
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 348

**The Water Environment (Controlled
Activities) (Scotland) Regulations 2005**

PART VIII

Appeals

Appeals to the Scottish Ministers

46. The following persons, namely:—

- (a) a person who has been refused the grant of an authorisation in accordance with regulation 15(3) or is deemed to have been refused the grant of an authorisation in accordance with regulation 16(3);
- (b) a person who has been granted a form of authorisation under regulation 15 which is different from the form of authorisation which that person believes ought to have been granted;
- (c) a person who is aggrieved by the terms and conditions attached to that person's authorisation in accordance with regulation 8 or 9;
- (d) a person who has been served with a variation notice under regulation 20(2) or is aggrieved by the conditions attached to that variation notice;
- (e) a person who has been refused the variation of an authorisation on request under regulation 21;
- (f) a person whose application under regulation 22 for SEPA to effect the transfer of an authorisation has been refused; or who is aggrieved by the conditions attached to that person's authorisation to take account of such a transfer;
- (g) a person whose application to surrender an authorisation under regulation 24(3) has been refused or who is aggrieved by the conditions attached to that authorisation in order to take account of the surrender;
- (h) a person whose authorisation has been suspended or revoked (in whole or in part) under regulation 26;
- (i) a person on whom a notice has been served under regulation 28(2), or who is aggrieved by the terms of that notice; and
- (j) where SEPA has determined that information is not commercially confidential under Part VI, the person to whom, or whose business, that information relates,

may appeal against the decision of SEPA to the Scottish Ministers.

Determination of Appeals

47. On determining an appeal against a decision of SEPA referred to in regulation 46, the Scottish Ministers may—

- (a) affirm the decision, or any part of it;
- (b) where the decision was a refusal to—
 - (i) grant an authorisation;
 - (ii) grant a form of authorisation; or
 - (iii) vary any condition of an authorisation,
 direct SEPA to grant the authorisation, the form of authorisation or vary the conditions of the authorisation, as the case may be;
- (c) where the decision was as to the conditions attached to an authorisation, quash or vary all or any of the conditions of the authorisation;
- (d) where the decision was a refusal to effect the transfer of, or accept the surrender of, an authorisation, direct SEPA to effect the transfer or accept the surrender, as the case may be;
- (e) where the decision was to serve a notice under regulation 20(2), 26 or 28(2), either quash or affirm the notice, and if they affirm it, they may do so in its original form or with such modifications as they may think fit;
- (f) where the decision was a determination that information is not commercially confidential, either affirm the determination or quash it,

and where they exercise any of the powers in paragraph (b), (c) or (e) the Scottish Ministers may give directions as to the conditions to be attached to the authorisation or the terms of the notice, as the case may be.

Effect of notices etc. during consideration of appeal

- 48.**—(1) Where an appeal is against—
- (a) a notice served under regulation 20(2) the notice shall not take effect until the day following the day on which the appeal is finally determined or withdrawn;
 - (b) a determination under Part VI that information is not commercially confidential, the information shall not be entered in the register until the day following the day on which the appeal is finally determined or withdrawn.
- (2) Where an appeal relates to—
- (a) the conditions attached to an authorisation under regulation 8 or 9, the bringing of the appeal shall not have the effect of suspending the operation of the conditions;
 - (b) a notice under regulation 26 or 28(2), the bringing of the appeal shall not have the effect of suspending the operation of the notice.

Appeals – miscellaneous

49.—(1) The provisions of regulation 15(1) apply where the Scottish Ministers, in exercising any of the powers in regulation 47, give directions as to the conditions to be attached to an authorisation under regulation 8 or 9 as they would apply to SEPA when determining the conditions of the authorisation.

(2) Schedule 9, which makes provision for procedures for appeals under regulation 46, has effect.

(3) Section 114 of the Environment Act 1995⁽¹⁾ (delegation of reference of appeals) shall apply to this Part and to Schedule 9 as it applies to appeals referred to in that section.

(1) 1995 c. 25, amended by the Pollution Prevention and Control (Scotland) Regulations 2000 (S.S.I. 2000/323).

