
STATUTORY INSTRUMENTS

2012 No. 3038

The Greenhouse Gas Emissions
Trading Scheme Regulations 2012

PART 8

Appeals

CHAPTER 1

General

Interpretation

72. In this Part—

- (a) “appeal body” has the meaning given by regulation 75;
- (b) “decision” means—
 - (i) a notice or deemed refusal under these Regulations; or
 - (ii) an action or decision of the registry administrator or the KP registry administrator;
- (c) “notice” includes—
 - (i) in the case of a notice determining an application for a permit or the transfer of the permit, the provisions of any permit attached to the notice; and
 - (ii) in the case of a notice determining an application for an aviation emissions plan, the conditions included in the plan issued by the notice.

Rights of appeal

73.—(1) Subject to paragraph (3), the following persons may appeal to the appeal body—

- (a) a person who is aggrieved by a decision determining any application made by them under these Regulations;
 - (b) a person who is aggrieved by a notice served on them under any provision mentioned in paragraph (2).
- (2) Those provisions are—
- (a) regulation 11(2), (3)(b) or (4);
 - (b) regulation 14(1);
 - (c) regulation 26(2);
 - (d) regulation 37(1), (2)(b) or (3);
 - (e) regulation 43(1);
 - (f) regulation 44(4);
 - (g) regulation 45(2);

- (h) regulation 50(1) or (3);
 - (i) paragraph 8(1) or (4) of Schedule 5;
 - (j) paragraph 6(7)(a) of Schedule 6, in relation to a decision to make a request under paragraph 6(5)(a) or (b) of that Schedule;
 - (k) paragraph 7(11)(a) of Schedule 6, in relation to a decision to make a request under paragraph 7(9)(a) of that Schedule;
 - (l) paragraph 7(11)(b) of Schedule 6;
 - (m) paragraph 8(11)(a) of Schedule 6, in relation to a decision to make a request under paragraph 8(9)(a) or (b) of that Schedule;
 - (n) paragraph 11(2) of Schedule 6;
 - (o) paragraph 10(2) of Schedule 7.
- (3) An appeal under paragraph (1) may not be made to the extent that the decision implements—
- (a) a direction given by the authority under section 40 of the Environment Act 1995 or regulation 37 of the Northern Ireland Regulations(1), or
 - (b) a direction given by an appeal body under these Regulations.

Rights of appeal: registries

74.—(1) A person who is aggrieved by a decision of the registry administrator referred to in a provision of the Registries Regulation 2011 mentioned in paragraph (2) may exercise the right to object given by that provision by appealing to the appeal body.

(2) Those provisions are—

- (a) Article 20(3);
- (b) Article 22(6);
- (c) Article 23(3);
- (d) Article 30(5);
- (e) Article 31(6).

(3) A person who is aggrieved by a decision of the KP registry administrator referred to in a provision of the Registries Regulation 2010 mentioned in paragraph (4) may exercise the right to object given by that provision by appealing to the appeal body.

(4) Those provisions are—

- (a) Article 18(3);
- (b) Article 20(4)
- (c) Article 21(1);
- (d) Article 27(5);
- (e) Article 28(5).

(5) On receiving notice under regulation 80(10), the account holder may appeal to the appeal body against the decision to set a registry account to blocked status.

Appeal body

75.—(1) In the case of an appeal against a decision of SEPA, the appeal body is the Scottish Ministers.

(1) Regulation 37 is modified by regulation 7(2) of these Regulations.

(2) In the case of an appeal against a decision of the chief inspector, the appeal body is the Planning Appeals Commission.

(3) In the case of an appeal against any other decision the appeal body is the First-tier Tribunal.

Effect of an appeal

76.—(1) Subject to paragraphs (2) to (4), the bringing of an appeal under regulation 73 suspends the effect of the decision pending the final determination or withdrawal of the appeal.

(2) The bringing of an appeal does not suspend the effect of—

- (a) a decision refusing an application;
- (b) a deemed refusal;
- (c) a notice under—
 - (i) regulation 11(2), (3)(b) or (4);
 - (ii) regulation 37(1), (2)(b) or (3);
 - (iii) regulation 43(1);
 - (iv) paragraph 8(1) or (4) of Schedule 5; or
 - (v) paragraphs 6(7)(a), 7(11)(a) or (b), or 8(11)(a) of Schedule 6.

(3) Where (following an application for a permit or for the transfer of a permit) a permit has been granted or varied, the bringing of an appeal against the provisions of the permit or the terms of the variation does not suspend the effect of those provisions or terms.

(4) Where an aviation emissions plan has been issued following an application under regulation 32, the bringing of an appeal against the conditions included in the plan does not suspend the effect of those conditions.

(5) The bringing of an appeal against a determination of emissions under regulation 44(4) suspends the effect of the decision only for the purpose of assessing whether there has been compliance with regulation 41 or 42.

(6) The bringing of an appeal under regulation 74 does not suspend the effect of the decision pending the final determination or withdrawal of the appeal.

Determination of an appeal

77.—(1) In determining an appeal under regulation 73(1) the appeal body may, subject to paragraph (3)—

- (a) affirm the decision;
- (b) quash the decision or vary any of its terms;
- (c) substitute a deemed refusal with a decision of the appeal body; or
- (d) give directions to the regulator as to the exercise of the regulator's functions under these Regulations.

(2) In determining an appeal under regulation 74 the appeal body may give directions to—

- (a) the registry administrator as to the exercise of its functions under the Registries Regulation 2011, or
- (b) the KP administrator as to the exercise of its functions under the Registries Regulation 2010.

(3) The appeal body may not make a determination that would result in a decision which could not otherwise have been made under these Regulations or under the Registries Regulation 2010 or 2011.

Status: *This is the original version (as it was originally made).*
