
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 219

The Environmental Authorisations (Scotland) Regulations 2018

PART 8

Information and publicity

Power to require the provision of information

37.—(1) For the purposes of exercising or discharging its functions under these Regulations, SEPA or the Scottish Ministers may, by notice served on a person (whether or not the person is carrying on a regulated activity), require that person to provide such information in such form and within such period as is specified in the notice.

(2) For the purposes of this regulation the—

(a) discharge by the Scottish Ministers of an obligation of the United Kingdom under the EU Treaties or any international agreement relating to the environment is treated as a function of the Scottish Ministers under these Regulations; and

(b) compilation of information (for an inventory or otherwise)—

(i) on emissions;

(ii) on energy consumption or the efficiency with which energy is used;

(iii) on waste and on the origins and destinations of waste,

is treated as a function of SEPA or the Scottish Ministers (as applicable) under these Regulations.

(3) The information which a person may be required to provide under paragraph (1) includes information which, although it is not in the possession of that person or would not otherwise come into the possession of that person, is information which it is reasonable to require that person to obtain for the purposes of complying with the notice.

(4) Nothing in this regulation authorises the Scottish Ministers or SEPA to require disclosure of anything which a person would be entitled to refuse to disclose on grounds of confidentiality in proceedings in the Court of Session.

Register

38.—(1) SEPA must maintain a register (“the register”) containing the information described in Table 1 of schedule 3.

(2) SEPA must make the register available for inspection by the public—

(a) free of charge; and

(b) at all reasonable times.

(3) The register may be kept in any form (including electronic form).

(4) Schedule 3 has effect.

Register – exclusions

39.—(1) In any case where SEPA does not include on the register a representation made to it in response to a consultation or to a notice advising of an appeal on request of the person who made it, SEPA must include on the register confirmation that—

- (a) a representation has been made; and
- (b) the person has not requested it be made public.

(2) SEPA must not include on the register a confirmation which would allow identification of the person.

(3) Where an application is withdrawn by the applicant, or is deemed withdrawn, before it is determined, SEPA must not include on the register any particulars of that application after a period of 3 months has passed beginning with the date on which the application was withdrawn or deemed withdrawn.

(4) Nothing in regulation 38(1) requires SEPA to include on the register—

- (a) particulars relating to an authorisation (including applications and any other information relating to the authorisation) if a period longer than 12 months has passed beginning with the last date on which the authorisation was in force;
- (b) particulars relating to an application if a period longer than 12 months has passed beginning with the later of the dates on which—
 - (i) SEPA refused the application; or
 - (ii) the Scottish Ministers affirmed SEPA's refusal of the application on appeal;
- (c) monitoring information provided by an authorised person relating to a particular regulated activity if a period longer than 6 years has passed beginning with the date on which the measurement to which the monitoring information relates was made;
- (d) information relating to a regulated activity which has been superseded by new information relating to that activity for a period longer than 6 years after that new information is made available; or
- (e) information contained in an application form relating to convictions for offences by an individual subject to the Rehabilitation of Offenders Act 1974⁽¹⁾.

(5) Paragraph (4)(c) does not apply to any aggregated monitoring data relating to activities generally or for any class of activities.

Commercially confidential information

40.—(1) For the purposes of these Regulations, information is commercially confidential to the extent that its disclosure would, or would be likely to, prejudice substantially the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest.

(2) Information which is commercially confidential may only be included in the register if the person giving the information to SEPA consents to its inclusion.

(3) Nothing in this regulation prevents SEPA from including information in the register where it is contained in or otherwise held with other information not made available unless the information is not reasonably capable of being separated for the purposes of inclusion.

(1) 1974 c.53.

Application for commercial confidentiality

41.—(1) Where information is given to SEPA for the purposes of these Regulations, the person giving it may apply to SEPA, at the same time the information is given to SEPA, to have the information excluded from the register on the ground that it is commercially confidential (as regards that person or another person).

(2) The application under paragraph (1) must include representations indicating why the applicant considers the information commercially confidential, together with such further information in support of the application as the applicant considers appropriate.

(3) The provisions of paragraph 6(2) and (3) of schedule 1 apply to an application under paragraph (1) as they do to any other application.

(4) SEPA must decide whether the information is commercially confidential and must give notice of its decision to the applicant within 28 days beginning with the date on which the application is received or within such longer period as SEPA may agree with the applicant in writing.

(5) If SEPA fails to give notice of its decision within the period allowed under paragraph (4), the information must be treated as commercially confidential.

Review of decision on commercial confidentiality

42.—(1) SEPA may review a decision under this Part that information is commercially confidential.

(2) In carrying out a review under paragraph (1), SEPA must—

- (a) give the person to whom the decision relates notice that it is reviewing that decision; and
- (b) give the person a reasonable opportunity of making representations regarding the commercial confidentiality of the information, including an indication of why the person may consider that the information remains commercially confidential, together with such further information in support of those representations as the person considers appropriate.

(3) The provisions of paragraph 6(2) of schedule 1 apply to representations made under paragraph (2) as they do to an application.

(4) SEPA must decide whether or not the information remains commercially confidential and must give notice of its decision to the person.

Effect of decision

43. Subject to regulation 57(2)(d), if SEPA has decided under this Part that information is not commercially confidential, the information must not be included on the register until the end of the period of 28 days beginning with the date on which the decision was notified.

Information relating to criminal proceedings

44. Nothing in this Part requires SEPA to include information on the register to the extent that its disclosure would, or would be likely to, prejudice substantially the course of justice, the ability of a person to receive a fair trial or the ability of any public authority to conduct an inquiry of a criminal or disciplinary nature.

Register – exclusion of information affecting national security

45.—(1) Information must not be included in the register if and so long as a direction by the Secretary of State or the Scottish Ministers⁽²⁾ is in force in relation to that information under section 21 of the 1990 Act (exclusion from registers of information affecting national security).

(2) Information must not be included in the register if and so long as a direction by the Secretary of State is in force in relation to that information under section 20(6) of the 1990 Act.

(3) A direction under section 21(2) of the 1990 Act applies to the register as it applies to the register maintained under section 20 of that Act (“the 1990 Act register”), and no information referred by SEPA under section 21(2)(b) of the 1990 Act is to be included in the register until the question of its inclusion is determined for the purposes of that section.

(4) A direction under section 20(6) of the 1990 Act applies to the register as it applies to the 1990 Act register.

(5) Section 21(3) and (4) of the 1990 Act applies to the register as it applies to the 1990 Act register, and no information notified under section 21(4)(b) of the 1990 Act may be included in the register until the question of its inclusion is determined for the purposes of section 21 of the 1990 Act.

(6) In this regulation, “the 1990 Act” means the Environmental Protection Act 1990⁽³⁾.

(2) The functions of the Secretary of State under section 21(1), (2) and (4) of the Environmental Protection Act 1990 (c.43) so far as they are exercisable in or as regards Scotland may by virtue of Article 3 of S.I. 1999/1750 be exercised by the Scottish Ministers after consultation with the Secretary of State.

(3) 1990 c.43.