

SCHEDULES

SCHEDULE 4

GRANT OF PERMITS

PART 2

DETERMINATION OF APPLICATIONS

12.—(1) Subject to paragraph 30, the enforcing authority shall, within the period of 14 days from the date of receiving a duly made application for a permit, give notice of the application, enclosing a copy of it, to the following persons—

- (a) in the case of an application for a permit to operate an installation or Part A mobile plant, the Regional Agency for Public Health and Social Well-being in whose area the installation or mobile plant will be operated;
- (b) in the case of an application for a permit to operate a Part A installation or Part A mobile plant—
 - (i) the Food Standards Agency⁽¹⁾;
 - (ii) where the operation of the installation or mobile plant may involve the release of any substance into a sewer vested in the Department for Regional Development, that Department;
 - (iii) where the operation of the installation or mobile plant may involve an emission which may affect an area of special scientific interest or a European site, the Department of the Environment;
 - (iv) where the operation of the installation or mobile plant may involve the release of any substance into a harbour managed by a harbour authority, that harbour authority;
 - (v) where the operation of the installation or mobile plant may involve the release of any substance directly into sea fisheries waters, the Department of Agriculture and Rural Development;
 - (vi) where the operation of the installation or mobile plant may involve the release of any substance directly into inland fisheries waters, the Department of Culture, Arts and Leisure;
 - (vii) where the operation of the installation or mobile plant may involve the release of any substance directly into waters under the control of the Loughs Agency or Waterways Ireland, the Loughs Agency or Waterways Ireland;
 - (viii) where the application will be determined by the chief inspector, the district council in whose district the installation or mobile plant will be operated; and
 - (ix) where the operation of the installation or mobile plant will involve the carrying out of a specified waste management activity, the Department of the Environment (Planning Service);

(1) See section 1 of the Food Standards Act 1999 (c.28)

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- (c) in the case of an application for a permit to operate a Part B or Part C installation where the operation of the installation may involve an emission which may affect an area of special scientific interest or a European site, the Department of the Environment;
- (d) in the case of an application for a permit to operate an installation or a Part A mobile plant on a site in respect of which a major accident prevention policy document is required under regulation 5 of the Control of Major Accident Hazards Regulations (Northern Ireland) 2000(2) or a safety report is required under regulation 7 of those Regulations, the Health and Safety Executive for Northern Ireland;
- (e) in the case of an application for a permit to operate a Part C installation involving only the carrying out of an activity falling within heads (b), (c), (d) or (e) of Part C of section 1.2 of Part 1 of Schedule 1, the petroleum licensing authority for that installation; and
- (f) in the case of all applications, such other persons as the Department may direct.

(2) In sub-paragraph (1)—

“European site” has the same meaning as in regulation 9(1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995(3);

“harbour authority” has the same meaning as in section 38(1) of the Harbours Act (Northern Ireland) 1970(4);

“Health and Safety Executive for Northern Ireland” means the Health and Safety Executive established under Article 12 of the Health and Safety at Work (Northern Ireland) Order 1978(5);

“Regional Agency for Public Health and Social Well-being” means the Regional Agency for Public Health and Social Well-being established under Article 12 of the Health and Social Care (Reform) Act (Northern Ireland) 2009(6);

“The Loughs Agency” means an agency of the Foyle, Carlingford and Irish Lights Commission, the implementation body for aquaculture and marine matters established under Article 1 of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland establishing implementation bodies(7);

“petroleum licensing authority” means a district council empowered to grant petroleum spirit licences under the Petroleum (Consolidation) Act (Northern Ireland) 1929(8);

“Waterways Ireland” means the implementation body for inland waterways established under Article 1 of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland establishing implementation bodies.

13. Paragraph 12 does not apply in relation to an application for a permit to operate an installation involving only dry cleaning as defined in section 7 (SED activities) of Part 1 of Schedule 1.

14.—(1) If the enforcing authority proposes to grant a permit subject to an off-site condition, it shall, before granting the permit, give a notice which complies with sub-paragraph (2) to every person appearing to it to be a person falling within sub-paragraph (3).

(2) A notice served under sub-paragraph (1) shall—

- (a) be in writing;
- (b) set out the off-site condition in question;

(2) S.R. 2000 No. 93

(3) S.R. 1995 No. 380

(4) 1970 c.1 (N.I.)

(5) S.I. 1978/1039 (N.I. 9)

(6) 2009 c.1 (N.I.)

(7) See Schedule 1 to the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 (S.I. 1999/859 (N.I.))

(8) 1929 c.13 (N.I.)

- (c) indicate the nature of the works or things which that condition might require the holder of the permit to carry out or do; and
 - (d) specify the period allowed for the purpose of paragraph 15 for making representations to the enforcing authority relating to the condition or its possible effects and the manner in which any such representations are to be made.
- (3) A person falls within this sub-paragraph if—
- (a) that person is the owner, lessee or occupier of land; and
 - (b) that land is land in relation to which it is likely that, as a consequence of the permit being issued subject to the off-site condition in question, rights will have to be granted by virtue of regulation 13(7) to the holder of the permit.
- (4) In sub-paragraph (3), “owner” means the person who—
- (a) is for the time being receiving the rack-rent of the land, whether on that persons own account or as agent or trustee for another person; or
 - (b) would receive the rack-rent if the land were let at a rack-rent,
- but does not include a mortgagee not in possession.

15.—(1) Any representations made by any persons within the period allowed shall be considered by the enforcing authority in determining the application.

- (2) For the purpose of sub-paragraph (1), the period allowed for making representations is—
- (a) in the case of any person to whom notice is given pursuant to—
 - (i) paragraph 12, the period of 42 days beginning with the date on which notice is given; and
 - (ii) paragraph 14, the period specified in the notice;
 - (b) in the case of any other person—
 - (i) for applications, the period of 42 days; and
 - (ii) for draft determinations, the period of 20 working days,

beginning with the date on which the application or draft determination is advertised pursuant to paragraph 7 or 19.

16. In the case of an application for a permit to operate a Part A installation or Part A mobile plant, any relevant information obtained or conclusion arrived at, pursuant to Articles 5, 6, 7 and 9 of Directive 2011/92/EU(9) on the assessment of the effects of certain public and private projects on the environment, in relation to the installation shall be taken into consideration by the chief inspector in determining the application.

17.—(1) The Department may give directions to the enforcing authority requiring that any particular application or any class of applications for a permit shall be referred to it for determination pending a further direction under sub-paragraph (13).

(2) The enforcing authority shall inform the applicant of the fact that the application is being referred to the Department and forward to the Department any representations which have been made to the enforcing authority within the period allowed.

(3) Where an application for a permit is referred to it under sub-paragraph (1), the Department may afford the applicant and the enforcing authority an opportunity of appearing before and being heard by a person appointed by the Department (the “appointed person”) and it shall do so in any case where a request is duly made by the applicant or the enforcing authority to be so heard.

(9) O.J. No, L26, 28.1.2012, p.1

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(4) A request under sub-paragraph (3) shall be in writing and shall be made within the period of 21 days beginning with the day on which the applicant is informed that the application is being referred to the Department.

(5) A hearing held under sub-paragraph (3) may, if the appointed person so decides, be held, wholly or to any extent, in private.

(6) Where the Department causes a hearing to be held under sub-paragraph (3) it shall give the applicant and the enforcing authority at least 28 days notice (or such shorter period of notice as they may agree) of the date, time and place fixed for the holding of the hearing.

(7) In the case of a hearing under sub-paragraph (3) which is to be held wholly or partly in public, the Department shall, at least 21 days before the date fixed for the holding of the hearing—

- (a) where the application relates to the operation of an installation or Part A mobile plant, publish a copy of the notice specified in sub-paragraph (6) in at least two newspapers circulating in the locality in which the installation or mobile plant is operated; and
- (b) serve a copy of that notice on every person required to be notified under paragraph 12 and on any person who made representations to the enforcing authority with respect to the subject matter of the application.

(8) The Department may vary the date fixed for the holding of any hearing under sub-paragraph (3) and sub-paragraphs (6) and (7) shall apply to the variation of a date as they applied to the date originally fixed.

(9) The Department may also vary the time or place for the holding of a hearing under sub-paragraph (3) and shall give such notice of any variation as appears to it to be reasonable.

(10) The persons entitled to be heard at a hearing under sub-paragraph (3) are—

- (a) the applicant;
- (b) the enforcing authority; and
- (c) any person required under paragraph 12 to be notified of the application.

(11) Nothing in sub-paragraph (10) shall prevent the appointed person from permitting any other persons to be heard at the hearing and such permission shall not be unreasonably withheld.

(12) After the conclusion of a hearing, the appointed person shall make a report in writing to the Department which shall include the appointed person's conclusions and recommendations or his reasons for not making any recommendations.

(13) The Department shall, on determining any application transferred to it under this paragraph, give to the enforcing authority such a direction as it thinks fit as to whether it is to grant the application and, if so, as to the conditions that are to be attached to the permit.

18.—(1) Except in a case where an application has been referred to the Department under paragraph 17 and subject to paragraph 23, the enforcing authority shall give notice of—

- (a) for Part A installations and for Part A mobile plant, its draft determination of an application for a permit, within the period of six months beginning with the day on which it received the duly made application;
- (b) for Part B and Part C installations and Part B and Part C mobile plant, its determination of an application for a permit, within the period of six months beginning with the day on which it received the duly made application; and
- (c) in any case, within such longer period as may be agreed with the applicant.

(2) For the purpose of calculating the periods mentioned in sub-paragraph (1) no account shall be taken of—

- (a) any period beginning with the date on which notice is served on the applicant under paragraph 6 and ending on the date on which the applicant furnishes the information specified in the notice;
- (b) any period allowed for making representations in relation to a notice given pursuant to paragraph 14 in so far as that period does not overlap with any other period allowed for making representations in accordance with paragraph 15;
- (c) where a matter falls to be determined under regulation 34 or 35, any period beginning with the date on which the period of 28 days referred to in paragraph 7 ends and ending on the date on which the application is advertised in accordance with paragraph 30(a);
- (d) where separate applications are made to operate different parts of one installation, any period beginning with the date on which notice is served on any of the applicants under paragraph 6 and ending on the date on which the applicant furnishes the information specified in the notice.

19.—(1) The enforcing authority shall—

- (a) within a period of 3 working days beginning with the date on which notice of a draft determination is given pursuant to paragraph 18(1)(a), advertise the notice on its web-site, and if it considers it appropriate, by any other means; and
- (b) take all relevant steps specified in the advertisement as falling to be carried out by the enforcing authority, within the time-periods set out in that advertisement.

(2) In the case of a notice of a draft determination in respect of an application which has been forwarded by the Department to another Member State under paragraph 22, the enforcing authority shall forward copies of the draft determination and of the advertisement made pursuant to this paragraph to the Department at the same time as the draft determination is advertised.

20.—(1) An advertisement required by paragraph 19 shall—

- (a) explain where, how and at what times any register which contains—
 - (i) any additional information which is relevant to the determination of the application which has become available after the application is advertised pursuant to paragraph 7;
 - (ii) a copy of the draft determination;
 - (iii) information on any guidance issued by the Department to the enforcing authority relevant to the application; and
 - (iv) information on the arrangements for public participation and the reasons and considerations on which the draft determination is based,may be inspected and that it may be inspected free of charge;
- (b) explain that any person may make representations in writing to the enforcing authority within the period of 20 working days beginning with the date of the advertisement and give the enforcing authority's address for receiving representations;
- (c) explain that where—
 - (i) no representations are made to the enforcing authority within the period referred to in head (b) and, where applicable, within the period specified under paragraph 24 for the Department to forward representations to the enforcing authority, the enforcing authority shall—
 - (aa) give notice of its determination; and

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- (bb) include in the register a copy of the final determination, together with a statement confirming that no representations have been made on the draft determination,

within the period of 5 working days from the date on which the period referred to in head (b) ends or, where applicable, the day on which the period specified under paragraph 24 for the Department to forward representations to the enforcing authority ends; or

- (ii) representations are made within the period referred to in head (b), and where applicable, within the period specified under paragraph 24 for the Department to forward representations to the enforcing authority, the enforcing authority shall—

- (aa) give notice of its determination;
- (bb) include in the register a copy of the final determination, together with information on the reasons and considerations on which the determination is based, including information on the public participation process; and
- (cc) advertise the notice on its web-site, and if it considers appropriate, by any other means,

within the period of 15 working days from the day on which the period referred to in head (b) ends or, where applicable, the day on which the period specified under paragraph 24 for the Department to forward representations to the enforcing authority ends or within such longer period as may be agreed with the applicant.

- (2) Where the draft determination has been forwarded to the Department pursuant to paragraph 19 (2)—

- (a) the enforcing authority shall forward to the Department a copy of the final determination and the information specified in sub-paragraph (1)(c)(i)(bb) or (1)(c)(ii)(bb), by the date by which it is required to give notice of its determination under sub-paragraph (1)(c)(i) or (1)(c)(ii); and
- (b) the Department shall forward to the Member State to which the draft determination has been forwarded under paragraph 22, copies of the documents specified in the previous head, as soon as practicable after the date of receipt.

21. If the enforcing authority fails to give notice of its determination or draft determination of an application for a permit within the applicable period allowed by or under paragraph 18 or paragraph 20, the application shall, if the applicant notifies the authority in writing that he treats the failure as such, be deemed to have been refused at the end of that period.

22. Where the Department is aware that the operation of an installation carrying out an activity listed in Annex I to the IED in Northern Ireland is likely to have significant negative effects on the environment of another Member State, or where another Member State likely to be significantly affected so requests, the Department shall forward—

- (a) a copy of the application to operate the installation together with a copy of the advertisement made under paragraph 7; and
- (b) where applicable, a copy of the draft determination in respect of that application together with a copy of the advertisement made under paragraph 19,

to the other Member States at the same time as the application or draft determination is advertised pursuant to paragraph 7 or 19, (or as soon as it becomes so aware or receives such a request, if it becomes so aware or receives such a request after the application or draft determination is advertised but before the application is determined) in order that the application or draft determination may serve as the basis for any consultations necessary in the framework of the bilateral relations between

the United Kingdom and the other Member State on a reciprocal and equivalent basis, as referred to in Article 26 of the IED.

23.—(1) Where an application is forwarded to another Member State pursuant to paragraph 22, the Department shall notify the applicant and the chief inspector and, in a case where the application has not been referred to the Department under paragraph 17—

- (a) the chief inspector shall not determine the application or provide his draft determination until the Department has notified him in writing that the bilateral consultations mentioned in paragraph 22 have been completed and has forwarded to him any representations duly made on the application by persons in the other Member State which have been forwarded to the Department; and
- (b) the period within which to give notice of the determination or to provide a draft determination of the application set out in paragraph 18 shall begin on the date on which the chief inspector receives the Department's notification that the bilateral consultations have been completed.

(2) In determining an application which is forwarded to another Member State pursuant to paragraph 22 the chief inspector, or the Department if the application has been referred to it, shall take into consideration any representations duly made in the other Member State which have been forwarded to the Department.

24. Any representations on the draft determination made in the Member State to which the draft determination has been sent, which have been received by the Department within the period of 22 working days from the date of the Department's receipt of the draft determination from the enforcing authority, shall be forwarded to the enforcing authority within the period of 3 working days beginning on the day after that period ends.

25.—(1) For the purposes of Parts 1 and 2 “working day” means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971(10)

(2) in paragraphs 22, 23 and 24, “Member State” shall be taken to include Norway, Iceland and Liechtenstein.