses attributable to the appointment of an assessor to assist the appointed person;
- (d) any legal expenses or disbursements incurred or made by or on behalf of the Scottish Ministers in connection with the hearing;
- (e) the entire administrative expense of the hearing, including an amount as appears to the Scottish Ministers or the appointed person to be reasonable in respect of general staff expenses and overheads.

(2) In sub-paragraph (1) “the standard amount” means such an amount, if any, as the Scottish Ministers may from time to time determine and make details of publicly available.

27.—(1) The Scottish Ministers or the appointed person may make an order as to the expenses incurred in relation to a hearing (including a hearing for which arrangements have been made and does not take place)—

- (a) by the Scottish Ministers or the appointed person; and
- (b) by the parties to the appeal.

(2) The order may specify the person or persons by whom any of the expenses must be paid.

28.—(1) Where the Scottish Ministers or the appointed person make an order under paragraph 27 requiring a person to pay expenses, the Scottish Ministers or the appointed person must certify the amount of the expenses.

(2) The amount certified is a debt due by that person to the Scottish Ministers or the appointed person and is recoverable accordingly.

29. After the conclusion of a hearing, the appointed person must make a report to the Scottish Ministers in writing which must include the conclusions and recommendations of that person or the reasons for not making any recommendation.