

2004 No. 107

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Solvent Emissions (England and Wales) Regulations 2004

Made - - - - - *19th January 2004*

Coming into force - - - *20th January 2004*

The Secretary of State, in exercise of the powers conferred upon her by section 2 of the Pollution Prevention and Control Act 1999(a), having in accordance with section 2(4) of that Act consulted the Environment Agency, such bodies or persons appearing to her to be representative of the interests of local government, industry, agriculture and small businesses respectively as she considers appropriate, and such other bodies and persons as she considers appropriate, hereby makes the following Regulations, a draft of which has, in accordance with section 2(8) of the 1999 Act, been laid before, and approved by resolution of, each House of Parliament:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Solvent Emissions (England and Wales) Regulations 2004 and shall come into force on the day after the day on which they are made.

(2) These Regulations extend to England and Wales.

Interpretation

2.—(1) In these Regulations—

“the 2000 Regulations” means the Pollution Prevention and Control (England and Wales) Regulations 2000(b);

“authorisation” means an authorisation granted under section 6 of the Environmental Protection Act 1990(c);

“risk phrase substance or preparation” means a substance or preparation which, because of its content of volatile organic compounds classified as carcinogens, mutagens, or toxic to reproduction under Directive 67/548/EEC(d) as last amended by Commission Directive

(a) 1999 c. 24. The Secretary of State can exercise these powers only in relation to England and Wales: see section 53 of the Scotland Act 1998 (c. 46) and section 5(3) of the 1999 Act. Directive 1999/13/EC was designated for the purposes of paragraph 20 of Schedule 1 to the 1999 Act by The Pollution Prevention and Control (Designation of Council Directive on Solvent Emissions) Regulations 2003, S.I. 2003/948.

(b) S.I. 2000/1973, amended by S.I. 2001/503, 2002/275, 2002/1559, 2002/1702, 2002/2469, 2002/2688, 2002/2980 and 2003/1699.

(c) 1990 c. 43.

(d) OJ 196, 16.8.1967, p. 1.

98/98/EC(a), is assigned or needs to carry the risk phrases R45, R46, R49, R60 or R61; and a substance or preparation “becomes a risk phrase substance or preparation” when, because of its content of volatile organic compounds, it is assigned or needs to carry one or more of those risk phrases.

(2) Subject to regulation 3(15), in these Regulations, words and expressions which are defined in Regulation 2 of, or Schedule 3 to, the 2000 Regulations shall have the same meaning as in those Regulations.

Application for variation of the conditions of an existing permit or authorisation in relation to installations covered by the Solvent Emissions Directive

3.—(1) Where—

- (a) an installation contains—
 - (i) a new SED installation; or
 - (ii) an existing SED installation which underwent a substantial change in operation, or at which abatement equipment was installed on or after 1st April 2001 and before the coming into force of these Regulations; or
 - (iii) an existing SED installation at which a risk phrase substance or preparation began to be used before the coming into force of these Regulations; and
- (b) the affected part of the SED installation is on the date of coming into force of these Regulations subject to a permit,

the operator shall within the period of 4 months beginning on the date of coming into force of these Regulations make an application under regulation 17 of the 2000 Regulations for a variation of the conditions of that permit.

(2) Where—

- (a) abatement equipment was installed in an existing SED installation on or after 1st April 2001 and before the coming into force of these Regulations;
- (b) the activities carried out in the affected part of the SED installation fall wholly within any description of processes set out in Schedule 1 to the 1991 Regulations under the heading “Part A”; and
- (c) that part of the SED installation is on the coming into force of these Regulations wholly covered by an authorisation,

the operator shall within the period of 4 months beginning on the date of coming into force of these Regulations either make an application under section 11 of the Environmental Protection Act 1990 for a variation of the conditions of the authorisation; or make an application for a permit to operate the whole installation under regulation 10 of the 2000 Regulations.

(3) Where—

- (a) an installation contains an existing SED installation at which a risk phrase substance or preparation began to be used before the coming into force of these Regulations; and
- (b) the SED installation or part of the SED installation in which the substance or preparation is used is subject to an authorisation,

the operator shall within the period of 4 months beginning on the date of coming into force of these Regulations make an application under section 11 of the Environmental Protection Act 1990 for a variation of the conditions of the authorisation.

(4) Subject to paragraph (1), where an installation which contains an existing SED installation is subject to a permit, the operator of the installation shall by the SED date make an application under regulation 17 of the 2000 Regulations for a variation of the conditions of that permit.

(5) Subject to paragraph (2), where the activities carried out in an existing SED installation—

- (a) fall wholly within any description set out in Schedule 1 to the 1991 Regulations under the heading “Part A”; and
- (b) are wholly covered by an authorisation,

(a) OJ L 355, 30.12.1998, p. 1.

the operator shall by the SED date make an application under section 11 of the Environmental Protection Act 1990 for a variation of the conditions of the authorisation or make an application for a permit to operate the whole installation under regulation 10 of the 2000 Regulations.

(6) Paragraphs (1) to (5) do not apply if the permit or authorisation already includes all conditions necessary to meet the requirements of the Solvent Emissions Directive.

(7) Where—

(a) an operator of an installation containing an existing SED installation proposes to make a substantial change in the operation of that SED installation or to install abatement equipment; and

(b) the affected part of the SED installation is subject to a permit,

the operator shall make an application under regulation 17 of the 2000 Regulations for a variation of the conditions of the permit and may not make the substantial change in operation or install the abatement equipment before the positive determination date.

(8) Where—

(a) an operator of an installation containing an existing SED installation proposes to install abatement equipment;

(b) the activities carried out in the affected part of the SED installation fall wholly within any description set out in Schedule 1 to the 1991 Regulations under the heading “Part A”; and

(c) that part of the SED installation is wholly covered by an authorisation,

the operator shall either make an application under section 11 of the Environmental Protection Act 1990 for a variation of the conditions of the authorisation or make an application for a permit to operate the whole installation under regulation 10 of the 2000 Regulations, and may not install the abatement equipment before the positive determination date.

(9) Where—

(a) an operator of an installation containing an existing SED installation proposes to start using a risk phrase substance or preparation; and

(b) the SED installation or part of the SED installation in which it is proposed to use the risk phrase substance or preparation is subject to a permit or an authorisation,

the operator shall make an application under regulation 17 of the 2000 Regulations for a variation of the conditions of the permit or an application under section 11 of the Environmental Protection Act 1990 for a variation of the conditions of the authorisation, and the operator may not begin using the substance or preparation before the positive determination date.

(10) Where after the coming into force of these Regulations—

(a) a substance or preparation used in an SED installation becomes a risk phrase substance or preparation; and

(b) the SED installation or part of the SED installation in which the substance or preparation is used is subject to a permit or an authorisation,

the operator shall within 4 months beginning on the date on which the risk phrase is assigned to that substance or preparation make an application under regulation 17 of the 2000 Regulations for a variation of the conditions of the permit or an application under section 11 of the Environmental Protection Act 1990 for a variation of the conditions of the authorisation.

(11) Paragraphs (1) and (7) shall not apply to an installation containing an SED installation which undergoes a substantial change in operation where the total emissions of the SED installation do not exceed those that would have been permitted had the substantially changed part of the SED installation been subject to a permit containing conditions necessary to ensure that the SED installation complied with the requirements of Articles 5, 8 and 9 of the Solvent Emissions Directive.

(12) An application under this regulation shall contain the information specified in paragraph 1C of Part 1 of Schedule 4 to the 2000 Regulations.

(13) Where an operator fails to comply with any of the requirements of this regulation, the regulator shall serve a notice on the operator specifying the relevant requirement, requiring him to comply with the requirement and specifying the period within which it shall be complied with.

(14) A notice served under paragraph (13) shall be treated for the purposes of the 2000 Regulations as an enforcement notice served under regulation 24(1) of the 2000 Regulations.

(15) For the purposes of this regulation—

“affected part” means that part of an SED installation which undergoes a substantial change in operation or in which abatement equipment is installed or in which a risk phrase substance or preparation is used;

“positive determination date” means—

- (a) in relation to an application for a variation of a permit, the date on which the permit is varied, whether in pursuance of an application for a variation or, on appeal, of a direction to vary it;
- (b) in relation to an application for a variation of an authorisation, the date on which the authorisation is varied, whether in pursuance of an application for a variation or, on appeal, of a direction to vary it; or
- (c) in relation to an application for a permit, the date on which the permit is granted, whether in pursuance of an application or, on appeal, of a direction to grant it;

“the SED date” means—

- (a) in relation to an existing SED installation for which the operator wishes to use a reduction scheme, 31st October 2005;
- (b) in relation to all other existing SED installations, 31st October 2006.

Application for an extension of an existing permit in relation to installations covered by the Solvent Emissions Directive

4.—(1) Where the prescribed dates for an installation, which is already in part subject to a permit, are determined in accordance with paragraph 18(5) of Part 4 of Schedule 3 to the 2000 Regulations (determination of the prescribed date for an SED installation carrying out activities which are only partly also activities falling within sections 1.1 to 6.9 of Part 1 of Schedule 1 and associated activities) and the prescribed date for part of the SED installation has not yet passed, the operator may make an application to extend the scope of the permit to incorporate the whole of the SED installation.

(2) Subject to paragraph (3), the provisions of regulation 17 of, and Schedule 7 to, the 2000 Regulations shall apply to an application under paragraph (1) as if it were an application for a variation of a permit under regulation 17(2) of the 2000 Regulations.

(3) In relation to an application under paragraph (1)—

(a) regulation 17 of the 2000 Regulations shall apply as if—

(i) for paragraph (4) there were substituted the following paragraph—

“(4) Where an application is duly made to the regulator under regulation 4(1) of the Solvent Emissions (England and Wales) Regulations 2004, the regulator shall either extend the scope of the permit subject to the conditions required or authorised to be imposed by regulations 11, 12 and 12A or refuse to extend the permit”;

(ii) for paragraph (5) there were substituted the following paragraph—

“(5) Where the regulator decides to extend the scope of the permit, it shall serve a notice on the operator (a “variation notice”) specifying how the permit will be extended, the conditions which will be imposed on the part of the installation covered by the extension and the date on which, unless the notice is withdrawn, the extension shall take effect”;

(iii) for paragraph (7) there were substituted the following paragraph—

“(7) Where the regulator decides on an application under regulation 4(1) of the Solvent Emissions (England and Wales) Regulations 2004 not to extend the permit, it shall give notice of its decision to the operator”;

(b) Schedule 7 shall apply as if—

(i) in paragraph 1(e) of Part 1 after “conditions of the permit” there were inserted “and the extension of the scope of the permit”;

- (ii) at the end of paragraph 1 there were inserted a new sub-paragraph (h) as follows—
 - “(h) in the case of an application for a variation to extend the scope of the permit in respect of an SED installation the information specified in paragraph 1C of Part 1 of Schedule 4”;
- (iii) in paragraph 4(1) “or” were deleted from the end of sub-paragraph (a); “or” were inserted at the end of sub-paragraph (b); and there were inserted a new sub-paragraph (c) as follows—
 - “(c) an application is made under regulation 4(1) of the Solvent Emissions (England and Wales) Regulations 2004 to extend the scope of the permit”;
- (iv) at the end of paragraph 4(9)(c) there were inserted “or, in the case of an application under regulation 4(1) of the Solvent Emissions (England and Wales) Regulations 2004 to extend the scope of the permit, the extension of the scope of the permit”;

(4) Where an application for a variation is made under paragraph (1), the provisions of Part 3 of Schedule 3 to the 2000 Regulations shall be read as if references to an “application for a permit to operate the installation” were references to an “application for variation of a permit”.

(5) An application for a variation of the conditions of a permit under regulation 3(1), (4), (7), (9) or (10) and an application for a variation to extend the scope of the permit under paragraph (1) may be made combined in one application.

Supplementary applications in relation to installations covered by the Solvent Emissions Directive

5.—(1) Where an operator has made or is deemed to have made an application under regulation 10 of the 2000 Regulations to operate an installation containing an SED installation (the “original application”) and—

- (a) the operator wishes to make a substantial change in the operation of the SED installation, to install abatement equipment, or to begin using a risk phrase substance or preparation before the original application has been determined;
- (b) the operator wishes to use a reduction scheme and the original application has not been determined by the regulator by 31st August 2005; or
- (c) in relation to an installation for which the prescribed date is determined in accordance with paragraph 18(5) of Part 4 of Schedule 3 to the 2000 Regulations (determination of the prescribed date for an SED installation carrying out activities which are only partly also activities falling within sections 1.1 to 6.9 of Part 1 of Schedule 1 and associated activities), the original application is not determined by the regulator before the date for which the operator is required to apply for a permit for the remaining part of the installation,

the operator may make a supplementary application to the regulator.

- (2) A supplementary application under paragraph (1) shall contain—
 - (a) in the case of an application under paragraph (1)(a), a description of the substantial change in the operation or abatement equipment to be installed or a description of the risk phrase substance or preparation to be used; and
 - (b) any information which would be required under Schedule 4 to be included in an application to operate the installation which is not in the original application.
- (3) Where an operator makes a supplementary application under paragraph (1)—
 - (a) the original application shall be amended to include the provisions of the supplementary application; and
 - (b) the resulting application shall be deemed to have been made on the date the supplementary application is made.

Duty for operators applying to use a reduction scheme

- 6.—(1) Where, in respect of an existing SED installation, an operator makes—
 - (a) an application for a permit;
 - (b) an application for a variation of the conditions of an existing permit or authorisation under regulation 3 or for an extension of an existing permit under regulation 4; or

(c) a supplementary application under regulation 5, and indicates that he wishes to use a reduction scheme in respect of that SED installation, the operator shall, from 31st October 2005 until the determination date for the SED installation, operate the SED installation in accordance with the requirements of the proposed reduction scheme.

(2) In paragraph (1), the “determination date” shall be interpreted in accordance with Part 3 of Schedule 3 to the 2000 Regulations.

(3) Where a regulator considers that an operator has failed, is failing or is likely to fail to comply with the requirement under paragraph (1), the regulator may serve a notice on the operator requiring him to comply with that requirement and specifying the period within which it shall be complied with.

(4) A notice served under paragraph (3) shall be treated for the purposes of the 2000 Regulations as an enforcement notice served under regulation 24(1) of the 2000 Regulations.

(5) For the purposes of the discharge of its functions under this regulation the regulator may serve a notice on any person requiring that person to furnish such information as is specified in the notice, in such form and within such period following service of the notice or at such time as is so specified.

(6) A notice served under paragraph (5) shall be treated for the purposes of the 2000 Regulations as a notice served under regulation 28(2) of the 2000 Regulations.

Duration of regulations 3 to 6

7.—(1) Subject to paragraph (2), regulations 3 to 6 shall cease to have effect on 1 November 2007 (“the sunset date”).

(2) Where—

(a) an operator has made or is deemed to have made an application for a permit to operate an installation containing an SED installation under regulation 10 of the 2000 Regulations; and

(b) the application has not been determined prior to the sunset date, regulation 6 shall continue to apply until the determination date for that installation.

(3) In paragraph (2) “determination date” means—

(a) for an SED installation or part of an SED installation, in relation to which a permit is granted, the date on which it is granted, whether in pursuance of the application, or, on an appeal, of a direction to grant it;

(b) for an SED installation or part of an SED installation, in relation to which a permit is refused and the applicant for the permit appeals against the refusal, the date of the affirmation of the refusal;

(c) for an SED installation or part of an SED installation, in relation to which a permit is refused and no appeal is made against the refusal, the date immediately following the last day, determined in accordance with paragraph 2 of Schedule 8 to the 2000 Regulations, on which notice of appeal might have been given;

(d) for an SED installation or part of an SED installation, in relation to which an application is withdrawn in accordance with regulation 7(6) of the 2000 Regulations or deemed to have been withdrawn in accordance with paragraph 4 of Schedule 4 to the 2000 Regulations, the date the application is withdrawn or deemed to have been withdrawn.

Amendment to the Pollution Prevention and Control (England and Wales) Regulations 2000

8.—(1) The 2000 Regulations shall be amended in accordance with the following paragraphs of this regulation.

(2) In regulation 2(1) (Interpretation: general)—

(a) in the definition of “change in operation” delete from “and “substantial change in operation”” to the end of the entry and substitute the following—

“and “substantial change in operation” means, in relation to an installation or mobile plant, a change in operation which, in the opinion of the regulator, may have

- significant negative effects on human beings or the environment and shall include (except in relation to Part 1 of Schedule 3)—
- (i) in relation to a small SED installation which does not fall wholly within the scope of the IPPC Directive, a change of the nominal capacity leading to an increase of emissions of volatile organic compounds of more than 25 per cent;
 - (ii) in relation to all other SED installations which do not fall wholly within the scope of the IPPC Directive, a change of the nominal capacity leading to an increase of emissions of volatile organic compounds of more than 10 per cent;”
- (b) after the definition of “change in operation” insert the following—
- ““directly associated activity” means—
- (i) in relation to an activity carried out in a stationary technical unit and falling within any description in sections 1.1 to 6.9 of Part 1 of Schedule 1, any directly associated activity which has a technical connection with the activity carried out in the stationary technical unit and which could have an effect on pollution; and
 - (ii) in relation to an SED activity, any directly associated activity which has a technical connection with the SED activity carried out on the same site and which could have an effect on any discharge of volatile organic compounds into the environment”;
- (c) delete the definition of “the Directive” and after the definition of “installation” insert the following—
- ““the IPPC Directive” means Council Directive 96/61/EC concerning integrated pollution prevention and control(a)”;
- (d) for the definition of “installation” substitute the following—
- ““installation” means (except where used in the term SED installation)—
- (i) a stationary technical unit where one or more activities listed in Part 1 of Schedule 1 are carried out;
 - (ii) any other location on the same site where any other directly associated activities are carried out,
- and, other than in Schedule 3, references to an installation include references to part of an installation;”;
- (e) in the definition of “mobile plant” before “Part 1” insert “sections 1.1 to 6.9 of”;
- (f) after the definition of “mobile plant” insert—
- ““new SED installation” and “existing SED installation” shall be interpreted in accordance with Schedule 3;”;
- (g) after the definition of “off-site condition” insert—
- ““organic compound” means any compound containing at least the element carbon and one or more of hydrogen, halogens, oxygen, sulphur, phosphorus, silicon or nitrogen, with the exception of carbon oxides and inorganic carbonates and bicarbonates;”;
- (h) after the definition of “pollution” insert—
- ““reduction scheme” means a reduction scheme which complies with Annex IIB of the Solvent Emissions Directive;”;
- (i) after the definition of “revocation notice” insert—
- ““SED activity means any activity falling within section 7 of Part 1 of Schedule 1;
“SED installation” means—
- (i) a stationary technical unit where one or more SED activities are carried out; and
 - (ii) any other location on the same site where any other directly associated activities are carried out;
- “small SED installation” means an SED installation which falls within the lower threshold band of items 1, 3, 4, 5, 8, 10, 13, 16 or 17 of Annex IIA to the Solvent Emissions Directive or, for the other activities of Annex IIA, which have a solvent consumption of less than 10 tonnes/year;

(a) OJ No. L257 10.10.96, p. 26, to which there are amendments not relevant to these Regulations.

“the Solvent Emissions Directive” means Council Directive 1999/13/EC(a) on the limitation of emissions of volatile organic compounds due to the use of solvents in certain activities and installations;” and

- (j) after the definition of “variation notice” insert—
““volatile organic compound” or “VOC” means—
(i) any organic compound having a vapour pressure of 0.01 kPa or more at 293.15K or having a corresponding volatility under the particular conditions of use; or
(ii) the fraction of creosote which exceeds a vapour pressure of 0.01 kPa at 293.15K;”.

(3) For all occurrences of the words “the Directive” substitute “the IPPC Directive”.

(4) In regulation 8 (discharge and scope of functions)—

- (a) in paragraph (4) after “and” insert “, subject to paragraph (4A),”;
(b) after paragraph (4) insert—

“(4A) The functions conferred or imposed by these Regulations in relation to an SED installation shall be exercisable for the purpose of preventing or reducing emissions of volatile organic compounds into air, soil and water as well as preventing the inclusion of solvents, or reducing the amount of solvents contained, in any products.”;

- (c) in paragraph (7), after “paragraphs (4)” insert “, (4A)”.

(5) In regulation 10(2) for the words “regulation 12” insert “regulation 12 or 12A”.

(6) After Regulation 12, insert a new regulation (12A) as follows—

“Conditions of permits: solvents

12A.—A permit authorising the operation of an SED installation shall contain such conditions as the regulator considers necessary to give effect to the provisions of the Solvent Emissions Directive.”

(7) In regulation 14—

- (a) in paragraph (2) for “regulation 12” substitute “regulations 12 and 12A”;
(b) in paragraph (3), for “regulation 12” substitute “regulations 12 and 12A”.

(8) In regulation 17—

- (a) in paragraph (1) for “regulations 11 and 12” substitute “regulations 11, 12 or 12A”;
(b) in paragraph (4), for “regulations 11 and 12” substitute “regulations 11, 12 or 12A”.

(9) Schedule 1 (Activities, Installations and Mobile Plant) shall be amended as follows—

- (a) at the end of Part 1 insert a new Section 7 as set out in Schedule 1 to these Regulations;
(b) in paragraph 2 of Part 2, for sub-paragraph (2) substitute the following—

“(2) Sub-paragraph (1) shall not apply to—

- (i) an SED activity; or
(ii) an activity which may give rise to an offensive smell noticeable outside the site where the activity is carried out.”;

(c) in paragraphs 3, 4, 5, 6 and 7 of Part 2, before “Part 1” insert “sections 1.1 to 6.9 of”;

(d) after paragraph 7 insert a new paragraph 7A—

“**7A.**—An activity listed in Section 7 of Part 1 shall include the cleaning of equipment but, except for a surface cleaning activity, not the cleaning of products.”;

(e) in paragraphs 9(4), 10(2) and (3) of Part 2, after “Part B” insert “(other than a description in Section 7)”;

(f) for paragraph 21 of Part 3 substitute the following—

“**21.**—(1) A Part B installation where an activity falling within Part B of Section 6.4 is carried out does not include any location where the associated cleaning of used storage drums prior to painting or their incidental handling in connection with such cleaning is carried out.

(2) Sub-paragraph (1) shall not apply where the location referred to in that sub-paragraph forms part of an SED installation.”

(a) OJ No. L85, 29.3.1999, p. 1.

(10) Schedule 3 (Prescribed Date and Transitional Arrangements) shall be amended as follows—

- (a) in paragraph 5 of Part 1,
 - (i) in paragraph (1), for “sub-paragraph (2)” substitute “sub-paragraphs (2) and (3)”; and
 - (ii) after sub-paragraph (2), insert a new sub-paragraph (3) as follows—

“(3) An operator may make an application before the beginning of the relevant period in accordance with regulation 3 of the Solvent Emissions (England and Wales) Regulations 2004”;
- (b) after Part 2 insert new Parts 3 and 4 as set out in Schedule 2 to these Regulations.

(11) Schedule 4 shall be amended as follows—

- (a) in paragraph 1(1)(d), at the beginning insert “subject to sub-paragraph (3)” and delete from “(but excluding” to “Schedule 1)”;
- (b) in paragraph 1(1)(e), delete from “which will have a technical connection” to “pollution”;
- (c) in paragraph 1(1)(m), after “regulation 12” insert “or 12A”;
- (d) after paragraph 1(2) insert a new sub-paragraph (3) as follows—

“(3) The requirement in paragraph 1(1)(d) does not apply to any part of an application which relates to—

- (a) an activity falling within Part A(2) of Section 5.1 of Part 1 of Schedule 1; or
- (b) an SED activity or part of an SED activity (and any directly associated activities) which does not also fall within any description in sections 1.1 to 6.9 of Part 1 of Schedule 1 (and any directly associated activities).”;
- (e) after paragraph 1B insert a new paragraph as follows—

“**1C.**—(1) An application for a permit to operate an installation which contains an SED installation shall include in addition a description of the measures which are envisaged to guarantee in respect of that installation that the installation is designed, equipped and will be operated in such a manner that the requirements of the Solvent Emissions Directive are met.

(2) That description shall include—

- (i) where the operator wishes to use a reduction scheme, details of the proposed reduction scheme;
- (ii) where there is used in the SED installation a substance or preparation which, because of its content of VOC’s classified as carcinogens, mutagens, or toxic to reproduction under Directive 67/548/EEC(**a**) as last amended by Commission Directive 98/98/EC(**b**) is assigned or needs to carry the risk phrases R45, R46, R49, R60 or R61, a timetable for replacing as far as possible such substance or preparation by a less harmful substance or preparation within the shortest possible time taking into account any guidance published under Article 7 of the Solvent Emissions Directive.

(3) Where the prescribed date for the installation is determined in accordance with paragraph 18(5) of Part 4 of Schedule 3 (determination of the prescribed date for an SED installation carrying out activities which are only partly also activities falling within sections 1.1 to 6.9 of Part 1 of Schedule 1 and associated activities), sub-paragraph (1) shall not apply to an application to operate that part of the installation in which an activity falling within sections 1.1 to 6.9 of Part 1 of Schedule 1 is carried out.”;

(f) after paragraph 3 insert a new paragraph as follows—

“**3A.**—Paragraph 1(1) shall apply in relation to an application for a permit to operate an installation involving dry cleaning as defined in paragraph (2) of Part B of Section 7 of

(a) OJ 196, 16.8.1967, p. 1.

(b) OJ L 355, 30.12.1998, p. 1.

Part 1 of Schedule 1 (SED activities), as if, in so far as the installation is concerned with the carrying out of that activity, the following sub-paragraphs were substituted for sub-paragraphs (e) to (h)—

- (e) the name and model number, description and number, if any, of the dry cleaning machine, the date when it was installed, the name of its manufacturer and its rated capacity;
- (f) details of any spot cleaning to be undertaken and details of checking and maintenance procedures to be followed and of the supervision, training and qualifications of operating staff;
- (g) details of the solvents to be used, including a description of any risk phrase substance or preparation;
- (h) details of the arrangements for storing solvents prior to use, and used solvents and solvent-contaminated materials, including a description of the location where the materials are stored;”;

(g) for paragraph 8, substitute the following—

“**8.** Paragraph 5 shall not apply in relation to an application for a permit to operate an installation involving only—

- (a) the burning of waste oil in an appliance with a rated thermal input of less than 0.4 megawatts; or
- (b) the carrying out of an activity falling within paragraph (d) of Part B of Section 1.2 of Part 1 of Schedule 1 (unloading of petrol at service stations); or
- (c) dry cleaning as defined in paragraph (2) of Part B of Section 7 of Part 1 of Schedule 1 (SED activities).”;

(h) for paragraph 10, substitute the following—

“**10.** Paragraph 9 shall not apply in relation to an application for a permit to operate an installation involving only—

- (a) the burning of waste oil in an appliance with a rated thermal input of less than 0.4 megawatts; or
- (b) dry cleaning as defined in paragraph (2) of Part B of Section 7 of Part 1 of Schedule 1 (SED activities).”.

(12) Schedule 7 shall be amended as follows—

(a) after paragraph 2 insert a new paragraph 2A—

“**2A.**—Paragraph 2 shall not apply in relation to a change in the operation of part of an installation which carries out an SED activity (and any directly associated activities) which does not also fall within any description in sections 1.1 to 6.9 of Part 1 of Schedule 1 (and any directly associated activities).”;

(b) for paragraph 4(4), substitute the following—

“(4) This paragraph shall not apply in relation to an application for the variation of the conditions of a permit or a proposed variation notice relating to an installation involving only—

- (a) the burning of waste oil (as defined in Section 1.1 of Part 1 of Schedule 1) in an appliance with a rated thermal input of less than 0.4 megawatts; or
- (b) dry cleaning as defined in paragraph (2) of Part B of Section 7 of Part 1 of Schedule 1.”.

19th January 2004

Whitty
Parliamentary Under-Secretary of State
Department for Environment, Food and Rural Affairs

NEW SECTION 7 IN PART 1 OF SCHEDULE 1 TO THE 2000 REGULATIONS

“SECTION 7—SED ACTIVITIES

Part A(1)

Nil.

Part A(2)

Nil.

Part B

The activities listed in the table below if they are operated above the solvent consumption threshold for the activity.

<i>Activity</i>	<i>Solvent consumption threshold in tonnes/year</i>
Heatset web offset printing	15
Publication rotogravure	25
Other rotogravure, flexography, rotary screen printing, laminating or varnishing units	15
Rotary screen printing on textile/cardboard	30
Surface cleaning using substances or preparations which because of their content of volatile organic compounds classified as carcinogens, mutagens or toxic to reproduction under Directive 67/548/EEC(a) as last amended by Commission Directive 98/98/EC(b) are assigned or need to carry one or more of the risk phrases R45, R46, R49, R60 or R61, or halogenated VOC's which are assigned or need to carry the risk phase R40	1
Other surface cleaning	2
Vehicle coating and vehicle refinishing	0.5
Coil coating	25
Other coating activities, including metal, plastic, textile (except rotary screen printing on textile), fabric, film and paper coating	5
Winding wire coating	5
Coating activity applied to wooden surfaces	15
Dry cleaning	0
Wood impregnation	25
Coating activity applied to leather	10
Footwear manufacture	5
Wood and plastic lamination	5
Adhesive coating	5
Manufacture of coating preparations, varnishes, inks and adhesives	100
Rubber conversion	15
Vegetable oil and animal fat extraction and vegetable oil refining activities	10
Manufacturing of pharmaceutical products	50

(1) Expressions used both in this Part and in the Solvent Emissions Directive have the same meaning for the purposes of this Part as they have for the purposes of that Directive.

(2) For the purposes of this Part—

“adhesive” means any preparation, including all the organic solvents or preparations containing organic solvents necessary for its proper application, which is used to adhere separate parts of a product;

“adhesive coating” means any activity in which an adhesive is applied to a surface, excluding the application of adhesive and laminating associated with printing activities;

“coating” means any preparation, including all the organic solvents or preparations containing organic solvents necessary for its proper application, which is used to provide a decorative, protective or other functional effect on a surface;

(a) OJ 196, 16.8.1967, p. 1.

(b) J L 355, 30.12.1998, p. 1.

“coating activity” means any activity in which a single or a multiple application of a continuous film of a coating is applied (including a step in which the same article is printed using any technique) but does not include the coating of substrate with metals by electrophoretic and chemical spraying techniques;

“coil coating” means any activity where coiled steel, stainless steel, coated steel copper alloys or aluminium strip is coated with either a film forming or laminate coating in a continuous process;

“consumption” means the total input of organic solvents into an installation per calendar year, or any other twelve month period, less any volatile organic compounds that are recovered for reuse;

“dry cleaning” means any industrial or commercial activity using volatile organic compounds to clean garments, furnishing and similar consumer goods excluding the manual removal of stains and spots in the textile and clothing industry;

“flexography” means a printing activity using an image carrier of rubber or elastic photopolymers on which the printing areas are above the non-printing areas, and liquid inks which dry through evaporation;

“footwear manufacture” means any activity of producing complete footwear or parts of footwear;

“halogenated organic solvent” means an organic solvent which contains at least one atom of bromine, chlorine, fluorine or iodine per molecule;

“heat web offset printing” means a web-fed printing activity using an image carrier in which the printing and non-printing area are in the same plane, where—

- (a) the non-printing area is treated to attract water and reject ink;
- (b) the printing area is treated to receive and transmit ink to the surface to be printed; and
- (c) evaporation takes place in the oven where hot air is used to heat the printed material;

“ink” means a preparation, including all the organic solvents or preparations containing organic solvents necessary for its proper application which is used in a printing activity to impress text or images on to a surface;

“laminating associated to a printing activity” means the adhering together of two or more flexible materials to produce laminates;

“manufacturing of coating preparations, varnishes, inks and adhesives” means the manufacture of coating preparations, varnishes, inks and adhesives as final products and where carried out at the same site, the manufacture of intermediates by the mixing of pigments, resins and adhesive materials with organic solvent or other carrier, including—

- (a) dispersion and predispersion activities,
- (b) viscosity and tint adjustments, and
- (c) operations for filling the final product into its container;

“manufacturing of pharmaceutical products” means one or more of the following activities:

- (a) the chemical synthesis;
- (b) fermentation;
- (c) extraction; or
- (d) formulation and finishing,

of pharmaceutical products and, where carried out at the same site, the manufacture of intermediate products;

“organic solvents” means any volatile organic compound which is used—

- (a) alone or in combination with other agents, and without undergoing a chemical change to dissolve raw materials, products or waste materials, or;
- (b) as a cleaning agent to dissolve contaminants, or;
- (c) as a dissolver, or;
- (d) as a dispersion medium, or;
- (e) as a viscosity adjuster, or;
- (f) as a surface tension adjuster, or;
- (g) as a plasticiser, or;
- (h) as a preservative;

“other coating activities” means a coating activity applied to-

- (a) trailers, defined in categories O1, O2 O3 and O4 in Directive 70/156/EEC(a);
- (b) metallic and plastic surfaces including surfaces of airplanes, ships, trains; or
- (c) textile, fabric, film and paper surfaces;

“printing activity” means any activity (not being a step in a coating activity) for reproducing text and/or images in which, with the use of an image carrier, ink is transferred onto any type of surface, including the use of associated varnishing, coating and laminating techniques;

“publication rotogravure” means a rotogravure printing activity used for printing paper for magazines, brochures, catalogues or similar products, using toluene-based inks;

(a) OJ L 42, 23.2.1970, p. 1 (OJ/SE Series I Chapter 1970(I) P 96), relevant amending Directives are Council Directive 92/53/EEC and Commission Directive 2001/116/EC.

“reuse” means the use of organic solvents recovered from an installation for any technical or commercial purpose and including use as a fuel but excluding the final disposal of such recovered organic solvent as waste;

“rotary screen printing” means a web-fed printing activity in which liquid ink which dries only through evaporation is passed onto the surface to be printed by forcing it through a porous image carrier, in which the printing area is open and the non-printing area is sealed off;

“rotogravure” means a printing activity, using a cylindrical image carrier in which the printing area is below the non-printing area and liquid inks which dry through evaporation, and in which the recesses are filled with ink and the surplus is cleaned off the non-printing area before the surface to be printed contacts the cylinder and lifts the ink from the recesses;

“rubber conversion” means—

- (a) any activity of mixing, milling, blending, calendaring, extrusion and vulcanisation of natural or synthetic rubber, and
- (b) any ancillary operations for converting natural or synthetic rubber into a finished product;

“surface cleaning” means any activity, except dry cleaning, using organic solvents to remove contamination from the surface of material including degreasing but excluding the cleaning of equipment; and a cleaning activity consisting of more than one step before or after any other activity shall be considered as one surface cleaning activity;

“vehicle coating” means a coating activity applied to the following vehicles—

- (a) new cars, defined as vehicles of category M1 in Directive 70/156/EEC, and of category N1 in so far as they are coated at the same installation as M1 vehicles;
- (b) truck cabins, defined as the housing for the driver, and all integrated housing for the technical equipment, of vehicles of categories N2 and N3 in Directive 70/156/EEC;
- (c) vans and trucks, defined as vehicles of categories N1, N2 and N3 in Directive 70/156/EEC, but not including truck cabins; or
- (d) buses, defined as vehicles in categories M2 and M3 in Directive 70/156/EEC;

“varnish” means a transparent coating;

“varnishing” means an activity by which varnish or an adhesive coating for the purpose of sealing the packaging material is applied to a flexible material;

“vegetable oil and animal fat extraction and vegetable oil refining activities” means any activity to extract vegetable oil from seeds and other vegetable matter, the processing of dry residues to produce animal feed, the purification of fats and vegetable oils derived from seeds, vegetable matter or animal matter;

“vehicle refinishing” means any industrial or commercial coating activity and associated degreasing activities performing—

- (a) the coating of road vehicles as defined in Directive 70/156/EEC, or part of them, carried out as part of vehicle repair, conservation or decoration outside of manufacturing installations;
- (b) the original coating of road vehicles as defined in Directive 70/156/EEC or part of them with refinishing-type materials, where this is carried out away from the original manufacturing line; or
- (c) the coating of trailers (including semi-trailers) (category O);

“web-fed” means that the material to be printed is fed to the machine from a reel as distinct from separate sheets;

“winding wire coating” means any coating activity of metallic conductors used for winding the coils in transformers and motors, etc;

“wood and plastic lamination” means any activity to adhere together wood or plastic to produce laminated products;

“wood impregnation” means any activity giving a loading of preservative in timber.

(3) Without prejudice to sub-paragraph (4), an activity shall be deemed to be operated above the solvent consumption threshold specified for that activity under this Part if the activity is likely to be operated above that threshold in any period of 12 months.

(4) An activity listed in this Part which was operated before the coming into force of these Regulations shall be deemed to have been operated above the solvent consumption threshold specified for that activity under this Part if—

- (a) it has been operated above that threshold in any period of 12 months prior to the date of coming into force of these Regulations; or
- (b) for an activity which is put into operation within 12 months prior to the date of coming into force of these Regulations, it was at any point likely to be operated above that threshold in any period of 12 months; and in either case,
- (c) it is likely to be operated above that threshold in any period of 12 months after the prescribed date for the SED installation in which that activity is carried out.”.

NEW PARTS 3 AND 4 OF SCHEDULE 3 TO THE 2000 REGULATIONS
(PRESCRIBED DATE AND TRANSITIONAL ARRANGEMENTS)

“PART 3: SED INSTALLATIONS

- 12.** The prescribed date for a new SED installation is—
- (a) in relation to new SED installations brought into operation before the coming into force of the SED Regulations—
 - (i) where an application for a permit to operate the SED installation is made before the expiry of a period 4 months beginning on the date of coming into force of the SED Regulations, the determination date for the SED installation;
 - (ii) where no such application is made, the day after the expiry of the period of 4 months beginning on the date of coming into force of the SED Regulations;
 - (b) in relation to all other new SED installations, the date of coming into force of the SED Regulations.
- 13.—**(1) Subject to paragraphs 14 and 15, the prescribed date for an existing SED installation is—
- (a) where an application for a permit to operate the SED installation is duly made by the relevant date, the determination date for the SED installation;
 - (b) where no such application is made, 1 November 2006.
- (2) For the purposes of sub-paragraph (1) the relevant date for an existing SED installation is—
- (a) for installations wishing to use the reduction scheme, 31 October 2005;
 - (b) for all other installations, 31 October 2006.
- 14.—**(1) Where there was a substantial change in the operation of an existing SED installation before the date of coming into force of the SED Regulations, the prescribed date for the affected part shall be—
- (a) where an application for a permit authorising the operation of that part of the installation is duly made before the expiry of a period 4 months beginning on the date of coming into force of the SED Regulations, the determination date for the SED installation;
 - (b) where no such application is made, the day after the expiry of the period of 4 months beginning on the date of coming into force of the SED Regulations.
- (2) Where an existing SED installation undergoes a substantial change in operation, the prescribed date for the affected part shall be the date on which the change is made, if earlier than the date which would be the prescribed date for the SED installation under this Part.
- (3) Sub-paragraphs (1) and (2) do not apply to that part of the SED installation which undergoes a substantial change in operation where the total emissions of the SED installation do not exceed those that would have been permitted had that part been subject to a permit containing conditions necessary to ensure that the SED installation complied with the requirements of Article 5 of the Solvent Emissions Directive.
- 15.—**(1) Where abatement equipment was installed in an existing SED installation before the coming into force of the SED Regulations, the prescribed date for the affected part shall be—
- (a) where an application for a permit authorising the operation of the affected part is duly made before the expiry of a period 4 months beginning on the date of coming into force of the SED Regulations, the determination date for the SED installation;
 - (b) where no such application is made, the day after the expiry of the period of 4 months beginning on the date of coming into force of the SED Regulations.
- (2) Subject to sub-paragraph (3), where after the date of coming into force of the SED Regulations abatement equipment is installed in an installation, the prescribed date for the affected part shall be the date on which the abatement equipment is installed if earlier than the date which would be the prescribed date for the SED installation under this Part.
- (3) Where the abatement equipment is to be installed in an installation in respect of which the operator has made an application to use a reduction scheme, the prescribed date for the affected part shall be the determination date for that affected part.
- 16.—**(1) Where—
- (a) in accordance with the provisions of Part 4 of this Schedule the prescribed date for a Part B installation which carries out in whole or in part an SED activity is to be determined under this Part; and

(b) but for the provisions of Part 4 the operator would have been deemed to have made an application for a permit to operate that plant under paragraph 9(3) of Part 2 of this Schedule, the application to be made shall relate only to the SED installation and the operator shall be deemed to have made an application to operate the rest of the installation at the same date.

(2) Schedule 4 shall not apply to a deemed application under sub-paragraph (1).

(3) Where sub-paragraph (1) applies, the regulator shall, within 1 month of the date on which the application is deemed to have been made, notify the operator of the installation of the deemed application and of the requirements of sub-paragraph (4).

(4) The regulator shall give notice of its determination of a deemed application under sub-paragraph (1) to the applicant at the same time as it gives notice of its determination of the application relating to the SED installation.

17.—(1) Expressions used both in this Part and in the Solvent Emissions Directive have the same meaning for the purposes of this Part as they have for the Solvent Emissions Directive.

(2) In this Part—

“determination date” means—

- (a) for an SED installation or part of an SED installation, in relation to which a permit is granted, the date on which it is granted, whether in pursuance of the application, or, on an appeal, of a direction to grant it;
- (b) for an SED installation or part of an SED installation, in relation to which a permit is refused and the applicant for the permit appeals against the refusal, the date of the affirmation of the refusal;
- (c) for an SED installation or part of an SED installation, in relation to which a permit is refused and no appeal is made against the refusal, the date immediately following the last day, determined in accordance with paragraph 2 of Schedule 8, on which notice of appeal might have been given;
- (d) for an SED installation or part of an SED installation, in relation to which an application is withdrawn in accordance with regulation 7(6) or deemed to have been withdrawn in accordance with paragraph 4 of Schedule 4, the date the application is withdrawn, or deemed to have been withdrawn;

“existing SED installation” means—

- (a) an SED installation which was put into operation before 1 April 2001; or
- (b) an SED installation which was subject on 1 April 2001 to a permit or to a full application for a permit and was put into operation on or before 1 April 2002;

“new SED installation” means an SED installation which is put into operation on or after 1 April 2001, other than an existing SED installation.

PART 4: APPLICATION OF PARTS 1 TO 3

18.—(1) Parts 1 to 3 of this Schedule shall apply subject to the provisions of this Part.

(2) Where an installation is wholly an SED installation and only carries out activities which do not fall within sections 1.1 to 6.9 of Part 1 of Schedule 1 the prescribed date for that installation shall be determined in accordance with Part 3.

(3) Subject to sub-paragraphs (4) to (6), the prescribed date for installations which carry out an activity falling within a description in sections 1.1 to 6.9 of Part 1 of Schedule 1 (and directly associated activities) shall be determined in accordance with Part 1 or 2.

(4) Subject to sub-paragraphs (5) and (6), where an SED installation carries out activities which are also wholly or partly activities falling within any description in sections 1.1 to 6.9 of Part 1 of Schedule 1 (and any directly associated activities), the prescribed date for that installation shall be determined in accordance with paragraphs 12 and 13 of Part 3 unless—

- (a) the activities carried out in the SED installation fall wholly within any description set out in Schedule 1 to the 1991 Regulations under the heading “Part A” and are wholly covered by an authorisation granted under Section 6 of the Environmental Protection Act 1990;
- (b) the anticipated prescribed date for the installation under Part 1 or 2 is earlier than the anticipated prescribed date for the SED installation under paragraph 12 or 13 of Part 3; or
- (c) an application to operate the installation has already been made or is already deemed to have been made at the date of coming into force of the SED Regulations.

- (5) Subject to subparagraph (6), where an installation—
- (a) carries out an SED activity and directly associated activities which are only partly also activities falling within a description in sections 1.1 to 6.9 of Part 1 of Schedule 1 and directly associated activities; and
 - (b) falls within sub-paragraph (4)(b),

the installation shall be regarded, for the purposes of this Schedule, as if it were two separate installations one consisting of the part of the installation carrying out activities under sections 1.1 to 6.9 in Part 1 of Schedule 1 (and directly associated activities) for which the prescribed date shall be determined in accordance with Parts 1 or 2 and the other consisting of the remainder of the installation for which the prescribed date shall be determined in accordance with Part 3.

(6) Where sub-paragraph (5) applies the operator may apply in writing to the regulator for consent to make an application at the earliest anticipated prescribed date covering the whole installation.

(7) Where abatement equipment is installed in an existing SED installation or an existing installation undergoes a substantial change in operation, the prescribed date for the affected part shall be determined in accordance with paragraphs 14 or 15 of Part 3 unless—

- (a) the prescribed date for the installation under Parts 1 or 2 or paragraphs 12 or 13 of Part 3 is earlier than the prescribed date for the affected part of the SED installation under paragraphs 14 or 15 of Part 3; or
- (b) in relation to an SED installation in which abatement equipment is installed the activities carried out by the affected part fall wholly within any description set out in Schedule 1 to the 1991 Regulations under the heading “Part A” and are wholly covered by an authorisation granted under Section 6 of the Environmental Protection Act 1990.

19. In this Schedule—

“affected part” means that part of an SED installation which undergoes a substantial change in operation or in which abatement equipment is installed;

“anticipated prescribed date” means—

- (a) in relation to a prescribed date under Part 1 of this Schedule, the last day of a period of 4 months beginning on the last day for making an application for a permit under that Part;
- (b) in relation to a prescribed date for a deemed application under paragraph 3 of Part 2 of this Schedule, the last day of a period of 12 months from the relevant date specified in paragraph 10 of that Part; or
- (c) in relation to a prescribed date under paragraphs 12 and 13 of Part 3, the last day of a period of 4 months beginning on the last day for making an application for a permit under this Part;

“existing SED installation” means—

- (a) an SED installation which was put into operation before 1 April 2001; or
- (b) an SED installation which was on 1 April 2001 subject to a permit or to a full application for a permit and was put into operation on or before 1 April 2002;

“the 1991 Regulations” means the Environmental Protection (Prescribed Processes and Substances) Regulations 1991(a);

“the SED Regulations” means the Solvent Emissions (England and Wales) Regulations 2004.”.

(a) S.I. 1991/472.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2 of the Pollution Prevention and Control Act 1999 (1999 c. 24). They implement in England and Wales the provisions of European Council Directive 1999/13/EC on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations (the Directive).

The Directive requires all installations carrying out activities listed in Annex I of the Directive above the thresholds in Annex IIA of the Directive to comply with certain emission limit values (SED installations).

The majority of SED installations are already regulated under either the Pollution Prevention and Control Regulations 2000 (S.I. 2000/1973) (the 2000 Regulations) or Part I of the Environmental Protection Act 1990 (1990 c. 43) (the 1990 Act). These Regulations use the existing pollution control regime set out under the 2000 Regulations to deliver the requirements of the Directive. As a result, these Regulations adjust the transitional provisions under the 2000 Regulations to align them with the requirements of the Directive.

Regulations 3 to 7 deal with transitional amendments to incorporate the requirements of the Directive into the existing pollution control regime under the 2000 Regulations.

Regulation 3 deals with applications for variations of conditions of existing permits or authorisations granted under the 2000 Regulations or the 1990 Act for installations which contain new or existing SED installations with the purpose of incorporating the Directive requirements into the permit or authorisation.

Regulation 4 sets out transitional provisions dealing with extensions of existing permits under the 2000 Regulations covering part of an SED installation with the purpose of extending the scope of the permit to incorporate the whole of the SED installation.

Regulation 5 enables the operator to make supplementary applications modifying applications made under regulation 10 of the 2000 Regulations in the situations specified in paragraphs (1)(a) to (c) of regulation 5.

Regulation 6 sets out the duties of operators wishing to operate an SED installation in accordance with the requirements of a reduction scheme as defined in regulation 2 of the 2000 Regulations as amended by these Regulations.

Regulation 7 specifies the duration of the transitional arrangements set out in regulations 3 to 6 to these Regulations.

Regulation 8 makes amendments to the 2000 Regulations to incorporate the requirements of the Directive. Regulation 8(6) inserts a new regulation 12A into the 2000 Regulations requiring permits authorising the operation of an SED installation to include such conditions as the regulator considers necessary to give effect to the provisions of the Solvent Emissions Directive. Regulation 8(9) and Schedule 1 to these Regulations add a new Section 7 to Schedule 1 to the 2000 Regulations. The new Section 7 provides for activities listed in the table when operated above solvent consumption thresholds for that activity to be Part B activities. Regulation 8(10) amends the transitional arrangements in Schedule 3 to the 2000 Regulations and inserts new Parts 3 and 4 to that Schedule as set out in Schedule 2 to these Regulations.

These Regulations extend to England and Wales.

A regulatory impact assessment has been prepared and copies can be obtained from AEQ Division, Department for Environment, Food and Rural affairs, Zone 4/H11, Ashdown House, 123 Victoria Street, London SW1E 6DE.

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