SCOTTISH STATUTORY INSTRUMENTS

2003 No. 168

ENVIRONMENTAL PROTECTION

The Anti-Pollution Works (Scotland) Regulations 2003

Made - - - -	*10th March 2003*
Laid before the Scottish Parliament - - - -	*11th March 2003*
Coming into force - -	*1st April 2003*

The Scottish Ministers, in exercise of the powers conferred by sections 41(1), 46A(5)(a), 46B(5) and (6), 46C(3), (4)(d) and (4)(e), 104(1)(a) and 105(1) of the Control of Pollution Act 1974(**1**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Anti-Pollution Works (Scotland) Regulations 2003 and shall come into force on 1st April 2003.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations–

(a) "the Act" means the Control of Pollution Act 1974; and

(b) the parties to an appeal are the appellant, SEPA and any person upon whom the appellant considers SEPA should instead have served a copy of a notice in accordance with regulation 4(4)(b) of these Regulations.

(2) A reference in these Regulations to a notice, to anything done in writing or produced in written form, includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000(**2**) which has been recorded and is consequently capable of being reproduced.

(3) In these Regulations–

(**1**) 1974 c. 40; section 41(1) was amended by the Environment Act 1995 (c. 25) ("the 1995 Act"), Schedule 22, paragraph 29; sections 46A to 46D were inserted by the 1995 Act, Schedule 22, paragraph 29(22); section 104(1) was amended by the Water Act 1989 (c. 15), Schedule 23, paragraph 7 and was repealed in part by the 1995 Act, Schedule 22, paragraph 29(34) and by Schedule 24; section 105(1) contains definitions of "prescribed" and "regulations" which are relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(**2**) 2000 c. 7.

(a) any reference to a numbered regulation is a reference to the regulation so numbered in these Regulations; and

(b) any reference in a regulation or the Schedule to a numbered paragraph is a reference to the paragraph so numbered in that regulation or Schedule.

Content of works notices

3. A works notice shall–

(a) in any case where it appears to SEPA that any poisonous, noxious or polluting matter or any solid waste matter is likely to enter any controlled waters, describe the matter concerned, and the nature of the risk to controlled waters, identifying the controlled waters which may be affected and the place from which the matter in question is likely to enter those waters;

(b) in any case where it appears to SEPA that any poisonous, noxious or polluting matter or any solid waste matter is or has been present in any controlled waters, describe the nature and extent of the matter concerned, identifying the controlled waters affected by it;

(c) specify the works or operations required to be carried out by the person on whom the notice is served, stating that person's name and address;

(d) give SEPA's reasons for serving the notice on that person and for requiring those works or operations to be carried out;

(e) inform the person on whom the notice is served of that person's right of appeal under section 46C of the Act (including the time period within which an appeal must be made) and of the requirements imposed by regulation 4 in relation to its exercise;

(f) state that SEPA is entitled, at any time, to withdraw the notice, extend the period for compliance with any requirement of the notice and with the consent of the person on whom the notice is served, modify any requirement of the notice;

(g) state that SEPA is entitled (unless the notice is quashed or withdrawn) to recover from the person on whom the notice is served its costs or expenses reasonably incurred in carrying out such investigations as are mentioned in section 46(1A)(**3**) of the Act; and

(h) set out the contents of section 46D(1) to (4) of the Act (consequences of not complying with a works notice).

Appeals

4.—(1) A person who wishes to appeal to the Scottish Ministers under section 46C of the Act (appeals against works notices) shall give the Scottish Ministers notice of the appeal.

(2) A notice of appeal shall state–

(a) the name and address of the appellant and of all persons to be served with a copy of the notice of appeal, in terms of paragraph (4);

(b) the grounds on which the appeal is made; and

(c) whether the appellant wishes the appeal to be determined on the basis of written representations or a hearing.

(3) A notice of appeal shall be accompanied by copies of any application, consent, correspondence, decision, notice or other document relevant to the appeal.

(4) At the same time as the appellant gives notice of the appeal to the Scottish Ministers, the appellant shall send a copy of the notice of appeal, together with a list of the documents provided to the Scottish Ministers under paragraph (3), to–

(**3**) Section 46(1A) was inserted by paragraph 29(21)(b), Schedule 22 to the Environment Act 1995.

(a) SEPA; and

(b) where a ground of appeal is that the appellant considers, having regard to the terms of section 46A(1) of the Act, that the notice should instead have been served on some other person, that person.

(5) If the appellant wishes at any time to abandon the appeal, the appellant shall do so by notice informing the Scottish Ministers and shall send a copy of the notice to SEPA and any other person on whom, in terms of paragraph (4), the appellant was required to serve a copy of the appellant's notice of appeal.

Written representations

5.—(1) Where, in terms of regulation 4(2)(c), the appellant informs the Scottish Ministers that the appellant wishes the appeal to be disposed of on the basis of written representations, SEPA and any party to the appeal other than the appellant, shall submit any written representations to the Scottish Ministers not later than 14 days after receiving a copy of the notice of appeal under regulation 4(4).

(2) The appellant shall submit any further representations by way of response not later than 14 days after receiving the representations under paragraph (1), or the later or latest of them, as the case may be.

(3) The Scottish Ministers may, in any particular case–

(a) set shorter or longer time limits than those mentioned in this regulation;

(b) allow the parties to make representations in addition to those mentioned in paragraphs (1) and (2).

(4) Any representations made by a party to the appeal shall be dated with the date on which they are submitted to the Scottish Ministers.

(5) Where any party to the appeal submits any representations to the Scottish Ministers they shall at the same time send a copy to every other party to the appeal.

Hearings

6.—(1) If any party to the appeal so requests, or if the Scottish Ministers so decide, the appeal shall be or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held, or held to any extent, in private).

(2) The Scottish Ministers shall give the parties to the appeal at least 28 days' notice (unless the parties agree to a shorter period of notice) of the date, time and place fixed for the hearing.

(3) In the case of a hearing which is to be held wholly or partly in public, the Scottish Ministers shall, at least 21 days before the date fixed for the hearing (or such shorter period as appears to them reasonable where a shorter period of notice is agreed to in terms of paragraph (2)), publish a copy of the notice given under paragraph (2) in a newspaper circulating in each locality which they consider may be affected by any matter which falls to be determined in relation to the appeal.

(4) The Scottish Ministers may vary the date fixed for the hearing and paragraphs (2) and (3) shall apply to the new date as they apply to the original date.

(5) The Scottish Ministers may also vary the time or place fixed for the hearing and shall give such notice of any such variation as appears to them to be reasonable.

(6) Each party to the appeal is entitled to be heard at the hearing.

(7) Nothing in paragraph (6) shall prevent the person appointed to hear the appeal from permitting any other person to be heard at the hearing and such permission shall not be unreasonably withheld.

(8) After the conclusion of a hearing the person appointed to hear the appeal shall, unless that person was appointed under section 114(1)(a) of the Environment Act 1995(**4**) (power of Scottish Ministers to delegate their functions of determining appeals), make a report in writing to the Scottish Ministers which shall include that person's conclusions and recommendations or their reasons for not making any recommendations.

Notification of determination

7.—(1) The Scottish Ministers shall notify the appellant in writing of the determination of the appeal and shall provide the appellant with a copy of any report mentioned in regulation 6(8).

(2) The Scottish Ministers shall at the same time send a copy of the report mentioned in paragraph (1) to every other party to the appeal.

Compensation for grant of rights under section 46B

8. The Schedule to these Regulations shall have effect–

(a) for prescribing the period within which a person who grants, or joins in granting, any rights pursuant to section 46B(2) of the Act may apply for compensation for the grant of those rights;

(b) for prescribing the manner in which, and the person to whom, such an application may be made; and

(c) for prescribing the manner of determining such compensation, for determining the amount of such compensation and for making supplemental provision relating to such compensation.

Pollution control registers: amendment

9.—(1) The Control of Pollution (Registers) (Scotland) Regulations 1993(**5**) shall be amended as follows.

(2) In regulation 2 (interpretation), for the definition of "relevant event" there shall be substituted–

""relevant event" means the service, making, giving or issue of such notice, application, consent, appeal or conviction as is referred to in section 41(1)(a), (b), (c), (f), (k), (l) or (m), the conviction or determination of any appeal referred to in regulation 4B, or the determination (whether at first instance or on appeal) of proceedings referred to in regulation 4C, as the case may be;"

(3) There shall be inserted after regulation 7–

"**Particulars of works notices, appeals and convictions for failure to comply with works notices**

7A.—(1) The particulars to be included in the register in respect of a works notice under section 46A are–

(a) the date of the works notice;

(b) the matters in respect of which the works notice was served;

(c) the works or operations to be carried out, as specified in the works notice; and

(d) the date by which the works or operations are to be completed.

(**4**) 1995 c. 25.
(**5**) S.I.1993/1155, amended by S.I. 1996/973 and S.S.I. 2000/432.