*Draft Regulations laid before the Assembly under Article 4(7) of the Environment (Northern Ireland) Order 2002, for approval by resolution of the Assembly*

DRAFT STATUTORY RULES OF NORTHERN IRELAND

# 2014 No. 000

# ENVIRONMENTAL PROTECTION

## The Pollution Prevention and Control (Industrial Emissions) (Amendment) Regulations (Northern Ireland) 2014

*Made - - - -* ***

*Coming into operation in accordance with regulation 1*

The Department of the Environment, in exercise of the powers conferred by Article 4(1) of, and Schedule 1 to, the Environment (Northern Ireland) Order 2002(**a**), makes the following Regulations.

In accordance with Article 4(4) of that Order, the Department of the Environment has consulted district councils and such bodies or persons appearing to it to be representative of the interests of district councils as it considers appropriate, such bodies or persons appearing to it to be representative of the interests of industry, agriculture and business as it considers appropriate and such other bodies or persons as it considers appropriate.

**Citation and commencement**

**1.** These Regulations may be cited as the Pollution Prevention and Control (Industrial Emissions) (Amendment) Regulations (Northern Ireland) 2014 and shall come into operation on the day after the day on which they are made.

**Amendment of the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013**

**2.** The Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013(**b**) are amended in accordance with regulations 3 to 12.

**Amendment of regulation 2 (interpretation: general)**

**3.** In regulation 2, at the appropriate alphabetical places, insert the following definitions—

> ""cogeneration" means the simultaneous generation in one process of thermal energy and electrical or mechanical energy;
>
> "cost-benefit analysis" means a cost-benefit analysis carried out in accordance with Part 2 of Annex IX of the Energy Efficiency Directive;

(**a**) S.I. 2002/3153 (N.I. 7)
(**b**) S.R. 2013 No. 160

"Energy Efficiency Directive" means Directive 2012/27/EU of the European Parliament and of the Council on energy efficiency amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC**(a)**;

"high-efficiency cogeneration" means cogeneration meeting the criteria laid down in Annex II of the Energy Efficiency Directive;

"net rated thermal input" means the rate at which fuel can be burned at the maximum continuous rating of the appliance multiplied by the net calorific value of the fuel and expressed as megawatts;

"rated thermal input" means the rate at which fuel can be burned at the maximum continuous rating of the appliance multiplied by the gross calorific value of the fuel and expressed as megawatts;".

**Amendment of regulation 7 (discharge and scope of functions)**

**4.** In regulation 7—

(a) for paragraphs (2) to (4) substitute—

"(2) Those functions, in their application to a Part A installation or Part A mobile plant, shall be functions of the chief inspector and shall be exercisable for the purpose of—

(a) achieving a high level of protection of the environment taken as a whole by, in particular, preventing or, where that is not practicable, reducing emissions into the air, water and land; and

(b) where appropriate, ensuring that cost-benefit analyses are carried out in accordance with Article 14(5) of the Energy Efficiency Directive and Schedule 13A.

(3) Those functions, in their application to a Part B installation or Part B mobile plant, shall be functions of the chief inspector and, subject to paragraph (5), shall be exercisable for the purpose of—

(a) preventing or, where that is not practicable, reducing emissions into the air; and

(b) where appropriate, ensuring that cost-benefit analyses are carried out in accordance with Article 14(5) of the Energy Efficiency Directive and Schedule 13A.

(4) Those functions, in their application to a Part C installation, shall be functions of the district council in whose district the installation is (or will be) situated and, subject to paragraph (5), shall be exercisable for the purpose of—

(a) preventing or, where that is not practicable, reducing emissions into the air; and

(b) where appropriate, ensuring that cost-benefit analyses are carried out in accordance with Article 14(5) of the Energy Efficiency Directive and Schedule 13A.";

(b) at the end of paragraph (5) insert "and, where appropriate, ensuring that cost-benefit analyses are carried out in accordance with Article 14(5) of the Energy Efficiency Directive and Schedule 13A";

(c) at the end of the closing words of paragraph (6) insert "and, where appropriate, ensuring that cost-benefit analyses are carried out in accordance with Article 14(5) of the Energy Efficiency Directive and Schedule 13A"; and

(d) in paragraph (17) for "Schedules 8 to 13" substitute "Schedules 8 to 13A".

**Amendment of regulation 10 (permits: general provisions)**

**5.** In regulation 10—

(a) in paragraph (1) after "Schedule 4" insert "and, where appropriate, Schedule 13A";

(b) in paragraph (2)—

(**a**) O.J. No. L 315/1, 14.11.2012, p.1

(i) for "(3) and (4)" substitute "(3) to (4A)"; and

(ii) after "of", in the first place where it occurs, insert ", or Schedule 13A to,"; and

(c) after paragraph (4) insert—

"(4A) In the case of an application for a permit to operate an installation or mobile plant carrying out only an activity falling within head (b) of Part C of section 1.1 of Schedule 1—

(a) any permit granted pursuant to the application shall only contain conditions required for complying with paragraphs 13 to 18 of Schedule 13A; and

(b) regulations 11, 12, 14 and 16 shall not apply.".

**Amendment of regulation 19 (variation of conditions of permits)**

**6.** In regulation 19—

(a) in paragraph (3) after "Schedule 7", in the first place where it occurs, insert "and, where appropriate, Schedule 13A";

(b) in paragraph (4) after "of", in the first place where it occurs, insert ", or Schedule 13A to,"; and

(c) after paragraph (5) insert—

"(5A) Where the enforcing authority decides to vary the conditions of a permit for an installation or mobile plant carrying out only an activity falling within head (b) of Part C of section 1.1 of Part 1 of Schedule 1—

(a) the variation notice shall only contain conditions required for complying with paragraphs 13 to 18 of Schedule 13A; and

(b) regulations 11, 12, 14 and 16 shall not apply.".

**Amendment of regulation 26 (duty of the enforcing authority to undertake inspections and to ensure compliance with conditions)**

**7.** In regulation 26—

(a) in paragraph (3) for "all installations and mobile plant" substitute "all Part A installations and Part A mobile plant";

(b) in paragraph (7) after "inspections" insert "of Part A installations and Part A mobile plant"; and

(c) in paragraph (8) after "visit", in the opening words, insert "to a Part A installation or Part A mobile plant".

**Amendment of Schedule 1 (activities, installations and mobile plant)**

**8.** In Schedule 1—

(a) in Part C of section 1.1 (combustion activities), after head (a), insert—

"(b) Unless falling within Part A of this section, or head (a) of this Part, burning any fuel or fuels in a combination of boilers, furnaces, turbines or compression ignition engines on the same site which, when added together, have a net rated thermal input of 20 megawatts or more but less than a rated thermal input of 50 megawatts. ";

(b) at the end of Part C of section 1.1, after paragraph 1 (interpretation of Part C) insert—

"**2.** Head (b) of this Part shall only apply to installations to which Article 14(5) of the Energy Efficiency Directive applies."; and

(c) in Part C of section 2.2 (non-ferrous metals), omit—

"Interpretation of Part C

**1.** In this Part "net rated thermal input" is the rate at which fuel can be burned at the maximum continuous rating of the appliance multiplied by the net calorific value of the fuel and expressed as megawatts thermal.".

(d) in Part C of section 6.6 (timber activities), in head (a) for "planning" substitute "planing".

**Amendment of Schedule 3 (prescribed date and transitional arrangements)**

**9.** In Part 2 (Part B and Part C installations and mobile plant) of Schedule 3, for paragraph 5, substitute—

"**5.—**(1) Save as set out in sub-paragraphs (2) and (3), the prescribed date for a Part B or Part C installation or a Part B or Part C mobile plant is 7th January 2013.

(2) In the case of an installation or mobile plant, which will carry out only an activity falling within head (b) of Part C of section 1.1 of Schedule 1 and which comes into operation in the period from the operational date, the prescribed date is the operational date.

(3) In the case of an installation or mobile plant, carrying out only an activity falling within head (b) of Part C of section 1.1 of Schedule 1 and which came into operation in the period ending on the operational date, the prescribed date shall be the date on which the plant is first operated, after a substantial refurbishment first takes place in the period from the operational date.

*Interpretation of Part 2*

"operational date" means, the date on which the Pollution Prevention and Control (Industrial Emissions) (Amendment) Regulations (Northern Ireland) 2014 come into operation;

"substantial refurbishment" means, in relation to paragraph 5, a refurbishment whose cost exceeds 50% of the investment cost for a new comparable unit, but the fitting of equipment to carry out the activity falling within head (a) of Part A of section 6.10 of Schedule 1 shall not be considered as refurbishment; and

"unit" means any boilers, furnaces, kilns, turbines or engines forming part of an installation which added together have a rated thermal input of more than 20 megawatts.".

**Amendment of Schedule 4 (grant of permits)**

**10.** In Schedule 4—

(a) in the opening words of paragraph 1(1) of Part 1 (applications for permits), for "2" substitute "1A";

(b) after paragraph 1 of Part 1, insert—

"**1A.** Paragraph 1(1) applies in relation to an application for a permit to operate an installation or mobile plant carrying out only an activity falling within head (b) of Part C of section 1.1 of Part 1 of Schedule 1, as if the following head was substituted for heads (e) to (j) of that paragraph—

(e) a cost-benefit analysis;";

(c) for paragraph 11 of Part 1, substitute—

"**11.** Paragraph 7 shall not apply in relation to an application for a permit to operate an installation involving only—

(1) 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;

(2) dry cleaning, as defined in section 7 (SED activities) of Part 1 of Schedule 1; or

(3) the carrying out of an activity falling within head (b) of Part C of section 1.1 of Part 1 of Schedule 1.";

(2) in the opening words of paragraph 12(1) of Part 2 (determination of applications), for "paragraph 30", substitute "paragraphs 13 and 30"; and

(3) for paragraph 13 of Part 2, substitute—

"**13.** Paragraph 12 does not apply in relation to an application for—

(1) a permit to operate an installation involving only dry cleaning as defined in section 7 (SED activities) of Part 1 of Schedule 1; or

(2) a permit to operate an installation or mobile plant carrying out only an activity falling within head (b) of Part C of section 1.1 of Part 1 of Schedule 1.".

**Amendment of Schedule 7 (variation of conditions)**

**11.** In Schedule 7—

(1) in paragraph 2 of Part 1 (applications for variations of conditions), for "II" substitute "I";

(2) in paragraph 3(c) of Part 1, for "II" substitute "I";and

(3) in paragraph 13 of Part 2 (variation notices), for "II" substitute "I".

**Amendment by inserting Schedule 13A (Energy Efficiency Directive)**

**12.** After Schedule 13 (asbestos), insert Schedule 13A as set out in the Schedule to these Regulations.

Sealed with the Official Seal of the Department of the Environment on *** 2014

L.S.

*Name*
A senior officer of the Department of the Environment

# SCHEDULE

Regulation 12

## Schedule to be inserted as Schedule 13A to the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013

# "SCHEDULE 13A

Regulation 7

## ENERGY EFFICIENCY DIRECTIVE

**Application**

**1.** This Schedule applies to every installation or mobile plant to which Article 14(5) of the Energy Efficiency Directive applies.

**Interpretation**

**2.** In this Schedule—

"economically justified demand" means demand that does not exceed the needs for heating or cooling and which would otherwise be satisfied at market conditions by energy generation processes other than cogeneration;

"electricity from cogeneration" means electricity generated in a process linked to the production of useful heat and calculated in accordance with the methodology laid down in Annex II of the Energy Efficiency Directive;

"substantial refurbishment" means a refurbishment whose cost exceeds 50% of the investment cost for a new comparable unit, but the fitting of equipment to carry out the activity falling within head (a) of Part A of section 6.10 of Part 1 of Schedule 1 shall not be considered as refurbishment for the purposes of paragraphs 4, 7 and 10 of this Schedule; and

"unit" means any boilers, furnaces, kilns, turbines or engines forming part of an installation which added together have a rated thermal input of more than 20 megawatts.

**Cost-benefit analysis**

**3.** An application to an enforcing authority under regulation 10 for a permit to operate a new installation, carrying out an activity with a total net thermal input exceeding 20 megawatts and generating electricity must be accompanied by a cost-benefit analysis that assesses the costs and benefits of operating the installation or converting the installation to operate as a high-efficiency cogeneration installation.

**4.** An operator of an installation, carrying out an activity with a total net thermal input exceeding 20 megawatts and generating electricity must apply to the enforcing authority under regulation 19(2) for a variation of the conditions of his permit before undertaking a substantial refurbishment.

**5.** The application for a variation of the conditions of the permit required by paragraph 4 must be accompanied by a cost-benefit analysis that assesses the costs and benefits of operating the installation, or converting the installation to operate, as a high-efficiency cogeneration installation.

**6.** An application to an enforcing authority under regulation 10 for a permit to operate a new installation with a total net thermal input exceeding 20 megawatts, other than an

installation falling within paragraph 3, and generating waste heat at a useful temperature level, must be accompanied by a cost-benefit analysis that assesses the cost and benefits of utilising the waste heat to satisfy economically justified demand, including through cogeneration, and of the connection of that installation to a district heating and cooling network.

**7.** An operator of an installation with a total net thermal input exceeding 20 megawatts, and generating waste heat at a useful temperature level must apply to the enforcing authority under regulation 19(2) for a variation of the conditions of his permit before undertaking a substantial refurbishment.

**8.** The application for a variation of the conditions of the permit required by paragraph 7 must be accompanied by a cost-benefit analysis that assesses the cost and benefits of utilising the waste heat to satisfy economically justified demand, including through cogeneration, and of the connection of that installation to a district heating and cooling network.

**9.** An application to an enforcing authority under regulation 10 for a permit to operate a new installation with a total net thermal input exceeding 20 megawatts which forms part of a new or existing district heating and cooling network must be accompanied by a cost-benefit analysis that assesses the cost and benefits of utilising the waste heat from nearby installations.

**10.** An operator of an installation with a total net thermal input exceeding 20 megawatts which forms part of an existing district heating or cooling network must apply to the enforcing authority under regulation 19(2) for a variation in the conditions of his permit before undertaking a substantial refurbishment.

**11.** The application for a variation in the conditions of the permit required by paragraph 10 must be accompanied by a cost-benefit analysis that assesses the cost and benefits of utilising the waste heat from nearby installations.

**12.** Paragraphs 3 to 11 shall not apply to—

(1) peak load and back-up electricity generating installations for which the application states that operation under 1,500 operating hours per year as a rolling average over a period of five years is planned; or

(2) installations that need to be located close to a geological storage site approved under Directive 2009/31/EC(**a**).

**13.** Where the exemption specified in paragraph 12(1) applies, the enforcing authority shall include, in the permit, conditions ensuring that the operating hours remain within the constraints specified in paragraph 12(1).

**14.** Paragraphs 6 to 11 shall not apply to individual installations:

(1) which do not form part of a district cooling network; and

(2) with any of the following—

(a) available waste heat of 100 kilowatts or less;

(b) available waste heat,

(i) greater than 100 kilowatts as hot water or steam, where there is no hot water heat demand greater than 100 kilowatts within the search radius from the source installation as set out in the table below, located within the connection distance from the centre of the source installation; or

(ii) greater than 500 kilowatts as steam, where there is no steam-based heat demand greater than 500 kilowatts and no water heat demand greater than 100

(**a**) O.J. L140 5.6.2009 p.144

kilowatts within the search radius from the centre of the installation as set out in the table below, located within the connection distance from the centre of the source installation;

(c) a heat demand of—

(i) 100 kilowatts or less for hot water heat demands; or

(ii) 500 kilowatts or less for steam-based heat demands;

(d) a hot water heat demand greater than 100 kilowatts, with no source of available waste heat greater than 100 kilowatts within the search radius from the centre of the installation as set out in the Table, located within the connection distance from the centre of the demand installation; or

(e) a steam-based heat demand greater than 500 kilowatts, with no source of steam-based waste heat greater than 500 kilowatts within the search radius from the centre of the installation as set out in the Table, located within the connection distance from the centre of the demand installation.

**Table**

| *Installation type* | *Thermal capacity (kilowatts (kW) and megawatts (MW))* | *Search radius (km) (measured from centre of the installation)* |
|---|---|---|
| Hot water demand | >100kW and <3.9 MW | 0.0038 x H, where H = thermal capacity in kW |
| | ≥3.9MW | 15 |
| Steam demand | >500kW and <12.5 MW | 0.0012 x H, where H = thermal capacity in kW |
| | ≥12.5 MW | 15 |
| Waste heat source (hot water or steam) | >100kW and <3.9 MW | 0.0038 x H, where H = thermal capacity in kW |
| | ≥3.9MW | 15 |

**15.** For the purposes of paragraph 14, "connection distance" means—

(1) in the case of a hot water heat link, the thermal capacity in kilowatts of the source or demand, whichever is smaller, multiplied by 0.0038; or

(2) in the case of a steam heat link, the thermal capacity in kilowatts of the source or demand, whichever is smaller, multiplied by 0.0012,

expressed in kilometres.

**16.** From 31st December 2015, when considering permit applications and applications for the variation of conditions, the enforcing authority shall take into account both the outcome of the cost-benefit analysis and the outcome of the United Kingdom's comprehensive national assessment required by Article 14(1) of the Energy Efficiency Directive.

**17.** Subject to paragraph 19, where a cost-benefit analysis, required pursuant to paragraphs 3, 5, 6 or 8 shows that benefits exceed costs, the enforcing authority may only grant the permit or vary the conditions of the permit subject to the inclusion of appropriate conditions that will ensure the operation of the installation in a manner shown by that analysis to be cost beneficial.

**18.** Subject to paragraph 19, where a cost-benefit analysis required pursuant to paragraphs 9 or 11 shows that benefits exceed costs, the regulator may only grant the permit or vary the conditions of the permit subject to the inclusion of appropriate conditions that will ensure the operation of the installation, in conjunction with the utilisation of the waste heat from nearby installations, in a manner shown by that analysis to be cost beneficial.

**19.** Paragraphs 17 and 18 do not apply if, in individual cases, the enforcing authority decides that there are imperative reasons of law, ownership or finance for it not to apply. In such cases, within two months of its decision, the enforcing authority shall submit a reasoned notification of it to the Department.

**20.** The provisions of this Schedule apply to installations covered by the IED without prejudice to the requirements of that Directive."

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 ("the principal Regulations").

They transpose Article 14(5) to (9) of Directive 2012/27/EU of the European Parliament and of the Council on energy efficiency ("the Energy Efficiency Directive") and otherwise amend the principal regulations.

Regulation 8 inserts a new activity into Part C of Section 1.1 of Schedule 1 to the principle Regulations, namely burning any fuel or fuels in a combination of boilers, furnaces, turbines or compression ignition engines on the same site which, when added together, have a net rated thermal input exceeding 20 megawatts but less than a rated thermal input of 50 megawatts.

Schedule 13A provides for a cost benefit analysis to be carried out (in order to assess the cost and benefits of high-efficiency cogeneration, connection to district heating or otherwise utilising the waste heat to satisfy economically justified demand), for conditions to be included in a permit where the cost-benefit analysis shows that waste heat from an installation can be utilised in accordance with the Directive and exempts certain installations from having to undertake a cost benefit analysis.

These regulations also make miscellaneous amendments to the principal Regulations to correct minor errors.

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