

## SCHEDULE 10

Regulation 72

### SAVINGS AND TRANSITIONAL PROVISIONS

#### PART 1

##### General

##### Interpretation

1.—(1) In this Schedule—

“enactment” includes an Act of the Scottish Parliament and an instrument made under such an Act,

“existing permit” means—

- (a) a permit granted under the 2000 Regulations on or before 6th January 2013 (other than a permit revoked by paragraph 2), and
- (b) a permit where—
  - (i) a duly made application for the permit is received by SEPA on or before 6th January 2013, and
  - (ii) the permit is granted in the period beginning on 7th January 2013 and ending on 6th January 2014.

(2) In the event of any inconsistency between a condition specified in any paragraph of Part 3 of this Schedule and any other condition of a permit the specified condition shall prevail to the extent of that inconsistency.

##### Permits in respect of odourising natural gas or liquefied petroleum gas

2. A permit for an activity falling within paragraph (a) of Part B of Section 1.2 of Part 1 of Schedule 1 to the 2000 Regulations is revoked on the date of coming into force of these Regulations.

##### Permits granted, or applied for, on or before 6th January 2013

3.—(1) This paragraph applies to an existing permit for—

- (a) a Part A installation,
- (b) a Part B installation, or
- (c) any Part B mobile plant.

(2) The 2000 Regulations continue to have effect notwithstanding their revocation in relation to an existing permit—

- (a) in the period beginning on 7th January 2013 and ending on 6th January 2014, and
- (b) in respect of any application, notice, investigation or legal proceedings made or begun in that period and not determined or concluded by 7th January 2014 (including for that purpose any penalty, punishment or other sanction that may be imposed in respect of a failure to comply with a requirement of the 2000 Regulations in that period).

(3) An existing permit for a Part A installation is to be treated as suspended under these Regulations from 7th January 2014 if the installation has not been put into operation on or before 6th January 2014.

(4) Any enactment or direction modified, repealed or revoked by these Regulations is to be read as if not so modified, repealed or revoked to the extent necessary to give effect to this paragraph.

(5) An existing permit is treated as a permit granted under the 2000 Regulations for the purposes of this paragraph notwithstanding that it may be deemed by virtue of any other enactment to be a permit granted under these Regulations for any other purpose.

(6) In this paragraph, “suspended” means that a permit ceases to have effect to authorise the operation of an installation, or the carrying out of an activity in an installation, until—

- (a) the permit is varied under regulation 46, or
- (b) SEPA gives notice to the operator that the permit is no longer suspended.

### **Activities not requiring a permit, or requiring an environmental licence**

4.—(1) This paragraph applies to an existing permit where the permit relates to activity that is not described in any Part A of Part 1 of Schedule 1 or in Schedule 2 to these Regulations (a “legacy permit”).

(2) An operator holding a legacy permit is deemed to have applied on 7th January 2013 for any environmental licence that would otherwise be required for the activity described in the permit.

(3) No fee or charge is payable by the operator to SEPA under any enactment or scheme in respect of such a deemed application.

(4) A legacy permit is, so far as not revoked, to be treated as being revoked on 7th January 2014.

(5) In this paragraph, “environmental licence” means a permit, licence or authorisation under any of—

- (a) these Regulations,
- (b) the 1990 Act,
- (c) the Water Environment (Controlled Activities) (Scotland) Regulations 2011<sup>(1)</sup>, or
- (d) the Waste Management Licensing (Scotland) Regulations 2011<sup>(2)</sup>.

### **2015 installations**

5.—(1) Regulation 11 applies to a 2015 installation—

- (a) from 7th July 2015, or
- (b) where an application for the purposes of paragraph (2) is not determined on or before that date, from the date the application is determined.

(2) An application for a permit to operate a 2015 installation must be received by SEPA in the period specified in sub-paragraph (3).

(3) The specified period for an activity described in Table 1 is—

- (a) for row 12, the period beginning on 7th January 2014 and ending on 7th April 2014,
- (b) for rows 3 to 8, the period beginning on 7th March 2014 and ending on 7th June 2014,
- (c) for row 11, the period beginning on 7th May 2014 and ending on 7th August 2014, and
- (d) for rows 1, 2, 9 and 10, the period beginning on 7th July 2014 and ending on 7th October 2014.

(4) An application received by SEPA for a permit for a 2015 installation before the applicable specified period—

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(1) [S.S.I. 2011/209](#).

(2) [S.S.I. 2011/228](#), as amended by [S.S.I. 2012/148](#).

- (a) is deemed to have been received in that period, and
- (b) no other period of time provided for in respect of any such application under these Regulations begins to elapse until the start of that period.

(5) In this paragraph, a reference to an application for a permit includes an application for a variation of a permit for an installation in respect of any other activity.

(6) In this paragraph, “2015 installation” means an installation at which an activity described in column 1 of Table 1 is carried out on or before 6th January 2013, but does not include an installation at which such an activity is carried out if—

- (a) the activity is a Part A activity for the purposes of the 2000 Regulations, and
- (b) a permit has been granted under those Regulations in respect of the activity.

(7) Where an activity falls within a description in more than one row of Table 1 it is to be regarded as falling only within the description that is most apt to describe the activity.

**Table 1**

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*Activity as described in Part 1 of Schedule 1*

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1. Section 1.2, Part A, paragraph (c)(ii)
2. Sections 4.1 to 4.6
3. Section 5.1
4. Section 5.3, Part A
5. Section 5.4, Part A, paragraph (a)(iii) to (v)
6. Section 5.4, Part A, paragraph (b)
7. Section 5.6, Part A, paragraph (a)
8. Section 5.6, Part A, paragraph (b)
9. Section 5.7, Part A
10. Section 6.1, Part A, paragraph (c)
11. Section 6.6, Part A
12. Section 6.8, Part A, paragraph (d)(iii)

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**Directions by the Scottish Ministers**

6. A direction made by the Scottish Ministers under regulations 9(2) and 23 of the 2000 Regulations having effect on 6th January 2013 ceases to have effect on 7th January 2013.

**PART 2**

**Specific installations and activities**

**Landfill**

7.—(1) Where a landfill falls within paragraph (a) of Part A of Section 5.2 of Part 1 of Schedule 1, and a waste management licence was granted for its operation in the period beginning on 16th July 2011 and ending on 10 April 2003, the licence has effect from 11th April 2003 as if it were a landfill permit.

(2) In this paragraph, “landfill permit” means a permit required under these Regulations for the carrying out of the disposal of waste in a landfill.

### **Solvent emission activities: risk phrases and hazard statements**

8.—(1) This paragraph applies where, on 1st June 2015, a permit refers to a substance that is a volatile organic compound or a halogenated volatile organic compound that is assigned or needs to carry a risk phrase<sup>(3)</sup>.

(2) A reference in a permit to a risk phase described in column 1 of Table 2 is to be read as a reference to the hazard statement in the corresponding entry in column 2 of the Table.

**Table 2**

<i>Risk phrase</i>	<i>Hazard statement</i>
R40	H341
R45	H340
R46	H350
R49	H350i
R60	H360D
R61	H360F
R68	H351

(3) In this paragraph, “permit” includes an authorisation under section 6 of the 1990 Act.

### **Solvent installations: first use of risk phrase or hazard statement substances**

9.—(1) The operator of a solvents installation who proposes to begin using—

- (a) in the period to 31st May 2015, a risk phrase or hazard statement substance or mixture, or
- (b) in the period from 1st June 2015, to a hazard statement substance or mixture,

must make an application for variation under regulation 46, and may not begin using the substance or mixture until after the determination date.

(2) The operator of a solvents installation must make an application for variation under regulation 46 within the period of four months beginning—

- (a) in the period to 31st May 2015, on the date on which a risk phrase or hazard statement, or
- (b) in the period from 1st June 2015, on the date a hazard statement,

is assigned to a substance or mixture used in the installation.

(3) Where an operator fails to comply with a requirement under this paragraph SEPA must serve a notice on the operator requiring compliance, and specifying the period for doing so.

(4) A notice under sub-paragraph (3) is deemed to be an enforcement notice under regulation 55.

(5) In this paragraph, “determination date” means the date on which the permit is varied.

(3) See Regulation (EC) No 1272/2008 as defined in regulation 2(1) for the meaning of ‘hazard statements’ and ‘risk phrases’.

### **Refuelling activities**

10.—(1) Regulation 11 applies, in respect of an installation at which an activity described in paragraph (c) of Part B of Section 1.2 of Part 1 of Schedule 1 is carried out, as specified in sub-paragraphs (2) and (3).

(2) It applies from the date of coming into force of these Regulations in respect of an existing service station with a throughput in any 12 month period of more than 3500 m<sup>3</sup>.

(3) It applies in the period beginning on 31st December 2018 in respect of an existing service station with a throughput in any such period of more than 3000 m<sup>3</sup>.

(4) In this paragraph, “existing service station” has the same meaning as in Section 1.2 of Part 1 of Schedule 1.

## **PART 3**

### **Permit conditions**

#### **Permit condition: incidents, accidents, and breach of conditions**

11.—(1) A permit for a Part A installation includes the condition specified in sub-paragraph (2).

(2) The specified condition is that the operator of an installation or any mobile plant must in the event—

(a) that operation gives rise to an incident or accident that significantly affects the environment, immediately take such measures as are needed to—

(i) limit the environmental consequences of the incident, and

(ii) prevent further possible incidents and accidents of the same type or from the same cause,

(b) of a breach of a permit condition, immediately take such measures as are needed to ensure compliance with the permit within the shortest possible time,

(c) of a breach of a permit condition that poses an immediate danger to human health, or threatens to cause an immediate significant adverse effect on the environment, immediately suspend operation until such time as the installation or mobile plant can be operated in compliance with the permit.

(3) This paragraph applies in the period from 7th January 2014 until the date that SEPA next varies a condition of the permit so as to give effect to Article 7 of the Industrial Emissions Directive.

#### **Permit condition: monitoring of Part A installations**

12.—(1) A permit for a Part A installation includes the condition specified in sub-paragraph (2).

(2) The specified condition is that the operator of a Part A installation must—

(a) supply SEPA regularly, and at least annually, with such results of emissions monitoring or monitoring of equivalent parameters as are needed to enable SEPA to verify compliance with the permit conditions,

(b) give SEPA the first report required under sub-paragraph (a) no later than 31st January 2014.

(3) This paragraph applies in the period from 7th January 2014 until the date that SEPA next varies a condition of the permit so as to give effect to Article 14(1)(d)(i) of the Industrial Emissions Directive.

### **Permit condition: large combustion plants**

13.—(1) This paragraph applies to an installation at which an activity described in Chapter III of the Industrial Emissions Directive is carried out, whether before or after that Chapter has effect.

(2) An existing permit for such an installation includes the conditions specified in sub-paragraphs (2) and (3).

(3) The first specified condition is that in the event of malfunction or breakdown of abatement equipment the operator—

- (a) must, if a return to normal operation is not achieved within 24 hours, reduce or close down operations or use low-polluting fuels, or take such other steps as SEPA requires, and
- (b) must ensure that the cumulative duration of unabated operation in any 12 month period does not, unless agreed in advance by SEPA, exceed 120 hours.

(4) The second specified condition is that the values of the 95% confidence intervals of single measured results must not exceed the following percentages of the emission limit values—

- (a) 10% for carbon monoxide,
- (b) 20 % for sulphur dioxide,
- (c) 20% for nitrogen oxides, and
- (d) 30% for dust,

where the validated hourly and daily average values are determined from the measured valid hourly average values after having subtracted the value of the confidence interval specified above, and providing that any day in which three or more hourly average values are invalid due to malfunction or maintenance of the continuous measurement system shall be invalidated.

(5) This paragraph applies in the period from 7th January 2013 until the date that SEPA next varies a condition of the permit so as to give effect—

- (a) in the case of sub-paragraph (3), to Article 37 of the Industrial Emissions Directive, and
- (b) in the case of sub-paragraph (4), to paragraph 9 of Part 3 of Annex V to that Directive.

## **PART 4**

### **Fees and charges**

14.—(1) A reference in these Regulations to payment of a prescribed fee is, in so far as a fee is prescribed for an equivalent matter in the 2012 Scheme, to be read as a reference to payment of the fee prescribed in the 2012 Scheme.

(2) Sub-paragraph (1) does not apply after the 2012 Scheme is revoked.

(3) Where sub-paragraph (1) does not apply (whether by virtue of sub-paragraph (2) or otherwise), and the 2012 Scheme—

- (a) provides for the payment of a fee for an equivalent matter, a reference in the 2012 Scheme to the 2000 Regulations (or any part) is to be read as a reference to these Regulations (or any part), or
- (b) does not provide for payment of such a fee, the fee to be charged by SEPA for any matter in or under these Regulations is the fee applicable to a Part A installation.

(4) For the purposes of sub-paragraph (3)(b), SEPA must apply—

- (a) an application charge unit of 1, and
- (b) a subsistence charge unit of 3.

(5) In this paragraph—

“2012 Scheme” means the Pollution Prevention and Control (Parts A and B) Fees and Charges (Scotland) Scheme 2012<sup>(4)</sup>,

“application charge unit” has the same meaning as in the 2012 Scheme,

“equivalent matter” means, as the case may be, a matter in the 2000 Regulations equivalent to a matter provided for in or under these Regulations, or a matter in these regulations equivalent to a matter provided for in or under the 2000 Regulations,

“fee” includes charge,

“Part A installation” means a Part A installation as referred to in the 2012 Scheme.

“subsistence charge unit” has the same meaning as in the 2012 Scheme.

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<sup>(4)</sup> Made by SEPA on 31 March 2012 in exercise of the powers conferred on them by section 41 of the Environment Act 1995 (c.25). A copy of the charging scheme is published on the SEPA web site at: [http://www.sepa.org.uk/about\\_us/charging\\_schemes/current\\_charging\\_schemes.aspx](http://www.sepa.org.uk/about_us/charging_schemes/current_charging_schemes.aspx).