

2014 No. 258

ENVIRONMENTAL PROTECTION

**The Sulphur Content of Liquid Fuels (Scotland) Regulations
2014**

Made - - - - 25th September 2014

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Coming into force - - 13th November 2014

ARRANGEMENT OF REGULATIONS

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SCHEDULE — Sulphur content of liquid fuels permits

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

Citation, commencement and extent

1.—(1) The Regulations may be cited as the Sulphur Content of Liquid Fuels (Scotland) Regulations 2014 and come into force on 13th November 2014.

(2) These Regulations extend to Scotland only.

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

Interpretation

2.—(1) In these Regulations—

“the 2007 Regulations” means the Sulphur Content of Liquid Fuels (Scotland) Regulations 2007^(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 limitation of emissions of certain pollutants into the air from large combustion plants^(b);

“Directive 2010/75/EU” means Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control)(Recast)^(c);

“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 fuels, diesel fuels (as defined in Article 2(2) of Council Directive 98/70/EC of the European Parliament and of the Council relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC)^(d) and fuels used by non-road mobile machinery and agriculture tractors—

(a) which falls within CN codes 2710 19 25, 2710 19 29, 2710 19 47, 2710 19 48, 2710 20 17 or 2710 20 19; 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 and gas oil, which—

(a) falls within CN code 2710 19 51 to 2710 19 68, 2710 20 31, 2710 20 35 or 2710 20 39;

(b) 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

(c) where the distillation cannot be determined by the ASTM D86 method, is as 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^(e);

“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 the Schedule 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^(f); and

(a) S.S.I. 2007/27.

(b) OJ L 309, 27.11.2001, p.1 as last amended by Council Directive 2009/31/EC (OJ L 140, 5.6.2009, p.114).

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

(d) OJ L 350, 28.12.1998, p.58.

(e) ISO 8217:1996 is described in the British Standard entitled “Specification for Petroleum Fuels for marine oil engines and boilers”, published under the numbers BSMA 100:1996 and ISO 8217:2012.

(f) The ASTM method is described in the 2014 Annual Book of the ASTM Standards.

- (b) the reference to a numbered CN code is a reference to the code set out in Annex I to Council Regulation 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff(a).

(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 and amending Directive 93/12/EEC(b) 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 with a sulphur content exceeding 1 per cent by mass.

(2) Until 1st January 2016 paragraph (1) does 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 new plants in Annex IV to Directive 2001/80/EC;
- (b) in an existing plant that is—
 - (i) 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; or
 - (ii) a participating plant operated in accordance with a permit containing a condition prohibiting the monthly average emissions of sulphur dioxide from the plant from exceeding 1,700 mg/Nm³ at an oxygen content in the flue gas of 3 per cent by volume on a dry basis;
- (c) in a combustion plant (other than a plant to which sub-paragraph (a) or (b) applies), which is operated in accordance with a permit which contains a condition which prohibits the monthly average of 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 a combustion plant forming part of a refinery (other than a gas engine, a gas turbine or a plant to which sub-paragraph (a) or (b) applies), which is operated in accordance with a permit which contains a condition that the monthly average of emissions of sulphur dioxide averaged over all plants in the refinery, irrespective of the fuel type or fuel combination used, does not exceed 1,700mg/Nm³ at an oxygen content in the flue gas of 3 per cent by volume on a dry basis.

(3) As from 1st January 2016, paragraph (1) does not apply to the use of heavy fuel oil—

- (a) in a combustion plant that—
 - (i) falls within the scope of Chapter III of Directive 2010/75/EU; and
 - (ii) is operated in accordance with a permit containing a condition that emission limit values for sulphur dioxide are at least as stringent as those set out in Annex V to that Directive;
- (b) in a combustion plant that—
 - (i) falls within the scope of Chapter III of Directive 2010/75/EU;

(a) OJ L 256, 7.9.1987, p.1, last amended by Council Regulation (EU) 1326/2013, (OJ L 334, 13.12.2013, p.4).

(b) OJ L 121, 11.5.1999, p.13, last amended by Directive 2012/33/EU (OJ L 327, 27.11.2012, p.1).

- (ii) is not subject to the emission limit values for sulphur dioxide set out in Annex V to that Directive; and
- (iii) is operated in accordance with a permit containing a condition prohibiting the monthly average emissions of sulphur dioxide from the plant from exceeding 1,700 mg/Nm³ at an oxygen content in the flue gas of 3 per cent by volume on a dry basis;
- (c) in a combustion plant (other than a plant to which sub-paragraph (a) or (b) applies), that is operated in accordance with a permit containing a condition prohibiting the monthly average emissions of sulphur dioxide from 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 a combustion plant forming part of a refinery (other than a gas engine, a gas turbine or a plant to which sub-paragraph (a) or (b) applies), which is operated in accordance with a permit containing a condition that the monthly average of emissions of sulphur dioxide averaged over all combustion plants in the refinery, irrespective of the fuel type or fuel combination used, does not exceed 1,700 mg/Nm³ at an oxygen content in the flue gas of 3 per cent per volume on a dry basis.

(4) SEPA must 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) or (3) are not exceeded.

(5) In this regulation—

“gas engine” and “gas turbine” have the meaning given in Article 3(34) and (33) respectively of Directive 2010/75/EU;

“participating plant” has the meaning given in regulation 3(1)(b) of the Large Combustion Plants (National Emission Reduction Plan) Regulations 2007(a);

“permit” means either—

- (a) if the operation of the combustion plant requires an authorisation or permit—
 - (i) an authorisation under Part I of the Environmental Protection Act 1990 (pollution control)(b);
 - (ii) a permit under regulations made under section 2 of the Pollution Prevention and Control Act 1999 (regulation of polluting activities)(c); or
 - (iii) an authorisation under regulations made under section 18 of the Regulatory Reform (Scotland) Act 2014(d); or
- (b) a sulphur content of liquid fuels permit.

(6) The Schedule (sulphur content of liquid fuels permits) has effect.

Maximum sulphur content in gas oil

5. No person shall use any gas oil with a sulphur content exceeding 0.1 per cent by mass.

Sampling and analysis

6.—(1) The Scottish Ministers must take all necessary measures to ensure that periodic 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 must be carried out with sufficient frequency and quantities and in such a way that the Scottish Ministers are satisfied that the samples are representative of the fuels examined.

(a) S.I. 2007/2325, relevantly amended by S.S.I. 2012/360.

(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 2012 (S.S.I. 2012/360).

(c) 1999 c.24.

(d) 2014 asp 3. No Regulations have been made under section 18.

(3) The samples must be analysed without undue delay.

(4) The reference method adopted for determining the sulphur content of fuels sampled pursuant to paragraph (1) must be defined by EN ISO method 8754:2003 or EN ISO method 14596:2007(a).

Offences and penalties

7.—(1) Any person who contravenes regulation 4(1) or 5, or causes or permits another person to do so, commits an offence.

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

(3) Where—

(a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association; and

(b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

(i) a relevant individual; or

(ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.

(4) In paragraph (3), “relevant individual” means—

(a) in relation to a body corporate—

(i) a director, manager, secretary or other similar officer of the body;

(ii) where the affairs of the body are managed by its members, a member;

(b) in relation to a Scottish partnership, a partner;

(c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Revocation and transitional provision

8.—(1) Subject to the following provisions of this regulation the 2007 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 2007 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 under these Regulations, and anything done in relation to the application under the 2007 Regulations is to 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 Sulphur Content of Liquid Fuels (Scotland) Regulations 2000(b) or Schedule 1 to the 2007 Regulations and which is still subsisting at the date of coming into force of these Regulations shall—

(a) continue to have effect; and

(a) EN ISO method 8754:2003 is described in the British Standard entitled, “Petroleum Products – Determination of Sulfur content – Energy-dispersive X-ray fluorescence methods”, published under the number BS EN ISO method 8754:2003, which came into effect on 14 August 2003 as amended by Amendment No. 14812 Corrigendum No. 1, which came into effect on 27th October 2003. EN ISO method 14596:2007 is described in the British Standard entitled, “Petroleum Products – Determination of sulfur content – Wavelength-dispersive X-ray fluorescence spectrometry”, published under the number EN ISO method 14596:2007, which came into effect on 31st October 2007.

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

(b) be treated for the purposes of these Regulations as if it was a permit granted in accordance with the Schedule to these Regulations.

PAUL WHEELHOUSE

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
25th September 2014

SCHEDULE

Regulation 4(6)

Sulphur content of liquid fuels permits

1. An operator of a combustion plant who wishes to operate that plant under an exception provided for in regulation 4(2) or (3) 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 (pollution control); or
- (b) a permit under Regulations made under section 2 of the Pollution Prevention and Control Act 1999; or
- (c) an authorisation under regulations made under section 18 of the Regulatory Reform (Scotland) Act 2014.

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

- (a) the applicant's name, telephone number, address (including postcode) and an 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) or (3).

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

4. On receipt of an application duly made under paragraph 1, SEPA must 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 intended to be transferred under paragraph 5 must –

- (a) notify SEPA in writing (or in electronic form acceptable to SEPA) of the intended transfer; and
- (b) do so within 21 days of the intended 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 ceases to have effect on the date specified in the notice.

8. Section 41 of the Environment Act 1995 applies in respect of a sulphur content of liquid fuels permit for the purposes 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.

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 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC (OJ L 121, 11.5.1999, p.13) “Directive 1999/32/EC”.

Directive 1999/32/EC was originally transposed in relation to Scotland by the Sulphur Content of Liquid Fuels (Scotland) Regulations 2000 (S.S.I. 2000/16).

Those Regulations were revoked by the Sulphur Content of Liquid Fuels (Scotland) Regulations 2007 “the 2007 Regulations” (S.S.I. 2007/27).

Directive 2012/33/EU as regards the sulphur content of marine fuels (OJ L 327, 27.11.2012, p.1-13) amended Directive 1999/32/EC. These Regulations transpose, as regards land based liquid fuels, the requirements of that Directive. They revoke the 2007 Regulations, save for some transitional provision (regulation 8).

Regulation 2 (1) contains new definitions of “gas oil” and “heavy fuel oil”.

Regulation 3 stipulates that 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.

Regulation 4 prohibits the use of any heavy fuel oil with a sulphur content exceeding 1 per cent by mass, subject to some exceptions.

Regulation 5 prohibits the use of gas oil with a sulphur content exceeding 0.1 per cent by mass.

Regulation 6 requires the Scottish Ministers to take all necessary measures to ensure that the periodic 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. That sampling is to be carried out with sufficient frequency and quantity and must be analysed without undue delay.

Regulation 7 deals with offences and penalties where these Regulations are contravened.

Regulation 8 revokes the 2007 Regulations and makes some transitional provisions in relation to an operator of a combustion plant who been granted a permit under the Sulphur Content of Liquid Fuels (Scotland) Regulations 2000, has submitted an application for a permit under the 2007 Regulations or has been granted a permit under the 2007 Regulations.

The Schedule deals with applications by an operator of a combustion plant who wishes to operate that plant under an exception provided for in regulation 4(2) or (3) and that plant meets certain requirements.

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