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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 209**

**The Water Environment (Controlled Activities) (Scotland) Regulations 2011**

**PART IV**

**Modification and termination of authorisations**

**Review of authorisations**

**21.**—(1) SEPA must periodically review authorisations granted under regulations 7 and 8, and may do so at any time.

(2) SEPA must periodically review the provisions of Schedule 3 and must make recommendations, in writing, to the Scottish Ministers as to any changes to that Schedule which it considers necessary or appropriate.

**Variation of authorisation**

**22.**—(1) Whether or not as a result of a review under regulation 21(1), SEPA may vary an authorisation granted under regulation 7 or 8.

(2) A variation under paragraph (1) may include removing, adding or amending any condition of an authorisation.

**Procedure for variation**

**23.**—(1) Regulations 11, 12, 13, 14, 15(1) and 15(6) apply when SEPA is considering variation of an authorisation under regulation 22 as if the variation proposed by SEPA is an application, and the responsible person or operator, as the case may be, is the applicant.

(2) Subject to regulation 16, SEPA must determine whether—

- (a) to grant; or
- (b) not to grant,

the variation of an authorisation under paragraph (1).

(3) If SEPA determines to grant the variation of an authorisation under paragraph (1), it must serve notice on the applicant specifying—

- (a) the variations being made to the authorisation; and
- (b) the date on which the variations are to take effect which must not be less than 3 months from the date on which the notice was served.

(4) If SEPA determines not to grant the variation of an authorisation which it has proposed under paragraph (1) it must give reasons for that determination to the applicant.

(5) SEPA may issue a varied authorisation to the applicant incorporating the variations made under this regulation.

(6) If SEPA issues a notice under regulation 13(2) requiring the responsible person or operator to advertise the variation of an authorisation proposed by SEPA under this regulation, and that person fails to comply with that notice, SEPA may advertise the proposed variation, and is entitled to recover the costs it reasonably incurs in doing so from that person.

### **Request for variation**

**24.**—(1) A responsible person or operator may apply to SEPA for a variation of an authorisation granted under regulation 7 or 8.

(2) The provisions of regulations 11, 12, 13, 14, 15(1), 15(6) and 17 apply to an application under paragraph (1) as if it were an application.

(3) Subject to regulation 16, SEPA must either grant or refuse to grant (in whole or in part) an application under paragraph (1), and if it refuses to grant the application it must give its reasons for such refusal.

(4) If SEPA grants an application under paragraph (1), it must serve notice on the applicant specifying—

- (a) the variations being made to the authorisation; and
- (b) the date on which the variations are to take effect, which must not (unless agreed by the applicant in writing) be less than 3 months from the date on which the notice was served.

(5) SEPA may issue a varied authorisation to the applicant incorporating the variations made under this regulation.

### **Transfer of authorisation**

**25.**—(1) A responsible person may jointly with another person apply to transfer an authorisation granted under regulation 8 (in whole or in part) to the other person.

(2) The provisions of regulation 11 and 14(1) to (3) apply to an application under paragraph (1) as if it were an application.

(3) SEPA must not grant an application under paragraph (1) unless it is satisfied that the person to whom the authorisation is to be transferred will secure compliance with the terms, limitations and conditions specified in the authorisation, or relevant part thereof.

(4) SEPA must determine an application under this regulation within 2 months beginning with the date on which it receives the application, or such longer period as may be agreed with the applicant in writing.

(5) SEPA must notify the applicant of its determination and, if it refuses the application, give its reasons for doing so.

(6) If SEPA fails to determine the application within the period specified in paragraph (4), it will be treated as having been granted.

### **Conditions of transferred authorisations**

**26.**—(1) If an application under regulation 25 is granted, or treated as having been granted, the following provisions of this regulation apply.

(2) In the case of a transfer of the whole of an authorisation SEPA must send a copy of the amended authorisation specifying—

- (a) the date on which the transfer is to have effect; and
- (b) the responsible person in respect of the authorisation,

to that responsible person.

- (3) In the case of transfer of part of an authorisation, SEPA must—
- (a) issue a new authorisation in respect of the part to be transferred, which specifies—
    - (i) the controlled activities being transferred and any conditions applying to them;
    - (ii) the responsible person for that authorisation; and
    - (iii) the date on which the new authorisation is to have effect,to the responsible person for that part; and
  - (b) issue an amended authorisation in respect of the part not so transferred which specifies—
    - (i) the controlled activities in relation to that part and any conditions applying to them;
    - (ii) the responsible person for that authorisation; and
    - (iii) the date on which the amended authorisation is to have effect,to the responsible person for that part.

### **Surrender of authorisation**

**27.**—(1) This regulation applies if an authorisation granted under regulation 7 or 8 is in force and either—

- (a) it is intended to cease the authorised activity; or
  - (b) the authorised activity has ceased.
- (2) Where paragraph (1) applies and the authorisation is under regulation 7, the operator—
- (a) where possible, must notify SEPA of the intention to cease the authorised activity and the date on which it will cease as soon as that information is known to the operator; and
  - (b) must in any event notify SEPA of the cessation of the activity within 7 days of that cessation.

(3) Where paragraph (1) applies and the authorisation is under regulation 8, the responsible person shall apply to SEPA to surrender the authorisation or part of it, and SEPA must grant or refuse that application for surrender.

(4) The provisions of regulations 11, 13 and 14(1) to (3) apply to an application under paragraph (3) as if it were an application.

(5) Before determining whether to grant or refuse an application under paragraph (3) SEPA must—

- (a) assess the risk to the water environment posed by the cessation of the activity referred to in paragraph (1); and
- (b) take account of the steps (if any) that have been taken and identify any steps necessary to—
  - (i) avoid any risk of adverse impact on the water environment resulting from the cessation of the authorised activity; and
  - (ii) leave the relevant part of the water environment affected by the authorised activity in a state which will permit compliance with any relevant requirements of the legislation referred to in Part 1 of Schedule 4.

### **Determination of application for surrender**

**28.**—(1) Subject to regulation 16, SEPA must give notice to the applicant of its determination of an application under regulation 27(3) within 2 months beginning with the date on which SEPA receives the application, or within such longer period as it may agree with the applicant in writing.

(2) The provisions of regulation 17(2) apply in respect of the period mentioned in paragraph (1) as they apply in respect of the periods mentioned in regulation 17(1).

(3) If SEPA grants an application under regulation 27(3), the notice given under paragraph (1) must—

(a) if SEPA has identified necessary steps in accordance with regulation 27(5)(b), specify those steps, require the responsible person to take those steps, and provide that the authorisation ceases to have effect on the date SEPA confirms to the applicant in writing that those steps have been completed to its satisfaction; and

(b) in any other case, specify the date on which the authorisation ceases to have effect.

(4) In the case of a partial surrender, if SEPA is of the opinion that it is necessary to vary the authorisation to take account of the surrender, it must send a notice to the applicant specifying—

(a) variations to the authorisation consequent on the partial surrender; and

(b) the date on which the authorisation, as varied, takes effect.

(5) If SEPA has failed to determine the application within the period specified in paragraph (1) the application will be treated as being granted at the end of that period, and the authorisation ceases to have effect at the end of that period.

### **Suspension and revocation of authorisation**

**29.**—(1) SEPA may at any time suspend or revoke an authorisation (in whole or in part) by serving a notice on the responsible person or operator, as the case may be.

(2) A notice under paragraph (1) must specify—

(a) in the case of a partial suspension or partial revocation, the extent to which the authorisation is being revoked or suspended;

(b) the date on which the suspension or revocation takes effect, which must be at least 28 days after the date on which the notice is served; and

(c) the reasons for the suspension or revocation,

(3) An authorisation ceases to have effect (in whole or in part) from the date specified in the notice under paragraph (1).

(4) SEPA may at any time lift the suspension of an authorisation under paragraph (1) (in whole or in part) by serving a notice on the responsible person or operator, as the case may be.

(5) A notice under paragraph (4) must specify—

(a) in the case of a partial lifting of the suspension, the extent to which the authorisation remains suspended;

(b) the date on which the lifting of the suspension or partial lifting of the suspension takes effect; and

(c) the reasons for the lifting or partial lifting of the suspension.

(6) An authorisation has effect (in whole or in part) from the date specified in the notice under paragraph (4).

### **Consolidated authorisations**

**30.** If there is more than one authorisation applying to controlled activities which are carried on by the same responsible person or operator, SEPA may replace those authorisations with a consolidated authorisation subject to the same conditions as the authorisations being replaced.