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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 27**

**The Sulphur Content of Liquid Fuels (Scotland) Regulations 2007**

**Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the Sulphur Content of Liquid Fuels (Scotland) Regulations 2007 and shall come into force on 12th March 2007.

(2) These Regulations extend to Scotland only.

**Interpretation**

**2.**—(1) In these Regulations—

“the 2000 Regulations” means the Sulphur Content of Liquid Fuels (Scotland) Regulations 2000(1);

“combustion plant” means any technical apparatus in which fuels are oxidised in order to use the heat generated;

“Directive 2001/80/EC” means Directive 2001/80/EC of the European Parliament and of the Council on the limitations of emissions of certain pollutants into the air from large combustion plants(2);

“existing plant” has the meaning given in Article 2(10) of Directive 2001/80/EC;

“gas oil” means any petroleum-derived liquid fuel other than marine fuel, diesel fuels (as defined in Article 2(2) of Council Directive 98/70/EC relating to the quality of petrol and diesel fuels(3)) and fuels used in non-road mobile machinery and agricultural tractors—

- (a) which falls within CN code 2710 19 25, 2710 19 29, 2710 19 45 or 2710 19 49; or
- (b) where less than 65 per cent by volume (including losses) distils at 250°C and at least 85 per cent by volume (including losses) distils at 350°C by the ASTM D86 method;

“heavy fuel oil” means any petroleum-derived liquid fuel, other than marine fuel, which—

- (a) falls within CN code 2710 19 51 to 2710 19 69; or
- (b) is not gas oil, and—
  - (i) which by reason of its distillation limits, falls within the category of heavy oils intended for use as fuel and of which less than 65 per cent by volume (including losses) distils at 250°C by the ASTM D86 method; or
  - (ii) where the distillation cannot be determined by the ASTM D86 method, is categorised as heavy fuel oil;

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(1) S.S.I. 2000/169.

(2) O.J. No. L 309, 27.11.01, p.1 as amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (O.J. No. L 236, 23.9.03, p.33).

(3) O.J. No. L 350, 28.12.98, p.58.

“marine fuel” means any petroleum-derived liquid fuel intended for use or in use on board a vessel, including those fuels defined in ISO 8217(4);

“new plant” has the meaning given in Article 2(9) of Directive 2001/80/EC;

“SEPA” means the Scottish Environment Protection Agency; and

“sulphur content of liquid fuels permit” means a permit granted in accordance with Schedule 1 to these Regulations or treated as so granted under regulation 8(3).

(2) In paragraph (1)–

- (a) “ASTM D86 method” means that method as set out in the American Society for Testing and Materials 1976 edition of standard definitions and specifications for petroleum and lubricating products(5); and
- (b) the reference to a numbered CN code is a reference to that code set out in the Integrated Customs Tariff of the United Kingdom (2000 edition) (6).

(3) Other expressions used in these Regulations and in Council Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels(7) have the same meaning as they do in that Directive.

## **Scope**

3. These Regulations do not apply to heavy fuel oil or gas oil intended for–

- (a) the purposes of research and testing;
- (b) processing prior to final combustion; or
- (c) processing in the refining industry.

## **Maximum sulphur content of heavy fuel oil**

4.—(1) Subject to paragraph (2), no person shall use any heavy fuel oil which has a sulphur content that exceeds 1 per cent by mass.

(2) Paragraph (1) shall not apply to the use of heavy fuel oil–

- (a) in a new plant which is operated in accordance with a permit which contains a condition that emission limit values for sulphur dioxide are at least as stringent as those set out for such plant in Annex IV to Directive 2001/80/EC;
- (b) in an existing plant which–
  - (i) until 31st December 2007, is operated in accordance with a permit which contains a condition which prohibits the emissions of sulphur dioxide from the plant exceeding 1,700 mg/Nm<sup>3</sup> at an oxygen content in the flue gas of 3 per cent by volume on a dry basis; or
  - (ii) on and after 1st January 2008, is operated in accordance with a permit which contains a condition that emission limit values for sulphur dioxide are at least as stringent as those set out for new plants in Part A of Annex IV to Directive 2001/80/EC;
- (c) in a combustion plant, other than a new or existing plant to which sub paragraphs (a) or (b) apply, which is operated in accordance with a permit which contains a condition which

(4) ISO 8217 (2005) is described in the British Standard entitled “Specification for Petroleum Fuels for marine oil engines and boilers”, published under the numbers BS MA100 and ISO 8217:2005, which came into effect on 15th August 1996.

(5) The ASTM method is described in the 2006 Annual Book of the ASTM Standards: Section 5-Petroleum Products, Lubricants and Fossil Fuels, published by the American Society for Testing and Materials, February 2006.

(6) The Integrated Customs Tariff of the United Kingdom (2000 edition) is published by HMSO (ISBN 0117818054).

(7) O.J. No. L 121, 11.5.99, p.13 as amended by Directive 2005/33/EC of the European Parliament and of the Council (O.J. No. L 191, 22.7.05, p.59).

prohibits the emissions of sulphur dioxide from the plant exceeding 1,700 mg/Nm<sup>3</sup> at an oxygen content in the flue gas of 3 per cent by volume on a dry basis; or

(d) in combustion plants forming part of a refinery other than—

- (i) a new plant to which sub paragraph (a) applies; or
- (ii) an existing plant to which sub paragraph (b)(ii) applies,

and where the combustion plants are operated in accordance with a permit which contains a condition that their monthly average of emissions of sulphur dioxide averaged over all plants in the refinery, irrespective of the fuel or fuel combination used, does not exceed 1,700 mg/Nm<sup>3</sup>.

(3) SEPA shall ensure that appropriate monitoring of emissions of sulphur dioxide is carried out to ensure that the limitations on emissions contained in a permit referred to in paragraph (2) are met.

(4) In this regulation “permit” means—

(a) either—

- (i) an authorisation under Part I of the Environmental Protection Act 1990 (pollution control)(8); or
- (ii) a permit under Regulations made under section 2 of the Pollution Prevention and Control Act 1999 (regulation of polluting activities)(9),

if the operation of the combustion plant requires such an authorisation or permit; or

(b) a sulphur content of liquid fuels permit.

(5) Schedule 1 (sulphur content of liquid fuels permits) has effect.

## Maximum sulphur content in gas oil

5. No person shall use gas oil—

- (a) before 1st January 2008, with a sulphur content exceeding 0.2 per cent by mass; or
- (b) on and after 1st January 2008, with a sulphur content exceeding 0.1 per cent by mass.

## Sampling and analysis

6.—(1) The Scottish Ministers shall take all necessary measures to ensure that sampling of heavy fuel oil and gas oil is carried out to check that the use of those fuels complies with, respectively, regulations 4(1) and 5.

(2) Sampling shall be carried out with sufficient frequency and in such a way that the Scottish Ministers are satisfied that the samples are representative of the fuels examined.

(3) Sampling in respect of compliance with regulation 5(b) shall commence no later than 1st July 2008.

(4) Schedule 2 has effect in relation to the technical requirements for determining the sulphur content of fuel sampled under paragraph (1).

## Offences and penalties

7.—(1) Any person who contravenes regulations 4(1) or 5, or causes or permits another person to do so, is guilty of an offence.

(8) [1990 c. 43](#). Section 6 (authorisations: general provisions) of the 1990 Act was amended by the Environment Act 1995 ([c. 25](#)) Schedule 22, paragraph 48, and by the Pollution Prevention and Control (Scotland) Regulations 2000 ([S.S.I. 2000/323](#)) Schedule 10, paragraph 3(2).

(9) [1999 c. 24](#).

(2) Any person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(3) Where an offence under paragraph (1) committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on the part of the officer,

the officer as well as the body corporate is deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

(4) In paragraph (3) “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(5) If the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to the acts or defaults of a member in connection with the member’s functions of management as if the member was a director of the body corporate.

(6) Where an offence under paragraph (1) committed by a Scottish partnership is proved—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on the part of a partner,

that partner as well as the partnership is deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

### **Revocation and saving**

8.—(1) Subject to the following provisions of this regulation and except in so far as they make provision in relation to marine gas oil, the 2000 Regulations are revoked.

(2) Where an operator of a combustion plant—

- (a) has submitted an application for a permit, to which these Regulations would have applied had they been in force, in accordance with Schedule 1 to the 2000 Regulations; and
- (b) the application has not been determined at the date these Regulations come into force,

the application shall be treated as if made and be determined under these Regulations, and anything done in relation to the application under the 2000 Regulations shall be treated as done under these Regulations.

(3) Any permit to which these Regulations would have applied had they been in force, which was granted in accordance with Schedule 1 to the 2000 Regulations and which is still subsisting at the date of coming into force of these Regulations shall—

- (i) continue to have effect; and
- (ii) be treated for the purposes of these Regulations as if it was a permit granted in accordance with Schedule 1 to these Regulations.

(4) In this regulation “marine gas oil” has the meaning given to that expression in the 2000 Regulations.

St Andrew’s House,  
Edinburgh  
30th January 2007

*SARAH BOYACK*  
Authorised to sign by the Scottish Ministers