

SCHEDULE 4

GRANT OF PERMITS

PART 2

DETERMINATION OF APPLICATIONS

9. Subject to paragraph 23, SEPA shall, within 14 days of receiving an application for a permit, give notice of the application, enclosing a copy of it, to the following persons:—

- (a) in the case of an application for a permit to operate an installation or Part A mobile plant, the Health Board in whose area the installation or mobile plant will be operated;
- (b) in the case of an application for a permit to operate a Part A installation or Part A mobile plant —
 - (i) the Food Standards Agency⁽¹⁾;
 - (ii) where the operation of the installation or mobile plant may involve the release of any substance into a sewer vested in a water and sewerage authority (established under the Local Government etc. (Scotland) Act 1994⁽²⁾), that authority;
 - (iii) where the operation of the installation or mobile plant may involve an emission which may affect a site of special scientific interest or a European site (within the meaning of regulation 10(1) of the Conservation (Natural Habitats, &c.) Regulations 1994⁽³⁾), Scottish Natural Heritage (and where such operation may involve an emission which may affect such a site in England, the Nature Conservancy Council for England);
 - (iv) where the operation of the installation or mobile plant may involve the release of any substance into a harbour managed by a harbour authority (within the meaning of section 57 (1) of the Harbours Act 1964⁽⁴⁾), that harbour authority;
- (c) in the case of an application for a permit to operate a Part B installation where the operation of the installation may involve an emission which may affect a site of special scientific interest or a European site (within the meaning of regulation 10(1) of the Conservation (Natural Habitats, &c.) Regulations 1994), Scottish Natural Heritage (and where such operation may involve an emission which may affect such a site in England, the Nature Conservancy Council for England);
- (d) in the case of an application for a permit to operate a Part A installation or a Part B installation on a site in respect of which a nuclear site licence is required under section 1 of the Nuclear Installations Act 1965⁽⁵⁾ or in respect of which a major accident prevention policy document is required under regulation 5 of the Control of Major Accident Hazards Regulations 1999⁽⁶⁾ or a safety report is required under regulation 7 of those Regulations, the Health and Safety Executive⁽⁷⁾;
- (e) in the case of all applications, the local authority in whose area the installation is situated or the mobile plant is intended to be operated and such other persons as the Scottish Ministers may direct.

(1) See section 1 of the Food Standards Act 1999 (c. 28).

(2) 1994 c. 39.

(3) S.I.1994/2716.

(4) 1964 c. 40.

(5) 1965 c. 57; section 1 was amended by S.I. 1974/2056 and S.I. 1990/1918.

(6) S.I. 1999/743.

(7) See section 10 of the Health and Safety at Work etc. Act 1974 (c. 37).

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10. Paragraph 9 shall not apply in relation to an application for a permit to operate an installation involving only the burning of waste oil in an appliance with a rated thermal input of less than 0.4 megawatts.

11.—(1) If SEPA proposes to grant a permit subject to an off-site condition, it shall, before granting the permit, give a notice which complies with sub-paragraph (2) to every person appearing to it to be a person falling within sub-paragraph (3).

(2) A notice served under sub-paragraph (1) shall—

- (a) set out the off-site condition in question;
- (b) indicate the nature of the works or things which that condition might require the holder of the permit to carry out or do; and
- (c) specify the period allowed for the purpose of paragraph 12 for making representations to SEPA relating to the condition or its possible effects and the manner in which any such representations are to be made.

(3) A person falls within this sub-paragraph if—

- (a) that person is the owner, tenant or occupier of the land; and
- (b) that land is land in relation to which it is likely that, as a consequence of the permit being issued subject to the off-site condition in question, rights will have to be granted by virtue of regulation 9(13) to the holder of the permit.

(4) In sub-paragraph (3), “owner” means the person (other than a creditor in a heritable security not in possession of the security subjects) for the time being entitled to receive or who, if the land were let, would be entitled to receive, the rents of the land in connection with which the land is used and includes a trustee, factor, guardian or curator and in the case of public or municipal land includes the persons to whom management of the land is entrusted.

12.—(1) Any representations made by any persons within the period allowed shall be considered by SEPA in determining the application.

(2) For the purpose of sub-paragraph (1), the period allowed for making representations is—

- (a) in the case of persons to whom notice is given pursuant to paragraph 9 or 11, the period of 28 days beginning with the date on which notice is given under the relevant paragraph;
- (b) in the case of other persons, the period of 28 days beginning with the date on which the application is advertised pursuant to paragraph 5.

13. In the case of an application for a permit to operate a Part A installation, any relevant information obtained or conclusion arrived at pursuant to Articles 5, 6 and 7 of Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment in relation to the installation shall be taken into consideration by SEPA in determining the application.

14.—(1) The Scottish Ministers may give directions to SEPA requiring that any particular application or any class of applications for a permit shall be referred to them for determination pending a further direction under sub-paragraph (6).

(2) SEPA shall inform the applicant of the fact that the application is being referred to the Scottish Ministers and forward to them any representations which have been made to SEPA within the period allowed.

(3) Where an application for a permit is referred to them under sub-paragraph (1), the Scottish Ministers may afford the applicant and SEPA an opportunity of appearing before and being heard by a person appointed by them and they shall do so in any case where a request is duly made by the applicant or SEPA to be so heard.

(4) A request under sub-paragraph (3) shall be in writing (or in electronic form) and shall be made within the period of 21 days beginning with the day on which the applicant is informed that the application is being referred to the Scottish Ministers.

(5) Paragraphs 4(2) to (10) of Schedule 8 shall apply to a hearing held under sub-paragraph (3) as they apply to a hearing held under paragraph 4(1) of that Schedule but with the following modifications:—

- (a) with the substitution in sub-paragraph (3) for the reference to the appellant of a reference to the applicant;
- (b) with the substitution in sub-paragraph (4)—
 - (i) for the reference to the appeal of a reference to the application; and
 - (ii) for the reference to every person mentioned in paragraph 3(1)(a) of Schedule 8 and every person mentioned in paragraph 3(1)(b) and (c) of that Schedule who has made representations to the Scottish Ministers of a reference to every person who was required to be given notice under paragraph 9 of this Schedule and to any person who made representations to SEPA with respect to the subject matter of the application;
- (c) with the substitution in sub-paragraph (7)—
 - (i) for the reference in sub-paragraph (7)(a) to the appellant of a reference to the applicant;
 - (ii) for the reference in sub-paragraph (7)(c) to any person required under paragraph 3(1) (a) of Schedule 8 to be notified of the appeal of a reference to any person required under paragraph 9 of this Schedule to be notified of the application.

(6) In relation to SEPA and the applicant, regulation 22(5) and (6) shall apply to any determination by the Scottish Ministers of any application referred to them under sub-paragraph (1) as it applies to decisions made by the Scottish Ministers under regulation 22(1) or (2).

(7) On determining any application transferred under this paragraph the Scottish Ministers shall (or, on determining an appeal, the sheriff, may) give to SEPA such a direction as considered fit as to whether it is to grant the application and, if so, as to the conditions that are to be attached to the permit by means of the variation notice.

15.—(1) Except in a case where an application has been referred to the Scottish Ministers under paragraph 14 and subject to paragraph 18, SEPA shall give notice of its determination of an application for a permit within the period of 4 months beginning with the day on which it received the application or within such longer period as may be agreed with the applicant.

(2) For the purpose of calculating the 4 month period mentioned in sub-paragraph (1), no account shall be taken of—

- (a) any period beginning with the date on which notice is served on the applicant under paragraph 4 and ending on the date on which the applicant furnishes the information specified in the notice;
- (b) any period allowed for making representations in relation to a notice given pursuant to paragraph 11 in so far as that period does not overlap with any other period allowed for making representations in accordance with paragraph 12;
- (c) where a matter falls to be determined for the purposes of regulation 28 or under regulation 29, any period beginning with the date on which the period of 28 days referred to in paragraph 5 ends and ending on the date on which the application is advertised in accordance with paragraph 23(a).

16. If SEPA fails to give notice of its determination of an application for a permit within the period allowed by or under paragraph 15, the application shall, if the applicant notifies SEPA in

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writing (or in electronic form acceptable to SEPA) that the applicant treats the failure as such, be deemed to have been refused at the end of that period.

17. Where the Scottish Ministers are aware that the operation of an installation carrying out an activity listed in Annex I to the Directive in Scotland is likely to have significant negative effects on the environment of another Member State, or where another Member State likely to be significantly affected so requests, they shall forward to the Secretary of State a copy of the application to operate that installation for onward transmission to the other Member State at the same time as the application is advertised pursuant to paragraph 5 (or as soon as they become so aware or receive such a request, if they become so aware or receive such a request after the application is advertised but before the application is determined) in order that the application may serve as the basis for any consultations necessary in the framework of the bilateral relations between the United Kingdom and the other Member State on a reciprocal and equivalent basis, as referred to in Article 17 of the Directive.

18.—(1) Where an application is forwarded for onward transmission to another Member State pursuant to paragraph 17 the Scottish Ministers shall notify the applicant and SEPA and, in a case where the application has not been referred to them under paragraph 14—

- (a) SEPA shall not determine the application until the Scottish Ministers have notified it in writing (or in electronic form) that the bilateral consultations mentioned in paragraph 17 have been completed and have forwarded to it any representations duly made on the application by persons in the other Member State which have been forwarded to the Scottish Ministers; and
- (b) the 4 month period within which to give notice of determination of the application set out in paragraph 15 shall begin on the date on which SEPA receives notification from the Scottish Ministers that the bilateral consultations have been completed.

(2) In determining an application which is forwarded to another Member State pursuant to paragraph 17, SEPA, or the Scottish Ministers if the application has been referred to them, shall take into consideration any representations duly made in the other Member State which have been forwarded to the Scottish Ministers.

19. In paragraphs 17 and 18, “Member State” shall be taken to include Norway, Iceland and Liechtenstein⁽⁸⁾.

(8) The Directive is extended to the European Economic Area by the decision of the EEA Joint Committee No. 27/97 of 30th April 1997 (O.J. L 242, 4.9.97, p.76).