

## 2003 No. 146

### ENVIRONMENTAL PROTECTION

#### The Pollution Prevention and Control (Scotland) Amendment Regulations 2003

*Made* 6th March 2003

*Laid before the Scottish Parliament* 10th March 2003

*Coming into force* 1st April 2003

The Scottish Ministers, in exercise of the powers conferred by section 2 of and Schedule 1 to the Pollution Prevention and Control Act 1999(a) and of all other powers enabling them in that behalf, having carried out consultation as required by section 2(4) of that Act, hereby make the following Regulations:

#### **Citation, commencement, extent and interpretation**

1.—(1) These Regulations may be cited as the Pollution Prevention and Control (Scotland) Amendment Regulations 2003 and shall come into force on 1st April 2003.

(2) These Regulations extend to Scotland only.

(3) In these Regulations, “the Regulations” means the Pollution Prevention and Control (Scotland) Regulations 2000(b).

#### **Amendment of the Regulations**

2. The Regulations are amended as follows.

3. In regulation 2 (interpretation: general)—

(a) in paragraph (1) in the definition of “change in operation”—

(i) “the” is deleted where it first appears in the last line; and

(ii) at the end there is inserted “, or which in itself constitutes the carrying out of an activity falling within Schedule 1, exceeding any threshold capacity listed therein”;

and

(b) in paragraph (5) for “Part 3”, there is substituted “those Parts”.

4. In regulation 6 (requirement for permit to operate installation and mobile plant), for paragraph (2) there is substituted—

“(2) In paragraph (1) the “prescribed date” means in respect of any installation or mobile plant—

(a) referred to in Table 1 in paragraph 2 of Part 1 of Schedule 3, the date set out or determined in accordance with paragraphs and 2 of Part 1 of Schedule 3;

(b) referred to in Table 2 in paragraph 2 of Part 1 of Schedule 3, and licensed under Part I of the Environmental Protection Act 1990(a) on 1st April 2003, the date set out or determined in accordance with paragraphs 1A and 2 of Part 1 of Schedule 3; and

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(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 said Act of 1999.

(b) S.S.I. 2000/323.

- (c) referred to in Part 2 of Schedule 3, the date set out or determined in accordance with that Part.”.
5. In regulation 7 (permits: general provisions)–
    - (a) in paragraph (1) after “an installation” there is inserted “or mobile plant”; and
    - (b) in paragraph (8) after “or” where it appears for the second time in the second line, there is inserted “mobile”.
  6. In regulation 9 (conditions of permits: specific requirements)–
    - (a) in paragraph (1)–
      - (i) after “paragraphs” there is inserted “(1A),”; and
      - (ii) in subparagraph (b)(ii), after “8(2)” there is inserted “and (3)”;
    - (b) after paragraph (1), there is inserted–
 

“(1A) No conditions shall be included in a permit for the purpose only of securing the health of persons at work (within the meaning of Part I of the Health and Safety at Work etc. Act 1974**(b)**).”;
    - (c) in paragraph (7)–
      - (i) after “description of” there is inserted “the”; and
      - (ii) for “of installation of” there is substituted “of an installation or”; and
    - (d) in paragraph (16) for “respect” there is substituted “respects”.
  7. In regulation 14 (transfer of permits) in paragraph 6(b) after “in” there is inserted “the”.
  8. In regulation 22 (appeals to the Scottish Ministers and to the sheriff)–
    - (a) in paragraph (7), for “(12)” there is substituted “(11)”;
    - (b) paragraphs (11), (12), (13) and (14) are renumbered (10), (11), (12) and (13) respectively.
  9. In regulation 24 (guidance to SEPA) in paragraph (1) for “their” there is substituted “its”.
  10. In regulation 26 (information) in paragraph (3) “the” is deleted in the last place it occurs.
  11. In regulation 27 (public register of information) after paragraph 5 there is inserted–
 

“(6) Scottish Ministers may give SEPA directions requiring the removal from the register of any specified information not prescribed for inclusion by paragraph 1 of schedule 9 or which, by virtue of regulation 29, ought to have been excluded from the register.”.
  12. In regulation 28 (exclusion from the register of information affecting national security)–
    - (a) after paragraph (1) there is inserted–
 

“(1A) No information shall be included in the register maintained by SEPA under regulation 27 if and so long as a direction under section 20(6) of that Act is issued or has been issued in relation to that information.”; and
    - (b) after paragraph (2) there is inserted–
 

“(2A) Directions issued under section 20(6) of that Act shall apply to the register maintained by SEPA under regulation 27 as they apply to the register maintained under section 20 of that Act.”.
  13. In regulation 29 (exclusion from the register of certain confidential information)–
    - (a) in paragraph (5) for “section 114” there is substituted “section 113”;
    - (b) for paragraph (8), there is substituted–
 

“(8) The Scottish Ministers–

      - (a) may, before giving notice of their determination of an appeal under paragraph (6), afford the appellant and SEPA an opportunity of appearing before and being heard by a person appointed by them and shall do so in any case where a request is duly made by the appellant or SEPA to be so heard; and
      - (b) shall, when issuing their determination, advise the appellant of the right of appeal under paragraph (13).”;

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(a) 1990 c.43, which has been relevantly amended by the Environment Act 1995 c.42, Schedules 22 and 24.  
 (b) 1974 c.37.

- (c) in paragraph (10), in the fifth line, “the” is deleted in the second place it occurs.
- 14.** In regulation 35 (notices) there is inserted after paragraph (5)–
- “(6) When issuing any decision or determination in respect of which there exists a right of appeal to the Scottish Ministers under these Regulations, SEPA shall advise all persons who have such a right of appeal of its existence.”.
- 15.** In Schedule 1 (activities and installations and mobile plant) in Part 1 (activities) in Chapter 1 (energy industries)–
- (a) in Section 1.1 (combustion)–
- (i) in Part A, in the paragraph below the heading “Interpretation of Part A”, after “aggregate” and “appliance with a” there is inserted “net”;
- (ii) in Part B, in paragraph (e) for “more than” there is substituted “at least”; and
- (iii) in Part B, in paragraph 2 below the heading “Interpretation of Part B”, for “(c)” there is substituted “(e)”; and
- (b) in Section 1.2 (refining mineral oil and gas, operating coke ovens and coal gasification and liquefaction activities), in Part A, in paragraph (f)(ii), after “stabilised” there is inserted “crude”.
- 16.** In Schedule 1, in Part 1 in Chapter 2 (production and processing of metals)–
- (a) in Section 2.1 (ferrous metals)–
- (i) in Part A, in paragraph (f), for “kilogoules” there is substituted “kilojoules”; and
- (ii) in Part B, in paragraph d(i) after “a” there is inserted “net”;
- (b) in Section 2.2 (non-ferrous metals), in Part A–
- (i) in paragraph (c), at the end there is inserted “except where the activity is related to an activity described in paragraph (a), (d) or (e) of Part B of this Section”; and
- (ii) in paragraph (j) for “calcining” there is substituted “calcination”; and
- (c) in Section 2.3 (surface treating metals and plastic materials), in Part B, after “metal” there is inserted “that”.
- 17.** In Schedule 1 in Part 1 in Chapter 3 (mineral industries)–
- (a) in Section 3.1 (production of cement and lime) in Part A, after paragraph (b) there is inserted–
- “(c) Unless falling within Part A of Section 2.1 or Section 2.2, grinding metallurgical slag in plant with a grinding capacity of more than 250,000 tonnes in any period of 12 months.”;
- (b) in Section 3.3 (glass and glass fibre manufacture) in Part A, in paragraph (b)–
- (i) for “fit” there is substituted “frit”; and
- (ii) for “stances” there is substituted “substances”; and
- (c) in Section 3.5 (other mineral activities)–
- (i) in Part A for “NIL” there is substituted “Manufacturing cellulose fibre reinforced calcium silicate board.”;
- (ii) in Part B, in paragraph (a), for “any Part A of this Part of” there is substituted “Part A of any Section in”; and
- (iii) in Part B, in paragraph (g), for “calcined” there is substituted “calcinated”.
- 18.** In Schedule 1 in Part 1 in Chapter 4 (the chemical industry)–
- (a) at the end of the first paragraph there is inserted–
- “, but does not include production for the purposes of research, development and testing of new products and processes unless such production is carried out at an installation which is regulated by these Regulations”;
- (b) in Section 4.1 (organic chemicals) in Part A, in paragraph (a), and in section 4.2 (inorganic chemicals) in Part A, in paragraph (a), “or manufacturing” is deleted;
- (c) in Section 4.2 (inorganic chemicals) in Part A–
- (i) in paragraph (a)(ii) “hydrochloric acid” is deleted in the second place it occurs;
- (ii) in paragraph (d), in subparagraph (xii) for “hromium” there is substituted “chromium” and in subparagraph (xvi) for “admium” there is substituted “cadmium”; and
- (iii) in paragraph (e) after “release” there is added “to air” and for “to air of” there is substituted “or”;

- (d) in Section 4.4 (biocide production) in Part A, in paragraph (a), “, and formulating” is deleted; and
- (e) in Section 4.5 (pharmaceutical production) in Part A, in paragraph (b), for “month” there is substituted “months”.

**19.** In Schedule 1 in Part 1 in Chapter 5 (waste management)–

- (a) after the heading there is inserted–
 

“This chapter should be interpreted in accordance with Article 11 of Council Directive 75/442/EEC(a) or Article 3 of Council Directive 91/689/EEC(b).”;
- (b) in Section 5.1 (incineration) in the paragraph headed “Interpretation of Section 5.1”, in the definition of “hazardous waste”, in paragraph (iii), “the exploration of” is deleted;
- (c) in Section 5.2 (landfill and disposal to land) in the paragraph headed “Interpretation of Section 5.2”, in the definition of “inert waste” for “or” in the second last place it occurs, there is substituted “of”;
- (d) in Section 5.3 (disposal of waste other than by incineration or landfill) in Part A–
  - (i) in paragraph (c)(i) for “75/441” there is substituted “75/442/EEC, which results in final compounds or mixtures which are discarded by means of any of the operations numbered D1 to D12 in that Annex”; and
  - (ii) in paragraph (c)(ii) for “75/441” there is substituted “75/442/EEC, which results in final compounds or mixtures which are discarded by means of any of the operations numbered D1 to D12 in that Annex (for example, evaporation, drying, calcination, etc)”;
- (e) in Section 5.3, after paragraph 2 below the heading “Interpretation of Part A”, there is inserted–

**3.** Nothing in this Part applies to the treatment of waste soil by means of mobile plant.”;

- (f) in Section 5.4 (recovery activities) in Part A, in paragraph (c)–
  - (i) at the end of subparagraph (i) there is inserted “(R1)”
  - (ii) at the end of subparagraph (ii) there is inserted “(R5)”
  - (iii) at the end of subparagraph (iii) there is inserted “(R6)”
  - (iv) at the end of subparagraph (iv) there is inserted “(R8)”
  - (v) at the end of subparagraph (v) there is inserted “(R9)”
  - (vi) at the end of subparagraph (vi) there is inserted “(R2)”
  - (vii) at the end of subparagraph (vii) there is inserted “(R7)”;
- (g) the paragraph headed “Interpretation of Part A” is numbered as paragraph “1.” and at the end of that paragraph there is inserted–

**2.** Paragraph (c)(ii) of this Part does not apply to the treatment of waste soil by means of mobile plant.

**3.** The reference to a paragraph number in brackets at the end of paragraphs c(i) to (vii) of this Part is to the number of the corresponding paragraph in Annex IIB of Council Directive 75/442/EEC on waste (recovery operations).”.

**20.** In Schedule 1 in Part 1 in Chapter 6 (other activities)–

- (a) in Section 6.1 (paper and pulp manufacturing activities)–
  - (i) in Part A, in paragraph (b), for “listed in paragraph 12” there is substituted “listed in the table in paragraph 13”, and for “of substance in column 2 of that Schedule” there is substituted “of the substance set out in column 1 of that Table in the corresponding entry in column 2 of that Table.”; and
  - (ii) in Part A, after paragraph (b) there is inserted–
 

“(c) Manufacturing wood particleboard, oriented strand board, wood fibreboard, plywood, cement-bonded particleboard or any other composite wood-based board with a production capacity exceeding 20 tonnes per day.”;
- (b) in Section 6.4 (coating activities, printing and textile treatments) in Part B in paragraph (b), for “or organic” there is substituted “of organic”;

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(a) O.J. No. L 194, 25.7.75, as amended by Council Directives 91/156/EEC (O.J. No. L 78, 26.3.91) and 91/692/EEC (O.J. No. L 337, 31.12.91, and Commission Decision 96/350/EC (O.J. No. L 135, 6.6.96, p.32).

(b) O.J. No. L 377, 31.12.91).

- (c) in Section 6.5 (the manufacture of dyestuffs, printing ink and coating materials) in Part B in paragraph (b), for “Manufacture” there is substituted “Manufacturing”;
- (d) in Section 6.6 (timber activities) in Part B before “Manufacturing products” there is inserted “Unless falling within paragraph (c) of Part A of Section 6.1.”;
- (e) in Section 6.7 (activities involving rubber) in Part A for “NIL” there is substituted–  
“Manufacturing new tyres (but not remoulds or retreads) if this involves the use in any period of 12 months of 50,000 tonnes or more, of one or more of the following–
  - (i) natural rubber;
  - (ii) synthetic organic elastomers;
  - (iii) other substances mixed with them.”; and
- (f) in Section 6.8 (the treatment of animal and vegetable matter and food industries)–
  - (i) in Part A, in paragraph (f) for “feedstuffs” there is substituted “feedstuff”;
  - (ii) in Part B for paragraph (a) there is substituted–  
“(a) Any activity mentioned in paragraph (f) of Section 6.8, unless an exempt activity, or excluded for control by the provisions of paragraph 2 of Part 2 of this Schedule and which may release into the air a substance referred to in paragraph 12 of Part 2 of this Schedule or give rise to an offensive smell noticeable outside the premises in which the activity is carried on.”;
  - (iii) in paragraph (c)(i) and (ii) of Part B, after “than” there is inserted “or equal to”;
  - (iv) in the paragraph headed “Interpretation of Section 6.8” in the definition of “exempt activity”, in paragraph (i), after “carried” there is inserted “out”.

**21.** In Schedule 3 (prescribed dates and transitional arrangements), in Part 1 (Part A installations and mobile plant)–

- (a) in paragraph 1, after “mobile plant” where those words first occur, there is inserted “referred to in Table 1 below”;
- (b) after paragraph 1 there is inserted–  
“**1A.** The prescribed date for a new Part A installation or a new Part A mobile plant referred to in Table 2 below–
  - (a) where an application for a permit to operate the installation or mobile plant is duly made in the period of 6 months beginning with 1st April 2003, is the determination date for the installation or mobile plant;
  - (b) where no such application is made, is 30th September 2003.”;
- (c) in paragraph 2(2)–
  - (i) for “table” there is substituted “tables”;
  - (ii) above the table there is inserted the heading “Table 1”;
  - (iii) in the table, in the entry relating to Section 2.1 Part A “Paragraphs (c), (e), (f), (g) and (h)” and “May 1st to 31st July 2002” are deleted, and for “Remaining paragraphs” there is substituted “Paragraphs (a), (b), (d) and (i)”;
  - (iv) in the table, for the entry relating to Section 3.1 Part A there is substituted–

“

Section 3.1 Part A Paragraph (a) and (b) Paragraph (c)	June 1st to August 31st 2001 August 1st to October 31st 2003
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”;

- (v) in the table, for the entry relating to Section 3.3 Part A after “Part A” there is inserted “Paragraphs (a) and (b)”;
- (vi) in the table, after the entry relating to Section 3.4 Part A there is inserted–

“

Section 3.5 Part A	August 1st to October 31st 2003
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”;

(vii) in the table, for the entry relating to Section 6.1 Part A there is substituted–

Section 6.1 Part A Paragraph (a) and (b) Paragraph (c)	April 1st to June 30th 2001 August 1st to October 31st 2003
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(viii) in the table, for the entry relating to Section 6.4 Part A after “Part A” there is inserted “Paragraphs (a), (b) and (d)”;

(ix) in the table, after the entry relating to Section 6.6 Part A there is inserted–

Section 6.7 Part A	August 1st to October 31st 2003
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(x) in the table, in the entry relating to Section 6.8 Part A in the second column in respect of the entry relating to paragraphs (b) and (c) for “March” there is substituted “August”;

(xi) in the table, in the entry relating to Section 6.9 Part A for “October 1st to December 31st 2006” there is substituted “November 1st 2006 to January 31st 2007”; and

(xii) after the table there is inserted–

“ Table 2

<i>Any installation where an activity falling within the following Sections of Part 1 of Schedule 1 is carried out or any mobile plant used to carry out such an activity</i>	<i>Relevant period</i>
Section 2.1 Part A Paragraphs (c) (e) (f) (g) and (h)	May 1st to July 31st 2003
Section 3.3 Part A Paragraph (c)	May 1st to July 31st 2003
Section 6.4 Part A Paragraph (c)	January 1st to March 31st 2007

”; and  
(d) in paragraph 6, at the end of the definition of “determination date”, there is inserted–  
“(d) for an installation, part of an installation or mobile plant in respect of which an application is made and withdrawn after the end of the relevant period, the date of withdrawal of the application”.

22. In Schedule 4 (grant of permits) in Part 1 (applications for permits)–

(a) in paragraph 1(1)(g) at the end there is inserted added “and on human health”;

(b) after paragraph 1(1)(h) there is inserted–

“(ha) how the best available techniques are applied to the operation of the installation or mobile plant;”;

(c) (i) paragraph 1(1)(l) is renumbered 1(1)(l)(i); and

(ii) at the end of that paragraph there is inserted–

“; or

(ii) a safety report within the meaning of Regulation 7 (safety report) of the Control of Major Accident Hazards Regulations 1999(a)”;

(d) after paragraph 1(1)(n) there is inserted–

“(na) in the case of an application for a permit for an installation or mobile plant which is the subject of a Climate Change Agreement within the meaning of paragraph 46 of Schedule 6 to the Finance Act 2000(b), written confirmation that

(a) S.I. 1999/743 (as amended).

(b) 2000 c.17 (as amended).

the installation is covered by a Climate Change Agreement and the terms of that agreement in so far as they relate to the installation;” and

- (e) in paragraph 2, after “(j)” there is inserted “(na)”.
- 23.** In Schedule 4 in Part 2 (determination of applications)–
- (a) in paragraphs (b)(iii) and (c) for “the Nature Conservancy Council for England” there is substituted “English Nature”;
  - (b) in paragraph 9(d), for “a Part A installation or a Part B installation” there is substituted “an installation or Part A mobile plant”; and
  - (c) for paragraph 13 there is substituted–
    - “**13.** In the case of an application for a permit to operate a Part A installation, SEPA shall take into consideration in determining the application–
    - (i) any relevant information obtained or conclusion arrived at pursuant to Articles 5, 6 and 7 of Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment in relation to the installation; or
    - (ii) a safety report within the meaning of Regulation 7 (safety report) of the Control of Major Accident Hazards Regulations 1999.”.
- 24.** In Schedule 4 in Part 3 (national security and confidential information)–
- (a) in paragraph 21 for “paragraph 9” there is substituted “paragraphs 9(b)(ii), (iii) and (iv) and 9(c)”;
  - (b) in paragraph 22 between “apply” and “in” there is inserted “in the case of information excluded from the register by virtue of regulation 29”; and
  - (c) in paragraph 22(b) for “National Heritage” there is substituted “Natural Heritage (or English Nature).”.
- 25.** In Schedule 6 (compensation in relation to off-site conditions) in paragraph 7(1), after “this” there is inserted “Schedule”.
- 26.** In Schedule 7 in Part 3 (national security and confidential information) in paragraph 14 for “paragraph 4(5)(b)” there is substituted “paragraph 4(5)(c)”.
- 27.** In Schedule 8 (procedures in connection with appeals to the Scottish Ministers)–
- (a) in paragraph 4(1) for “him” there is substituted “them”; and
  - (b) in paragraph 6(1), for “and shall provide the appellant with a copy of any report mentioned in paragraph 4(9)”, there is substituted “, shall provide the appellant with a copy of any report mentioned in paragraph 4(9) and shall advise the appellant of the right of appeal under regulation 22(5)”.

*ALLAN WILSON*

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
6th March 2003

## EXPLANATORY NOTE

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

These Regulations amend the Pollution Prevention and Control (Scotland) Regulations 2000 (2000/323) (“the Principal Regulations”).

The majority of the amendments to those Regulations are clarificatory. The opportunity has also been taken to amend typographical errors in the Principal Regulations.

The following regulations make substantial changes to the Principal Regulations. Regulation 6, among other things, adds a requirement to regulation 9 of the Principal Regulations that no conditions are to be included in a permit for the purpose only of securing the health of persons at work (within the meaning of Part I of the Health and Safety at Work etc. Act 1974.)

Regulation 11 enables Scottish Ministers to give directions to SEPA to remove information from the public register maintained under regulation 27 of the Principal Regulations any information which is not prescribed for inclusion by paragraph 1 of Schedule 9 or which ought to have been excluded from the register by virtue of regulation 29 of the Principal Regulations.

Regulation 12 enables SEPA to remove information from the register maintained under regulation 28 of the Principal Regulations where the Scottish Ministers are of the opinion that the information relates to national security.

Regulation 13 amends regulation 29 of the Principal Regulations and inserts a requirement for the Scottish Ministers to advise an appellant of a right of appeal under regulation 29(13).

Regulation 14 amends regulation 35 of the Principal Regulations and creates an obligation on SEPA to advise all persons who have a right of appeal to the Scottish Ministers in relation to a decision or determination made under the Principal Regulations of the existence of that right.

Regulations 17(a), 17(c), 20(a)(ii) and 20(e) of these regulations provide for certain activities listed in Part 1 of Schedule 1 to the Principal Regulations to be moved from one Section or part of a Section to another Section or part of a Section.

Regulation 18 excludes from Chapter 4 of Part 1 of Schedule 1 to the Principal Regulations production for the purposes of research, development and testing of new products and processes unless such production is carried out at an installation which is regulated by the Principal Regulations.

Regulations 4 and 21 amend some of the dates contained in the table in Part 1 of Schedule 3 to the Principal Regulations so as to provide new dates for those activities which have been reclassified as Part A activities and new dates for some other activities.

Regulation 22(b) inserts a requirement into Part 1 of Schedule 4 to the Principal Regulations for applicants to include information on how the best available techniques are applied to the operation of the installation or mobile plant in the application for a permit.

Regulation 22(c)(ii) amends paragraph 1(1)(l) in Schedule 4 to the Principal Regulations so as to ensure that applicants for Part A provide relevant information related to the installation where a safety report within the meaning of Regulation 7 (safety report) of the Control of Major Accident Hazards Regulations (S.I. 1999/743) has been prepared.

Regulation 22(d) inserts a requirement into Part 1 of Schedule 4 to the Principal Regulations for applicants for a permit for an installation or mobile plant which is the subject of a climate change agreement, within the meaning of paragraph 46 of schedule 6 to the Finance Act 2000, to provide written confirmation that the installation is covered by a climate change agreement together with the terms of that agreement in so far as they relate to the installation.

Regulation 27 amends Schedule 8 to the Principal Regulations so as to include the requirement for Scottish Ministers to advise the appellant of the right of appeal under regulation 22(5) of those Regulations.

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