*Draft Regulations laid before the Scottish Parliament under section 2(8) and (9)(d) of the Pollution Prevention and Control Act 1999 for approval by resolution of the Scottish Parliament.*

D R A F T  S C O T T I S H  S T A T U T O R Y  I N S T R U M E N T S

# 2014 No.

# ENVIRONMENTAL PROTECTION

## The Pollution Prevention and Control (Scotland) Amendment Regulations 2014

*Made - - - -*

*Coming into force - -* *30th October 2014*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2 of, and Schedule 1 to, the Pollution Prevention and Control Act 1999(**a**) and all other powers enabling them to do so.

In accordance with section 2(4) of that Act, they have consulted the Scottish Environment Protection Agency, such bodies and persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses respectively as they consider appropriate and such other bodies or persons as they consider appropriate.

In accordance with section 2(8) and (9)(d) of that Act a draft of these Regulations has been laid before and approved by resolution of the Scottish Parliament.

**Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the Pollution Prevention and Control (Scotland) Amendment Regulations 2014, and come into force on 30th October 2014.

(2) These Regulations extend to Scotland only.

(**a**) 1999 c.24. 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), as read with section 5(3) of the Pollution Prevention and Control Act 1999 ("the 1999 Act") and S.I. 2008/1776, and by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2008 (S.I. 2008/1776). The 1999 Act is to be read subject to the gloss in section 45(3) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, so that the maximum period of imprisonment that can be imposed on summary conviction of an offence triable either way under these Regulations is 12 months. Directive 2008/98/EC (OJ L 312, 22.11.2008, p.3), Directive 2008/1/EC (OJ L 24, 29.01.2008, p.8; as amended by Directive 2009/31/EC) and Directive 2000/60/EC (OJ L 327, 22.12.2000, p.1; as amended by Directives 2008/105/EC and 2009/31/EC, and by Decision 2455/2001/EC) were designated for the purposes of paragraph 20 of Part 1 of Schedule 1 to the 1999 Act by S.S.I. 2010/131. Directive 2008/112/EC (OJ L 345, 23.12.2008, p.68) was designated for those purposes by S.S.I. 2010/235. Directive 2010/75/EU (OJ L 334, 17.12.2010, p.17) was designated for those purposes by S.S.I. 2011/423. Directive 2012/27/EU (OJ L 315, 14.11.2012, p.1) was designated for those purposes by S.S.I. 2013/321.

**Interpretation**

**2.** In these Regulations, "the principal Regulations" means the Pollution Prevention and Control (Scotland) Regulations 2012(**a**).

**Amendment of the principal Regulations**

**3.** The principal Regulations are amended in accordance with regulations 4 to 14.

**Interpretation: enactments etc.**

**4.** In regulation 3 (interpretation: enactments etc.), after the definition of "EIA Directive" insert—

> ""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(**b**),".

**Designation as competent authority**

**5.** In regulation 10 (SEPA: designation as competent authority), after "Directive" insert "and Article 14(5) to (8) of the Energy Efficiency Directive".

**Schedule 1 activities**

**6.** After regulation 20 (schedule 1 activities) insert—

"**Schedule 1A: Energy Efficiency Directive**

**20A.** Schedule 1A has effect.".

**Solvents: conditions**

**7.** For regulation 34 (solvents: conditions), substitute—

"**Solvents: conditions**

**34.** SEPA must include in a permit to operate a solvents installation—

(a) such conditions as SEPA considers necessary to give effect to the provisions of Chapter V of and Annex VII to the Industrial Emissions Directive, and

(b) a condition requiring the operator to inform SEPA, without delay, of any incident or accident significantly affecting the environment.".

**Permits: surrender of a Part A permit**

**8.** In regulation 48(8)(c) (permits: surrender of a Part A permit), after "its" omit "the".

**Offences**

**9.** In regulation 67 (offences)—

(a) after paragraph (1)(f) insert—

"(fa)to contravene paragraph 7 of Schedule 1A,"; and

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(**a**) S.S.I. 2012/360, as amended by S.I. 2014/469.
(**b**) OJ L 315, 14.11.2012, p.1, as amended by Council Directive 2013/12/EU (OJ L 141, 28.5.2013, p.28).

(b) in paragraph (2), after "(f)" insert ", (fa)".

**Activities and installations and mobile plant**

**10.** In Schedule 1 (activities and installations and mobile plant)—

(a) in Part 1 (activities)—

(i) in Part B of Section 1.1 (combustion), after paragraph (b) insert—

"(c) Burning any fuel in a combination of appliances with a total rated thermal input of more than 20 megawatts and less than 50 megawatts in an installation to which Schedule 1A applies.";

(ii) at the end of Part B of Section 1.1 insert—

"**Interpretation of Part B**

For the purposes of paragraph (c) of Part B—

(a) "appliance" means a boiler, furnace, gas turbine or compression ignition engine, and

(b) fuel is burned in a combination of appliances where two or more appliances are operated on the same site.";

(iii) in Section 5.3 (disposal or recovery of hazardous waste), in paragraph (a) of Part A, after "Chapter" insert "or in Part 1 of Schedule 2";

(iv) in Section 5.4 (disposal, recovery or a mix of disposal or recovery of non-hazardous waste), in paragraph (a)(iii) of Part A after "pre-treatment" insert "of"; and

(v) in Section 6.6 (timber activities)—

(aa) in Part A, after "products" omit "wood"; and

(bb) in the definition of "relevant activity" for "planning" substitute "planing"; and

(b) in Part 2 (interpretation of Schedule), in paragraph 2(2) for "Paragraph" substitute "Sub-paragraph".

**Schedule 1A**

**11.** After Schedule 1 insert Schedule 1A as specified in the Schedule.

**Grant of permits**

**12.** In Schedule 4 (grant of permits), in paragraph 20(2)(c) for "period of 28" substitute "day period".

**Variation of permits**

**13.** In Schedule 7 (variation of permits)—

(a) in paragraph 2(2), for "(1)" substitute "(3)"; and

(b) in paragraph 4—

(i) for sub-paragraph (1) substitute—

"(1) Subject to sub-paragraphs (2) and (3), this paragraph applies where—

(a) an application for variation is made under regulation 46 that will, if granted, authorise a substantial change in operation of an installation or mobile plant,

(b) SEPA proposes to serve a variation notice for a variation that will authorise—

(i) a substantial change in operation of an installation or mobile plant, or

(ii) a variation of a permit for a Part A installation as a result of a review under regulation 44(1)(a), or

(c) SEPA makes a determination that this paragraph applies to a proposed variation."; and

(ii) in sub-paragraph (8)(b) for "landfall" substitute "landfill".

**Savings and transitional provisions**

**14.** In Schedule 10 (savings and transitional provisions)—

(a) in paragraph 3(2)(b), for "in" where it second occurs substitute "before";

(b) in paragraph 5, in row 1 of Table 1, for "(c)(ii)" substitute "(d)";

(c) in paragraph 7(1), for "2011" substitute "2001";

(d) in paragraph 11—

(i) in sub-paragraph (1), after "installation" insert "or a solvents installation"; and

(ii) in sub-paragraph (2)(a)(i), after "incident" insert "or accident"; and

(e) in paragraph 13(2), for "(2) and (3)" substitute "(3) and (4)".

*Name*
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
Date

# SCHEDULE

Regulation 11

## Schedule 1A inserted into the Principal Regulations

# "SCHEDULE 1A

Regulation 20A

## Energy Efficiency Directive

**Application of Schedule**

**1.** Subject to paragraphs 2 and 3, this Schedule applies to—

(a) a thermal electricity generation installation with a total thermal input exceeding 20 megawatts,

(b) an industrial installation with a total thermal input exceeding 20 megawatts generating waste heat at a useful temperature level, or

(c) an energy production installation with a total thermal input exceeding 20 megawatts in an existing district heating or cooling network,

for which an application for a permit, or an application for a variation of a permit due to a substantial refurbishment, is made on or after 30th October 2014.

**2.**—(1) This Schedule does not apply to individual installations, except an installation which forms part of a district heating and cooling network, 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, 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 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 source installation,

(c) a heat demand of—

(i) 100 kilowatts or less for a hot water heat demand, or

(ii) 500 kilowatts or less for a steam-based heat demand,

(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 demand 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.

(2) For the purposes of this paragraph, "connection distance" means—

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

(b) 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.

**TABLE**

**Search radius**

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

**3.** This Schedule does not apply to—

(a) peak load and back-up electricity generating installations which operate or are planned to operate under 1,500 operating hours per year as a rolling average over a period of five years,

(b) nuclear power installations, or

(c) installations that need to be located close to a geological storage site approved under Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006(**a**).

**Applications and cost-benefit analysis**

**4.** Subject to paragraph 5, an application for a permit under regulation 13 for an installation to which this Schedule applies must provide a cost-benefit analysis.

**5.** An application in respect of a Part B installation where no activity listed in Schedule 1 other than the activity described in paragraph (c) of Part B of Section 1.1 of Schedule 1 will be carried out need include only—

(a) the information described in paragraph 1(1)(a) to (c), (f) and (s) of Schedule 4, and

(b) a cost-benefit analysis.

**6.** Paragraphs 4 and 5 do not apply to any installation for which an application for a permit was made before 30th October 2014.

**7.** No person may carry out a substantial refurbishment of an installation to which this Schedule applies except under and to the extent authorised by a permit.

(**a**) OJ L 140, 5.6.2009, p.114.

**8.** Where there is a proposed change in operation at an installation to which this Schedule applies, the operator of which has been granted a permit, and the change—

(a) results in an application for variation under regulation 46, and

(b) constitutes a substantial refurbishment,

the operator must include a cost-benefit analysis in addition to the information required by paragraph 1 of Schedule 7.

**9.** Where there is a proposed change in operation at an installation to which this Schedule applies, the operator of which has been granted a permit, and the change—

(a) does not result in an application for variation under regulation 46, and

(b) constitutes a substantial refurbishment,

the operator must submit to SEPA the information described in paragraph 1(a) to (c) of Schedule 7, and a cost-benefit analysis.

**10.** The requirements of paragraphs 8 and 13 of Schedule 4 and paragraph 4(4)(c) and (8) of Schedule 7 do not apply to an application in respect of a Part B installation where no activity listed in Schedule 1 other than the activity described in paragraph (c) of Part B of Section 1.1 is or will be carried out.

**11.** The cost-benefit analysis must be carried out in accordance with Part 2 of Annex IX of the Energy Efficiency Directive and must—

(a) in the case of a thermal electricity generation installation, assess the costs and benefits of operating the installation or converting the installation to operate as a high-efficiency cogeneration installation,

(b) in the case of an installation which forms part of an existing or planned district heating and cooling network, assess the costs and benefits of utilising the waste heat from nearby industrial installations, or

(c) in the case of any other industrial installation generating waste heat at a useful temperature, assess the costs and benefits of utilising the waste heat to satisfy economically justifiable demand, including through cogeneration, and of the connection of that installation to a district heating and cooling network.

**Determination of applications**

**12.** When considering an application for a permit, or for a variation of permit, in respect of an installation to which this Schedule applies, SEPA must take into account—

(a) the outcome of the cost-benefit analysis required by paragraph 4, 8 or 9, and

(b) from 31st December 2015, the outcome of any comprehensive national assessment required by Article 14(1) of the Energy Efficiency Directive.

**13.** Where a cost-benefit analysis required in the case referred to in paragraph 11(a) or (c) shows that benefits exceed costs, SEPA must ensure that the permit includes conditions that will ensure the operation of the installation in a manner shown by that analysis to be cost beneficial.

**14.** Where a cost-benefit analysis required in the case referred to in paragraph 11(b) shows that benefits exceed costs, SEPA must ensure that the permit includes conditions that will ensure the operation of the installation, in conjunction with the utilisation of the waste heat from nearby industrial installations, in a manner shown by that analysis to be cost beneficial.

**15.** SEPA must ensure, in respect of a permit for a Part B installation at which the only activity listed under the heading "Part B" in Section 1.1 of Part 1 of Schedule 1 carried out is that described in paragraph (c) of Part B of that Section, that the permit includes only such conditions as SEPA considers necessary to comply with the Energy Efficiency

Directive, and any requirement in these Regulations to include any other condition does not apply in respect of the permit to that extent.

**16.** Paragraphs 13 and 14 do not apply if SEPA decides that there are imperative reasons of law, ownership or finance for them not to apply in respect of any permit application or variation.

**17.** SEPA must, in any case where it makes a decision in accordance with paragraph 16, submit a reasoned notification of it to the Scottish Ministers within two months after the date of the decision.

**Interpretation**

**18.** In this Schedule—

"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,

"economically justifiable 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,

"high-efficiency cogeneration" means cogeneration meeting the criteria 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 described in Part A of Section 6.10 of Part 1 of Schedule 1 shall not be considered as a substantial refurbishment, and

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

## EXPLANATORY NOTE

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

These Regulations amend the Pollution Prevention and Control (Scotland) Regulations 2012 ("the principal Regulations").

They transpose Article 14(5) to (8) 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 7 further transposes Article 7 of Directive 2010/75 of the European Parliament and of the Council on industrial emissions (OJ L 334, 17.12.2010, p.17). It has the effect that SEPA must include in any new permit authorising the operation of a solvents installation a condition requiring the operator of the installation to notify SEPA of any incident or accident significantly affecting the environment.

Regulation 9 provides for it to be offence to carry out a substantial refurbishment on an installation to which new Schedule 1A of the principal Regulations applies except as authorised by a permit, and for penalties in that respect.

Regulation 10 inserts a new activity into Part B of Section 1.1 of Schedule 1 to the principal Regulations, namely the burning of any fuel in a combination of appliances with a total rated thermal input of more than 20 megawatts and less than 50 megawatts, which has the effect that the principal Regulations will apply to all the types of combustion activity at installations as required by the Energy Efficiency Directive.

Regulation 11 and the Schedule insert a new Schedule 1A into the principal Regulations. The new Schedule applies to specified installations (paragraphs 1 to 3), provides for a cost-benefit analysis to be carried out for the purposes of the Energy Efficiency Directive (paragraphs 4 to 11), 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 that Directive (paragraphs 12 to 17), and for the definition of terms used in the new Schedule (paragraph 18).

Regulation 13 substitutes an amended paragraph 4(1) of Schedule 7 to the principal Regulations, and has the further effect that provisions on notification and advertisement of proposed variations in that paragraph do not apply where an application for variation if granted will not authorise a substantial change in operation (as defined in regulation 2(1) of the principal Regulations).

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

A Business and Regulatory Impact Assessment has been prepared, and placed in the Scottish Parliament Information Centre. A copy can be obtained from the Environmental Quality Division, Scottish Government, Victoria Quay, Edinburgh EH6 6QQ.

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