

## SCHEDULE 3

Regulation 30(6)

### Provisions relating to appeals in Scotland

## PART 1

### Appeals procedure

1. A person (the “appellant”) who wishes to appeal under regulation 26(8) or 28(11) must—
  - (a) give the Scottish Ministers written notice of the appeal together with the relevant documents (together these are referred to as the “notice of appeal”), and
  - (a) at the same time, give SEPA a copy of the notice of appeal.
2. The relevant documents are—
  - (a) a written statement of the grounds of appeal;
  - (b) a copy of any relevant correspondence between the appellant and SEPA; and
  - (c) a copy of any enforcement notice which is the subject of the appeal.
3. The notice of appeal must be given in accordance with paragraph 31 before the expiry of the period of 28 days beginning with the day on which the enforcement notice was given.
4. The appellant may withdraw a notice of appeal by—
  - (a) giving the Scottish Ministers written notice stating that the appeal is withdrawn, and
  - (b) giving a copy of the written notice to SEPA.
5. The Scottish Ministers may, in a particular case, allow a notice of appeal to be given after the expiry of the period mentioned in paragraph 3.
6. SEPA must, within 14 days of receipt of the notice of appeal given in accordance with paragraph 1, give notice of it to any person SEPA considers it appropriate to notify.
7. Notice given under paragraph 6 must—
  - (a) describe the subject of the appeal;
  - (b) include a statement that representations about the appeal may be made to the Scottish Ministers in writing within a period of 21 days beginning with the date of the notice;
  - (c) explain that if a hearing is to be held wholly or partly in public (see Part 2), a person who makes representations about the appeal will be notified of the date of the hearing.
8. SEPA must, within 14 days of giving notice under paragraph 6, notify the Scottish Ministers of the persons to whom and the date on which the notice was given.
9. If an appeal is withdrawn, SEPA must give notice of the withdrawal to every person to whom notice was given under paragraph 6.
10. SEPA may make written representations about the appeal to the Scottish Ministers.
11. Any representations by SEPA must be given to the Scottish Ministers within the period of 28 days beginning with the day on which SEPA receives the copy of the notice of appeal.
12. The Scottish Ministers may, in a particular case, allow SEPA's representations to be given after the expiry of the period mentioned in paragraph 10.
13. SEPA must, at the same time as giving the representations to the Scottish Ministers, give a copy of the representations to the appellant.

**Changes to legislation:** There are currently no known outstanding effects for the The Control of Mercury (Enforcement) Regulations 2017, SCHEDULE 3. (See end of Document for details)

**14.** The appellant may make further written representations relating to SEPA's representations within the period of 28 days beginning with the day on which the appellant receives a copy of SEPA's representations.

**15.** The Scottish Ministers may, in a particular case, allow the appellant's further representations to be given after the expiry of the period mentioned in paragraph 14.

**16.** The appellant must, at the same time as giving the further representations to the Scottish Ministers, give a copy of the representations to SEPA.

**17.** The Scottish Ministers must—

- (a) give to the appellant and SEPA a copy of any representations made to them by persons to whom notice was given under paragraph 6, and
- (b) allow the appellant and SEPA a period of 14 days beginning with the date on which the copy of the representations are given under paragraph (a) in which to make written representations on them.

**18.** The Scottish Ministers may require exchanges of written representations between the parties in addition to those mentioned in paragraphs 10 and 14.

## **PART 2**

### **Public hearings**

**19.** Before determining an appeal under regulation 26(8) or 28(11), the Scottish Ministers may give the appellant and SEPA an opportunity to appear before and be heard by a person appointed by the Scottish Ministers (the “appointed person”).

**20.** A hearing must be held wholly or partly in private if the appointed person so decides.

**21.** Where the Scottish Ministers cause a hearing to be held, they must give the appellant and SEPA at least 28 days' written notice of the date, time and place fixed for the holding of the hearing.

**22.** If the Scottish Ministers, the appellant and SEPA agree, the period for notice under paragraph 21 may be less than 28 days.

**23.** Where any part of a hearing is to be held in public, the Scottish Ministers must, at least 21 days before the date fixed for the holding of the hearing—

- (a) publish notice of the date, time and place fixed for the holding of the hearing in a newspaper circulating in the locality in which the regulated activity which is the subject of the appeal is carried on or is to be carried on;
- (b) give written notice of the date, time and place fixed for the holding of the hearing to every person who was given notice under paragraph 6 and who has made representations to the Scottish Ministers.

**24.** The Scottish Ministers may vary the date fixed for the holding of any hearing.

**25.** If the Scottish Ministers vary the date under 24, they must give such notice of the variation as appears to them to be reasonable.

**26.** The persons entitled to be heard at a hearing are—

- (a) the appellant;
- (b) SEPA.

**27.** Nothing in paragraph 26 prevents the appointed person from allowing any other persons to be heard at the hearing and such permission must not be unreasonably withheld.

**28.** The appointed person must cause notice of the time and place of the hearing to be given to persons appearing to him or her to be interested.

**29.** The appointed person may do one or any combination of the following—

- (a) give a person written notice requiring that person to attend a hearing, at a time and place stated in the notice, to give evidence;
- (b) give a person written notice requiring that person to produce any books or other documents in the custody or under the control of the person which relate to any matter in question at the hearing;
- (c) take evidence on oath, and for that purpose administer oaths.

**30.** But the appointed person must not require any person to produce any book or document or to answer any question which that person would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the inquiry were a proceeding in a court of law.

**31.** A person who is required to give evidence at a hearing or to produce any books or other documents is entitled to have the necessary expenses of attendance and production of books or other documents reimbursed.

**32.** The expenses are to be treated as part of the expenses of the hearing.

**33.** The Scottish Ministers or the appointed person may make an order as to the expenses incurred in relation to a hearing (including a hearing for which arrangements have been made and does not take place)—

- (a) by the Scottish Ministers or the appointed person, and
- (b) by the parties to the appeal.

**34.** The order may specify the person or persons by whom any of the expenses must be paid.

**35.** The Scottish Ministers or the appointed person may treat as expenses incurred—

- (a) the standard amount in respect of each day (or an appropriate proportion of that amount in respect of a part of a day) on which the hearing sits or the appointed person is otherwise engaged on work connected with the hearing;
- (b) expenses actually incurred in connection with the hearing on travelling or subsistence allowances or the provision of accommodation or other facilities for the hearing;
- (c) any expenses attributable to the appointment of an assessor to assist the appointed person;
- (d) any legal expenses or disbursements incurred or made by or on behalf of the Scottish Ministers in connection with the hearing;
- (e) the entire administrative expense of the hearing, including an amount as appears to the Scottish Ministers or the appointed person to be reasonable in respect of general staff expenses and overheads.

**36.** In paragraph 35(a), “the standard amount” means an amount, if any, as the Scottish Ministers may from time to time determine and make details of publicly available.

**37.** Where the Scottish Ministers or the appointed person make an order under paragraph 33 requiring a person to pay expenses, the Scottish Ministers or the appointed person must certify the amount of the expenses.

**38.** The amount certified is a debt due by that person to the Scottish Ministers or the appointed person and is recoverable accordingly.

**39.** After the conclusion of a hearing of an appointed person, the appointed person must give a written report to the Scottish Ministers.

**Changes to legislation:** There are currently no known outstanding effects for the The Control of Mercury (Enforcement) Regulations 2017, SCHEDULE 3. (See end of Document for details)

**40.** The report must include the conclusions and recommendations of the appointed person or the reasons for not making any recommendation.

## **PART 3**

### Determination of appeals

**41.** The Scottish Ministers must—

- (a) give written notice to the appellant setting out their determination of the appeal,
- (b) set out in the notice the reasons for their determination, and
- (c) provide the appellant with a copy of any report under paragraph 39.

**42.** At the same time as giving notice under paragraph 41, the Scottish Ministers must give a copy of the documents listed in paragraph 41(a) to (c) to—

- (a) SEPA,
- (b) any person notified under paragraph 6, if that person subsequently made representations to the Scottish Ministers, and
- (c) if a hearing was held, to any other person who made representations in relation to the appeal at the hearing.

**Changes to legislation:**

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