

2003 No. 168

ENVIRONMENTAL PROTECTION

The Anti-Pollution Works (Scotland) Regulations 2003

Made 10th March 2003

Laid before the Scottish Parliament 11th March 2003

Coming into force 1st April 2003

The Scottish Ministers, in exercise of the powers conferred by sections 41(1), 46A(5)(a), 46B(5) and (6), 46C(3), (4)(d) and (4)(e), 104(1)(a) and 105(1) of the Control of Pollution Act 1974(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Anti-Pollution Works (Scotland) Regulations 2003 and shall come into force on 1st April 2003.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

- (a) “the Act” means the Control of Pollution Act 1974; and
- (b) the parties to an appeal are the appellant, SEPA and any person upon whom the appellant considers SEPA should instead have served a copy of a notice in accordance with regulation 4(4)(b) of these Regulations.

(2) A reference in these Regulations to a notice, to anything done in writing or produced in written form, includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(b) which has been recorded and is consequently capable of being reproduced.

(3) In these Regulations—

- (a) any reference to a numbered regulation is a reference to the regulation so numbered in these Regulations; and
- (b) any reference in a regulation or the Schedule to a numbered paragraph is a reference to the paragraph so numbered in that regulation or Schedule.

Content of works notices

3. A works notice shall—

- (a) in any case where it appears to SEPA that any poisonous, noxious or polluting matter or any solid waste matter is likely to enter any controlled waters, describe the matter

(a) 1974 c.40; section 41(1) was amended by the Environment Act 1995 (c.25) (“the 1995 Act”), Schedule 22, paragraph 29; sections 46A to 46D were inserted by the 1995 Act, Schedule 22, paragraph 29(22); section 104(1) was amended by the Water Act 1989 (c.15), Schedule 23, paragraph 7 and was repealed in part by the 1995 Act, Schedule 22, paragraph 29(34) and by Schedule 24; section 105(1) contains definitions of “prescribed” and “regulations” which are relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 2000 c.7.

concerned, and the nature of the risk to controlled waters, identifying the controlled waters which may be affected and the place from which the matter in question is likely to enter those waters;

- (b) in any case where it appears to SEPA that any poisonous, noxious or polluting matter or any solid waste matter is or has been present in any controlled waters, describe the nature and extent of the matter concerned, identifying the controlled waters affected by it;
- (c) specify the works or operations required to be carried out by the person on whom the notice is served, stating that person's name and address;
- (d) give SEPA's reasons for serving the notice on that person and for requiring those works or operations to be carried out;
- (e) inform the person on whom the notice is served of that person's right of appeal under section 46C of the Act (including the time period within which an appeal must be made) and of the requirements imposed by regulation 4 in relation to its exercise;
- (f) state that SEPA is entitled, at any time, to withdraw the notice, extend the period for compliance with any requirement of the notice and with the consent of the person on whom the notice is served, modify any requirement of the notice;
- (g) state that SEPA is entitled (unless the notice is quashed or withdrawn) to recover from the person on whom the notice is served its costs or expenses reasonably incurred in carrying out such investigations as are mentioned in section 46(1A)(a) of the Act; and
- (h) set out the contents of section 46D(1) to (4) of the Act (consequences of not complying with a works notice).

Appeals

4.—(1) A person who wishes to appeal to the Scottish Ministers under section 46C of the Act (appeals against works notices) shall give the Scottish Ministers notice of the appeal.

(2) A notice of appeal shall state—

- (a) the name and address of the appellant and of all persons to be served with a copy of the notice of appeal, in terms of paragraph (4);
- (b) the grounds on which the appeal is made; and
- (c) whether the appellant wishes the appeal to be determined on the basis of written representations or a hearing.

(3) A notice of appeal shall be accompanied by copies of any application, consent, correspondence, decision, notice or other document relevant to the appeal.

(4) At the same time as the appellant gives notice of the appeal to the Scottish Ministers, the appellant shall send a copy of the notice of appeal, together with a list of the documents provided to the Scottish Ministers under paragraph (3), to—

- (a) SEPA; and
- (b) where a ground of appeal is that the appellant considers, having regard to the terms of section 46A(1) of the Act, that the notice should instead have been served on some other person, that person.

(5) If the appellant wishes at any time to abandon the appeal, the appellant shall do so by notice informing the Scottish Ministers and shall send a copy of the notice to SEPA and any other person on whom, in terms of paragraph (4), the appellant was required to serve a copy of the appellant's notice of appeal.

Written representations

5.—(1) Where, in terms of regulation 4(2)(c), the appellant informs the Scottish Ministers that the appellant wishes the appeal to be disposed of on the basis of written representations, SEPA and any party to the appeal other than the appellant, shall submit any written representations to the Scottish Ministers not later than 14 days after receiving a copy of the notice of appeal under regulation 4(4).

(2) The appellant shall submit any further representations by way of response not later than 14 days after receiving the representations under paragraph (1), or the later or latest of them, as the case may be.

(a) Section 46(1A) was inserted by paragraph 29(21)(b), Schedule 22 to the Environment Act 1995.

- (3) The Scottish Ministers may, in any particular case—
- (a) set shorter or longer time limits than those mentioned in this regulation;
 - (b) allow the parties to make representations in addition to those mentioned in paragraphs (1) and (2).
- (4) Any representations made by a party to the appeal shall be dated with the date on which they are submitted to the Scottish Ministers.
- (5) Where any party to the appeal submits any representations to the Scottish Ministers they shall at the same time send a copy to every other party to the appeal.

Hearings

6.—(1) If any party to the appeal so requests, or if the Scottish Ministers so decide, the appeal shall be or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held, or held to any extent, in private).

(2) The Scottish Ministers shall give the parties to the appeal at least 28 days' notice (unless the parties agree to a shorter period of notice) of the date, time and place fixed for the hearing.

(3) In the case of a hearing which is to be held wholly or partly in public, the Scottish Ministers shall, at least 21 days before the date fixed for the hearing (or such shorter period as appears to them reasonable where a shorter period of notice is agreed to in terms of paragraph (2)), publish a copy of the notice given under paragraph (2) in a newspaper circulating in each locality which they consider may be affected by any matter which falls to be determined in relation to the appeal.

(4) The Scottish Ministers may vary the date fixed for the hearing and paragraphs (2) and (3) shall apply to the new date as they apply to the original date.

(5) The Scottish Ministers may also vary the time or place fixed for the hearing and shall give such notice of any such variation as appears to them to be reasonable.

(6) Each party to the appeal is entitled to be heard at the hearing.

(7) Nothing in paragraph (6) shall prevent the person appointed to hear the appeal from permitting any other person to be heard at the hearing and such permission shall not be unreasonably withheld.

(8) After the conclusion of a hearing the person appointed to hear the appeal shall, unless that person was appointed under section 114(1)(a) of the Environment Act 1995(a) (power of Scottish Ministers to delegate their functions of determining appeals), make a report in writing to the Scottish Ministers which shall include that person's conclusions and recommendations or their reasons for not making any recommendations.

Notification of determination

7.—(1) The Scottish Ministers shall notify the appellant in writing of the determination of the appeal and shall provide the appellant with a copy of any report mentioned in regulation 6(8).

(2) The Scottish Ministers shall at the same time send a copy of the report mentioned in paragraph (1) to every other party to the appeal.

Compensation for grant of rights under section 46B

8. The Schedule to these Regulations shall have effect—

- (a) for prescribing the period within which a person who grants, or joins in granting, any rights pursuant to section 46B(2) of the Act may apply for compensation for the grant of those rights;
- (b) for prescribing the manner in which, and the person to whom, such an application may be made; and
- (c) for prescribing the manner of determining such compensation, for determining the amount of such compensation and for making supplemental provision relating to such compensation.

(a) 1995 c.25.

Pollution control registers: amendment

9.—(1) The Control of Pollution (Registers) (Scotland) Regulations 1993(a) shall be amended as follows.

(2) In regulation 2 (interpretation), for the definition of “relevant event” there shall be substituted—

““relevant event” means the service, making, giving or issue of such notice, application, consent, appeal or conviction as is referred to in section 41(1)(a), (b), (c), (f), (k), (l) or (m), the conviction or determination of any appeal referred to in regulation 4B, or the determination (whether at first instance or on appeal) of proceedings referred to in regulation 4C, as the case may be;”

(3) There shall be inserted after regulation 7—

“Particulars of works notices, appeals and convictions for failure to comply with works notices

7A.—(1) The particulars to be included in the register in respect of a works notice under section 46A are—

- (a) the date of the works notice;
- (b) the matters in respect of which the works notice was served;
- (c) the works or operations to be carried out, as specified in the works notice; and
- (d) the date by which the works or operations are to be completed.

(2) The particulars to be included in the register in respect of appeals to the Scottish Ministers under section 46C are—

- (a) the documents provided to the Scottish Ministers in connection with the appeal under that section;
- (b) written notification of the determination of such an appeal; and
- (c) any report accompanying any such written notification.

(3) The particulars of any conviction of a person convicted for an offence under section 46D to be included in the register are—

- (a) the name of the offender;
- (b) the date of conviction;
- (c) the penalty imposed by the court; and
- (d) the name of the court concerned.”.

St Andrew’s House,
Edinburgh
10th March 2003

ROSS FINNIE
A member of the Scottish Executive

SCHEDULE
COMPENSATION FOR GRANT OF RIGHTS

Interpretation**1.** In this Schedule—

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

“grantor” means a person who has granted or joined in granting any rights pursuant to section 46B(2) of the Act; and

“relevant interest” means an interest in land or waters in respect of which rights have been granted pursuant to section 46B(2) of the Act.

Period for making an application

2. An application for compensation shall be made within the period beginning with the date of the grant of the rights in respect of which compensation is claimed and ending on whichever is the latest of the following dates:—

- (a) twelve months after the date of the grant of those rights;
- (b) where there is an appeal against the works notice which imposed the requirements in relation to which the rights in question were granted, 12 months after the date of the final determination or abandonment of the appeal; or
- (c) six months after the date on which the rights were first exercised.

Form of application

3.—(1) An application for compensation shall be made in writing and delivered or sent by pre-paid post to the last known address for correspondence of the person to whom the rights were granted.

(2) The application shall contain, or be accompanied by—

- (a) a description of the grant of rights in respect of which the grantor is applying for compensation, and of any relevant plans;
- (b) a description of the grantor’s relevant interest in respect of which compensation is applied for; and
- (c) a statement of the amount of compensation applied for, distinguishing the amounts applied for under each of sub-paragraphs (a) to (e) of paragraph 4, indicating how the amount applied for under each sub-paragraph has been calculated.

Loss and damage for which compensation payable

4. Compensation shall be payable under this Schedule for loss and damage of the following descriptions:—

- (a) depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the rights;
- (b) loss or damage, in relation to any relevant interest to which the grantor is entitled, which—
 - (i) is attributable to the grant of the rights or the exercise of them;
 - (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 by way of compensation for disturbance, if that interest had been acquired compulsorily under the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947(b) in pursuance of a notice to treat served on the date on which the rights were granted;

(a) 1963 c.51.
(b) 1947 c.42.

- (c) 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 rights or the exercise of them;
- (d) any loss or damage sustained by the grantor, other than in relation to any interest in land to which the grantor is entitled, which is attributable to the grant of the rights or the exercise of them; and
- (e) the amount of any valuation and legal expenses reasonably incurred by the grantor in granting the rights and in the preparation of the application for and the negotiation of the amount of compensation (up to the point of referral to the Lands Tribunal under paragraph 6).

Basis on which compensation assessed

5.—(1) The rules set out in section 12 of the Act (rules for assessing compensation) shall, so far as applicable and subject to any necessary modifications, have effect for the purposes of paragraph 4 as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(2) Where the relevant interest in respect of which compensation is to be assessed is subject to a standard security within the meaning of section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970(a)–

- (a) the compensation shall be assessed as if the interest were not subject to that security;
- (b) no compensation shall be payable in respect of the interest of the creditor (as distinct from the interest which is subject to the security); and
- (c) any compensation which is payable in respect of the interest which is subject to the security shall be paid (subject to the maximum sum due thereunder) to the creditor in that security or, if there is more than one creditor, to the first ranking creditor and shall, in either case, be applied by that person as if it were proceeds of sale.

Payment of compensation and determination of disputes

6.—(1) Amounts of compensation determined under this Schedule shall be payable–

- (a) where the person to whom the rights were granted and the grantor or creditor in a standard security agree that a single payment is to be made on a specified date, on that date;
- (b) where the person to whom the rights were granted and the grantor or such a creditor 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 question of disputed compensation shall be referred to and determined by the Lands Tribunal for Scotland.

(3) In relation to the determination of any such questions, sections 9 and 11 of the Act (procedures on reference to the Lands Tribunal and expenses)(b) shall apply as if–

- (a) the reference in section 9(1) of the Act to section 8 were a reference to subparagraph (1) above; and
- (b) references in section 11 of the Act to the acquiring authority were references to the person to whom the rights were granted.

(a) 1970 c.35.

(b) Section 9 was amended by the Local Government, Planning and Land Act 1980 (c.65), Schedule 33, paragraph 7(2).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, prescribe the contents of anti-pollution works notices served under section 46A of the Control of Pollution Act 1974 (“the 1974 Act”), the procedure to be followed in relation to appeals to the Scottish Ministers against such notices and the procedures relating to compensation for rights of entry in connection with anti-pollution works paid under section 46B of that Act (regulations 3 to 8 and the Schedule).

They also amend the Control of Pollution (Registers) (Scotland) Regulations 1993 so as to apply the general provisions as to entries on the register kept by SEPA under section 41 of the 1974 Act to works notices, appeals against works notices and convictions under section 46D of the 1974 Act, and to prescribe the particulars of such notices, appeals and convictions to be placed on the register (regulation 9).

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£2.00

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Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland
300 03/03 19593

