
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

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

PART VI

Information and Register

Power of the Scottish Ministers and SEPA to obtain information

36.—(1) The Scottish Ministers may require SEPA, by notice served on it, to furnish such information about the discharge of its functions under these Regulations as the Scottish Ministers may require.

(2) SEPA may serve on any person a notice requiring that person to furnish to SEPA, within a period or at times specified in the notice and in a form so specified, any information so specified which SEPA reasonably considers is necessary for the purpose of any function conferred on SEPA by—

- (a) the Act;
- (b) the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003(1);
- (c) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004(2); and
- (d) these Regulations.

(3) The information which a person may be required to furnish under paragraph (2) must include 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 information 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.

Public register of information

37.—(1) Subject to paragraph (5) and regulation 38, it is the duty of SEPA to maintain a register containing the particulars described in Schedule 8.

(2) If, by virtue of regulation 38, information of any description is not included in the register maintained by SEPA under this regulation, a statement must be entered in the register indicating the existence of information of that description.

(3) It is the duty of SEPA—

(1) [S.I. 2003/3245](#).
(2) [S.I. 2004/99](#).

- (a) to secure that the register maintained by it under this regulation is available, at all reasonable times, for inspection by the public free of charge; and
 - (b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges.
- (4) The register maintained by SEPA under this regulation may be kept in any form.
- (5) If the Scottish Ministers exercise functions under regulation 55, they must send any particulars referred to in Schedule 8 which relate to that exercise of functions to SEPA, and SEPA must enter those particulars in the register.

Confidential information

38.—(1) Information relating to the affairs of any individual or business which is commercially confidential may only be included in the register if—

- (a) the individual or the person for the time being carrying on the business gives consent to that inclusion; or
- (b) the information requires to be included in the register in pursuance of a direction under regulation 43.

(2) For the purposes of these Regulations, information is only commercially confidential in relation to the affairs of any individual or business if SEPA has determined that putting it on the register would prejudice to an unreasonable degree the commercial interests of that individual or business.

Application for determination of commercial confidentiality

39.—(1) If information is given to SEPA for the purposes of these Regulations, the person giving it may apply 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 regulation 14(1) and (2) apply to an application under paragraph (1) as they do to an application.

(4) SEPA must determine whether the information is or is not commercially confidential and must give notice of its determination to the applicant within 28 days beginning with the date of the application or within such longer period as may be agreed with the applicant in writing.

(5) The provisions of regulation 17(2)(b) apply in respect of the period mentioned in paragraph (4) as they apply in respect of the periods mentioned in regulation 17(1).

(6) If SEPA fails to give notice of its determination of an application under paragraph (2) within the period allowed by or under paragraph (4), the information will be treated as commercially confidential.

Procedure relating to information which might be confidential

40.—(1) If it appears to SEPA that any information that has been obtained by it under or by virtue of any provision of these Regulations and is required to be included in the register, might be commercially confidential, SEPA must—

- (a) give to the person to whom or whose business it relates notice that that information is required to be included in the register; and
- (b) give that person a reasonable opportunity—

- (i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and
- (ii) of making representations to SEPA indicating why the person considers the information to be commercially confidential, together with such further information in support of the objection as the person considers appropriate.

(2) The provisions of regulation 14(1) and (2) apply to an objection under paragraph (1) as they do to an application.

(3) SEPA must determine whether the information is or is not commercially confidential and must give notice of its determination to the person to whom or whose business it relates.

(4) This regulation does not apply if the information is the subject of an application under regulation 39.

Review of determination of commercial confidentiality

41.—(1) SEPA must periodically review its determinations under this Part that information is commercially confidential, and may do so at any time.

(2) If SEPA is carrying out a review under paragraph (1), it must—

- (a) give the person to whom or to whose business the determination relates notice that it is reviewing that determination; and
- (b) give that 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 regulation 14(1) and (2) apply to representations made under paragraph (2) as they do to an application.

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

Effect of determination

42. Subject to the provisions of regulation 52(1)(b), if SEPA has determined under this Part that information is not commercially confidential, the information must not be entered in the register until the end of the period of 21 days beginning with the date on which the determination was notified.

Directions to SEPA concerning confidential information

43. The Scottish Ministers may give to SEPA a direction as to specified information, or descriptions of information, which the public interest requires to be included in the register, notwithstanding that the information may be commercially confidential.