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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 510**

**ENVIRONMENTAL PROTECTION**

**The Pollution Prevention and Control (Public Participation etc.) (Scotland) Regulations 2005**

*Made* - - - - *13th October 2005*  
*Laid before the Scottish*  
*Parliament* - - - - *14th October 2005*  
*Coming into force* - - *16th November 2005*

The Scottish Ministers, in exercise of the powers conferred by section 2 of the Pollution Prevention and Control Act 1999<sup>(1)</sup> and of all other powers enabling them in that behalf, having, in accordance with subsection (4) of that section, consulted the Scottish Environment Protection Agency, such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses respectively and such other bodies and persons as they consider appropriate, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Pollution Prevention and Control (Public Participation etc.) (Scotland) Regulations 2005 and shall come into force on 16th November 2005.

**Amendment to the Pollution Prevention and Control (Scotland) Regulations 2000**

2. The Pollution Prevention and Control (Scotland) Regulations 2000<sup>(2)</sup> shall be amended in accordance with regulations 3 to 10.

3. In regulation 4 (fit and proper person)–

- (a) in paragraph (5)(b) insert at the beginning “subject to paragraph (7)”; and
- (b) after paragraph (6) insert–

“(7) Notwithstanding paragraph (5)(b), where–

- (a) an application has been made for a permit under regulation 7 to authorise activities to be carried on at a site–

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(1) 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) and section 5(3) of the Pollution Prevention and Control Act 1999.  
(2) S.S.I. 2000/323 as amended by 2004 asp 8, schedule 2, paragraph 7; S.S.I. 2002/493; 2003/146, 170, 221, 235 and 411; 2004/26, 110, 112 and 512 and 2005/101 and 340.

- (i) involving the disposal of waste falling within Section 5.3 of Part 1 of Schedule 1, the recovery of waste falling within paragraphs (c)(i), (v), (vi) or (vii) of Part A of Section 5.4 of that Part of that Schedule or the disposal of waste in a waste incineration installation; and
- (ii) which is under the management of the applicant;
- (b) the applicant has also applied to the Waste Management Industry Training and Advisory Board for a certificate of technical competence in relation to those activities; and
- (c) SEPA is satisfied that the applicant would be technically competent to carry out those activities,

then the applicant shall be treated as a technically competent person for the purposes of paragraph (3)(d) and SEPA may grant a permit subject to the condition that that person obtains the relevant certificate of technical competence in respect of those activities within 2 years of the grant of the permit.”

4. In regulation 17(8) (revocation of permits) after “installation”, insert “or mobile plant”.
5. After regulation 22 (appeals to the Scottish Ministers), insert—
 

“**22A.** Any non-governmental organisation promoting environmental protection and meeting any requirements under the law shall be deemed to have an interest for the purposes of Article 15a(a) of the IPPC Directive and rights capable of being impaired for the purposes of Article 15a(b) of that Directive.”
6. In Schedule 1 (activities and installations and mobile plant)—
  - (a) in Chapter 1 (energy industries), for section 5.4 (recovery activities) substitute(3)—

*“Section 5.4*

*Recovery activities*

PART A

- (a) Unless carried on as part of an activity falling within any description in Part A or Part B of section 6.4 of Chapter 6 or Part B of Chapter 7 of this Schedule, recovering by distillation any oil or organic solvent.
- (b) Cleaning or regenerating carbon, charcoal or ion exchange resins by removing matter which is, or includes, any substance listed in paragraphs 12 to 14 of Part 2 of this Schedule.
- (c) Unless part of a Part A activity described in another Chapter of this Schedule, recovery activities (within the meaning of Council Directive [91/689/EEC](#))(4) involving hazardous waste in excess of 10 tonnes per day and falling within the following descriptions:—
  - (i) using waste principally as a fuel or other means to generate energy (R1);
  - (ii) recycling/reclamation of inorganic materials other than metals and metal compounds (R5);
  - (iii) regeneration of acids or bases (R6);
  - (iv) recovery of components from catalysts (R8);
  - (v) oil refining or other reuses of oil (R9);

(3) Section 5.4 was amended by [S.S.I. 2003/446](#), regulations 19(f) and 19(g), and [S.S.I. 2005/340](#), regulation 11(c).

(4) O.J. No. L 377, 31.12.1991, p.20.

- (vi) solvent reclamation/regeneration (R2);
- (vii) recovering components used for pollution abatement (R7).

#### Interpretation of Part A

1. Except where the activity involves distilling more than 10 tonnes per day, nothing in paragraphs (a) or (b) of this Part applies to—

- (a) distilling oil for the production or cleaning of vacuum pump oil; or
- (b) an activity which is ancillary and related to another activity, whether described in this Schedule or not, which involves the production or use of the substance which is recovered, cleaned or regenerated.

2. Nothing in this Part applies to the treatment of waste soil by means of mobile plant for the treatment of contaminated material, substances or products for the purpose of remedial action with respect to land or controlled waters.

3. The reference to a paragraph number in brackets at the end of paragraph (c)(i) to (vii) of this Part is to the number of the corresponding paragraph in Annex IIB to the Waste Directive (recovery operations).

#### PART B

NIL”;

- (b) in Chapter 7, section 7 (SED activities)(5), in the definition of vehicle coating, insert at the end of paragraph (e)(6)—

“,

but not where the activity is carried out as part of the repair, conservation or decoration of those vehicles referred to in (a) to (e) above outside of manufacturing installations;”.

7. In Schedule 3 (prescribed dates and transitional arrangements)—

- (a) in paragraph 5, after sub-paragraph (3)(7), insert—

“(4) In this paragraph, “existing Part A installation or Part A mobile plant” means any Part A installation or Part A mobile plant which is in operation whether or not already subject to a relevant authorisation.”;

- (b) in paragraph 6, after “of this Schedule”, insert “, unless the context otherwise requires”;

- (c) in paragraph 9, for sub-paragraph (2A)(8), substitute—

“(2A) An operator of an existing Part B installation may with the consent of SEPA make an application for a permit before the date on which an application would otherwise be deemed to have been made under sub-paragraph (3), whether or not already subject to an authorisation under Part I of the Environmental Protection Act 1990(9).”; and

- (d) for paragraph 23(10) substitute—

“23. Without prejudice to any other power it may have to vary or revoke an authorisation, licence or permit under any enactment, SEPA may, at any time, issue a variation or revocation notice under this paragraph in consequence of a request or application as mentioned in paragraph 22.”.

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(5) Chapter 7, section 7 was inserted by S.S.I. 2004/26, regulation 18(a) and Schedule 1.

(6) Paragraph (e) was inserted by S.S.I. 2004/110, regulation 2(2)(d)(ii).

(7) Sub-paragraph (3) was inserted by S.S.I. 2004/26, regulation 19(a)(ii).

(8) Paragraph 9(2A) was inserted by S.S.I. 2004/26, regulation 19(b)(i).

(9) 1990 c. 43.

(10) Paragraph 23 was inserted by S.S.I. 2005/101, regulation 8 and Schedule 1.

8. In Schedule 4 (grant of permits)–
- (a) in paragraph 1(1), after paragraph (o), insert–
    - “(oa) in the case of an application for a permit to operate a Part A installation, an outline of the main alternatives, if any, studied by the applicant;”;
  - (b) in paragraph 6(e), after “where”, insert “, and in the case of an application for a permit to operate a Part A installation, how and at what times”;
  - (c) after paragraph 6, insert–
    - “**6A.** In the case of an application for a permit to operate a new Part A installation, the advertisement required by paragraph 5 shall, in addition to the information required by paragraph 6–
      - (a) explain that the particulars of the application contained in the register specified in paragraph 6(e) include a description of the elements listed in paragraph 1(1); and
      - (b) where applicable, state that the determination of the application is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with paragraph 17.”;
  - (d) in paragraph 7, for “paragraphs 1 and 6” substitute “paragraphs 1, 6 and, where applicable, 6A”;
  - (e) in paragraph 12(2), at the end of paragraph (b), insert–
    - “; and
    - (c) in the case of all persons, the period of 28 days beginning with the date on which the draft determination is advertised pursuant to paragraph 5 or 15B.”;
  - (f) in paragraph 15, for sub-paragraph (1) substitute–
    - “(1) Except in a case where an application has been referred to the Scottish Ministers under paragraph 14 and subject to paragraph 18, SEPA shall give notice of–
      - (a) its determination of an application for a permit; or
      - (b) in the case of an application for a permit to operate a new Part A installation, its draft determination,
 within the period of 4 months beginning with the day on which it received the application or within such longer period as may be agreed with the applicant.”;
  - (g) after paragraph 15A(**11**), insert–
    - “**15B.**—(1) SEPA shall–
      - (a) within a period of 3 days beginning with the date on which notice of a draft determination is given pursuant to paragraph 15(1)(b) advertise the notice on its web site or, 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 SEPA, 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 Scottish Ministers to the Secretary of State for onward transmission to another Member State under paragraph 17, SEPA shall forward copies of the draft determination and of the advertisement made pursuant to this paragraph to the Scottish Ministers at the same time as the draft determination is advertised.

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(11) Paragraph 15A was inserted by S.S.I. 2005/340, regulation 17(c).

**15C.—(1)** An advertisement required by paragraph 15B 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 5;
  - (ii) a copy of the draft determination; and
  - (iii) 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 where any other information and guidance relevant to the application may be obtained free of charge;
- (c) explain that any person may make representations to SEPA in writing (or in electronic form acceptable to SEPA) within the period of 28 days beginning with the date of the advertisement and give SEPA's address for receiving representations;
- (d) explain that where—
  - (i) no representations are made to SEPA within the period specified in paragraph (c) or, where applicable, paragraph 18A, SEPA shall—
    - (aa) give notice of its determination;
    - (bb) include in the relevant register a copy of the final determination, together with a statement confirming that no representations have been made on the draft determination, and information on the reasons and considerations on which the determination is based and information about the public participation process; and
    - (cc) advertise the notice on its web-site or, if it considers it appropriate, by any other means, within the period of 7 days beginning on the day on which the later of the period specified in paragraph (c) or, where applicable, paragraph 18A ends; or
  - (ii) representations are made to SEPA within the period specified in paragraph (c) or, where applicable, paragraph 18A, SEPA shall, subject to paragraph 15D—
    - (aa) give notice of its determination;
    - (bb) include in the relevant register a copy of the final determination, together with information on the reasons and considerations on which the determination is based, including information about the public participation process; and
    - (cc) advertise the notice on its web-site or, if it considers it appropriate, by any other means, within the period of 21 days beginning on the day on which the later of the periods specified in paragraph (c) or, where applicable, paragraph 18A ends, or within such longer period as may be agreed with the applicant;

(2) Where the draft determination has been forwarded to the Secretary of State pursuant to paragraph 17, the Scottish Ministers shall forward to the Secretary of State a copy of the final determination and the information specified in sub paragraph (1)(d)(i)(bb) or

(ii)(bb) as the case may be, by the date by which SEPA is required to give notice of its determination under sub paragraph (1)(d)(i) or (ii).

**15D.** For the purpose of calculating the period specified in paragraph 15C(1)(d)(ii), no account shall be taken any period beginning with the date on which notice is served on the applicant under paragraph 4 and ending on the date on which the applicant furnishes the information specified in the notice.”;

(h) in paragraph 16–

(i) after “its determination” insert “or draft determination”; and

(ii) for “paragraph 15” substitute “paragraph 15 or, as the case may be, paragraph 15C”;

(i) for paragraph 17 substitute–

“**17.** Where the Scottish Ministers are aware that the operation of an installation carrying out an activity listed in Annex I to the IPPC Directive in Scotland 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, they shall forward to the Secretary of State for onward transmission to that Member State–

(a) a copy of the application to operate the installation and a copy of the advertisement made under paragraph 5; 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 15B,

at the same time as the application or draft determination is advertised pursuant to paragraphs 5 or 15B (or as soon as they become so aware or receive such a request, if they become so aware or receive such a request after the application or draft determination are advertised but before the application is determined) and as soon as possible thereafter, any additional information which has become available after the application or draft determination are advertised and which may be relevant to the determination of the application, 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 other Member States on a reciprocal and equivalent basis, as referred to in Article 17 of the IPPC Directive.”;

(j) in paragraph 18–

(i) in paragraph (1)(a) after “application” where it first occurs, insert “or provide its draft determination”; and

(ii) in paragraph (1)(b) after “determination”, insert “ or to provide a draft determination”;

(k) after paragraph 18, insert–

“**18A.** 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 Scottish Ministers within the period of 35 days from the date of notification of the draft determination in accordance with paragraph 17, shall be forwarded by the Scottish Ministers to SEPA within the period of 10 days beginning on the day after that period ends”;

(l) for paragraph 19 substitute–

“**19.** For the purposes of Parts 1 and 2 of this Schedule–

(a) “new Part A installation” shall be interpreted in accordance with paragraph 6 of Part 1 of Schedule 3; and

- (b) “Member State” shall be taken to include Norway, Iceland and Liechtenstein<sup>(12)</sup>
- (m) for paragraph 20 substitute—
  - “**20.** The requirements of paragraphs 5 or 15B of this Schedule shall not apply in so far as they would require the advertisement of information mentioned in paragraph 6 or, as the case may be, paragraph 15C which is not to be included in the register by virtue of regulation 28 or 29.”;
- (n) after paragraph 23, insert—
  - “**23A.** Where a matter falls to be determined for the purposes of regulation 28 or under regulation 29, the period within which an advertisement is to be made under paragraph 15B shall be 3 days beginning 14 days after the day on which the matters to be determined for the purposes of regulation 28 or, as the case may be, under regulation 29, are finally disposed of.”; and
- (o) in paragraph 24—
  - (i) for “paragraph 23” substitute “paragraphs 23 and 23A”; and
  - (ii) for “paragraph 13 of Schedule 7” substitute “paragraphs 13, 15 and 15A of Schedule 7”.

**9.** In Schedule 7 (applications for variation of conditions)—

- (a) in paragraph 4—
  - (i) in sub paragraph (1)(b) omit from “authorise” to the end and substitute—
    - “authorise—
    - (i) a substantial change in the operation of an installation or mobile plant; or
    - (ii) a variation in the conditions of a permit to operate a Part A installation as a result of a review under regulation 11(2)(a).”;
  - (ii) in sub paragraph (2), omit from “no substantial change” to the end and substitute “sub-paragraph (1) does not apply”;
  - (iii) at the end of sub paragraph (5)(c), insert—
    - “; and
  - (d) in the case of a proposed variation notice affecting the operation of a Part A installation, provide—
    - (i) information on the reasons and considerations on which that proposed variation notice is based;
    - (ii) information on any guidance relevant to the determination of the proposed variation.”;
- (iv) in sub paragraph (9)—
  - (aa) for sub paragraph (9)(d), substitute—
    - “(d) state where and in the case of a variation affecting the operation of a Part A installation, how and at what times, any register which contains—
    - (i) particulars of the application or proposed variation;
    - (ii) in the case of a proposed variation affecting the operation of a Part A installation, a copy of the proposed variation

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<sup>(12)</sup> The Directive is extended to the European Economic Area by the decision of the EEA Joint Committee No. 27/97 of 30.4.97 (O.J. No. L 242, 4.9.97, p.76).

notice and the information provided by SEPA under sub-paragraph (5)(d)(i) on the reasons and considerations on which that proposed variation notice is based,

may be inspected and that it may be inspected free of charge;”;

(bb) at the end of paragraph (9)(f), insert–

“;

(g) in the case of a variation affecting the operation of a Part A installation–

(i) explain that the particulars of the application contained in the register specified in paragraph (d) include a description of the elements listed in paragraph 1;

(ii) in the case of a proposed variation notice, describe the contents of that notice;

(iii) where applicable, state that the determination of the application or the serving of the variation notice is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with paragraph 9;

(iv) where applicable, explain that any guidance relevant to the determination of the proposed variation which has been provided to the operator under paragraph 4(5)(d)(ii) has been included in the register or otherwise made available.”;

(v) in sub paragraph (12)–

(aa) in paragraph (b), for “other persons” substitute “any other person”; and

(bb) after paragraph (b), insert–

“(c) in the case of all persons, the period of 28 days beginning with the date on which the draft determination is advertised pursuant to paragraph 7A.”;

(b) after paragraph 6, insert–

“**6A.**—(1) In the case of a proposed variation notice affecting the operation of a Part A installation to which the consultation and advertising procedure set out in paragraph 4 applies–

(a) where no representations are made to SEPA within the period allowed by paragraph 4(12) or, where applicable and if later, paragraph 5 or by the day on which SEPA receives notification by the Scottish Ministers that the bilateral consultations have been completed pursuant to paragraph 10(b), SEPA shall–

(i) serve the variation notice;

(ii) include in the relevant register a copy of the variation notice, together with the statement confirming that no representations have been received by SEPA on the proposed variation and information on the reasons and considerations on which the variation notice is based; and

(iii) where paragraph 9 applies, forward a copy of the variation notice and the information specified in sub paragraph (ii) to the Scottish Ministers,

within the period of 7 days beginning on the day on which the period allowed by paragraph 4(12) or, where applicable and if later, paragraph 5 ends or the day



on which SEPA receives notification by the Scottish Ministers that the bilateral consultations have been completed pursuant to paragraph 10(b); or

- (b) where representations are made to SEPA within the period allowed by paragraph 4(12) or, where applicable and if later, paragraph 5 or by the day on which SEPA receives notification by the Scottish Ministers that the bilateral consultations have been completed pursuant to paragraph paragraph 10(b), SEPA shall—
  - (i) serve the variation notice;
  - (ii) include in the relevant register a copy of the variation notice, together with information on the reasons and considerations on which the variation notice is based, including information about the public participation process;
  - (iii) advertise the notice on its web site or, if it considers it appropriate, by any other means; and
  - (iv) where paragraph 9 applies, forward a copy of the variation notice and the information specified in sub paragraph (ii) to the Scottish Ministers,

within the period of 21 days beginning on the day on which the period allowed by paragraph 4(12) or, where applicable and if later, paragraph 5 ends or the day on which SEPA receives notification by the Scottish Ministers that the bilateral consultations have been completed pursuant to paragraph 10(b) or within such longer period as may be agreed with the applicant.

(2) Where the proposed variation has been forwarded to another Member State pursuant to paragraph 9, the Scottish Ministers shall forward to the Secretary of State a copy of the variation notice and the information specified in sub paragraph (1)(a)(ii) or (b)(iv) as the case may be, as soon as practicable.

(3) Where sub paragraph (1) applies and SEPA fails to serve the variation notice within the periods specified in that sub paragraph, the proposed variation shall, if the applicant notifies SEPA in writing (or in electronic form acceptable to SEPA) that the applicant treats the failure as such, be deemed to have been withdrawn at the end of that period.”;

- (c) for paragraph 7 substitute—

“7.—(1) Except in a case where an application has been referred to the Scottish Ministers under paragraph 6 and, subject to paragraph 10, SEPA shall give notice of—

- (a) its determination of an application under regulation 13(2); or
- (b) in the case of an application under regulation 13(2) for a variation to which paragraph 4(1)(b)(i) applies and which affects the operation of a Part A installation, its draft determination,

within the period specified in sub paragraph (2).

(2) The period specified for the purposes of sub paragraph (1) is as follows:—

- (a) where the consultation and advertising procedure set out in paragraph 4 applies, within the period of 4 months beginning with the day on which SEPA received the application;
- (b) where that procedure does not apply, within the period of 3 months beginning with the day on which SEPA received the application,

or, in either case, within such longer period as may be agreed with the operator.

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

- (a) any period beginning with the date on which notice is served on an operator under paragraph 3 and ending on the date on which the operator furnishes the information specified in the notice;
- (b) any period allowed for making representations in relation to a notice given pursuant to paragraph 5 in so far as that period does not overlap with any other period allowed for making representations in accordance with paragraph 4(12);
- (c) where a matter falls to be determined for the purposes of regulation 28 or under regulation 29, any period beginning with the date on which the period of 28 days referred to in paragraph 4(8) ends and ending on the date on which the application is advertised in accordance with paragraph 15(b).”;
- (d) after paragraph 7, insert—

“7A.—(1) SEPA shall—

- (a) within a period of 3 days beginning with the date on which notice of a draft determination is given pursuant to paragraph 7, advertise the notice on its web site or, 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 SEPA, 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 Scottish Ministers to the Secretary of State for onward transmission to another Member State under paragraph 9, SEPA shall forward copies of the draft determination and of the advertisement made pursuant to this paragraph to the Scottish Ministers at the same time as the draft determination is advertised.

7B.—(1) An advertisement required by paragraph 7A 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 4(8);
  - (ii) a copy of the draft determination; and
  - (iii) 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 where any other information and guidance relevant to the application may be obtained free of charge;
- (c) explain that any person may make representations to SEPA in writing (or in electronic form acceptable to SEPA) within the period of 28 days beginning with the date of the advertisement and give SEPA’s address for receiving representations;
- (d) explain that where—
  - (i) no representations are made to SEPA within the period specified in paragraph (c) or where applicable, paragraph 11A, SEPA shall—
    - (aa) give notice of its determination; and
    - (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 and information on the reasons

and considerations on which the determination is based and information about the public participation process; and

- (cc) advertise the notice on its web-site or, if it considers it appropriate, by any other means,

within the period of 7 days beginning on the day on which the period referred to in sub-paragraph (c) or, where applicable, paragraph 11A ends; or

- (ii) representations are made to SEPA within the period specified in paragraph (c) or, where applicable, paragraph 11A, SEPA shall, subject to paragraph 7C–

- (aa) serve the variation notice; and

- (bb) include in the register a copy of the final variation, together with information on the reasons and considerations on which the variation is based, including information about the public participation process; and

- (cc) advertise the notice on its web-site or, if it considers it appropriate, by any other means,

within the period of 21 days beginning on the day on which the later of the period specified in sub-paragraph (c) or, where applicable, paragraph 11A ends, or within such longer period as may be agreed with the applicant.

(2) Where the draft determination has been forwarded to the Secretary of State pursuant to paragraph 9 the Scottish Ministers shall forward to the Secretary of State a copy of the final determination and the information specified in sub paragraph (1)(d)(i)(bb) or (ii)(bb) as the case may be, by the date by which SEPA is required to give notice of its determination under sub-paragraph (1)(d)(i) or (ii), for the purpose of its onward transmission as soon as practicable to the Member State to which the draft determination has been forwarded under paragraph 9.

**7C.** For the purpose of calculating the period specified in paragraph 7B(1)(d)(ii), no account shall be taken any period beginning with the date on which notice is served on the applicant under paragraph 3 and ending on the date on which the applicant furnishes the information specified in the notice.”;

- (e) in paragraph 8–

- (i) after “its determination” insert “or draft determination”;

- (ii) for “the period” substitute “the applicable periods”; and

- (iii) for “paragraph 7” substitute “paragraph 7 or 7B”;

- (f) for paragraph 9, substitute–

**“9.** Where the Scottish Ministers are aware that an application or proposal to serve a variation notice mentioned in paragraph 4(1) relates to a substantial change in the operation of an installation carrying out activities listed in Annex I to the IPPC Directive in Scotland which are 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 Scottish Ministers shall forward to the Secretary of State for onward transmission to that State–

- (a) a copy of the application or proposed variation notice and a copy of the advertisement made under paragraph 4(8);

- (b) where applicable, a copy of the draft determination in respect of that application together with a copy of the advertisement made under paragraph 7A,

at the same time as the application, proposed variation or draft determination are advertised pursuant to paragraphs 4(8) and 7A (or as soon as they become so aware or receive such a request after the application, proposed variation or draft determination are advertised but before the application is determined or the proposed variation notice is served) and as soon as possible thereafter, any additional information which has become available after the application, proposed variation or draft determination and which may be relevant to the determination of the application or proposed variation, in order that the application or proposed variation notice 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 17 of the IPPC Directive.”;

(g) in paragraph 10–

(i) in sub-paragraph (a), after “application” where it first occurs, insert “or provide its draft determination”;

(ii) in sub-paragraph (b), after “determine the application”, insert “or to provide a draft determination”;

(h) after paragraph 11, insert–

“**11A.** 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 Scottish Ministers within the period of 35 days from the date of notification of the draft determination in accordance with paragraph 9, shall be forwarded to SEPA within the period of 10 days beginning on the day after that period ends.”;

(i) for paragraph 13, substitute–

“**13.** The requirements of paragraph 4(8) or paragraph 7A of this Schedule shall not apply in so far as they would require the advertisement of information mentioned in paragraph 4(9) or, as the case may be, paragraph 7B which is not to be included in the register by virtue of regulation 28 or 29”; and

(j) after paragraph 15, insert–

“**15A.** Where a matter falls to be determined for the purposes of regulation 28 or under regulation 29, the period within which an advertisement is to be made under paragraph 7A shall be 3 days beginning 14 days after the day on which the matters to be determined for the purposes of regulation 28 or, as the case may be, under regulation 29, are finally disposed of.”.

**10.** In Schedule 9 (Registers), in paragraph 1, after paragraph (c) insert–

“(ca) all particulars of any advertisement under paragraph 15B of Schedule 4 or paragraph 7A of Schedule 7, the information specified in paragraph 15C of Schedule 4 or paragraphs 6A or 7B of Schedule 7 and all particulars of any representations made by any person in response to such an advertisement, other than representations which the person who made them requested should not be placed in the register.”.

### **Amendment of the Environmental Protection (Prescribed Processes and Substances) Regulations 1991**

**11.** In paragraph (b) of Part B of section 6.5 (coating processes and printing) of Schedule 1 to the Environmental Protection (Prescribed Processes and Substances) Regulations 1991(13), for “1 tonne” substitute “2 tonnes”.

(13) S.I. 1991/472. Section 6.5 was amended by S.I.1994/1271 and 1995/3247.

St Andrew's House, Edinburgh  
13th October 2005

*ROSS FINNIE*  
A member of the Scottish Executive

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## EXPLANATORY NOTE

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

These Regulations are made under section 2 of the Pollution Prevention and Control Act 1999 (1999 c. 24). They implement in Scotland the amendments to the public participation provisions in Directive 96/61/EC made by Article 4 of Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (“the Public Participation Directive”) (O.J. No. L 156, 25.6.2003, p.17).

The requirements of Directive 96/61/EC concerning integrated pollution prevention and control have been implemented in Scotland by means of the Pollution Prevention and Control (Scotland) Regulations (S.S.I. 2000/323) (“the 2000 Regulations”).

Regulation 3 amends regulation 4 of the 2000 Regulations to enable SEPA to grant a permit subject to the condition that the applicant obtains any relevant certificate of technical competence within 2 years, where satisfied that the person is a fit and proper person to carry out certain specified waste management activities.

Regulation 4 amends regulation 17(8) of the 2000 Regulations so as to extend the application of that provision to mobile plant.

Regulation 5 inserts a new regulation 22A into the 2000 Regulations to extend the additional access to justice requirements in Article 4 of the Public Participation Directive to environmental non-governmental organisations.

Regulation 6(a) substitutes a new section 5.4 into Schedule 1 to the 2000 Regulations, which deals with the regulation of certain waste recovery activities. This corrects minor errors in the most recent amendment of that section by S.S.I. 2005/146, regulation 19(f) and (g).

Regulation 6(b) amends the definition of “vehicle coating” in section 7 of Schedule 1 to the 2000 Regulations to exclude certain coating activities from the scope of that definition in certain circumstances.

Regulation 7(a) to (c) amend paragraphs 5, 6 and 9 of Schedule 3 to the 2000 Regulations to enable SEPA to receive and consider applications for permits under those Regulations to allow the continued operation of existing installations, whether or not already subject to an authorisation under Part I of the Environmental Protection Act 1990 (“the 1990 Act”).

Regulation 7(d) substitutes a new paragraph 23 into Schedule 3 to the 2000 Regulations to clarify that the specific powers of variation or revocation under that paragraph are exercisable at any time and without prejudice to more general powers of variation or revocation, for example, under section 10 of the 1990 Act.

Regulations 8 and 9 amend the procedures for public participation in Schedules 4 (grant of permits) and 7 (applications for variation of conditions) respectively to the 2000 Regulations in order to implement the additional public participation requirements in paragraphs 1 to 3, 5 and 6 of article 4 of the Public Participation Directive. These requirements apply to all applications for permits to operate new Part A installations and to variations authorising substantial changes in the operation of a Part A installation or variations resulting from a review by SEPA of a Part A installation under regulation 11(2)(a) of the 2000 Regulations.

Regulation 8 amends Schedule 4 to the 2000 Regulations, which sets out the procedures for applications and determination of permits under regulation 7 of those Regulations. In particular–

- (i) regulation 8(a) adds a new paragraph (oa) (relating to alternatives) to the list of information specified in paragraph 1 of Schedule 4 which needs to be provided with the application;
- (ii) regulation 8(b) to (o) extends the public participation requirements in Parts 1 and 2 of Schedule 4 to apply the new requirements in Article 4 of the Public Participation Directive to applications for permits to operate new Part A installations, within the meaning of paragraph 6 of Part 1 of Schedule 3 to the 2000 Regulations;
- (iii) regulation 8(b) and (c) provides for additional advertisement requirements in respect of applications for permits to operate new Part A installations;
- (iv) regulation 8(f) to (l) amends the provisions in Parts 1 and 2 of Schedule 4 to provide for a new “draft determination” stage, which includes additional obligations to advertise, to inform other Member States in the case of installations with transboundary effects, to allow for representations from interested parties, and to provide or make available the additional information specified in Annex V to the Public Participation Directive;
- (v) regulation 8(m) to (o) amends the provisions in Part 3 of Schedule 4 to ensure that the additional advertisement requirements under the new paragraph 15B shall not extend to information precluded from disclosure under regulation 28 (national security) or regulation 29 (commercially confidential information).

Regulation 9 amends Schedule 7 to the 2000 Regulations, which sets out the procedures for the variation of conditions of permits under regulation 13 of those Regulations. In particular–

- (i) regulation 9(a) to (i) extends the public participation requirements in Part 2 of Schedule 7 to apply the new requirements in Article 4 of the Public Participation Directive to–
  - (aa) variations authorising substantial changes in the operation of Part A installations; and
  - (bb) variations in the conditions of a permit to operate a Part A installation proposed by SEPA and resulting from a review under regulation 11(2)(a) of the 2000 Regulations;
- (ii) regulation 9(a) amends paragraph 4 of Schedule 7 to the 2000 Regulations to require SEPA to furnish the operator with additional information as well as to provide for additional advertisement requirements in respect of variations affecting the operation of Part A installations;
- (iii) regulation 9(b) to (h) inserts, for variations affecting Part A installations, a new “post-advertisement” stage in respect of variations proposed by SEPA and a “draft variation” stage in respect of applications for variations, including, as in the case of applications for permits to operate Part A installations, additional obligations in relation to advertising, the provision of information to other Member States in the case of installations with transboundary effects, new representation requirements, and the obligation to provide or make available information specified in Annex V to the Public Participation Directive.
- (iv) regulation 9(i) and (j) amends Part 3 of Schedule 7, in a similar way to the amendments to Schedule 4 by virtue of regulation 8(m) to (o), to exclude information from advertisement on grounds of national security or commercial confidentiality.

Regulation 10 inserts a new sub-paragraph (c) into paragraph 1 of Schedule 9 (Registers) to require SEPA to include in the register the information resulting from the new public participation requirements specified by these Regulations.

Regulation 11 amends the Environmental Protection (Prescribed Processes and Substances) Regulations 1991 (S.I.1991/472) to increase the threshold from 1 tonne to 2 tonnes for which an authorisation is required under Part I of the Environmental Protection Act 1990 (c. 43) to carry out certain activities involving repainting or respraying of road vehicles.

A Regulatory Impact Assessment relating to Article 4 of the Public Participation Directive has been prepared and copies can be obtained from the SEPA Sponsorship and Waste Division, Scottish Executive Environment and Rural Affairs Department (SEERAD), Victoria Quay, Leith, EH6 6QQ.

**Status:** *This is the original version (as it was originally made).*