

2007 No. 27

ENVIRONMENTAL PROTECTION

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

Made - - - - - *30th January 2007*
Laid before the Scottish Parliament *30th January 2007*
Coming into force - - - *12th March 2007*

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The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

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.

^(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The function conferred on the Minister of the Crown under section 2(2), insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

Interpretation

2.—(1) In these Regulations—

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

“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(b);

“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(c)) 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;

“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(d);

“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(e); 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) (f).

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

(b) 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).

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

(d) 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.

(e) 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.

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

(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^(a) 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/Nm³ 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 prohibits the emissions of sulphur dioxide from the plant exceeding 1,700 mg/Nm³ 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/Nm³.

(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)^(b); or

(a) 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).

(b) 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).

- (ii) a permit under Regulations made under section 2 of the Pollution Prevention and Control Act 1999 (regulation of polluting activities)(a),
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.

(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.

(a) 1999 c. 24.

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.

SARAH BOYACK

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
30th January 2007

Sulphur content of liquid fuels permits

1. An operator of an existing plant, new plant or other combustion plant who wishes to operate that plant under an exception provided for in regulation 4(2) may apply to SEPA for a sulphur content of liquid fuels permit if the operation of that plant does not require—

- (a) an authorisation under Part I of the Environmental Protection Act 1990; or
- (b) a permit under regulations made under section 2 of the Pollution Prevention and Control Act 1999.

2. An application under paragraph 1 shall be in writing (or in an electronic form acceptable to SEPA), shall be accompanied by any charge prescribed in respect of the application under section 41 of the Environment Act 1995(a) and shall contain—

- (a) the applicant's name, telephone number, address (including postcode) and e-mail address (if any) and, if different, any address to which correspondence should be sent;
- (b) the address of the site of the combustion plant, the rated thermal input (in megawatts) and the fuel used in the plant; and
- (c) the condition which the applicant wishes to be included in the permit, being a condition which is referred to in regulation 4(2).

3. An application under paragraph 1 may be withdrawn at any time before it is determined.

4. On receipt of an application made under paragraph 1, SEPA shall grant a sulphur content of liquid fuels permit subject to the condition identified in the application.

5. A sulphur content of liquid fuels permit may be transferred by the holder of the permit to a person who intends to operate the plant to which the permit relates in place of the holder.

6. The person to whom a sulphur content of liquid fuels permit is transferred as permitted by paragraph 5 shall—

- (a) notify SEPA in writing (or in electronic form acceptable to SEPA) of the transfer; and
- (b) do so within 21 days of the date of the transfer.

7.—(1) A sulphur content of liquid fuels permit may be surrendered by the holder of the permit serving on SEPA notice in writing (or in electronic form acceptable to SEPA) of the surrender containing the date on which the surrender is to have effect.

(2) Where a surrender is notified under this paragraph, the permit shall cease to have effect on the date specified in the notice.

8. Section 41 of the Environment Act 1995 shall apply in respect of a sulphur content of liquid fuels permit for the purpose of prescribing charges payable under that section as it applies to environmental licences, within the meaning of Part I of that Act.

(a) 1995 c.25.

Technical requirements for analysis of samples

1. The reference method adopted for determining the sulphur content of fuels sampled pursuant to regulation 6(1) shall be defined by–
 - (a) ISO method 8754 (1992) and PrEN ISO 14596 for heavy fuel oil(**a**);
 - (b) EN method 24260 (1987), ISO 8754 (1992) and PrEN ISO 14596 for gas oil(**b**).
2. The arbitration method shall be PrEN ISO 14596.
3. The statistical interpretation of the verification of the sulphur content of the gas oils used shall be carried out in accordance with ISO standard 4259 (1992)(**c**).

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- (a) ISO method 8754 (1992) is described in the British Standard entitled “Petroleum Products-Determination of Sulphur content-Energy-dispersive X-ray fluorescence methods”, published under the numbers BS EN ISO 8754:1995 and ISO 8754:1992, which came into effect on 31st July 1995. PrEN ISO 14596 is described in the British Standard entitled “Petroleum Products-Determination of Sulphur content-Wavelength-dispersive X-ray fluorescence spectrometry”, published under the numbers BS EN ISO 14596:1998 and ISO 14596:1998, which came into effect on 15th December 1998.
 - (b) EN method 24260 (1987) is described in the British Standard entitled “Petroleum Products and Hydrocarbons-Determination of Sulphur Content-Wickbold combustion method”, published under the numbers BS EN 24260:1994 and ISO 24260:1987, which came into effect on 30th September 1994.
 - (c) ISO standard 4259 (1992) is described in the British Standard entitled “Petroleum Products-Determination and Application of precision data in relation to methods of test”, published under the numbers BS EN ISO 4259:1996 and ISO 4259:1992, which came into effect on 15th February 1996.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations extend to Scotland only. They implement in relation to Scotland those matters concerning heavy fuel oil and gas oil (except marine fuels) contained in Council Directive 1999/32/EC (O.J. No. L 121, 11.5.99, p.13 as amended by Regulation (EC) No. 1882/2003 of the European Parliament and of the Council (O.J. No. L 284, 31.10.03, p.1)) relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC as amended by Directive 2005/33/EC (O.J. No. L 191, 22.7.05, p.59) of the European Parliament and of the Council as regards the sulphur content of marine fuels.

Directive 1999/32/EC was transposed in relation to Scotland by the Sulphur Content of Liquid Fuels (Scotland) Regulations 2000 (S.S.I. 2000/169) (“the 2000 Regulations”). These Regulations implement that Directive as so amended except in respect of marine fuels.

The Regulations—

- (a) do not apply to research and testing and certain processing operations (regulation 3);
- (b) prohibit the use of heavy fuel oil which has a sulphur content that exceeds 1 per cent by mass except where conditions limiting emissions imposed under a permit issued by SEPA are complied with (regulation 4);
- (c) prohibit the use of gas oil—
 - (i) with a sulphur content exceeding 0.2 per cent by mass until 31st December 2007; and
 - (ii) with a sulphur content exceeding 0.1 per cent by mass on and from 1st January 2008 (regulation 5);
- (d) require the Scottish Ministers to take all necessary measures to ensure that sampling of heavy fuel oil and gas oil to check compliance with regulations 4(1) and (5) is carried out (regulation 6);
- (e) make it an offence to contravene the restrictions on the use of heavy fuel oil and gas oil and impose criminal penalties (regulation 7);
- (f) revoke the 2000 Regulations with a saving in respect of emission permits granted or applied for under those Regulations (regulation 8);
- (g) provide for SEPA to grant emission permits and for such permits to be transferred and surrendered (Schedule 1); and
- (h) set out technical requirements for the analysis of samples taken under regulation 6 (Schedule 2).

Copies of the British Standards publications referred to in these Regulations may be obtained from any of the outlets operated by the British Standards Institution, or by post from the British Standards Institution at Standards House, 389 Chiswick High Road, London W4 4AL. The *Integrated Customs Tariff of the United Kingdom*, which sets out the CN codes used in the definitions of “gas oil” and “heavy fuel oil”, are published by HMSO and available from HMSO Bookshops. The 2006 Annual Book of ASTM Standards is available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428, USA.

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