
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2012 No.

**The Pollution Prevention and
Control (Scotland) Regulations 2012**

**PART I
GENERAL**

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Pollution Prevention and Control (Scotland) Regulations 2012.

(2) These Regulations come into force on 7th January 2013.

(3) These Regulations extend to Scotland only.

Interpretation: general

2.—(1) In these Regulations—

“abatement equipment” means, in relation to solvent emission activities, equipment used to abate the effects of emissions of volatile organic compounds,

“baseline report” means a report as described in paragraph 1(3) of Schedule 4,

“battery” means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable) or one or more secondary battery cells (rechargeable; an accumulator), but does not include any battery excluded from the scope of the Batteries Directive by Article 2(2) of that Directive,

“change in operation” means a change in the nature or functioning of an installation or mobile plant, or an extension of the installation or plant, which may have consequences for the environment (see also the definition of “substantial change in operation”),

“co-incineration” and “incineration” have the same meanings as in Section 5.1 of Part 1 of Schedule 1,

“directly associated activity” means—

(a) in relation to an activity carried out in a stationary technical unit and falling within any description in Part 1 of Schedule 1, any directly associated activity which has a technical connection with the activity carried out in the unit and which could have an effect on pollution, and

(b) in relation to a solvent emission activity, any directly associated activity which has a technical connection with the solvent emission activity carried out on the same site and which could have an effect on any discharge of volatile organic compounds into the environment,

“emission” means in relation to—

- (a) Part A installations, the direct or indirect release of a substance, a vibration, heat or noise from individual or diffuse sources in an installation into the air, water or land,
- (b) Part B installations, the direct release of a substance or heat from individual or diffuse sources in an installation into the air,
- (c) mobile plant, the direct release of a substance or heat from the plant into the air, and
- (d) a solvent emission activity—
 - (i) the direct release of a substance in waste gases into the air from individual or diffuse sources forming part of that activity, and
 - (ii) the direct or indirect release of fugitive emissions,

“emission limit value” means the mass, expressed in terms of specific parameters, concentration or level of an emission, which may not be exceeded during one or more periods of time,

“enforcement notice” has the same meaning as in regulation 55,

“environmental inspection” means the actions necessary to check and promote compliance of installations and mobile plant with permit conditions and, where necessary, to monitor the environmental impact of activities carried out under a permit, including as required—

- (a) site visits,
- (b) monitoring of emissions and checks of internal reports and follow-up documents,
- (c) verification of self-monitoring,
- (d) checking of techniques used, and
- (e) checking of the adequacy of environmental management of the installation,

“environmental inspection plan” has the same meaning as in regulation 53,

“environmental quality standard” means the set of requirements which must be fulfilled at a given time in respect of a particular environment as set out in Union legislation,

“fugitive emissions” means, in relation to solvent emission activities, any emission of volatile organic compounds not in waste gases into air, soil or water as well as solvents contained in any products, unless otherwise stated in Part 2 of Annex VII of the Industrial Emissions Directive,

“hazardous substance” means substances or mixtures as defined in Article 3 of the Hazardous Substances Regulation,

“hazardous waste” means waste which displays one or more of the hazardous properties listed in Annex III of the Waste Framework Directive,

“hybrid installation or mobile plant” means an installation or mobile plant which is subject to a hybrid permit, and cognate expressions are construed accordingly,

“hybrid permit” means a permit combining a standard rules condition with one or more other conditions under Part III of these Regulations,

“industrial battery” means any battery or battery pack which is—

- (a) designed exclusively for industrial or professional uses,
- (b) used as a source of power for propulsion in an electric vehicle,
- (c) unsealed, but is not an automotive battery, or
- (d) sealed, but is not a portable battery,

“installation” means—

- (a) a stationary technical unit where one or more activities listed in Schedules 1 or 2 are carried out, and

(b) any other location on the same site where any other directly associated activities are carried out,

and references to an installation include references to part of an installation,

“landfill” has the same meaning as in Article 2(g) of Council Directive 1999/31/EC on the landfill of waste⁽¹⁾,

“mobile plant” has the meaning given by regulation 12,

“off-site condition” has the meaning given by regulation 24,

“operator” means, in relation to an installation or mobile plant, the person who has control over the operation of the installation or plant (see also paragraph (2)),

“organic compound” means any compound containing carbon and one or more of hydrogen, halogens, oxygen, sulphur, phosphorus, silicon or nitrogen, with the exception of carbon oxides and inorganic carbonates and bicarbonates,

“Part A installation” and “Part B installation” have the same meanings as regulation 12,

“permit” means, unless the context requires otherwise, a permit granted by SEPA in accordance with these Regulations,

“pollution” means emissions as a result of human activity which may—

- (a) be harmful to human health or the quality of the environment,
- (b) cause offence to any human sense,
- (c) result in damage to material property, or
- (d) impair or interfere with amenities and other legitimate uses of the environment,

and “pollutant” means any substance, vibration, heat or noise released as a result of such an emission which may have such an effect,

“portable battery” means any battery or battery pack which is sealed, can be hand-carried by an average natural person without difficulty, and is neither an automotive battery nor an industrial battery,

“prescribed fee” means a fee prescribed for a matter in a scheme imposing charges made by SEPA under section 41 of the 1995 Act⁽²⁾,

“register” means the register maintained by SEPA under regulation 64,

“reduction scheme” means a reduction scheme which complies with Part 5 of Annex VII of the Industrial Emissions Directive,

“the relevant date” has the meaning given by regulation 1(1) of the Landfill Regulations,

“revocation notice” has the meaning given by regulation 50,

“rule-making authority” means the Scottish Ministers or SEPA,

“separately collected waste” means waste which has been collected and transported in accordance with section 34(2I) of the 1990 Act,

“site report” means a report as described in paragraph 1(2) of Schedule 4

“solvents installation” has the same meaning as in regulation 12, and an activity carried out at such an installation is referred to as a “solvent emission activity”,

“SEPA” means the Scottish Environment Protection Agency⁽³⁾,

(1) OJ L 182, 16.7.1999, p.1, as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p.11), Regulation (EC) No 1137/2008 (OJ L 311, 21.11.2008, p.1), and Directive 2011/97/EU (OJ L 328, 10.12.2011, p.49).

(2) 1995 c.25. Section 41 has been relevantly amended by paragraph 2 of schedule 2 to the Climate Change (Scotland) Act 2009 (asp12), by S.I. 2007/1711, 2007/3106, 2008/3087 and 2009/890, and by S.S.I. 2003/235.

(3) SEPA is established by section 20 of the Environment Act 1995 (c.25).

“specified waste management activity” means an activity comprising—

- (a) the disposal of waste in a landfill, whether or not the disposal falls within Section 5.2 of Part 1 of Schedule 1,
- (b) the disposal or recovery of waste falling within Sections 5.3, 5.4 or 5.6 of that Part of that Schedule, or
- (c) the disposal or recovery of waste in a waste incineration installation,

“standard installation” or “standard mobile plant” means an installation or mobile plant described in standard rules, and cognate expressions are construed accordingly,

“standard rules” has the meaning given by regulation 36,

“standard rules condition” has the meaning given by regulation 37,

“standard rules permit” means a permit containing one or more standard rules conditions and, in relation to any set of standard rules, means a permit containing a standard rules condition in respect of those rules,

“start up and shut down operations” means, in relation to solvent emission activities, operations excluding regular oscillating activity phases whilst bringing an activity, an equipment item or a tank into or out of service or into or out of an idling state,

“substance” includes any chemical element and its compounds and any biological entity or micro-organism, with the exception of—

- (a) radioactive substances within the meaning of Council Directive 96/29/Euratom laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation⁽⁴⁾,
- (b) genetically modified organisms within the meaning of Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC⁽⁵⁾, and
- (c) genetically modified micro-organisms within the meaning of Directive 2009/41/EC of the European Parliament and of the Council on the contained use of genetically modified micro-organisms (recast)⁽⁶⁾,

“substantial change in operation” means a change in operation which SEPA considers may have a significant negative effect on human health or the environment, or which in itself constitutes the carrying out of an activity described in Part 1 of Schedules 1 or 2 that exceeds any threshold capacity specified in those Schedules, and includes the—

- (a) carrying out of solvent emissions activity—
 - (i) at a small solvents installation, where there is a change of the nominal capacity leading to an increase in emissions of volatile organic compounds of more than 25 percent,
 - (ii) at any other solvents installation, where a change of the nominal capacity leads to an increase in emissions of volatile organic compounds of more than 10 percent,
 and for that purpose—

“input” has the same meaning as in Part 4 of Schedule 2 (see the definition of “consumption”),

“nominal capacity” means the maximum mass input of organic solvents at the installation averaged over one day, if that installation is operated at its design output under conditions other than start up and shut down operations or relating to the maintenance of equipment, and

(4) OJ L 159, 29.6.96, p.1.

(5) OJ L 106, 17.4.2001, p.1; as amended by Commission Decision 2000/6123/EC (OJ L 200, 30.7.2002, p.22), Regulation (EC) No 1829/2003 (OJ L 268, 18.10.2003, p.1), Regulation (EC) No 1830/2003 (OJ L 268, 18.10.2003, p.25) and Directive 2000/27/EC of the European Parliament and of the Council (OJ L 81, 20.3.2008, p.45).

(6) OJ L 125, 21.5.2009, p.75.

“small solvents installation” means a solvents installation—

- (i) which falls within the lower threshold band of items 1, 3, 4, 5, 8, 10, 13, 16 or 17 of the table in Part 2 of Annex VII to the Industrial Emissions Directive, or
- (ii) for the activities which fall under one of the other items of that Part and which has a solvent consumption of less than 10 tonnes per year,
- (b) extension of the rated thermal input of a combustion plant as defined in Article 3(25) of the Industrial Emissions Directive by 50 megawatts or more,
- (c) incineration or co-incineration for the first time of hazardous waste, and for that purpose “hazardous waste” has the meaning given in Section 5.1 of Part 1 of Schedule 1,

“suspension notice” has the meaning given by regulation 56(1) and (4),

“variation notice” has the meaning given by regulation 46,

“volatile organic compound” means—

- (a) any organic compound having a vapour pressure of 0.01 kPa or more at 293.15K or having a corresponding volatility under the particular conditions of use, or
- (b) the fraction of creosote having a vapour pressure of 0.01 kPa or more at 293.15K,

“waste” means any substance or object which the holder discards or intends or is required to discard,

“waste gases” means, in relation to solvent emission activities, the final gaseous discharge containing volatile organic compounds or other pollutants from a stack or abatement equipment into the air,

“waste incineration installation” means that part of an installation or any mobile plant where—

- (a) waste is incinerated or co-incinerated in an incineration or co-incineration plant falling within Part A of Section 5.1 of Part 1 of Schedule 1, or
- (b) any activity falling within Part 1 of that Schedule is carried out in an incineration or co-incineration plant as defined in Section 5.1 of that Part of that Schedule, and

“waste management licence” means a waste management licence within the meaning of Part II of the 1990 Act.

(2) For the purposes of these Regulations—

- (a) where an installation or any mobile plant has not been put into operation, the person who will have control over the operation of the installation or mobile plant when it is put into operation is to be treated as the operator of the installation or mobile plant, and
- (b) where an installation or any mobile plant has ceased to be in operation, the person who holds the permit which applies to the installation or mobile plant is to be treated as the operator of the installation or mobile plant.

(3) In these Regulations a reference to a release into water includes a release into a sewer.

Interpretation: enactments etc.

3.—(1) In these Regulations—

“1990 Act” means the Environmental Protection Act 1990(7),

“1995 Act” means the Environment Act 1995(8),

(7) 1990 c.43.

(8) 1995 c.25.

“2000 Regulations” means the Pollution Prevention and Control (Scotland) Regulations 2000⁽⁹⁾,

“Batteries Directive” means Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC⁽¹⁰⁾,

“EIA Directive” means Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (codification)⁽¹¹⁾,

“Hazardous Substances Regulation” means Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006⁽¹²⁾,

“Industrial Emissions Directive” means Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (recast)⁽¹³⁾,

“Landfill Regulations” means the Landfill (Scotland) Regulations 2003⁽¹⁴⁾,

“Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste⁽¹⁵⁾,

(2) An expression in relation to batteries defined in Article 3 of the Batteries Directive has the same meaning in these Regulations as in that Directive.

(3) A reference to any other term defined in the Industrial Emissions Directive has the same meaning in these Regulations as in that Directive.

Interpretation: best available techniques, etc.

4. In these Regulations—

“available techniques” means those techniques which have been developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the cost and advantages, whether or not the techniques are used or produced inside the United Kingdom, as long as they are reasonably accessible to the operator,

“BAT conclusions” means a document containing the parts of a BAT reference document laying down the conclusions on best available techniques, their description, information to assess their applicability, the emission levels associated with the best available techniques, associated monitoring, associated consumption levels and, where appropriate, relevant site remediation measures,

“BAT reference document” means a document, resulting from the exchange of information organised for the purposes of Article 13 of the Industrial Emissions Directive, drawn up for defined activities and describing, in particular applied techniques, present emissions and consumption levels, techniques considered for the determination of best available techniques

(9) S.S.I. 2000/323; as amended by paragraph 7 of Part 2 of schedule 1 to the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), by S.I. 2007/2325, and by S.S.I. 2002/493, 2003/146, 170, 221 and 235, 2004/26, 110, 112 and 512, 2005/101, 340 and 510, 2006/127, 2008/410, 2009/247 and 336, 2010/236 and 2011/171, 226, 285 and 418, and 2012/148.

(10) OJ L 266, 26.9.2006, p.1, as amended by Directives 2008/12/EC (OJ L 76, 19.3.2008, p.39) and 2008/103/EC (OJ L 327, 5.12.2008, p.7).

(11) OJ L 175, 28.1.2012, p.40.

(12) OJ L No 353, 31.12.2008, p.1; as amended by Commission Regulation (EC) No 790/2009 (OJ L No 235, 5.9.2009, p.1) and Commission Regulation (EC) No 286/2011 (OJ L 83, 30.3.2011, p.1).

(13) OJ L 334, 17.12.2010, p.17.

(14) S.S.I. 2003/235; as amended by paragraph 8 of schedule 2 to the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), and by S.S.I. 2003/343, 2009/247, 2010/60, 2011/226 and 2012/148.

(15) OJ L 312, 22.11.2008, p.3.

as well as BAT conclusions and any emerging techniques, giving special consideration to the matters listed in Schedule 3,

“best” means, in relation to techniques, most effective in achieving a high general level of protection of the environment as a whole,

“best available techniques” mean the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole,

“emerging technique” means a novel technique for an industrial activity that, if commercially developed, could when compared to existing best available techniques provide—

- (a) a higher level of protection of the environment, or
- (b) at least the same level of protection of the environment and higher cost savings,

“emission levels associated with the best available techniques” means the range of emission levels obtained under normal operating conditions using a best available technique, or combination of best available techniques, as described in BAT conclusions, expressed as an average over a given period of time, under specified reference conditions, and

“techniques” includes both the technology used and the way in which an installation is designed, built, maintained, operated and decommissioned.

SEPA: duties relating to best available techniques

5.—(1) SEPA must ensure that it follows or is informed of—

- (a) developments in best available techniques, and
- (b) the publication of any new or updated BAT conclusions.

(2) SEPA must where appropriate exercise its functions so as to encourage the development and application of emerging techniques, in particular for any technique identified in a BAT reference document.

(3) SEPA must have regard to any guidance by the Commission under Article 27 of the Industrial Emissions Directive relating to the development and application of emerging techniques.

SEPA: application forms

6. SEPA may require any application made to it under any provision of these Regulations to be made in writing on a form made available by SEPA.

SEPA: information relating to right of appeal

7. SEPA must, when issuing any decision or determination in respect of which there exists a right of appeal to the Scottish Ministers under these Regulations, inform all persons who have such a right of the existence of the right.

The Scottish Ministers and SEPA: service of notices

8.—(1) A notice served or given by the Scottish Ministers or by SEPA under these Regulations or the Landfill Regulations must be in writing.

(2) A notice may be served on or given to a person by leaving it at the proper address of the person or by sending it by post to that person at that address.

(3) A notice may—

- (a) in the case of a body corporate, be served on the secretary or clerk of the body,
- (b) in the case of a partnership, be served on or given to a partner or person having the control or management of the partnership business.

(4) For the purposes of this regulation, and of section 7 of the 1978 Act in its application to this regulation, the proper address of any person on or to whom any such notice is to be served or given is the last known address of that person, except that—

- (a) in the case of a body corporate or their secretary or clerk, it is the address of the registered or principal office of that body,
- (b) in the case of a partnership or person having the control or management of the partnership business, it is the principal office of the partnership.

(5) The principal office of a company registered outside of the United Kingdom, or of a partnership carrying on business outside the United Kingdom, is their principal office within the United Kingdom.

(6) If the person to be served with or given any such notice has specified an address in the United Kingdom other than the proper address within the meaning of paragraph (4) as the address at which that person (or someone on behalf of that person) will accept notices of the same description as that notice, the specified address is also be treated for the purposes of this regulation and section 7 of the 1978 Act as the proper address of that person.

(7) In this regulation, “1978 Act” means the Interpretation Act 1978⁽¹⁶⁾.

Electronic communications

9.—(1) In these Regulations—

- (a) “writing” includes electronic communications within the meaning of section 15 (general interpretation) of the Electronic Communications Act 2000⁽¹⁷⁾, and
- (b) a reference to a form includes an electronic form.

(2) Where an application is sent electronically—

- (a) any fee, map or plan that is required to accompany the application may be sent to SEPA separately, and
- (b) the application is not be treated as having being received by SEPA until the last thing so required has also been received.

⁽¹⁶⁾ 1978 c.30.

⁽¹⁷⁾ 2000 c.7; section 15 was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).