
SCOTTISH STATUTORY INSTRUMENTS

2000 No. 323

ENVIRONMENTAL PROTECTION

**The Pollution Prevention and
Control (Scotland) Regulations 2000**

Made - - - - 14th September 2000

Coming into force in accordance with regulation 1(1)

The Scottish Ministers, in exercise of the powers conferred upon them by section 2 of and Schedule 1 to the Pollution Prevention and Control Act 1999⁽¹⁾ and of all other powers enabling them in that behalf, having carried out consultation, as required by section 2(4) of that Act, hereby make the following Regulations, being the first to be made thereunder which apply in relation to Scotland, a draft of which has, in accordance with section 2(8) and (9)(c) of that Act, been laid before, and approved by resolution of the Scottish Parliament:

PART I
GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Pollution Prevention and Control (Scotland) Regulations 2000 and shall come into force on the fourteenth day after the date on which they are made.

(2) These Regulations extend to Scotland only.

Interpretation : general

2.—(1) In these Regulations—

“change in operation” means, in relation to an installation or mobile plant, a change in the nature or functioning or an extension of the installation or mobile plant which may have consequences for the environment; and “substantial change in operation” means, in relation to an installation or mobile plant, a change in operation of the installation which, in the opinion of the SEPA, may have significant negative effects on human beings or the environment;

(1) 1999 c. 24. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46), as read with section 5(3) of the said Act of 1999.

“the Directive” means Council Directive 96/61/EC concerning integrated pollution prevention and control(2);

“emission” means–

- (a) in relation to Part A installations, the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in an installation into the air, water or land;
- (b) in relation to Part B installations, the direct release of substances or heat from individual or diffuse sources in an installation into the air;
- (c) in relation to Part A mobile plant, the direct or indirect release of substances, vibrations, heat or noise from the mobile plant into the air, water or land;
- (d) in relation to Part B mobile plant, the direct release of substances or heat from the mobile plant into the air,

and references to emissions in the definitions of “emission limit value”, “pollution” and “pollutant” shall be construed accordingly for the purpose of the application of those definitions in relation to Part A and Part B installations and Part A and B mobile plant;

“emission limit value” means the mass, expressed in terms of specific parameters, concentration or level of an emission, which may not be exceeded during one or more periods of time;

“enforcement notice” has the meaning given by regulation 19(1);

“general binding rules” has the meaning given by regulation 10(1);

“installation” means–

- (a) a stationary technical unit where one or more activities listed in Part 1 of Schedule 1 are carried out; and
- (b) any other location on the same site where any other directly associated activities are carried out which have a technical connection with the activities carried out in the stationary technical unit and which could have an effect on pollution,

and, other than in Schedule 3, references to an installation include references to part of an installation;

“mobile plant” means plant which is designed to move or to be moved whether on roads or otherwise and which is used to carry out one or more activities listed in Part 1 of Schedule 1;

“off-site condition” has the meaning given by regulation 9(13);

“operator”, subject to paragraph (2), means, in relation to an installation or mobile plant, the person who has control over its operation;

“Part A installation”, “Part B installation”, “Part A mobile plant” and “Part B mobile plant” shall be interpreted in accordance with Part 3 of Schedule 1;

“permit” means a permit granted under regulation 7;

“pollution” means emissions as a result of human activity which may be harmful to human health or the quality of the environment, cause offence to any human senses, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment; and “pollutant” means any substance, vibration, heat or noise released as a result of such an emission which may have such an effect;

“revocation notice” has the meaning given by regulation 17;

“SEPA” means the Scottish Environment Protection Agency;

“specified waste management activity” means any one of the following activities:–

- (a) the disposal of waste in a landfill, whether or not the disposal falls within Section 5.2 of Part 1 of Schedule 1;
- (b) the disposal of waste falling within Section 5.3 of that Part of that Schedule;
- (c) the recovery of waste falling within paragraphs (c)(i), (v), (vi) or (vii) of Part A of Section 5.4 of that Part of that Schedule;

“substance” includes any chemical element and its compounds and any biological entity or micro-organism, with the exception of radioactive substances within the meaning of Council Directive 80/836/Euratom⁽³⁾, genetically modified micro-organisms within the meaning of Council Directive 90/219/EEC⁽⁴⁾ and genetically modified organisms within the meaning of Council Directive 90/220/EEC⁽⁵⁾;

“suspension notice” has the meaning given by regulation 20;

“variation notice” has the meaning given by regulation 13.

(2) For the purposes of these Regulations—

- (a) where an installation or mobile plant has not been put into operation, the person who will have control over the operation of the installation or mobile plant when it is put into operation shall be treated as the operator of the installation or mobile plant;
- (b) where an installation or mobile plant has ceased to be in operation, the person who holds the permit which applies to the installation or mobile plant shall be treated as the operator of the installation or mobile plant.

(3) In these Regulations, a reference to a release into water includes a release into a sewer and a reference to a Council Directive is a reference to that Directive as amended on the date on which these Regulations are made.

(4) Schedule 1 shall have effect and Part 1 of that Schedule shall be interpreted in accordance with the provisions as to interpretation in Part 2 and 3 of that Schedule.

(5) Parts 1 and 2 of Schedule 3 shall have effect and shall be interpreted in accordance with the definition sections in Part 3 of that Schedule.

(6) Any reference in these Regulations to a numbered regulation or Schedule is a reference to the regulation or Schedule so numbered in these Regulations and any reference to a numbered paragraph is a reference to the paragraph so numbered in the regulation or the Schedule (or Section or part of the Schedule) of which that paragraph forms part.

Interpretation : best available techniques

3.—(1) For the purpose of these Regulations, “best available techniques” means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing in principle the basis for emission limit values designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole; and for the purpose of this definition—

- (a) “available techniques” means those techniques which have been developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the cost and advantages, whether or not the techniques are used or produced inside the United Kingdom, as long as they are reasonably accessible to the operator;
- (b) “best” means, in relation to techniques, the most effective in achieving a high general level of protection of the environment as a whole;

⁽³⁾ O.J. No. L 246, 17.9.80, p.1, as amended by Council Directive 84/467/Euratom (O.J. L265, 5.10.84, p.4).

⁽⁴⁾ O.J. No. L 117, 8.5.90, p.1.

⁽⁵⁾ O.J. No. L 117, 8.5.90, p.15.

- (c) “techniques” includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned.
- (2) Schedule 2 shall have effect in relation to the determination of best available techniques.

Fit and proper person

4.—(1) This regulation applies for the purpose of the discharge of any function under these Regulations which requires SEPA to determine whether a person is or is not a fit and proper person to carry out a specified waste management activity.

(2) Whether a person is or is not a fit and proper person to carry out a specified waste management activity shall be determined by reference to the fulfilment of the conditions of the permit which apply or will apply to the carrying out of that activity.

(3) Subject to paragraph (4), a person shall be treated as not being a fit and proper person if it appears to SEPA that—

- (a) that person or another relevant person has been convicted of a relevant offence;
- (b) the management of the specified waste management activity which is or is to be carried on is not or will not be in the hands of a technically competent person; or
- (c) the person who holds or is to hold the permit has not made and either has no intention of making or is in no position to make financial provision adequate to discharge the obligations arising from the permit in relation to the specified waste management activity.

(4) SEPA may, if it considers it proper to do so in any particular case, treat a person as a fit and proper person, notwithstanding that paragraph (3)(a) applies in his case.

(5) For the purposes of paragraphs (3) and (6)—

- (a) “relevant offence” means an offence prescribed under section 74(6) of the Environmental Protection Act 1990⁽⁶⁾ for the purposes of section 74(3)(a) of that Act; and
- (b) the qualifications and experience required of a person for the purposes of section 74(3)(b) of that Act which are prescribed under section 74(6) of that Act shall be treated as the qualifications and experience required of a person for the purposes of paragraph (3)(b).

(6) In paragraph (3)(a), “another relevant person” means, in relation to the holder or proposed holder of a permit—

- (a) any person who has been convicted of a relevant offence committed in the course of that person’s employment by the holder or proposed holder of the permit or, in the course of the carrying on of any business by a partnership, one of the members of which was the holder or proposed holder of the permit;
- (b) a body corporate which has been convicted of a relevant offence committed when the holder or proposed holder of the permit was a director, manager, secretary or other similar officer of that body corporate (including, where the affairs of the body corporate are managed by its members, one of those members); or
- (c) where the holder or proposed holder of the permit is a body corporate, a person who is a director, manager, secretary or other similar officer of that body corporate (including, where the affairs of the body corporate are managed by its members, one of those members) and who—
 - (i) has been convicted of a relevant offence; or
 - (ii) was a person holding such an office at a time when a relevant offence for which that body corporate has been convicted was committed.

(6) 1990 c. 43; see regulation 3 of S.I. 1994/1056 (amended by S.I. 1994/1137).

Applications and duties of SEPA in relation to best available techniques

5.—(1) SEPA may require any application or type of application made to it under any provision of these Regulations to be made on an application form made available by it, in writing or in an electronic form acceptable to SEPA.

(2) An application form made available by SEPA under paragraph (1) shall specify the information required by it to determine the application, which shall include any information required to be contained in the application by the provision of these Regulations under which the application is made.

(3) Where SEPA makes available an application form under paragraph (1) in relation to the making of applications to it under a provision of these Regulations, any application made to it under that provision shall be made on that form.

(4) Where an application which is required to be accompanied by a fee, map or plan is sent electronically, the fee, map or plan may be sent to SEPA separately from the application but the application shall not be treated as having been received by SEPA until the fee, map or plan has also been received.

(5) An application made under these Regulations may be withdrawn at any time before it is determined.

(6) It shall be the duty of SEPA to follow developments in best available techniques.

PART II

PERMITS

Requirement for permit to operate installation and mobile plant

6.—(1) No person shall operate an installation or mobile plant after the prescribed date for that installation or mobile plant, except under and to the extent authorised by a permit granted by SEPA.

(2) In paragraph (1), the “prescribed date” means the appropriate date set out in or determined in accordance with Schedule 3.

Permits : general provisions

7.—(1) An application for a permit to operate an installation shall be made to SEPA in accordance with paragraphs 1 to 3 of Part I of Schedule 4 and shall be accompanied by any fee prescribed in respect of the application under section 41 of the Environment Act 1995⁽⁷⁾ and paragraphs 4 to 8 of Part 1 of Schedule 4 shall apply with respect to such applications.

(2) Subject to paragraphs (3) and (4), where an application is duly made to SEPA, it shall either grant the permit subject to the conditions required or authorised to be imposed by regulation 9 or refuse the permit.

(3) A permit shall not be granted if SEPA considers that the applicant will not be the person who will have control over the operation of the installation or mobile plant concerned after the grant of the permit or will not ensure that the installation or mobile plant is operated so as to comply with the conditions which would be included in the permit.

(4) In the case of an application for a permit that will authorise the carrying out of a specified waste management activity at an installation, or by means of mobile plant, the permit shall not be granted unless—

(7) 1995 c. 25; the definition of “environmental licences” in section 56(1) of the 1995 Act, which defines that expression for the purposes of section 41 of that Act, is amended by paragraph 5(2) of Schedule 10 to these Regulations.

- (a) SEPA is satisfied that the applicant is a fit and proper person to carry out that activity; and
- (b) in the case of an installation where the use of the application site for the carrying out of that activity requires planning permission granted under the Town and Country Planning (Scotland) Act 1997⁽⁸⁾, such planning permission is in force in relation to that use of the land.

(5) For the purpose of paragraph (4)(b), a certificate under section 150 of the Town and Country Planning (Scotland) Act 1997 (certificate of lawfulness of existing use or development) in relation to the use of the application site for the carrying out of the specified waste management activity, shall be treated as if it were a grant of planning permission for that use.

(6) A permit may authorise the operation of—

- (a) more than one Part A installation or Part A mobile plant on the same site operated by the same operator;
- (b) more than one Part B installation on the same site operated by the same operator; or
- (c) more than one Part B mobile plant operated by the same operator.

(7) A permit authorising the operation of Part A mobile plant may only authorise the operation of that plant on a site specified in the permit and only one site may be specified in each such permit (and accordingly, the operation of the plant on a different site shall require a separate permit).

(8) A permit authorising the operation of an installation or Part A mobile plant shall include a map or plan showing the site of the installation or plant covered by the permit and in the case of an installation, the location of the installation on that site.

(9) A permit shall be transferred only in accordance with regulation 14 and shall cease to have effect only in accordance with regulation 15 or 16 (surrender) or regulation 17 (revocation).

(10) Where—

- (a) the conditions of a permit have been varied under regulation 13 or affected by a partial transfer, surrender or revocation under regulations 14 to 17; or
- (b) there is more than one permit applying to installations on the same site operated by the same operator or to mobile plant operated by the same operator,

SEPA may replace the permit or permits, as the case may be, with a consolidated permit applying to the same installations or mobile plant and subject to the same conditions as the permit or permits being replaced.

(11) Part 2 of Schedule 3 shall apply in relation to applications for the operation of existing Part B installations and mobile plant.

(12) Schedule 4 shall have effect in relation to applications for permits and the determination of applications for permits and Parts 1 and 2 of that Schedule shall be subject to Part 3 of that Schedule (national security and confidential information).

(13) This regulation is subject to paragraphs 5 and 9 of Schedule 3 (applications for a permit to operate existing installations or mobile plant).

Conditions of permits : general principles

8.—(1) When determining the conditions of a permit, SEPA shall take account of the general principles set out in paragraph (2) and, in the case of permits for the operation of a Part A installation or a Part A mobile plant, the additional general principles set out in paragraph (3).

(2) The general principles referred to in paragraph (1) are that installations and mobile plant should be operated in such a way that—

(8) 1997 c. 8.

- (a) all the appropriate preventative measures are taken against pollution, in particular through application of the best available techniques;
 - (b) no significant pollution is caused.
- (3) The additional general principles referred to in paragraph (1) in relation to permits for the operation of Part A installations or a Part A mobile plant are that these installations should be operated in such a way that—
- (a) waste production is avoided in accordance with Council Directive [75/442/EEC](#) on waste⁽⁹⁾, but where waste is produced, it is recovered or, where that is technically and economically impossible, it is disposed of while avoiding or reducing any impact on the environment;
 - (b) energy is used efficiently;
 - (c) the necessary measures are taken to prevent accidents and limit their consequences,
- and that, upon final cessation of activities, the necessary measures should be taken to avoid any pollution risk and to return the site of the installation or mobile plant to a satisfactory state.

Conditions of permits : specific requirements

- 9.—(1) Subject to paragraphs (2) and (15) and regulation 10, there shall be included in a permit—
- (a) such conditions as SEPA considers appropriate to comply with paragraphs (3) to (9);
 - (b) in relation to any Part A installations or Part A mobile plant authorised by the permit—
 - (i) such other conditions applying in relation to those Part A installations or Part A mobile plant as SEPA considers appropriate to comply with paragraph (10); and
 - (ii) such other conditions (if any) applying in relation to those Part A, installations or Part A mobile plant, in addition to those required by sub-paragraphs (a) and (b) (i), as appear to SEPA to be appropriate, when taken with the condition implied by paragraph (11), for the purpose of ensuring a high level of protection for the environment as a whole, taking into account, in particular, the general principles set out in regulation 8(2); and
 - (c) in relation to any Part B installation or Part B mobile plant authorised by the permit, such other conditions (if any) applying in relation to the Part B installation or Part A mobile plant as appear to SEPA to be appropriate, when taken with the condition implied by paragraph (11), for the purpose of preventing or, where that is not practicable, reducing emissions into the air, taking into account, in particular, the general principles set out in regulation 8(2).
- (2) The Scottish Ministers may give directions to SEPA—
- (a) as to the specific conditions which are, or are not, to be included in all permits, in permits of a specified description or in any particular permit;
 - (b) as to the objectives which are to be achieved by conditions included in such permits,
- and SEPA shall include in such permits such conditions as are specified or required to comply with such directions.
- (3) Subject to paragraph (9), a permit shall include emission limit values for pollutants, in particular those listed in Schedule 5, likely to be emitted from the installation or mobile plant in significant quantities, having regard to their nature and, in the case of emissions from Part A installations or Part A mobile plant, their potential to transfer pollution from one environmental medium to another.

⁽⁹⁾ O.J. No. L 194, 25.7.75, p.39, as amended by Council Directives [91/156/EEC](#) (O.J. No. L 78, 26.3.91, p.32) and [91/692/EEC](#) (O.J. No. L 377, 31.12.91, p.48 and Commission Decision [96/350/EC](#) (O.J. No. L 135, 6.6.96, p.32).

(4) Where appropriate, the emission limit values required by paragraph (3) may apply to groups of pollutants rather than to individual pollutants.

(5) The emission limit values required by paragraph (3) shall normally apply at the point at which the emissions leave the installation or mobile plant, any dilution being disregarded when determining them.

(6) The effect of a waste water treatment plant may be taken into account when determining the emission limit values applying in relation to indirect releases into water from a Part A installation or Part A mobile plant, provided that an equivalent level of protection of the environment as a whole is guaranteed and taking such treatment into account does not lead to higher levels of pollution.

(7) Subject to paragraph (8), the emission limit values required by paragraph (3) shall be based on the best available techniques for the description of installation or mobile plant concerned but shall take account of the technical characteristics of the particular installation or mobile plant being permitted, and, in the case of installation of a Part A mobile plant, its geographical location and the local environmental conditions.

(8) Where an environmental quality standard requires stricter emission limit values than those that would be imposed pursuant to paragraph (7), paragraph (3) shall require those stricter emission limit values; and for the purpose of this paragraph “environmental quality standard” means the set of requirements which must be fulfilled at a given time by a given environment or particular part thereof, as set out in Community legislation.

(9) Where appropriate, the emission limit values required by paragraph (3) may be supplemented or replaced by equivalent parameters or technical measures.

(10) A permit authorising the operation of a Part A installation or Part A mobile plant shall also include conditions—

- (a) aimed at minimising long distance and transboundary pollution;
- (b) ensuring, where necessary, appropriate protection of the soil and groundwater and appropriate management of waste generated by the installation or mobile plant;
- (c) relating to the periods when the installation or mobile plant is not operating normally where there is a risk that the environment may be adversely affected during such periods, including, in particular, conditions relating to the start up of operations, leaks, malfunctions and momentary stoppages;
- (d) setting out the steps to be taken prior to the operation of the installation or mobile plant and after the final cessation of operations;
- (e) setting out suitable emission monitoring requirements, specifying the measurement methodology and frequency and the evaluation procedure, and ensuring that the operator supplies SEPA with the data required to check compliance with the permit;
- (f) requiring the operator to supply SEPA regularly with the results of the monitoring of emissions and to inform SEPA, without delay, of any incident or accident significantly affecting the environment.

(11) Subject to paragraph (12), there is implied in every permit a condition that, in operating the installation or mobile plant, the operator shall use the best available techniques for preventing or, where that is not practicable, reducing emissions from the installation or mobile plant.

(12) The obligation implied by virtue of paragraph (11) shall not apply in relation to any aspect of the operation of the installation or mobile plant in question which is regulated by a condition imposed under any other paragraph of this regulation.

(13) A permit authorising the operation of an installation or Part A mobile plant may include a condition (an “off-site condition”) requiring an operator to carry out works or do other things in relation to land not forming part of the site of the installation or mobile plant, notwithstanding that such operator is not entitled to carry out the works or do the thing, and any person whose consent

would be required shall grant, or join in granting, the operator such rights in relation to that land as will enable the operator to comply with any requirements imposed on that operator by the permit.

(14) A permit may, without prejudice to the generality of the previous provisions of this regulation, include conditions—

- (a) imposing limits on the amount or composition of any substance produced or utilised during the operation of the installation or mobile plant in any period;
- (b) which are supplemental or incidental to other conditions contained in the permit.

(15) Guidance issued by the Scottish Ministers under regulation 24 may sanction reliance by SEPA on any arrangements referred to in the guidance to operate to secure a particular result as an alternative to including a condition in the permit pursuant to this regulation.

(16) Where a Part B mobile plant authorised by a permit is used to carry out an activity on the site of an installation which is authorised by a separate permit, then if different requirements are imposed in the permits as respect the carrying out of the activity the requirements in the permit authorising the operation of the installation shall prevail in the event of any inconsistency.

(17) Schedule 5 shall have effect for the purpose of listing the main polluting substances further to paragraph (3) and Schedule 6 shall have effect in relation to compensation where rights are granted pursuant to paragraph (13).

General binding rules

10.—(1) Subject to paragraph (2), the Scottish Ministers may make rules (“general binding rules”) containing requirements applying to certain types of installation or mobile plant.

(2) The Scottish Ministers shall only make general binding rules under this regulation applying to Part A installations or Part A mobile plants if they are satisfied that the operation of such installations or mobile plant under the rules will result in the same high level of environmental protection and integrated prevention and control of pollution as would result from the operation of the installations or mobile plant under the conditions that would be included in the permits for those installations or mobile plant pursuant to regulation 9 if the rules did not apply.

(3) Where the Scottish Ministers make general binding rules SEPA may, at the request of the operator, include in a permit authorising the operation of an installation or mobile plant covered by the rules a condition (a “general binding rules condition”) providing that the aspects of the operation of the installation or mobile plant covered by the requirements in the rules shall be subject to those requirements instead of to conditions included in the permit pursuant to regulation 9.

(4) Where a permit includes a general binding rules condition the requirements in the general binding rules shall be treated as if they were conditions of the permit for the purpose of regulations 18, 19, and 30(1)(b).

(5) The Scottish Ministers may vary general binding rules by means of a notice of variation specifying the variations and the date on which the variations are to take effect, which shall be not less than 3 months after the date on which notice of the variation is given in the Edinburgh Gazette pursuant to paragraph (9).

(6) The Scottish Ministers may revoke general binding rules by means of a notice of revocation.

(7) Where aspects of the operation of an installation or mobile plant are covered by the requirements in general binding rules which are revoked, SEPA shall vary the permit authorising the operation of the installation or mobile plant under regulation 13 to delete the general binding rules condition and to insert the conditions that will be required by regulations 8 and 9 when the requirements in the general binding rules no longer apply.

(8) Where the Scottish Ministers revoke general binding rules, the requirements in the general binding rules shall continue to be treated under paragraph (4) as if they were conditions of a permit until the variations of the permit required by paragraph (7) take effect.

- (9) Where the Scottish Ministers make, vary or revoke general binding rules they shall—
- (a) serve a copy of the rules, notice of variation or notice of revocation on SEPA;
 - (b) publish the rules, notice of variation or notice of revocation in such manner as they consider appropriate for the purpose of bringing the rules or notice to the attention of operators likely to be affected by them;
 - (c) give notice of the making, variation or revocation of the rules in the Edinburgh Gazette.

Review of conditions of permits

- 11.**—(1) SEPA shall periodically review the conditions of permits and may do so at any time.
- (2) Without prejudice to paragraph (1), a review of a permit shall be carried out where—
- (a) the pollution caused by the installation or mobile plant covered by the permit is of such significance that the existing emission limit values of the permit need to be revised or new emission limit values need to be included in the permit;
 - (b) substantial changes in the best available techniques make it possible to reduce emissions from the installation or mobile plant significantly without imposing excessive costs; or
 - (c) the operational safety of the activities carried out in the installation or mobile plant requires other techniques to be used.

Proposed change in the operation of an installation

- 12.**—(1) Subject to paragraph (4), where an operator of an installation which is permitted under these Regulations proposes to make a change in the operation of that installation the operator shall, at least 14 days before making the change, notify SEPA.
- (2) A notification under paragraph (1) shall be in writing (or in electronic form acceptable to SEPA) and shall contain a description of the proposed change in the operation of the installation.
- (3) SEPA shall, by notice served on the operator, acknowledge receipt of any notification received under paragraph (1).
- (4) Paragraph (1) shall not apply where—
- (a) the operator applies under regulation 13(2) for the variation of the conditions of the permit before making the proposed change; and
 - (b) that application contains a description of the change.

Variation of permits

- 13.**—(1) SEPA may at any time vary the conditions of a permit and shall do so if it appears to it at that time, whether as a result of a review under regulation 11, a notification under regulation 12 or otherwise, that regulations 8 and 9 require conditions to be included which are different from the subsisting conditions.
- (2) An operator of an installation or mobile plant which is permitted under these Regulations may apply to SEPA for the variation of the conditions of the permit.
- (3) An application under paragraph (2) shall be made in accordance with paragraph 1 of Part 1 of Schedule 7 and shall be accompanied by any fee prescribed in respect of the application under section 41 of the Environment Act 1995; and paragraphs 2 and 3 of Part 1 of Schedule 7 shall apply with respect to such applications.
- (4) Where an application is duly made under paragraph (2), SEPA shall determine, in accordance with regulations 8 and 9, whether to vary the conditions of the permit.

(5) Where SEPA decides to vary the conditions of the permit, whether on an application under paragraph (2) or otherwise, it shall serve a notice on the operator (a “variation notice”) specifying the variations of the conditions of the permit and the date or dates on which the variations are to take effect and, unless the notice is withdrawn, the variations specified in the notice shall take effect on the date or dates so specified.

(6) A variation notice served under paragraph (5) shall, unless served for the purpose of determining an application under paragraph (2), require the operator to pay, within such period as may be specified in the notice, any fee prescribed in respect of the variation notice under section 41 of the Environment Act 1995.

(7) Where SEPA decides on an application under paragraph (2) not to vary the conditions of the permit, it shall give notice of its decision to the operator.

(8) Schedule 7 shall have effect in relation to applications for variations of conditions, the determination of applications under paragraph (2) and the issuing of variation notices and Parts 1 and 2 of Schedule 7 shall apply subject to Part 3 of that Schedule (national security and confidential information).

(9) This regulation and Schedule 7 apply to the variation of any provision, other than a condition which is contained in a permit, as they apply to the variation of a condition.

Transfer of permits

14.—(1) Where the operator of an installation or mobile plant wishes to transfer, in whole or in part, that operator’s permit to another person (“the proposed transferee”) the operator and the proposed transferee shall jointly make an application to SEPA to effect the transfer.

(2) An application under paragraph (1) shall be accompanied by the permit and any fee prescribed in respect of the transfer under section 41 of the Environment Act 1995 and shall contain—

- (a) the operator’s and the proposed transferee’s telephone number, address and e-mail address (if any) and, if different, any address or e-mail address to which correspondence relating to the application should be sent; and
- (b) in the case of an application to effect the transfer of a permit or part of a permit that authorises the carrying out of a specified waste management activity, any information which the applicants wish SEPA to take into account when considering whether the transferee is a fit and proper person to carry out that activity.

(3) Where the operator wishes to retain part of his permit (a “partial transfer”), an application under paragraph (1) shall—

- (a) identify the installation or mobile plant to which the transfer applies (the “transferred unit”); and
- (b) where the transfer applies to the operation of an installation or Part A mobile plant, contain a map or plan identifying the part of the site used for the operation of that installation or mobile plant (the “identified part of the site”).

(4) Subject to paragraph (5), SEPA shall effect the transfer unless it considers that the proposed transferee will not be the person who will have control over the operation of the installation or mobile plant covered by the transfer after the transfer or will not ensure compliance with the conditions of the transferred permit.

(5) In the case of an application to effect the transfer of a permit or part of a permit which authorises the carrying out of a specified waste management activity, SEPA shall only effect the transfer if it is satisfied that the proposed transferee is a fit and proper person to carry out that activity.

(6) SEPA shall effect a transfer under this regulation by—

- (a) in the case of a partial transfer—

- (i) issuing a new permit to the proposed transferee which applies to the transferred unit and, where the transfer applies to the operation of an installation or Part A mobile plant, the identified part of the site covered by the transfer and includes the conditions required by paragraph (7); and
- (ii) returning the original permit to the operator endorsed to record the transfer and varied to show the installation or installations or mobile plant and, where the transfer applies to the operation of an installation or Part A mobile plant, the site covered by the permit after the transfer and the conditions applying after the transfer required by paragraph (7); and
- (b) in case of a transfer of the whole permit, causing the permit to be endorsed with the name and other particulars of the proposed transferee as the operator of the installation or mobile plant concerned,

and the transfer shall take effect from such date as may be agreed with the applicants and specified in the endorsement and, in the case of a partial transfer, the new permit.

(7) In the case of a partial transfer effected under this regulation, the conditions included in the new permit and original permit after the transfer shall be the same as the conditions included in the original permit immediately before the transfer in so far as they are relevant to any installation, site and mobile plant covered by the new permit or the original permit, as the case may be, but subject to such variations as, in the opinion of SEPA, are necessary to take account of the transfer.

(8) If within the period of two months beginning with the date on which SEPA receives an application under paragraph (1), or within such longer period as SEPA and the applicants may agree in writing (or in electronic form), SEPA has neither effected the transfer nor given notice to the applicants that it has rejected the application, the application shall, if the operator notifies SEPA in writing (or in electronic form) that they treat the failure as such, be deemed to have been refused at the end of that period or that longer period, as the case may be.

Application to surrender a permit for a Part A installation or Part A mobile plant

15.—(1) This regulation applies where an operator of a Part A installation or Part A mobile plant ceases or intends to cease operating the installation (in whole or in part) or the mobile plant.

(2) Where this regulation applies, the operator may—

- (a) if that operator has ceased or intends to cease operating all of the installations and mobile plant covered by the permit, apply to SEPA to surrender the whole permit;
- (b) in any other case, apply to SEPA to surrender the permit in so far as it authorises the operation of the installation or mobile plant (“the surrender unit”) which that operator has ceased or intends to cease operating (a “partial surrender”).

(3) An application under paragraph (2) shall be accompanied by the permit and any fee prescribed in respect of the application under section 41 of the Environment Act 1995, and shall contain the following information:—

- (a) the operator’s telephone number, address and e-mail address (if any) and, if different, any address or e-mail address to which correspondence relating to the application should be sent;
- (b) in the case of a partial surrender, a description of the surrender unit and a map or plan identifying the part of the site used for the operation of the surrender unit (the “identified part of the site”);
- (c) a site report describing the condition of the site or the identified part of the site, as the case may be (“the report site”), identifying, in particular, any changes in the condition of the site as described in the site report contained in the application for the permit; and

- (d) a description of any steps that have been taken to avoid any pollution risk on the report site resulting from the operation of the Part A installation or Part A mobile plant or to return it to a satisfactory state.
- (4) If SEPA is satisfied, in relation to the report site, that such steps (if any) as are appropriate to avoid any pollution risk resulting from the operation of the Part A installation or Part A mobile plant and to return the site to a satisfactory state have been taken, it shall accept the surrender and give the operator notice of its determination and the permit shall cease to have effect or, in the case of partial surrender, shall cease to have effect to the extent surrendered, on the date specified in the notice of determination.
- (5) If, in the case of a partial surrender, SEPA is of the opinion that it is necessary to vary the conditions included in the permit to take account of the surrender, it shall specify the necessary variations in the notice of determination given under paragraph (4) and the variations specified in the notice shall take effect on the date specified in the notice.
- (6) If SEPA is not satisfied as mentioned in paragraph (4), it shall give to the operator a notice of its determination stating that the application has been refused.
- (7) SEPA shall give notice of its determination of an application under this regulation within the period of 3 months beginning with the date on which it receives the application or within such longer period as it and the operator may agree in writing (or in electronic form).
- (8) If SEPA fails to give notice of its determination accepting the surrender or refusing the application within the period allowed by or agreed under paragraph (7), the application shall, if the operator notifies SEPA in writing (or in electronic form acceptable to it) that the operator treats the failure as such, be deemed to have been refused at the end of that period.
- (9) SEPA may, by notice to the applicant, require that applicant to furnish such further information specified in the notice, within the period so specified, as it may require for the purpose of determining an application under this regulation.
- (10) Where a notice is served on an operator under paragraph (9)–
- (a) for the purpose of calculating the 3 month period mentioned in paragraph (7), no account shall be taken of the period beginning with the date on which notice is served and ending on the date on which the information specified in the notice is furnished; and
 - (b) where the specified information is not furnished within the period specified, the application shall, if SEPA gives notice to the operator that it treats the failure as such, be deemed to have been withdrawn at the end of that period.
- (11) For the purpose of deciding whether a pollution risk results from the operation of a Part A installation or Part A mobile plant for the purpose of this regulation–
- (a) where the operation of the installation or plant involved the carrying out of a specified waste management activity, only risks resulting from carrying out that activity after the relevant date for that activity shall be treated as resulting from the operation of the installation or plant;
 - (b) where the operation of the installation or mobile plant involved the carrying out of other activities, only risks resulting from the carrying out of those other activities after the date on which the permit applying to the installation or mobile plant was granted shall be treated as resulting from the operation of the installation or mobile plant.
- (12) The relevant date for a specified waste management activity for the purpose of paragraph (11) (a) is–
- (a) where the activity was carried out on the site of the installation or mobile plant under a waste management licence which, by virtue of section 35(11A) of the Environmental

Protection Act 1990⁽¹⁰⁾, ceased to have effect in relation to the carrying out of that activity on that site on the granting of the permit applying to the installation or mobile plant, the date on which that waste management licence was granted;

- (b) in any other case, the date on which the permit applying to the installation or mobile plant was granted.

(13) In paragraph (12), “waste management licence” has the same meaning as in section 35(12) of the Environmental Protection Act 1990 (and includes a disposal licence which is treated as a site licence by virtue of section 77(2) of that Act).

Notification of surrender of a permit for a Part B installation or Part B mobile plant

16.—(1) This regulation applies where an operator of a Part B installation or Part B mobile plant ceases or intends to cease operating the installation (in whole or in part) or the mobile plant.

(2) Where this regulation applies, the operator may—

- (a) if that operator has ceased or intends to cease operating all of the installations and mobile plant covered by the permit, notify SEPA of the surrender of the whole permit;
- (b) in any other case, notify SEPA of the surrender of the permit in so far as it authorises the operation of the installation or mobile plant (“the surrender unit”) which that operator has ceased or intends to cease operating (a “partial surrender”).

(3) A notification under paragraph (2) shall contain the following information:—

- (a) the operator’s telephone number, address and e-mail address (if any) and, if different, any address or e-mail address to which correspondence relating to the notification should be sent;
- (b) in the case of a partial surrender of a permit applying to Part B installations, a description of the surrender unit and a map or plan identifying the part of the site used for the operation of the surrender unit (the “identified part of the site”);
- (c) in the case of a partial surrender of a permit applying to Part B mobile plant, a list of the mobile plant to which it applies; and
- (d) the date on which the surrender is to take effect, which shall be at least 28 days after the date on which the notice is served on SEPA.

(4) Subject to paragraph (5), where a surrender is notified under this regulation, the permit shall cease to have effect on the date specified in the notification or, in the case of partial surrender, shall cease to have effect on that date to the extent surrendered.

(5) If, in the case of a partial surrender, SEPA is of the opinion that it is necessary to vary the conditions of the permit to take account of the surrender, it shall—

- (a) notify the operator of its opinion; and
- (b) serve a variation notice under regulation 13 on the operator specifying the variations of the conditions necessitated by the surrender,

and the permit shall cease to have effect to the extent surrendered on the date on which the variations specified in the variation notice take effect if that date is after the date specified in the notification of the surrender.

Revocation of permits

17.—(1) SEPA may at any time revoke a permit (in whole or in part) by serving a notice (“a revocation notice”) on the operator.

⁽¹⁰⁾ 1990 c. 43; section 35(11A) is inserted by paragraph 3(4)(b) of Schedule 10 to these Regulations.

(2) Without prejudice to the generality of subsection (1), SEPA may serve a notice under this regulation in relation to a permit where—

- (a) the permit authorises the carrying out of a specified waste management activity and it appears to SEPA that the operator of the installation or mobile plant concerned has ceased to be a fit and proper person to carry out that activity by reason of that operator having been convicted of a relevant offence within the meaning of regulation 4(5)(a) or by reason of the management of that activity having ceased to be in the hands of a technically competent person;
- (b) the holder of the permit has ceased to be the operator of the installation or plant covered by the permit.

(3) A revocation notice may—

- (a) revoke a permit entirely;
- (b) revoke a permit only in so far as it authorises the operation of some of the installations or mobile plant to which it applies;
- (c) revoke a permit only in so far as it authorises the carrying out of some of the activities which may be carried out in an installation or by means of mobile plant to which it applies.

(4) A revocation notice shall specify—

- (a) in the case of a partial revocation mentioned in sub-paragraphs (b) or (c) of paragraph (3) (“a partial revocation”), the extent to which the permit is being revoked; and
- (b) in all cases, the date on which the revocation shall take effect, which shall be at least 28 days after the date on which the notice is served.

(5) If, in the case of a revocation mentioned in sub-paragraphs (a) or (b) of paragraph (3) applying to a Part A installation or Part A mobile plant, SEPA considers that it is appropriate to require the operator to take steps, once that installation or mobile plant is no longer in operation, to—

- (a) avoid any pollution risk resulting from the operation of the installation or mobile plant on the site or, in the case of a partial revocation, that part of the site used for the operation of that installation or mobile plant; or
- (b) return the site, or part of the site, to a satisfactory state,

the revocation notice shall also specify that this is the case and, in so far as those steps are not already required to be taken by the conditions of the permit, the steps to be taken.

(6) Subject to paragraph (7) and to regulation 22(9), a permit shall cease to have effect or, in the case of a partial revocation, shall cease to have effect to the extent specified in the revocation notice, from the date specified in the notice.

(7) Where paragraph (5) applies, the permit shall cease to have effect to authorise the operation of the Part A installation or Part A mobile plant from the date specified in the revocation notice but shall continue to have effect in so far as the permit requires steps to be taken once it is no longer in operation until SEPA issues a certificate of completion stating that it is satisfied that all such steps have been taken.

(8) Where a permit continues to have effect as mentioned in paragraph (7), any steps specified in a revocation notice pursuant to paragraph (5) shall be treated as conditions of the permit and regulations 13, 19, and 30 shall apply in relation to such steps, and to any other conditions in the permit which require steps to be taken once the installation is no longer in operation, until SEPA issues a certificate of completion.

(9) Where SEPA has served a revocation notice it may, before the date on which the revocation takes effect, withdraw the notice.

(10) Regulation 15(11) shall apply for the purpose of deciding whether a pollution risk results from the operation of a Part A installation or Part A mobile plant for the purpose of this regulation as it applies for the purpose of regulation 15.

PART III

ENFORCEMENT

Duty of SEPA to ensure compliance with conditions

18. While a permit is in force it shall be the duty of SEPA to take such action under these Regulations as may be necessary for the purpose of ensuring that the conditions of the permit are complied with.

Enforcement notices

19.—(1) If SEPA is of the opinion that the operator of an installation has contravened, is contravening or is likely to contravene any condition of a permit, it may serve on that operator a notice (an “enforcement notice”).

(2) An enforcement notice served under this regulation shall—

- (a) state SEPA’s opinion, as mentioned in paragraph (1);
- (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise, as the case may be;
- (c) specify the steps that must be taken to remedy the contravention or to remedy the matters making it likely that the contravention will arise, as the case may be; and
- (d) specify the period within which those steps must be taken.

(3) The steps that may be specified in an enforcement notice as steps that must be taken to remedy the contravention of any condition of a permit may include both steps that must be taken to make the operation of the installation or mobile plant comply with the conditions of the permit and steps that must be taken to remedy the effects of any pollution caused by the contravention.

(4) SEPA may withdraw an enforcement notice at any time.

Suspension notices

20.—(1) If SEPA is of the opinion, as respects an installation or mobile plant authorised under these Regulations, that the operation of the installation or mobile plant, or the operation of it in a particular manner, involves a risk of serious pollution, it shall, unless it intends to arrange for steps to be taken under regulation 21(1) in relation to the risk, serve a notice under this regulation (“a suspension notice”) on the operator of the installation or mobile plant.

(2) Paragraph (1) applies whether or not the particular manner of operating the installation or mobile plant in question is regulated by or contravenes a condition of the permit.

(3) If SEPA is of the opinion, as respects the carrying out of specified waste management activities under a permit, that the operator carrying out the activities has ceased to be a fit and proper person in relation to those activities by reason of their management having ceased to be in the hands of a technically competent person, it may serve a suspension notice under this regulation on that operator.

(4) A suspension notice served under this regulation shall—

- (a) state SEPA’s opinion, as mentioned in paragraph (1) or (3), as the case may be;
- (b) in the case of a notice served under paragraph (1), specify—

- (i) the imminent risk involved in the operation of the installation or mobile plant;
 - (ii) the steps that must be taken to remove it and the period within which they must be taken;
 - (c) state that the permit shall, until the notice is withdrawn, cease to have effect to authorise the operation of the installation or mobile plant or the carrying out of specified activities in the installation or by means of the mobile plant; and
 - (d) where the permit is to continue to have effect to authorise the carrying out of activities, state any steps, in addition to those already required to be taken by the conditions of the permit, that are to be taken in carrying out those activities.
- (5) Where a suspension notice is served under this regulation, the permit shall, on the service of the notice, cease to have effect as stated in the notice.
- (6) SEPA may withdraw a suspension notice at any time and shall withdraw a notice when it is satisfied that—
- (a) in the case of a notice served under paragraph (1), the steps required by the notice to remove the imminent risk of pollution have been taken;
 - (b) in the case of a notice served under paragraph (3), the management of the specified waste management activities is in the hands of a technically competent person.

Power of SEPA to prevent or remedy pollution

21.—(1) If SEPA is of the opinion, as respects the operation of an installation or mobile plant authorised under these Regulations, that the operation of the installation or mobile plant, or the operation of it in a particular manner, involves an imminent risk of serious pollution, it may arrange for steps to be taken to remove that risk.

(2) Where the commission of an offence under regulation 30(1)(a), (b) or (d) causes any pollution, SEPA may arrange for steps to be taken towards remedying the effects of pollution.

(3) Where SEPA intends to arrange for steps to be taken under paragraph (2), it shall, at least seven days before the steps are taken, notify the operator of the steps that are to be taken.

(4) Subject to paragraph (5), where SEPA arranges for steps to be taken under this regulation, it may recover the cost of taking those steps from the operator of the installation concerned.

(5) No costs shall be recoverable under paragraph (4) where SEPA arranges for steps to be taken under paragraph (1) if the operator shows that there was no imminent risk of serious pollution requiring any such steps to be taken and no other costs shall be recoverable which the operator shows to have been unnecessarily incurred by SEPA.

PART IV

APPEALS

Appeals to the Scottish Ministers and to the sheriff

22.—(1) Subject to paragraph (3), the following persons, namely:—

- (a) a person who has been refused the grant of a permit under regulation 7;
- (b) a person who has been refused the variation of the conditions of a permit on an application under regulation 13;

- (c) a person who is aggrieved by the conditions attached to that person's permit following an application under regulation 7 or by a variation notice following an application under regulation 13;
- (d) a person whose application under regulation 14 for SEPA to effect the transfer of a permit has been refused or who is aggrieved by the conditions attached to that person's permit to take account of such transfer;
- (e) a person whose application under regulation 15 to surrender a permit has been refused or who is aggrieved by the conditions attached to that person's permit to take account of the surrender,

may appeal against the decision of SEPA to the Scottish Ministers.

(2) Subject to paragraph (3), a person on whom a variation notice is served, other than following an application under regulation 13, or on whom a revocation notice, an enforcement notice or a suspension notice is served may appeal against the notice to the Scottish Ministers.

(3) Paragraphs (1) and (2) shall not apply where the decision or notice, as the case may be, implements directions given under regulations 9(2) or 23, under paragraph (4), under paragraph 14(7) of Schedule 4, or under paragraph 6(7) of Schedule 7.

(4) On determining an appeal against a decision of SEPA under paragraph (1), the Scottish Ministers may—

- (a) affirm the decision;
- (b) where the decision was a refusal to grant a permit or to vary the conditions of a permit, direct SEPA to grant the permit or to vary the conditions of the permit, as the case may be;
- (c) where the decision was as to the conditions attached to a permit, quash all or any of the conditions of the permit;
- (d) where the decision was a refusal to effect the transfer or accept the surrender of a permit, direct SEPA to effect the transfer or accept the surrender, as the case may be,

and where they exercise any of the powers in subparagraph (b) or (c) above, the Scottish Ministers may give directions as to the conditions to be attached to the permit.

(5) An appeal may be taken to the sheriff by SEPA or by any of the persons referred to in paragraphs (1) or (2) affected by a decision made by the Scottish Ministers in pursuance of those paragraphs.

(6) The appeal referred to in paragraph (5) shall be by summary application and shall be taken within 21 days of the decision of the Scottish Ministers made under paragraph (4).

(7) In disposing of an appeal taken under paragraph (5), the sheriff may take any steps open to the Scottish Ministers under paragraphs (4) and (12).

(8) On the determination of an appeal pursuant to paragraph (2), the Scottish Ministers (or the sheriff, as the case may be) may either quash or affirm the variation notice and, if affirming it, may do so either in its original form or with such modifications as may in the circumstances be thought fit.

(9) Where an appeal is brought under this regulation against a revocation notice, the revocation shall not take effect until expiry of the period of appeal following final determination or until the withdrawal of the appeal.

(11) Where—

- (a) an appeal is brought pursuant to paragraph (1)(c), (d) or (e) in relation to the conditions attached to a permit, the bringing of the appeal shall not have the effect of suspending the operation of the conditions; and

- (b) an appeal is brought pursuant to paragraph (2) against a variation notice, an enforcement notice or a suspension notice, the bringing of the appeal shall not have the effect of suspending the operation of the notice.

(12) Regulations 8 and 9 (other than paragraph (2)) shall apply where the Scottish Ministers, in exercising any of the powers in sub-paragraph (b) or (c) of paragraph (4), give directions as to the conditions to be attached to a permit as they would apply to SEPA when determining the conditions of the permit.

(13) Schedule 8 shall have effect in relation to the making and determination of appeals by the Scottish Ministers under this regulation.

(14) So far as relating to appeals to the Scottish Ministers, this regulation and Schedule 8 are subject to section 114 of the Environment Act 1995⁽¹¹⁾ (delegation of reference of appeals).

PART V

POWERS OF THE SCOTTISH MINISTERS

Directions to SEPA

23.—(1) The Scottish Ministers may give a direction to SEPA of a general or specific character with respect to the carrying out of any of their functions under these Regulations.

(2) Without prejudice to the generality of the power conferred by paragraph (1), a direction under that paragraph may direct SEPA—

- (a) to exercise any of their powers under these Regulations or to do so in such circumstances as may be specified in the direction or in such manner as may be so specified; or
- (b) not to exercise those powers, or not to do so in such circumstances nor such manner as may be specified in the direction.

(3) Where the Scottish Ministers receive information pursuant to Article 17(1) of the Directive in relation to the operation of an installation outside of the United Kingdom which is likely to have a significant negative effect on the environment of Scotland, they shall, for the purpose of complying with Article 17(2) of the Directive, direct SEPA to take such steps as they consider appropriate for the purpose of bringing the information to the attention of the persons in Scotland likely to be affected by the operation of the installation and providing them with an opportunity to comment on that information.

(4) Any direction given under these Regulations shall be in writing (or in electronic form) and may be varied or revoked by a further direction.

(5) It shall be the duty of SEPA to comply with any direction which is given to it under these Regulations.

Guidance to SEPA

24.—(1) The Scottish Ministers may issue guidance to SEPA with respect to the carrying out of any of their functions under these Regulations.

(2) In carrying out any of its functions under these Regulations, SEPA shall have regard to any guidance issued by the Scottish Ministers under this regulation.

(11) 1995 c. 25.

Plans relating to emissions

25.—(1) The Scottish Ministers may make plans for—

- (a) the setting of limits on the total amount, or the total amount in any period, of emissions from all or any description of source within Scotland;
- (b) the allocation of quotas relating to such emissions.

(2) Where the Scottish Ministers allocate a quota in a plan made under paragraph (1), they may also make a scheme for the trading or other transfer of the quota so allocated.

(3) In this regulation, “emissions” mean the direct or indirect release of any substance from individual or diffuse sources into the air, water or land.

PART VI

INFORMATION AND PUBLICITY

Information

26.—(1) For the purpose of the discharge of their functions under these Regulations, the Scottish Ministers may require SEPA, by notice served on it, to furnish such information about the discharge of its functions under these Regulations as they may require.

(2) For the purposes of the discharge of their functions under these Regulations, the Scottish Ministers or SEPA may, by notice served on any person, require 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.

(3) For the purposes of this regulation, the discharge by the Scottish Ministers of an obligation of the United Kingdom under the Community Treaties or any international agreement relating to the environment shall be treated as a function of theirs under these Regulations and the compilation of an inventory of emissions (whether or not from installations or mobile plant) shall be treated as a function of the SEPA under these Regulations.

(4) The information which a person may be required to furnish under paragraph (2) shall include information on emissions which, although it is not in the possession of that person or would not otherwise come into the possession of that person, is information which it is reasonable to require that person to compile for the purpose of complying with the notice.

Public register of information

27.—(1) Subject to regulations 28 and 29 and to paragraphs 2 to 4 of Schedule 9, it shall be the duty of SEPA, to maintain a register containing the particulars described in paragraph 1 of that Schedule.

(2) Where, by virtue of regulation 29, information of any description is excluded from the register maintained by SEPA under this regulation, a statement shall be entered in the register indicating the existence of information of that description.

(3) It shall be the duty of SEPA—

- (a) to secure that the register maintained by it under this regulation is available, at all reasonable times, for inspection by the public free of charge; and
- (b) to afford to members of the public facilities for obtaining copies of entries, on payment of reasonable charges.

(4) The register maintained by SEPA under this regulation may be kept in any form.

(5) Schedule 9 shall have effect in relation to the register maintained by SEPA under this regulation.

Exclusion from the register of information affecting national security

28.—(1) No information shall be included in the register maintained by SEPA under regulation 27 if and so long as, a direction under section 21 of the Environmental Protection Act 1990⁽¹²⁾ is issued or has been issued, in relation to that information, to the effect that in the opinion of the Secretary of State (or in the case of a direction issued by the Scottish Ministers with the consent of the Secretary of State, in the opinion of the Scottish Ministers⁽¹³⁾) that information, or information of that description, would be contrary to the interests of national security.

(2) Directions issued under section 21(2) of that Act shall apply to the register maintained by SEPA under regulation 27 as they apply to the register maintained under section 20 of that Act and no information referred by SEPA in pursuance of section 21(2)(b) of that Act shall be included in the register maintained by SEPA under regulation 27 until the question of its inclusion is determined for the purposes of section 21 of that Act.

(3) Section 21(3) and (4) of that Act shall apply to the register maintained by SEPA under regulation 27 as it applies to the register maintained under section 20 of that Act and no information notified under section 21(4)(b) of that Act shall be included in the register maintained by SEPA under regulation 27 until the question of its inclusion is determined for the purposes of section 21 of that Act.

Exclusion from the register of certain confidential information

29.—(1) No information relating to the affairs of any individual or business shall be included in the register maintained by SEPA under regulation 27, without the consent of that individual or the person for the time being carrying on that business, if and so long as the information—

(a) is, in relation to that individual or person, commercially confidential; and

(b) is not required to be included in the register in pursuance of a direction under paragraph (9), but information is not commercially confidential for the purposes of this regulation unless it is determined under this regulation to be so by SEPA or, as the case may be, on appeal.

(2) Where information is furnished to SEPA for the purpose of these Regulations, the person furnishing it may apply to SEPA to have the information excluded from the register on the ground that it is commercially confidential (as regards that person or another person) and SEPA shall determine whether the information is or is not commercially confidential.

(3) Notice of determination under paragraph (2) must be given to the applicant within the period of 28 days beginning with the date of the application or within such longer period as may be agreed with the applicant.

(4) If SEPA fails to give notice of its determination of an application under paragraph (2) within the period allowed by or under paragraph (3), it shall (if the applicant notifies SEPA in writing that the failure is being treated as such) be deemed to have determined at the end of that period that the information is not commercially confidential.

(5) Subject to section 114 of the Environment Act 1995, where it appears to SEPA that any information which has been obtained by it under or by virtue of any provision of these Regulations and is required to be included in the register, unless excluded under this regulation, might be commercially confidential, SEPA shall (unless the information is the subject of an application under paragraph (2))—

⁽¹²⁾ 1990 c. 43.

⁽¹³⁾ See S.I. 1999/1750, Schedule 2.

- (a) give to the person to whom or whose business it relates notice that that information is required to be included in the register, unless excluded under this regulation; and
 - (b) give that person a reasonable opportunity—
 - (i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and
 - (ii) of making representations to SEPA for the purpose of justifying any such objection, and, if any representations are made, SEPA shall, having taken the representations into account, give that person notice of its determination as to whether the information is or is not commercially confidential.
- (6) Where, under paragraph (2) or (5), SEPA determines that information is not commercially confidential—
- (a) the information shall not be entered in the register until the end of the period of 21 days beginning with the date on which the determination is notified to the person concerned or the determination is deemed to have been made under paragraph (4), as the case may be; and
 - (b) that person may, before the end of that period, appeal to the Scottish Ministers against the decision,
- and, where an appeal is brought under this regulation in respect of any information, the information shall not be entered in the register until the end of the period of 21 days following the day on which the appeal is finally determined or is withdrawn.
- (7) A person who wishes to appeal to the Scottish Ministers under paragraph (6) shall give to the Scottish Ministers written notice of the appeal (or notice in electronic form acceptable to them) together with a statement of the grounds of appeal and a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of by way of written representations and shall, at the same time, send to SEPA a copy of that notice together with those statements.
- (8) Before giving notice of their determination of an appeal under paragraph (6), the Scottish Ministers may afford the appellant and SEPA an opportunity of appearing before and being heard by a person appointed by them and they shall do so in any case where a request is duly made by the appellant or SEPA to be so heard.
- (9) The Scottish Ministers may give to SEPA a direction as to specified information, or descriptions of information, which the public interest requires to be included in the register maintained by it under regulation 27, notwithstanding that the information may be commercially confidential.
- (10) Information excluded from the register shall be treated as ceasing to be commercially confidential for the purposes of this regulation at the expiry of the period of four years beginning with the date of the determination by virtue of which it was excluded or at the expiry of such shorter period as may be specified in the notice of that determination for the purpose of this paragraph; but the person who furnished it may apply to the SEPA for the information to remain excluded from the register on the ground that it is still commercially confidential and SEPA shall determine whether or not that is the case.
- (11) Paragraphs (6) to (8) shall apply in relation to a determination under paragraph (10) as they apply in relation to a determination under paragraph (2) or (5).
- (12) Information is, for the purposes of any determination under this regulation, commercially confidential, in relation to any individual or other person, if its being contained in the register would prejudice, to an unreasonable degree, the commercial interests of that individual or other person.
- (13) An appeal may be taken by SEPA or by the person referred to in paragraph (6)(a) to the sheriff against the decision of the Scottish Ministers made under that paragraph.

(14) The appeal referred to in paragraph (13) shall be by summary application and shall be taken within 21 days of the decision of the Scottish Ministers under paragraph (6).

PART VII

PROVISION AS TO OFFENCES

Offences

30.—(1) It is an offence for a person—

- (a) to contravene regulation 6(1);
- (b) to fail to comply with or to contravene a condition of a permit;
- (c) to fail to comply with regulation 12(1);
- (d) to fail to comply with the requirements of an enforcement notice or a suspension notice;
- (e) to fail, without reasonable excuse, to comply with any requirement imposed by a notice under regulation 26(2);
- (f) to make a statement which that person knows to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made—
 - (i) in purported compliance with a requirement to furnish any information imposed by or under any provision of these Regulations; or
 - (ii) for the purpose of obtaining the grant of a permit issued under these Regulations to that or any other person, or the variation, transfer or surrender of a permit;
- (g) intentionally to make a false entry in any record required to be kept under the condition of a permit;
- (h) with intent to deceive, to forge or use a document issued or authorised to be issued under the condition of a permit or required for any purpose under a condition of such a permit or to make or have in his possession a document so closely resembling any such document as to be likely to deceive;
- (i) to fail to comply with an order made by a court under regulation 33.

(2) A person guilty of an offence under sub-paragraph (a), (b), (d) or (i) of paragraph (1) shall be liable—

- (a) on summary conviction, to a fine not exceeding £20,000 or to imprisonment for a term not exceeding six months, or to both;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding five years, or to both.

(3) A person guilty of an offence under sub-paragraph (c) and (e) to (h) of paragraph (1) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

(4) Where an offence under this regulation committed by a body corporate or a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or a person who was purporting to act in any such capacity (or, in the case of a partnership, a partner or a person who was purporting to act as such), that person as well as the body corporate or the

partnership, as the case may be, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(5) Where the affairs of a body corporate are managed by its members, paragraph (4) shall apply in relation to the acts or defaults of a member in connection with the functions of management of that member as if that member were a director of the body corporate.

(6) Where the commission by any person of an offence under this regulation is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings for the offence are taken against the first-mentioned person.

Enforcement by the Courts

31. If SEPA is of the opinion that proceedings for an offence under regulation 30(1)(d) would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice or a suspension notice, it may take proceedings in any court of competent jurisdiction for the purpose of securing compliance with the notice.

Admissibility of evidence

32. Where—

- (a) by virtue of a condition of a permit, an entry is required to be made in any record as to the observance of any condition of the permit; and
- (b) the entry has not been made,

that fact shall be admissible as evidence that that condition has not been observed.

Power of court to order cause of offence to be remedied

33.—(1) Where a person is convicted of an offence under regulation 30(1)(a), (b) or (d) in respect of any matters which appear to the court to be matters which it is in the power of that person to remedy, the court may, in addition to or instead of imposing any punishment, order that person, within such time as may be fixed by the order of the court, to take such steps as may be specified in that order for remedying those matters.

(2) The time fixed by an order of the court under paragraph (1) may be extended or further extended by a further order of the court on an application made before the end of the time as originally fixed or extended under this paragraph, as the case may be.

(3) Where a person is ordered under paragraph (1) to remedy any matters, that person shall not be liable under regulation 30 in respect of those matters in so far as they continue during the time fixed by the order of the court or any further time allowed under paragraph (2).

PART VIII

GENERAL

Application to the Crown

34.—(1) Subject to the provisions of this regulation, these Regulations bind the Crown.

(2) No contravention by the Crown of any provision of these Regulations shall make the Crown criminally liable under regulation 30 and no proceedings may be taken against the Crown under regulation 31 but the Court of Session may, on an application by SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), the provisions of these Regulations shall apply to persons in the public service of the Crown as they apply to other persons.

(4) If a certification has been or is issued by the Secretary of State to the effect that it appears to the Secretary of State, as respects any premises held or used by or on behalf of the Crown and any powers of entry exercisable under section 108 of the Environment Act 1995 (as are or may be specified in that certification) in relation to functions conferred or imposed by these Regulations, that it is requisite or expedient that, in the interests of national security, those powers of entry should not be exercisable in relation to such premises, those powers shall not be exercisable in relation to those premises.

(5) The following persons shall be treated as if they were the operator of the installation or mobile plant concerned for the purpose of any notice served or given or any proceedings instituted in relation to an installation or mobile plant operated or controlled by any person acting on behalf of the Royal Household, the Duchy of Lancaster or the Duke of Cornwall or other possessor of the Duchy of Cornwall—

- (a) in relation to an installation or mobile plant operated or controlled by a person acting on behalf of the Royal Household, the Keeper of the Privy Purse;
- (b) in relation to an installation or mobile plant operated or controlled by a person acting on behalf of the Duchy of Lancaster, such person as the Chancellor of the Duchy appoints in relation to that installation or mobile plant;
- (c) in relation to an installation or mobile plant operated or controlled by a person acting on behalf of the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints in relation to that installation or mobile plant.

Notices

35.—(1) Any notice served or given under these Regulations by the Scottish Ministers or by SEPA shall be in writing (or in electronic form).

(2) Any such notice may be served on or given to a person by leaving it at that person's proper address or by sending it by post to that person at that address.

(3) Any such notice may—

- (a) in the case of a body corporate, be served on the secretary or clerk of that body;
- (b) in the case of a partnership, be served on or given to a partner or person having the control or management of the partnership business.

(4) For the purpose of this regulation and of section 7 of the Interpretation Act 1978⁽¹⁴⁾ (service of documents by post) in its application to this regulation, the proper address of any person on or to whom any such notice is to be served or given shall be the last known address of that person, except that—

- (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;
- (b) in the case of a partnership or person having the control or management of the partnership business, it shall be the principal office of the partnership,

and for the purposes of this paragraph the principal office of a company registered outside of the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be their principal office within the United Kingdom.

(14) 1978 c. 30.

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(5) If the person to be served with or given any such notice has specified an address in the United Kingdom other than the proper address of that person within the meaning of paragraph (4) as the one at which that person or someone on behalf of that person will accept notices of the same description as that notice, that address shall also be treated for the purposes of this regulation and section 7 of the Interpretation Act 1978 as the proper address of that person.

Consequential Amendments

36. Schedule 10 shall have effect and the enactments mentioned in that Schedule, so far as they extend to Scotland, shall have effect with the amendments there specified (being minor amendments consequential on provisions of these Regulations).

St Andrew's House,
Edinburgh
14th September 2000

SARAH BOYACK
A member of the Scottish Executive

SCHEDULE 1

Regulation 2(4)

ACTIVITIES AND INSTALLATIONS AND MOBILE PLANT

PART I

ACTIVITIES

CHAPTER 1

ENERGY INDUSTRIES

Section 1.1

Combustion

PART A

- (a) Burning any fuel in a combustion appliance with a net rated thermal input of 50 megawatts or more.
- (b) Burning any of the following fuels in an appliance with a net rated thermal input of three megawatts or more otherwise than as an activity which is related to a Part B activity:–
 - (i) waste oil;
 - (ii) recovered oil;
 - (iii) any fuel manufactured from any other waste.

Interpretation of Part A

For the purposes of paragraph (a), where two or more appliances with an aggregate rated thermal input of 50 megawatts or more are operated on the same site by the same operator those appliances shall be treated as a single appliance with a rated thermal input of 50 megawatts or more.

PART B

- (a) Burning any fuel in a boiler or furnace with a net rated thermal input of 20 megawatts or more but less than 50 megawatts.
- (b) Burning any fuel in a gas turbine or compression ignition engine with a net rated thermal input of 20 megawatts or more but less than 50 megawatts.
- (c) Burning waste oil or recovered oil as a fuel in an appliance with a net rated thermal input of less than 3 megawatts.
- (d) Burning solid fuel which has been manufactured from waste by a process involving the application of heat in an appliance with a net rated thermal input of less than 3 megawatts.
- (e) Burning fuel manufactured from waste, other than waste oil or recovered oil or such fuel as is mentioned in paragraph (d) in any appliance with a net rated thermal input of less than 3 megawatts but more than 0.4 megawatts or which is used together with other appliances, which each have a net rated thermal input of less than 3 megawatts, where the aggregate net rated thermal input of all the appliances is at least 0.4 megawatts.

Interpretation of Part B

1. Nothing in Part B applies to any activity falling within Part A of Section 5.1.
2. In paragraph (c), “fuel” does not include gas produced by biological degradation of waste.

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Interpretation of Section 1.1

For the purposes of section 1.1–

“net rated thermal input” is the rate at which fuel can be burned at the maximum continuous rating of the appliance multiplied by the net calorific value of the fuel and expressed as megawatts thermal;

“waste oil” means any mineral based lubricating or industrial oil which has become unfit for the use for which it was intended and, in particular, used combustion engine oil, gearbox oil, mineral lubricating oil, oil for turbines and hydraulic;

“recovered oil” means waste oil which has been processed before being used.

Section 1.2

Refining Mineral Oil and Gas, Operating Coke Ovens and Coal Gasification and Liquefaction Activities.

PART A

- (a) Refining gas including natural gas or its products.
- (b) Reforming natural gas.
- (c) Operating a coke oven.
- (d) Producing gas from coal, lignite, oil or other carbonaceous material or from mixtures thereof, other than from sewage, unless carried on as part of an activity which is a combustion activity, whether or not that activity falls within Section 1.1.
- (e) Purifying or refining any product of any of the activities described in paragraphs (a), (b), (c) or (d) of this Section or converting it into a different product.
- (f) The refining of mineral oils, or the loading, unloading or other handling of, the storage of, or other physical, chemical or thermal treatment of–
 - (i) crude oil;
 - (ii) stabilised petroleum;
 - (iii) crude shale oil;
 - (iv) where related to another activity described in this paragraph, any associated gas or condensate;
 - (v) emulsified hydrocarbons intended for use as a fuel.
- (g) The further refining, conversion or use, in the manufacture of a chemical of the product of any activity listed in paragraph (f) above, otherwise than as a fuel or solvent.
- (h) Activities involving the pyrolysis, carbonisation, distillation, liquefaction, gasification, partial oxidation or other heat treatment of coal (other than the drying of coal), lignite, oil, other carbonaceous material or mixtures thereof otherwise than with a view to making charcoal.
- (i) Purifying or refining any of the products of an activity mentioned in paragraph (a) or its conversion into a different product.

Nothing in paragraph (h) or (i) refers to the use of any substance as a fuel or its incineration as a waste or to any activity for the treatment of sewage.

In paragraph (h), the heat treatment of oil does not include heat treatment of waste oil or waste emulsions containing oil in order to recover the oil from aqueous emulsions.

Interpretation of Part A

In Part A “carbonaceous material” includes such materials as charcoal, coke, peat, rubber and wood.

PART B

- (a) Odourising natural gas or liquefied petroleum gas, except where that activity is related to a Part A activity.
- (b) Blending odorant for use with natural gas or liquefied petroleum gas.
- (c) The following activities:–
 - (i) the storage of petrol in stationary storage tanks at a terminal, or the loading or unloading of petrol into or from a road tanker, a rail tanker or an inland waterway vessel at a terminal;
 - (ii) the unloading of petrol into stationary storage tanks at a service station, other than an exempt service station, if the total quantity of petrol unloaded into such tanks at the service station in any 12 month period is likely to be equal to or greater than 100m³.

Interpretation of Part B

1. In Part B–

“inland waterway vessel” means a vessel, other than a sea-going vessel, having a total dead weight of 15 tonnes or more;

“petrol” means any petroleum derivative, with or without additives, having a Reid vapour pressure of 27.6 kilopascals or more which is intended for use as a fuel for motor vehicles, other than liquefied petroleum gas;

“service station” means any premises where petrol is dispensed to motor vehicle fuel tanks from stationary storage tanks;

“terminal” means any premises which are used for the storage and loading of petrol into road tankers, rail tankers or inland waterway vessels;

“exempt service station” is as defined in the Environmental Protection (Prescribed Processes and Substances) Regulations 1991(15).

2. Any other expressions which are also used in European Parliament and Council Directive 94/63/EC on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations(16) have the same meaning as in that Directive.

CHAPTER 2

PRODUCTION AND PROCESSING OF METALS

Section 2.1

Ferrous Metals

PART A

- (a) Roasting or sintering metal ore, including sulphide ore, or any mixture of iron ore with or without other materials.
- (b) Producing, melting or refining iron or steel or any ferrous alloy, including continuous casting, except where the only furnaces involved are–
 - (i) electric arc furnaces of less than 7 tonnes designed holding capacity; or
 - (ii) cupola, crucible, reverberatory, rotary, induction or resistance furnaces.

(15) S.I. 1991/507; that definition was added by S.I. 1996/2678.

(16) O.J. No. L 365, 31.12.94, p.24.

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- (c) Processing ferrous metals and their alloys by using hot-rolling mills with a production capacity of more than 20 tonnes of crude steel per hour.
- (d) Loading, unloading or otherwise handling or storing more than 500,000 tonnes in total in any period of 12 months of iron ore, except in the course of mining operations, or burnt pyrites.
- (e) Producing pig iron or steel, including continuous casting, in a plant with a production capacity of more than 2.5 tonnes per hour unless falling within paragraph (b) of Part A of this Section.
- (f) Operating hammers in a forge, the energy of which is more than 50 kilowatts per hammer, where the calorific power used is more than 20 megawatts.
- (g) Applying protective fused metal coatings with an input of more than 2 tonnes of crude steel per hour.
- (h) Casting ferrous metal at a foundry with a production capacity of more than 20 tonnes per day.
- (i) Handling slag arising in conjunction with an activity in this Section.

PART B

- (a) Producing pig iron or steel, including continuous casting, in a plant with a production capacity of 2.5 tonnes or less per hour, unless falling within paragraph (b) of Part A of this Section.
- (b) Producing, melting or refining iron or steel or any ferrous alloy (other than producing pig iron or steel, and including continuous casting) using—
 - (i) one or more electric arc furnaces, none of which has a designed holding capacity of 7 tonnes or more; or
 - (ii) a cupola, crucible furnace, reverberatory furnace, rotary furnace, induction furnace or resistance furnace,
 unless falling within paragraph (e) or (h) of Part A of this Section.
- (c) Desulphurising iron, steel or any ferrous alloy.
- (d) Heating iron, steel or any ferrous alloy (whether in a furnace or other appliance) to remove grease, oil or any other non-metallic contaminant (including such operations as the removal by heat of plastic or rubber covering scrap cable) unless—
 - (i) it is carried out in one or more furnaces or other appliances the primary combustion chambers of which have in aggregate a rated thermal input of less than 0.2 megawatts;
 - (ii) it does not involve the removal by heat of plastic or rubber covering from scrap cable or of any asbestos contaminant; and
 - (iii) it is not related to any other activity falling within this Part of this Section.
- (e) Casting iron, steel or any ferrous alloy from deliveries of 50 tonnes or more of molten metal falling within Part A of this Section.

Interpretation of Section 2.1

In this Section (and Section 2.2), “ferrous alloy” means an alloy of which iron is the largest constituent, or equal to the largest constituent, by weight, whether or not that alloy also has a non-ferrous metal content greater than any percentage specified in Section 2.2 below.

Section 2.2

Non-ferrous Metals

PART A

- (a) Producing non-ferrous metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic activities and in this paragraph “secondary raw materials” include scrap and other waste.

- (b) Melting, including making alloys, of non-ferrous metals, including recovered products, refining, foundry casting, etc. in an installation with a melting capacity exceeding—
 - (i) 4 tonnes per day for lead or cadmium; or
 - (ii) 20 tonnes per day for all other metals in aggregate.
- (c) Refining any non-ferrous metal or its alloy, other than the electrolytic refining of copper.
- (d) Producing, melting or recovering by chemical means or by the use of heat lead or any lead alloy, if—
 - (i) the activity may result in the release into the air of lead; and
 - (ii) in the case of lead alloy, the percentage by weight of lead in the alloy in molten form exceeds 23 per cent if the alloy contains copper and 2 per cent in other cases.
- (e) Recovering any of the elements listed below if the activity may result in their release into the atmosphere—
 - gallium;
 - indium;
 - palladium;
 - tellurium;
 - thallium.
- (f) Producing, melting or recovering (whether by chemical means or by electrolysis or by the use of heat) cadmium or mercury or any alloy containing more than 0.05 per cent by weight of either of those metals or of both of those metals in aggregate.
- (g) Mining zinc or tin bearing ores where the activity may result in the release into water of cadmium or any compound of cadmium which may result in concentrations of cadmium or any compound of cadmium in concentrations in water above background concentrations.
- (h) Manufacturing or repairing involving the manufacture or use of beryllium or selenium or an alloy containing one or both of those metals if the process may release in to the air of any of the substances mentioned in Schedule 5; but an activity does not fall into this description by reason of it involving an alloy that contains beryllium if that alloy contains less than 0.1 per cent by weight of beryllium.
- (i) Unless described elsewhere in this Section, melting, including making alloys, of non-ferrous metals, including recovered products, refining and foundry casting in an installation which has a design holding capacity exceeding 5 tonnes.
- (j) Pelletising, calcining, roasting or sintering any non-ferrous metal ore or any mixture of any such ore and other materials.

PART B

- (a) Unless falling in Part A of this section, melting, including making alloys, of non ferrous metals (other than tin or any alloy which in molten form contains 50 per cent or more by weight of tin) including recovered products, refining foundry casting, etc. in an installation which has a design holding capacity of less than 5 tonnes.
- (b) The separation of copper, aluminium, magnesium or zinc from mixed scrap by differential heating.
- (c) The heating in a furnace or any other application of any non-ferrous metal or non-ferrous metal alloy for the purpose of removing grease oil or any other non-metallic contaminant, including such operations as the removal by heat of plastic or rubber covering from scrap cable if not related to another activity described in this Part; but an activity does not fall within this paragraph if—

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- (i) it involves the use of one or more furnaces or other appliances the primary combustion chambers of which have in aggregate a net rated thermal input of less than 0.2 megawatts; and
- (ii) it does not involve the removal by heat of plastic or rubber covering from scrap cable or of any asbestos contaminant.
- (d) Melting zinc or a zinc alloy in conjunction with a galvanising activity at a rate not exceeding 20 tonnes per day.
- (e) Melting zinc, aluminium or magnesium or an alloy of one or more of these metals in conjunction with a die-casting activity at a rate not exceeding 20 tonnes per day.

Interpretation of Part B

In this Part, “net rated thermal input” has the same meaning as in Section 1.1

Interpretation of Section 2.2

1. In this Section, “non-ferrous metal alloy” and cognate expressions mean an alloy which is not a ferrous alloy, as defined in Section 2.1.
2. Nothing in paragraphs (c) to (h) of Part A or in Part B of this Section shall be taken to prescribe the activities of hand soldering, flow soldering or wave soldering.

Section 2.3

Surface Treating Metals and Plastic Materials

PART A

Surface treating metals and plastic materials using an electrolytic or chemical activity where the aggregated volume of the treatment vats exceeds 30m³.

PART B

Any process for the surface treatment of metal is likely to result in the release into air of any acid-forming oxide of nitrogen and which does not fall within a description in Part A of this Section.

CHAPTER 3

MINERAL INDUSTRIES

Section 3.1

Production of Cement and Lime

PART A

- (a) Producing or grinding cement clinker.
- (b) Producing lime in kilns or other furnaces with a production capacity exceeding 50 tonnes per day or where the activity is likely to involve the heating in any 12 month period of 5,000 tonnes of calcium carbonate or calcium magnesium carbonate or, in aggregate, both.

PART B

- (a) Any of the following activities:—
 - (i) Storing, loading or unloading cement or cement clinker in bulk prior to further transportation in bulk;
 - (ii) Blending cement in bulk or using cement in bulk other than at a construction site, including the bagging of cement and cement mixture, the batching of ready-mixed concrete and the manufacture of concrete blocks and other cement products.

- (b) Slaking lime for the purpose of making calcium hydroxide or calcium magnesium hydroxide.
- (c) Heating calcium carbonate or calcium magnesium carbonate for the purpose of making lime where the activity is not likely to involve the heating in any 12 month period of 5,000 tonnes or more of either substance or, in aggregate, both.

Section 3.2

Activities Involving Asbestos

PART A

- (a) Producing asbestos or manufacturing products based on or containing asbestos.
- (b) Stripping asbestos from railway vehicles except—
 - (i) in the course of the repair or maintenance of the vehicle;
 - (ii) in the course of recovery operations following an accident; or
 - (iii) where the asbestos is permanently bonded in cement or in any other material (including plastic, rubber or resin).
- (c) Destroying a railway vehicle by burning if asbestos has been incorporated in, or sprayed on to, its structure.

PART B

The industrial finishing, including shaping, drilling, or fitting manufactured asbestos products, of any of the following products where not carried out in conjunction with manufacture—

asbestos filters;
asbestos friction products;
asbestos jointing, packaging, and reinforcement material;
asbestos packing;
asbestos textiles.

Interpretation of Section 3.2

In this Section, “asbestos” includes any of the following fibrous silicates:—

actinolite, amosite, anthophyllite, chrysotile, crocidolite and tremolite.

Section 3.3

Glass and Glass Fibre Manufacture

PART A

- (a) Manufacturing glass fibre.
- (b) Manufacturing glass frit or enamel fit where the aggregate quantity of such stances manufactured in any period of 12 months is likely to be 100 tonnes or more.
- (c) Manufacturing glass, unless falling within a description in paragraph (a) or (b) above where the melting capacity exceeds 20 tonnes per day.

PART B

Unless falling within a description in Part A of this Section—

- (a) The manufacture of glass at any location where the person concerned has the capacity to make 5,000 tonnes or more in any 12 month period, and any activity involving the use of glass which is carried out at any such location in conjunction with its manufacture.
- (b) Manufacturing glass where the use of lead or any lead compound is involved.

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- (c) Making any glass product where lead or any lead compound has been used in the manufacture of the glass except–
 - (i) making products from lead glass blanks;
 - (ii) melting, or mixing with another substance, glass manufactured elsewhere to produce articles such as ornaments or road paint.
- (d) Polishing or etching glass or glass products in the course of any manufacturing activity if–
 - (i) hydrofluoric acid is used; or
 - (ii) hydrogen fluoride may be released into the air.
- (e) The manufacture of glass frit or enamel frit and its use in any activity where that activity is related to its manufacture.

Section 3.4

Production of Other Mineral Fibres

PART A

- (a) Melting mineral substances, including the production of mineral fibres, in an installation with a melting capacity exceeding 20 tonnes per day.
- (b) Manufacturing any fibre from any mineral.

PART B

NIL

Section 3.5

Other mineral activities

PART A

NIL

PART B

- (a) Unless falling within any description in any Part A of this Part of this Schedule, the crushing, grinding or other size reduction, other than the cutting of stone, or the grading, screening or heating of any designated mineral or mineral product, except where the operation of the activity is unlikely to result in the release into the air of particulate matter.
- (b) Any of the following activities, unless carried on at an exempt location:–
 - (i) crushing, grinding or otherwise breaking up coal or coke or any other coal product;
 - (ii) screening, grading or mixing coal, or coke or any other coal product;
 - (iii) loading or unloading petroleum coke, coal, coke or any other coal product, except unloading on retail sale.
- (c) The crushing, grinding or other size reduction, with machinery designed for that purpose, of bricks, tiles or concrete.
- (d) Screening the product of any such activity as is described in paragraph (c).
- (e) Coating road stone with tar or bitumen.
- (f) Loading, unloading, or storing pulverised fuel ash in bulk prior to further transportation in bulk.
- (g) The fusion of calcined bauxite for the production of artificial corundum.

Interpretation of Part B

In this Part–

“coal” includes lignite;

“designated mineral or mineral product” means—

- (i) clay, sand and any other naturally occurring mineral other than coal or lignite;
- (ii) metallurgical slag;
- (iii) boiler or furnace ash produced from the burning of coal, coke or any other coal product;
- (iv) gypsum which is a by-product of any activity;

“exempt location” means—

- (i) any premises used for the sale of petroleum coke, coal, coke or any coal product where the throughput of such substances at those premises in any 12 month period is in aggregate likely to be less than 10,000 tonnes; or
- (ii) any premises to which petroleum coke, coal, coke or any coal product is supplied only for use there;

“retail sale” means sale to the final customer.

Nothing in this Section applies to any activity carried on underground.

Section 3.6

Ceramic Production

PART A

Manufacturing ceramic products including roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, by firing in kilns with a production capacity exceeding 75 tonnes per day, or where the kiln capacity exceeds 4m³ and where the setting density of the kiln exceeds 300 kg/m³.

PART B

- (a) Firing heavy clay goods or refractory goods other than heavy clay goods in a kiln where the activity does not fall within a description in Part A of this Section.
- (b) Vapour glazing earthenware or clay with salts.

Interpretation of Part B

In this Part—

“clay” includes a blend of clay with ash, sand or other materials;

“refractory” means refractory material (such as fireclay, silica, magnesite, chrome-magnesite, sillimanite, sintered alumina, beryllia and boron nitride) which is able to withstand high temperatures and to function as a furnace lining or in other similar high temperature applications.

CHAPTER 4

THE CHEMICAL INDUSTRY

Production within the meaning of the categories of activities contained in Part A of the Sections in this Chapter means the production by chemical processing for commercial purposes or on an industrial scale of substances or groups of substances listed in Sections 4.1 to 4.6.

PART A

- (a) Producing or manufacturing by chemical means organic chemicals including—
 - (i) hydrocarbons, linear or cyclic, saturated or unsaturated, aliphatic or aromatic;
 - (ii) organic compounds containing oxygen, including alcohols, aldehydes, ketones, carboxylic acids, esters, ethers, peroxides, phenols, epoxy resins;

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- (iii) organic compounds containing sulphur, including sulphides, mercaptans, sulphonic acids, sulphonates, sulphates and sulphones and sulphur heterocyclics;
 - (iv) organic compounds containing nitrogen including amines, amides, nitrous-, nitro- or azo-compounds, nitrate, nitriles, nitrogen heterocyclics, cyanates, isocyanates, di-isocyanates and di-isocyanate prepolymers;
 - (v) organic compounds containing phosphorus including substituted phosphines and phosphate esters;
 - (vi) organic compounds containing halogens, such as halocarbons, halogenated aromatic compounds and acid halides;
 - (vii) organometallic compounds, such as lead alkyls, Grignard reagents and lithium alkyls;
 - (viii) plastic materials such as polymers, synthetic fibres and cellulose-based fibres;
 - (ix) synthetic rubbers;
 - (x) dyes and pigments;
 - (xi) surface-active agents;
 - (xii) any other organic compounds not described in paragraphs (i) to (xi) above which have the potential to pollute the environment.
- (b) Polymerising or co-polymerising any unsaturated hydrocarbons or a product of an activity mentioned in paragraph (a), (other than a pre-formulated resin or pre-formulated gel coat which contains any unsaturated hydrocarbons), which is likely to involve, in any 12 month period, the polymerisation or co-polymerisation of 50 tonnes or more of any of those materials or, in aggregate, of any combination of those materials.
 - (c) Carrying out any activity involving the use of 1 tonne or more of toluene di-isocyanate or partly polymerised toluene di-isocyanate or other di-isocyanate compounds which have comparable volatility in any 12 month period; where the activity may result in a release into the air which contains such a di-isocyanate monomer.
 - (d) The flame bonding of polyurethane foams or polyurethane elastomers, and the hot wire cutting of such substances where such cutting is related to any other Part A activity.
 - (e) Recovering—
 - (i) carbon disulphide;
 - (ii) pyridine, or any substituted pyridines.
 - (f) Recovering or purifying any designated acrylate.

In Part A, “designated acrylate” means any of the following, namely, acrylic acid, substituted acrylic acids, the esters of acrylic acid and the esters of substituted acrylic acids.

PART B

- (a) Carrying out any activity involving—
 - (i) the use of less than 1 tonne of toluene di-isocyanate or partly polymerised toluene di-isocyanate or other di-isocyanate compounds which have comparable volatility in any 12 month period;
 - (ii) the use of 5 tonnes or more of methyl di-isocyanate or partly polymerised di-isocyanate or other di-isocyanate compounds which have comparable volatility in any 12 month period,

where the activity may result in a release into the air which contains such a di-isocyanate monomer.
- (b) Cutting polyurethane foams or polyurethane elastomers with heated wires if not related to any other Part A activity.

- (c) Any activity, if not related to any other Part A activity, for the polymerisation or co-polymerisation of any pre-formulated resin or pre-formulated gel coat which contains any styrene, which is likely to involve, in any 12 month period, the polymerisation or co-polymerisation of 100 tonnes or more of styrene.

Interpretation of Section 4.1

In this Section, “pre-formulated resin or pre-formulated gel coat” means any resin or gel coat which has been formulated before being introduced into polymerisation or co-polymerisation activity, whether or not the resin or gel coat contains a colour pigment, activator or catalyst.

Section 4.2

Inorganic Chemicals

PART A

- (a) Producing or manufacturing by chemical means inorganic chemicals including—
- (i) inorganic substances, including those in gaseous form, such as ammonia, hydrogen chloride, hydrogen fluoride, hydrogen cyanide and hydrogen sulphide, carbon oxides, sulphur compounds, nitrogen oxides, hydrogen, sulphur dioxide, phosgene;
 - (ii) acids, such as chromic acid, hydrofluoric acid, hydrochloric acid, hydrobromic acid, hydroiodic acid, phosphoric acid, nitric acid, hydrochloric acid, sulphuric acid, oleum and chlorosulphonic acid;
 - (iii) bases, such as ammonium hydroxide, potassium hydroxide, sodium hydroxide and calcium hydroxide;
 - (iv) salts, such as ammonium chloride, potassium chlorate, potassium carbonate, sodium carbonate, perborate, silver nitrate, cupric acetate, ammonium phosphomolybdate;
 - (v) non-metals, metal oxides, metal carbonyls or other inorganic compounds such as calcium carbide, silicon, silicon carbide;
 - (vi) halogens or any compound comprising only—
 - (A) two or more of halogens; or
 - (B) any one or more of those halogens and oxygen.
- (b) Any manufacturing activity which uses, or which is likely to result in the release into the air or into water of, any halogens, hydrogen halides or any of the compounds mentioned in paragraph (a)(vi), other than the treatment of water by chlorine.
- (c) Any manufacturing activity which uses or is likely to result in the release of hydrogen cyanide or hydrogen sulphide.
- (d) Producing any compounds, using or recovering any mixture, other than the application of a glaze or vitreous enamel, containing any of the following or their compounds:—
- (i) antimony;
 - (ii) arsenic;
 - (iii) beryllium;
 - (iv) gallium;
 - (v) indium;
 - (vi) lead;
 - (vii) palladium;
 - (viii) platinum;

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- (ix) selenium;
- (x) tellurium;
- (xi) thallium;
- (xii) hromium;
- (xiii) manganese;
- (xiv) nickel;
- (xv) zinc;
- (xvi) admium; or
- (xvii)mercury,

where the activity may result in the release into the air of any of those elements or compounds or the release into water of any substance listed in Schedule 5.

- (e) Recovering any compound of or engaging in any process of manufacture which involves the use of cadmium or mercury or of any compound of either of those elements or which may result in the release of either of those elements to air of their compounds.
- (f) Any of the following activities, operated at installations not otherwise described under this Part of this Schedule:—
 - (i) recovering, concentrating or distilling sulphuric acid or oleum;
 - (ii) recovering nitric acid;
 - (iii) purifying phosphoric acid;
 - (iv) any activity of manufacture (other than the manufacture of chemicals) involving the use of any hydrogen fluoride, hydrogen chloride, hydrogen bromide or hydrogen iodide or any of their acids which may result in the release of any of those compounds into the air, other than the coating, plating or surface treatment of metal;
 - (v) recovering ammonia;
 - (vi) extracting any magnesium compound from sea water.

PART B

NIL

Section 4.3

Chemical Fertiliser Production

PART A

- (a) Producing phosphorous, nitrogen or potassium based fertilisers made by chemical means.
- (b) Converting chemical fertilisers into granules.

PART B

NIL

Section 4.4

Biocide Production

PART A

- (a) producing, and formulating plant health products and biocides.
- (b) Formulating such products if doing so may result in the release into water of any substance listed in the Table in paragraph 13 of Part 2 to this Schedule in a quantity which, in any 12 month period, exceeds the background quantity by more than the amount specified in relation

to the description of the substance set out in column 1 of that Table in the corresponding entry in column 2 of that Table.

PART B

NIL

Section 4.5

Pharmaceutical Production

PART A

- (a) Producing pharmaceutical products using a chemical or biological process.
- (b) Formulating such products if doing so may result in the release into water of any substance listed in the Table in paragraph 13 of Part 2 to the Schedule in a quantity which, in any period of 12 month, exceeds the background quantity by more than the amount specified in relation to the description of the substance set out in column 1 of that Table in the corresponding entry in column 2 of that Table.

PART B

NIL

Section 4.6

Explosives Production

PART A

Producing explosives, unless described elsewhere in any Section of this Chapter.

PART B

NIL

Section 4.7

Manufacturing activities involving carbon disulphide or ammonia.

PART A

- (a) Any manufacturing activity which may result in the release of carbon disulphide into the air.
- (b) Any activity for the manufacture of a chemical which involves the use of ammonia or may result in the release of ammonia into the air other than an activity in which ammonia is only used as a refrigerant.

PART B

NIL

Section 4.8

The storage of chemicals in bulk

PART A

NIL

PART B

The storage, other than as part of any Part A activity or in a tank for the time being forming part of a powered vehicle, of any of the substances listed below except where the total capacity of the tanks installed at the location in question in which the relevant substance may be stored is less than the figure specified below in relation to that substance—

any one or more acrylates

20 tonnes;

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| | |
|-----------------------------|---------------|
| acrylonitrile | 20 tonnes; |
| anhydrous ammonia | 100 tonnes; |
| anhydrous hydrogen fluoride | 1 tonne; |
| toluene di-isocyanate | 20 tonnes; |
| vinyl chloride monomer | 20 tonnes; |
| ethylene | 8,000 tonnes. |

In this Section, “acrylate” has the same meaning as “designated acrylate” in Part A of Section 4.1.

CHAPTER 5

WASTE MANAGEMENT

Section 5.1

Incineration

PART A

- (a) The incineration of hazardous waste in an incineration plant, other than in an exempt hazardous waste incineration plant.
- (b) The incineration of waste, including animal remains, in an incineration plant not covered by paragraph (a) above, on premises where there is plant used or designed to incinerate waste at a rate of 1 tonne or more per hour.
- (c) Cleaning for reuse metal containers used for the transport or storage of a chemical by burning out their residual content.

PART B

The following activities if operated at installations not falling under Part A of this Section:–

- (a) The incineration of waste, including animal remains, in an incineration plant, other than in an exempt waste incineration plant.
- (b) The cremation of human remains.

Interpretation of Section 5.1

In this Section –

“incineration of waste” means the incineration by oxidation of waste, with or without recovery of the combustion heat generated, including pre-treatment as well as pyrolysis or other thermal treatment processes, for example, plasma process, in so far as their products are subsequently incinerated, and includes the incineration of such wastes as regular or additional fuel for any industrial process;

“incineration plant” means any technical equipment used for the incineration of waste;

“hazardous waste” means any solid or liquid as defined in Article 1.4 of Council Directive [91/689/EEC](#) on hazardous waste⁽¹⁷⁾ but shall not include the following waste:–

- (i) combustible liquid wastes, including waste oils as defined in Article 1 of Council Directive [75/439/EEC](#) on the disposal of waste oils⁽¹⁸⁾, provided that they meet the following three criteria:–

⁽¹⁷⁾ O.J. No. L 377, 31.12.91, p.20.

⁽¹⁸⁾ O.J. No. L 194, 25.7.75, p.23.

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- (a) the mass content of polychlorinated aromatic hydrocarbons, e.g. polychlorinated biphenyls or pentachlorinated phenol, amounts to concentrations not higher than those set out in the relevant Community legislation;
- (b) these wastes are not rendered hazardous by virtue of containing other constituents listed in Annex II to Council Directive [91/689/EEC](#) in quantities or in concentrations which are inconsistent with the achievement of the objectives set out in Article 4 of Directive [75/442/EEC](#) on waste⁽¹⁹⁾; and
- (c) the net calorific value amounts to at least 30 MJ per kilogramme;
- (ii) any combustible liquid wastes which cannot cause, in the flue gas directly resulting from their combustion, emissions other than those from gas oil, as defined in Article 1.1 of Directive [75/716/EEC](#) on the approximation of the laws of Member States relating to the sulphur content of certain liquid fuels⁽²⁰⁾ or a higher concentration of emissions than those resulting from the combustion of gas oil as so defined;
- (iii) hazardous waste resulting from the exploration for the exploration of oil and gas resources from off-shore installations and incinerated on board;
- (iv) municipal waste covered by Council Directives [89/369/EEC](#) on the prevention of air pollution from new municipal waste incineration plants⁽²¹⁾ and [89/429/EEC](#) on the reduction of air pollution from existing municipal waste incineration plants⁽²²⁾;
- (v) sewage sludges from the treatment of municipal waste waters which are not rendered hazardous by virtue of containing constituents listed in Annex II to Council Directive [91/689/EEC](#) in quantities or in concentrations which are inconsistent with the achievement of the Council objectives set out in the Article 4 of Directive [75/442/EEC](#) on waste;

“exempt hazardous waste incineration plant” means–

- (i) an incineration plant for animal carcasses or remains;
- (ii) an incineration plant for infectious clinical waste, provided that such waste is not rendered hazardous as a result of the presence of constituents listed in Annex II to Council Directive [91/689/EEC](#) on hazardous waste other than constituent C35 in that list (infectious substances); or
- (iii) a municipal waste incineration plant also burning infectious clinical waste which is not mixed with other wastes which are rendered hazardous as a result of one of the properties listed in Annex III to Council Directive [91/689/EEC](#) other than property H9 in that list (infectious);

“exempt waste incineration plant” means any incineration plant on premises where there is plant designed to incinerate waste, including animal remains at a rate of not more than 50 kilogrammes per hour, not being an incineration plant employed to incinerate clinical waste, sewage sludge, sewage screenings or municipal waste (as defined in Article 1 of Council Directive [89/369/EEC](#)); and for the purposes of this Section, the weight of waste shall be determined by reference to its weight as fed into the incineration plant;

“clinical waste” means waste (other than waste consisting wholly of animal remains) which falls within sub-paragraph (a) or (b) of the definition of such waste in paragraph (2) of regulation 1 of the Controlled Waste Regulations 1992⁽²³⁾ (or would fall within one of those sub-paragraphs but for paragraph (4) of that regulation).

(19) O.J. No. L 194, 25.7.75 p.39; amended by Council Directives [91/156/EEC](#) (O.J. No. L 78, 26.3.91 p.32) and [91/692/EEC](#) (O.J. No. L 377, 31.12.91, p.48) and Commission Decision [96/350/EC](#) (O.J. No. L 135, 6.6.96 p.32).

(20) O.J. No. L 307, 27.11.75, p.22.

(21) O.J. No. L 163, 14.6.89, p.32.

(22) O.J. No. L 203, 15.7.89, p.50.

(23) S.I. [1992/588](#).

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Section 5.2

Landfill and disposal to land

PART A

Landfill activities receiving more than 10 tonnes in any day or with a total capacity exceeding 25,000 tonnes, excluding landfills of inert waste.

PART B

NIL

Interpretation of Section 5.2

In this Section—

“landfill” means a waste disposal site for the deposit of waste onto or into land, including—

- (a) internal waste disposal sites, including a landfill where a producer of waste is carrying out its own waste disposal at the place of production; and
- (b) a permanent site, operating for more than one year, which is used for temporary storage of waste,

and includes the following operations:—

- (i) tipping above or underground, for example by landfill;
- (ii) land treatment, for example by biodegradation of liquid or sludge discards in soils;
- (iii) deep injection of waste, for example, injection of pumpable discarded materials into wells, salt domes or naturally occurring repositories;
- (iv) surface impoundment, for example placing liquid or sludge wastes into pits, ponds or lagoons;
- (v) specially engineered landfill, for example, placing waste into lined discrete cells which are capped and isolated from one another and the environment;
- (vi) permanent storage, for example, by placing containers in a mine;

“inert waste” means waste that does not undergo any significant physical, chemical or biological transformation, which will not dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter with which it comes into contact in a way likely to give rise to environmental pollution or harm to human health: Provided the ability of any potentially polluting material contained in waste and the ecotoxicology of the leachate is insignificant, and in particular does not endanger the quality either of surface water or groundwater.

Section 5.3

Disposal of waste other than by incineration or landfill

PART A

- (a) The disposal of hazardous waste (other than by incineration or landfill) in plant with a capacity exceeding 10 tonnes per day for hazardous waste.
- (b) The disposal of waste oils (other than by incineration or landfill) in plant with a capacity exceeding 10 tonnes per day.
- (c) Disposal of non-hazardous waste in plant with a capacity exceeding 50 tonnes per day by—
 - (i) biological treatment specified in paragraph D8 of Annex IIA to Council Directive 75/441;
 - or

- (ii) physico-chemical treatment specified in paragraph D9 of Annex IIA to Council Directive 75/441.

Interpretation of Part A

1. In Part A, “disposal”, in paragraph (a), means any of the operations described in Annex IIA to Council Directive 75/442/EEC on waste.

2. Paragraph (b) shall be interpreted in accordance with Article 1 of Council Directive 75/439/EEC.

PART B

NIL

Section 5.4

Recovery activities

PART A

- (a) Recovering by distillation any oil or organic solvent.
- (b) Cleaning or regenerating carbon, charcoal or ion exchange resins by removing matter which is, or includes, any substance listed in paragraphs 12 to 14 of Part 2 of this Schedule.
- (c) Unless part of a Part A activity described in another Chapter of this Schedule, recovery activities (within the meaning of Council Directive 91/689/EEC) involving hazardous waste in excess of 10 tonnes per day and falling within the following descriptions:–
 - (i) using waste principally as a fuel or other means to generate energy;
 - (ii) recycling/reclamation of inorganic materials other than metals and metal compounds;
 - (iii) regeneration of acids or bases;
 - (iv) recovery of components from catalysts;
 - (v) oil refining or other reuses of oil;
 - (vi) solvent reclamation/regeneration;
 - (vii) recovering components used for pollution abatement.

Interpretation of Part A

Except where the activity involves distilling more than 10 tonnes per day, nothing in paragraphs (a) and (b) of this Part applies to–

- (i) distilling oil for the production or cleaning of vacuum pump oil; or
- (ii) an activity which is ancillary and related to another activity, whether described in this Schedule or not, which involves the production or use of the substance which is recovered, cleaned or regenerated.

PART B

NIL

Section 5.5

The production of fuel from waste

PART A

Making solid fuel from waste by any process involving the use of heat other than making charcoal.

PART B

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NIL

CHAPTER 6 OTHER ACTIVITIES

Section 6.1

Paper and pulp manufacturing activities

PART A

- (a) Producing—
 - (i) pulp from timber or other fibrous materials;
 - (ii) paper and board with a production capacity exceeding 20 tonnes per day.
- (b) Any activity associated with making paper pulp or paper, including activities connected with the recycling of paper such as de-inking, if the activity may result in the release into water of any substance listed in paragraph 12 of Part 2 to this Schedule in a quantity which, in any 12 month period, exceeds the background quantity by more than the amount specified in relation to the description of substance in column 2 of that Schedule.

Interpretation of Part A

In Part A, “paper pulp” includes pulp made from wood, grass, straw and similar materials and references to the making of paper are to the making of any product using paper pulp.

PART B

NIL

Section 6.2

Carbon Activities

PART A

Producing carbon or hard-burnt coal or electro graphite by means of incineration or graphitization.

PART B

NIL

Section 6.3

Tar and Bitumen Processes

PART A

The following activities if operated at installations not falling within any other description contained in any other Part A activity in this Schedule involving:—

- (i) distilling tar or bitumen in connection with any process of manufacture; or
- (ii) heating tar or bitumen for the manufacture of electrodes or carbon-based refractory materials, where the carrying on of the activity by the person concerned at the location in question is likely to involve the use in any 12 month period of 5 tonnes or more of tar or of bitumen or, in aggregate, both.

PART B

Any activity not falling within Part A of this Section or within any other description in this Schedule involving—

- (i) heating, but not distilling, tar or bitumen in connection with any process of manufacture; or

- (ii) oxidising bitumen by blowing air through it, at installations where there are no other activities prescribed in this Schedule,

where the carrying on of the activities by the person concerned at the location in question is likely to involve the use in any 12 month period of 5 tonnes or more of tar or of bitumen or, in aggregate, of both.

Interpretation of Part B

In Part B, the expressions “tar” and “bitumen” include pitch.

Section 6.4

Coating activities, printing and textile treatments

PART A

- (a) Pre-treating by operations such as washing, bleaching or mercerisation or dyeing fibres or textiles where the treatment capacity exceeds 10 tonnes per day.
- (b) Surface treating substances, objects or products using organic solvents, in particular for dressing, printing, coating, degreasing, waterproofing, sizing, painting, cleaning or impregnating, with a consumption capacity of more than 150 kilogrammes per hour or more than 200 tonnes per year.
- (c) Applying or removing a coating material containing one or more tributyltin compounds or triphenyltin compounds, if carried out at a shipyard or boatyard where vessels of a length of 25 metres or more can be built or maintained or repaired.
- (d) Treating textiles if the activity may result in the release into water of any substance listed in the Table in paragraph 13 of Part 2 of this Schedule in a quantity which, in any 12 month period, exceeds the background quantity by more than the amount specified in relation to the description of the substance set out in column 1 of that Table in the corresponding entry in column 2 of that Table.

PART B

- (a) Any activity, not falling within Part A (other than for the repainting or respraying of, or of parts, of aircraft or road or railway vehicles) for applying to a substrate, or drying or curing after such application, printing ink or paint or any other coating material as, or in the course of, a manufacturing activity where—
 - (i) the activity may result in the release into the air of particulate matter or of any volatile organic compound; and
 - (ii) the carrying on of the activity by the person concerned at the location in question is likely to involve the use in any period 12 months of—
 - (A) 20 tonnes or more applied in solid form of any printing ink, paint or other coating material, unless covered by Section 2.1(g);
 - (B) 20 tonnes or more of any metal coatings which are sprayed on in molten form; or
 - (C) 25 tonnes or more of organic solvents in respect of any cold set web offset printing activity or any sheet fed offset litho printing activity or, in respect of any other activity, 5 tonnes or more of organic solvents.
- (b) Repainting or respraying road vehicles or parts of them if the activity does not fall within Part A and may result in the release into the air of particulate matter or of any volatile organic compound and the carrying on of the activity by the person concerned at the location in question is likely to involve the use of 1 tonne or more of organic solvents in any period of 12 months.
- (c) Repainting or respraying aircraft or railway vehicles or parts of them if the activity may result in the release into the air of particulate matter or of any volatile organic compound and the

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carrying on of the activity by the person concerned at the location in question is likely to involve the use in any period of 12 months of –

- (i) 20 tonnes or more applied in solid form of any paint or other coating material;
- (ii) 20 tonnes or more of any metal coatings which are sprayed on in molten form; or
- (iii) 5 tonnes or more of organic solvents.

Interpretation of Part B

In Part B–

“aircraft” includes gliders and missiles;

“coating material” means paint, printing ink, varnish, lacquer, dye, any metal oxide coating, any adhesive coating, any elastomer coating, any metal or plastic coating and any other coating material; and the amount of organic solvents used in an activity shall be calculated as–

- (i) the total input of organic solvents into the process, including both solvents contained in coating materials and solvents used for cleaning or other purposes; less
- (ii) any organic solvents that are removed from the process for re-use or for recovery for re-use.

Section 6.5

The manufacture of dyestuffs, printing ink and coating materials.

PART A

Any manufacture of dyestuffs if the activity involves the use of hexachlorobenzene and is operated at an installation not falling within any other description in any Part A of this Schedule.

PART B

Any of the following activities not falling within any description in Part A of this Schedule involving:–

- (a) Manufacturing or formulating printing ink or any other coating material containing, or involving the use of, an organic solvent, where the carrying on of the activity by the person concerned at the location in question is likely to involve the use of 100 tonnes or more of organic solvents in any 12 months period;
- (b) Manufacture any powder for use as a coating material where there is the capacity to produce 200 tonnes or more of such powder in any 12 month period.

Interpretation of Part B

In Part B, “coating material” has the same meaning as in Section 6.4; except that the amount of organic solvents used in an activity shall be calculated as–

- (a) the total input of organic solvents into the process, including both solvents contained in coating materials and solvents used for cleaning or other purposes; less
- (b) any organic solvents, not contained in coating materials, that are removed from the process for re-use or for recovery for re-use.

Section 6.6

Timber activities

PART A

Curing or chemically treating as part of a manufacturing process timber or products made wholly or mainly of wood if any substance listed in column 1 of the Table in paragraph 13 of Part 2 of this Schedule is used.

PART B

Manufacturing products wholly or mainly of wood at any works if the activity involves the sawing, drilling, shaping, turning, planing, shredding, curing or chemical treatment of wood and the throughput of the works in any 12 month period is likely to exceed—

- (i) 10,000 cubic metres, in the case of works at which wood is sawed but at which wood is not subjected to any other relevant activities or is subjected only to relevant activities which are exempt activities ; or
- (ii) 1,000 cubic metres in any other case.

Interpretation of Part B

In this Part—

“relevant activities”, other than sawing, are “exempt activities” where, if no sawing were carried on at the works, the activities carried on there would be unlikely to result in the release into the air of any substances listed in paragraph 12 of Part 2 of this Schedule in a quantity which is capable of causing significant harm;

“throughput” shall be calculated by reference to the amount of wood which is subjected to any of the relevant activities: but where, at the same works, wood is subject to two or more relevant activities, no account shall be taken of the second or any subsequent activity;

“wood” includes any product consisting wholly or mainly of wood;

“works” includes a sawmill or any other premises on which relevant activities are carried out on wood.

Section 6.7

Activities involving rubber

PART A

NIL

PART B

- (a) The following activities if operated at installations not falling within any other description in any Part A of this Schedule involving the mixing, milling or blending of—
 - (i) natural rubber; or
 - (ii) synthetic organic elastomers,if carbon black is used.
- (b) Any activity which converts the product of an activity falling within paragraph (a) into a finished product, if related to a activity falling within that paragraph.

Section 6.8

The treatment of animal and vegetable matter and food industries

PART A

- (a) Tanning hides and skins where the treatment capacity exceeds 12 tonnes of finished products per day.
- (b) Disposing of or recycling animal carcasses and animal waste except by incineration at installations with a capacity exceeding 10 tonnes per day.

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- (c) Slaughtering animals with a carcass production capacity greater than 50 tonnes per day.
- (d) Treating and processing materials intended for the production of food products from–
 - (i) animal raw materials (other than milk) with a finished product production capacity greater than 75 tonnes per day;
 - (ii) vegetable raw materials with a finished product production capacity greater than 300 tonnes per day (average value on a quarterly basis).
- (e) Treating and processing milk, the quantity of milk received being greater than 200 tonnes per day (average value on an annual basis).
- (f) The following activities if operated at installations not falling within a description in another Section or an exempt activity, namely processing in anyway whatsoever, storing or drying by the application of heat of any dead animal (or part thereof) or any vegetable matter if the process may result in the release into water of any substance listed in the Table in paragraph 13 of Part 2 of this Schedule in a quantity which, in any 12 month period, exceeds the background quantity by more than the amount specified in relation to the description of the substance set out in column 1 of that Table in the corresponding entry in column 2 of that Table: but excluding any activity that treats effluent so as to permit its discharge into controlled waters or into a sewer unless the treatment process involves the drying of any material with a view to its use as an animal feedstuffs.

PART B

- (a) Any activity mentioned in Section 6.8 (f), unless an exempt activity–
 - (i) where the activity has the characteristics described in paragraph 2 of Part 2 of this Schedule; but
 - (ii) may release into the air a substance referred to in paragraph 12 of Part 2 of this Schedule or any offensive smell noticeable outside the premises in which the activity is carried on.
- (b) Breeding maggots in any case where 5 kilogrammes or more of animal or of vegetable matter or, in aggregate, of both are introduced into the process in any week.
- (c) The ensiling or storage of dead fish or fish offal in plant capable of retaining volumes–
 - (i) of less than 10m³ of ensiled liquor;
 - (ii) in excess of 10m³ and less than 50m³ of ensiled liquor; or
 - (iii) in excess of 50m³ of ensiled liquor.

Interpretation of Section 6.8

In this Section–

“animal” includes a bird or a fish;

“ensiling” means the treatment of dead fish or fish offal by the application of formic acid for the purpose of rendering the material free from infectious disease;

“exempt activity” means–

- (i) any activity carried on a farm or agricultural holding, other than the manufacture of goods for sale;
- (ii) the manufacture or preparation of food or drink for human consumption but excluding–
 - (A) the extraction, distillation or purification of animal or vegetable oil or fat, otherwise than as an activity incidental to the cooking of food for human consumption;
 - (B) any activity involving the use of green offal or the boiling of blood, except the cooking of food (other than tripe) for human consumption;

- (C) the cooking of tripe for human consumption elsewhere than on premises on which it is to be consumed;
 - (iii) the fleshing, cleaning and drying of pelts of fur-bearing mammals;
 - (iv) any activity carried on in connection with the operation of a knacker's yard, as defined in article 3(1) of the Animal By-Products Order 1999⁽²⁴⁾;
 - (v) any activity for the manufacture of soap not falling within a description in Part A of Section 4.1;
 - (vi) the storage of vegetable matter otherwise than as part of any prescribed activity;
 - (vii) the cleaning of shellfish shells;
 - (viii) the manufacture of starch;
 - (ix) the processing of animal or vegetable matter at premises for feeding a recognised pack of hounds registered under article 13 of the Animal By-Products Order 1999;
 - (x) the salting of hides or skins, unless related to any other prescribed activity;
 - (xi) any activity for composting animal or vegetable matter or a combination of both, except where that activity is carried on for the purposes of cultivating mushrooms;
 - (xii) any activity for cleaning, and any related activity for drying or dressing, seeds, bulbs, corms or tubers;
 - (xiii) the drying of grain or pulses;
 - (xiv) any activity for the production of cotton yarn from raw cotton or for the conversation of cotton yarn into cloth;
- “food” includes drink, articles and substances of no nutritional value which are used for human consumption, and articles and substances used as ingredients in the preparation of food;
- “green offal” means the stomach and intestines of any animal, other than poultry or fish, and their contents.

Section 6.9

Intensive farming

PART A

- (a) Rearing poultry or pigs intensively in an installation with more than—
 - (i) 40,000 places for poultry, including ducks and turkeys;
 - (ii) 2,000 places for production pigs (over 30 kilogrammes); or
 - (iii) 750 places for sows.

PART B

NIL

PART 2

INTERPRETATION OF PART 1

1. The following applies for the interpretation of Part 1 of this Schedule.

2.—(1) Subject to sub-paragraph (2), an activity shall not be taken to be a Part B activity if it cannot result in the release into the air of a substance listed in paragraph 12 or there is no likelihood

⁽²⁴⁾ S.I. [1999/646](#).

that it will result in the release into the air of any such substance except in a quantity which is so trivial that it is incapable of causing harm or its capacity to cause harm is insignificant.

(2) Sub-paragraph (1) does not apply to an activity which may give rise to an offensive smell noticeable outside the site where the activity is carried out.

3. An activity shall not be taken to be an activity falling within Part 1 if it is carried out in a working museum to demonstrate an industrial activity of historic interest or if it is carried out for educational purposes in a school within the meaning of section 135(1) of the Education (Scotland) Act 1980(25).

4. The running on or within an aircraft, hovercraft, mechanically propelled road vehicle, railway locomotive or ship or other vessel of an engine which propels or provides electricity for it shall not be taken to be an activity falling within Part 1.

5. The running of an engine in order to test it before it is installed or in the course of its development shall not be taken to be an activity falling within Part 1.

6.—(1) The use of a fume cupboard shall not be taken to be an activity falling within Part 1 if it is used as a fume cupboard in a laboratory for research or testing and it is not—

- (i) a fume cupboard which is an industrial and continuous production activity enclosure; or
- (ii) a fume cupboard in which substances or materials are manufactured.

(2) In sub-paragraph (1) “fume cupboard” has the meaning given by the British Standard ‘Laboratory fume cupboards’ published by the British Standards Institution numbered BS7258 : Part I : 1990.

7. An activity shall not be taken to fall within Part 1 if it is carried out as a domestic activity in connection with a private dwelling.

8. References in Part 1 to related activities are references to separate activities being carried out by the same person on the same site.

9.—(1) This paragraph applies for the purpose of determining whether an activity carried out in a stationary technical unit falls within a description in Part A which refers to capacity, other than design holding capacity.

(2) Where a person carries out several activities falling within the same description in Part A in different parts of the same stationary technical unit or in different stationary technical units on the same site, the capacities of each part or unit, as the case may be, shall be added together and the total capacity shall be attributed to each part or unit for the purpose of determining whether the activity carried out in each part or unit falls within a description in Part A.

(3) For the purpose of sub-paragraph (2), no account shall be taken of capacity when determining whether activities fall within the same description.

(4) Where an activity falls within a description in Part A by virtue of this paragraph it shall not be taken to be an activity falling within a description in Part B.

10. Where an activity falls within a description in Part A and a description in Part B that activity shall be regarded as falling only within the description in Part A.

11.—(1) In Part 1 of this Schedule—

“background quantity” means, in relation to the release of a substance resulting from an activity, such quantity of that substance as is present in—

- (i) water supplied to the site where the activity is carried out;

(25) 1980 c. 44.

(ii) water abstracted for use in the activity; and

(iii) precipitation onto the site on which the activity is carried out;

“Part A activity” means an activity falling within Part A of any Section in Part 1 of this Schedule;

“Part B activity” means an activity falling within Part B of any Section in Part 1 of this Schedule.

(2) For the purposes of the interpretation of Part 1 of this Schedule, and unless the context otherwise requires, a reference to a Section is a reference to the Section so numbered in Part 1 of this Schedule.

12. References to, or to the release into the air of, a substance listed in this paragraph are to any of the following substances:—

oxides of sulphur and other sulphur compounds;

oxides of nitrogen and other nitrogen compounds;

oxides of carbon;

organic compounds and partial oxidation products;

metals, metalloids and their compounds;

asbestos (suspended particulate matter and fibres), glass fibres and mineral fibres;

halogens and their compounds;

phosphorus and its compounds;

particulate matter.

13.—(1) References to, or to the release into water of, a substance listed in this paragraph or to its release in a quantity which exceeds, in any 12 month period, the background quantity by an amount specified in this paragraph are, in respect of the substances set out in column 1 of the following Table, the amounts specified in the corresponding entry in column 2 of that Table.

TABLE

| <i>Substance</i> | <i>Amount in excess of background quantity (in grammes) in any 12 month period</i> |
|---|--|
| Mercury and its compounds | 200 (expressed as metal) |
| Cadmium and its compounds | 1000 (expressed as metal) |
| All isomers of hexachlorocyclohexane | 20 |
| All isomers of DDT | 5 |
| Pentachlorophenol (PCP) and its compounds | 350 (expressed as PCP) |
| Hexachlorobenzene | 5 |
| Hexachlorobutadiene | 20 |
| Aldrin | 2 |
| Dieldrin | 2 |
| Endrin | 1 |
| Polychlorinated Biphenyls | 1 |

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| <i>Substance</i> | <i>Amount in excess of background quantity (in grammes) in any 12 month period</i> |
|---------------------------------|--|
| Dichlorvos | 0.2 |
| 1,2 – Dichloroethane | 2000 |
| All isomers of trichlorobenzene | 75 |
| Atrazine | 350 |
| Simazine | 350 |
| Tributyltin (TBT) compounds | 4 (expressed as TBT) |
| Triphenyltin (TPT) compounds | 4 (expressed as TPT) |
| Trifluralin | 20 |
| Fenitrothion | 2 |
| Azinphos-methyl | 2 |
| Malathion | 2 |
| Endosulfan | 0.5 |

(2) In the Table in sub-paragraph (1), where both Atrazine and Simazine are released, the figure for both substances in aggregate shall be 350 grammes.

14.—(1) References to a substance listed in this paragraph are to any of the following substances:—

- (a) alkali metals and their oxides and alkaline earth metals and their oxides;
- (b) organic solvents;
- (c) azides;
- (d) halogens and their covalent compounds;
- (e) metal carbonyls;
- (f) organo-metallic compounds;
- (g) oxidising agents;
- (h) polychlorinated dibenzofuran and any congener thereof;
- (i) polychlorinated dibenzo-p-dioxin and any congener thereof;
- (j) polyhalogenated biphenyls, terphenyls and naphthalenes;
- (k) phosphorus;
- (l) pesticides.

(2) In this sub-paragraph, “pesticide” means any chemical substance or preparation prepared or used for destroying any pest, including those used for protecting plants or wood or other plant products from harmful organisms, regulating the growth of plants, giving protection against harmful creatures, rendering such creatures harmless, controlling organisms with harmful or unwanted effects on water systems, buildings or other structures, or on manufactured products, or protecting animals against ectoparasites.

PART 3

INTERPRETATION OF “PART A INSTALLATION” ETC

15. For the purpose of these Regulations, subject to paragraph 2–

“Part A installation” means an installation where one or more activities listed under the heading “Part A” are carried out (including such an installation where one or more activities listed under the heading “Part B” are also carried out);

“Part B installation” means an installation where one or more of the activities listed under the heading “Part B” are carried out, not being a Part A installation.

16. A Part B installation shall not be taken to include any activity which requires a waste management licence under Part II of the Environmental Protection Act 1990(26).

17. For the purpose of these Regulations–

“Part A mobile plant” means mobile plant used to carry out a Part A activity (including such plant which is also used to carry out a Part B activity);

“Part B mobile plant” means mobile plant used to carry out a Part B activity, not being Part A mobile plant.

18. In the case of Part B installations–

(a) an installation where an activity falling within Part B of Section 1.1 is carried out does not include any associated storage, handling or shredding of tyres which are to be burned as part of that activity;

(b) an installation where an activity falling within paragraph (e) of Part B of Section 2.2 is carried out does not include any associated storage or handling of scrap which is to be heated as part of that activity other than its loading into a furnace;

(c) an installation where an activity falling with paragraph (a) of Part B of Section 5.1 is carried out does not include any associated storage or handling of wastes and residues which are to be incinerated as part of that process other than the associated storage or handling of animal remains intended for burning in an incinerator used wholly or mainly for the incineration of such remains or residues from the burning of such remains in such an incinerator;

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

19. Where an installation is a Part A installation or a Part B installation by virtue of the carrying out of an activity which is only carried out during part of a year that installation shall not cease to be such an installation during the parts of the year when that activity is not being carried out.

20. Where an installation is authorised by a permit granted under these Regulations to carry out Part A activities or Part B activities which are described in Part 1 by reference to a threshold (whether in terms of capacity or otherwise), the installation shall not cease to be a Part A installation or a Part B installation, as the case may be, by virtue of the installation being operated below the relevant threshold unless the permit ceases to have effect in accordance with these Regulations.

21. In this Part, “Part A activity” and “Part B activity” have the meaning given by paragraph 11(1) of Part 2 of this Schedule.

(26) 1990 c. 43.

SCHEDULE 2

Regulation 3(2)

BEST AVAILABLE TECHNIQUES

1. Subject to paragraph 2, in determining best available techniques, special consideration shall be given to the following matters, bearing in mind the likely costs and benefits of a measure and the principles of precaution and prevention:—

- (a) the use of low-waste technology;
- (b) the use of less hazardous substances;
- (c) the furthering of recovery and recycling of substances generated and used in the process and of waste, where appropriate;
- (d) comparable processes, facilities or methods of operation which have been tried with success on an industrial scale;
- (e) technological advances and changes in scientific knowledge and understanding;
- (f) the nature, effects and volume of the emissions concerned;
- (g) the commissioning dates for new or existing installations or mobile plant;
- (h) the length of time needed to introduce the best available technique;
- (i) the consumption and nature of raw materials (including water) used in the process and the energy efficiency of the process;
- (j) the need to prevent or reduce to a minimum the overall impact of the emissions on the environment and the risks to it;
- (k) the need to prevent accidents and to minimise the consequences for the environment;
- (l) the information published by the Commission pursuant to Article 16(2) of the Directive or by international organisations.

2. Sub-paragraphs (a) to (c) and (i) to (l) shall not apply for the purposes of determining best available techniques in relation to Part B installations and Part B mobile plant.

SCHEDULE 3

Regulation 2(5), 6(2) and 7(11)

PRESCRIBED DATES AND TRANSITIONAL ARRANGEMENTS

PART 1

PART A INSTALLATIONS AND MOBILE PLANT

1. The prescribed date for a new Part A installation or new Part A mobile plant—

- (a) where an application for a permit to operate the installation or mobile plant is duly made before the transitional date, is the determination date for the installation or mobile plant;
- (b) where no such application is made, is the transitional date.

2.—(1) Subject to paragraph 4, the prescribed date for an existing Part A installation or existing Part A mobile plant—

- (a) where an application for a permit to operate the installation or mobile plant is duly made within the relevant period (or before the beginning of the relevant period where allowed under paragraph 5), is the determination date for the installation or mobile plant;

(b) where no such application is made, is the day after the date on which the relevant period expires.

(2) For the purpose of sub-paragraph (1), the relevant period for an existing Part A installation or existing Part A mobile plant is the period specified for that description of installation or mobile plant in the following table:–

| <i>Any installation where an activity falling within the following Sections of Part 1 of Schedule 1 is carried out or any mobile plant used to carry out such an activity</i> | <i>Relevant Period</i> |
|---|--------------------------------|
| Section 1.1 | January 1st to March 31st 2006 |
| Part A | |
| Section 1.2 | |
| Part A | June 1st to August 31st 2001 |
| Paragraph (c) | June 1st to August 31st 2006 |
| Remaining paragraphs | |
| Section 2.1 | |
| Part A | May 1st to July 31st 2002 |
| Paragraph (c), (e), (f), (g) and (h) | June 1st to August 31st 2001 |
| Remaining paragraphs | |
| Section 2.2 | June 1st to August 31st 2002 |
| Part A | |
| Section 2.3 | May 1st to July 31st 2004 |
| Part A | |
| Section 3.1 | June 1st to August 31st 2001 |
| Part A | |
| Section 3.2 | June 1st to August 31st 2006 |
| Part A | |
| Section 3.3 | May 1st to July 31st 2002 |
| Part A | |
| Section 3.4 | May 1st to July 31st 2002 |
| Part A | |
| Section 3.6 | January 1st to March 31st 2004 |

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| <i>Any installation where an activity falling within the following Sections of Part 1 of Schedule 1 is carried out or any mobile plant used to carry out such an activity</i> | <i>Relevant Period</i> |
|---|-----------------------------------|
| Part A | |
| Section 4.1 | |
| Part A | January 1st to March 31st 2003 |
| Paragraphs (a) (i), (v), (vi), (vii) and (xii), (e) and (f) | June 1st to August 31st 2003 |
| | January 1st to March 31st 2006 |
| Paragraphs (a) (ii), (iii), (iv) | June 1st to August 31st 2006 |
| Paragraphs (a) (viii) and (ix), (b) (c) and (d) | |
| Paragraph (a) (x) to (xi) | |
| Section 4.2 | |
| Part A | October 1st to December 31st 2004 |
| Paragraph (a) (i),(ii),(iii) and (vi) | June 1st to August 31st 2005 |
| Paragraph (a) (iv) and (v) | October 1st to December 31st 2004 |
| Paragraphs (b) to (f) | |
| Section 4.3 | June 1st to August 31st 2005 |
| Part A | |
| Section 4.4 | January 1st to March 31st 2006 |
| Part A | |
| Section 4.5 | January 1st to March 31st 2006 |
| Part A | |
| Section 4.6 | January 1st to March 31st 2006 |
| Part A | |
| Section 4.7 | October 1st to December 31st 2004 |
| Part A | |
| Section 5.1 | June 1st to August 31st 2005 |
| Part A | |
| Section 5.2 | January 1st to March 31st 2007 |
| Part A | |
| Section 5.3 | |

| <i>Any installation where an activity falling within the following Sections of Part 1 of Schedule 1 is carried out or any mobile plant used to carry out such an activity</i> | <i>Relevant Period</i> |
|---|-----------------------------------|
| Part A | June 1st to August 31st 2005 |
| Paragraph (a) and (b) | January 1st to March 31st 2004 |
| Paragraph (c)(i) | June 1st to August 31st 2004 |
| Paragraph (c)(ii) | |
| Section 5.4 | January 1st to March 31st 2005 |
| Part A | |
| Section 5.5 | January 1st to March 31st 2004 |
| Part A | |
| Section 6.1 | April 1st to June 30th 2001 |
| Part A | |
| Section 6.2 | January 1st to March 31st 2004 |
| Part A | |
| Section 6.3 | |
| Part A | January 1st to March 31st 2004 |
| Paragraph (i) | October 1st to December 31st 2001 |
| Paragraph (ii) | |
| Section 6.4 | October 1st to December 31st 2002 |
| Part A | |
| Section 6.5 | October 1st to December 31st 2002 |
| Part A | |
| Section 6.6 | June 1st to August 31st 2006 |
| Part A | |
| Section 6.8 | |
| Part A | May 1st to July 31st 2002 |
| Paragraph (a) | June 1st to March 31st 2004 |
| Paragraphs (b) and (c) | June 1st to August 31st 2004 |
| Paragraph (d) (i) | January 1st to March 31st 2005 |

| <i>Any installation where an activity falling within the following Sections of Part 1 of Schedule 1 is carried out or any mobile plant used to carry out such an activity</i> | <i>Relevant Period</i> |
|---|-----------------------------------|
| Paragraphs (d) (ii), (e) and (f) | |
| Section 6.9 | October 1st to December 31st 2006 |
| Part A | |
| <p>(3) For the purpose of sub-paragraph (2), where an activity falls within a description in Part A of more than one Section of Part 1 of Schedule 1, it shall be regarded as falling only within that description which fits it most aptly.</p> <p>(4) Subject to sub-paragraph (5), where more than one activity falling within Part A of any Section in Part 1 of Schedule 1 is carried out in an existing Part A installation or using an existing Part A mobile plant, the relevant period for that installation or mobile plant shall be the period beginning with the earliest date listed against one of those activities in the table in sub-paragraph (2).</p> <p>(5) Where more than one activity falling within Part A of any Section in Part 1 of Schedule 1 is carried out in an existing Part A installation, the operator of the installation may apply to SEPA to determine that the relevant period for the installation shall not be the period determined by sub-paragraph (4) but the later period listed in the table in sub-paragraph (2) against the primary activity of the installation.</p> <p>(6) An application under sub-paragraph (5) shall be in writing (or in electronic form acceptable to SEPA) and shall –</p> <ul style="list-style-type: none"> (a) identify the installation concerned; (b) list the activities falling within Part A of any Section in Part 1 of Schedule 1 which are carried on in the installation; and (c) identify which of those activities the operator considers to be the primary activity, <p>and shall be submitted at least 3 months before the beginning of the period which would be the relevant period for the installation concerned under sub-paragraph (4).</p> <p>(7) Where SEPA receives a duly made application under sub-paragraph (5) it shall, if it agrees with the operator that the activity identified pursuant to sub-paragraph (6)(b) is the primary activity, serve notice of its determination on the operator, and the later period listed against that activity in sub-paragraph (2) shall be the relevant period for the installation.</p> <p>(8) Where SEPA does not agree with the operator as mentioned in sub-paragraph (7) it shall serve notice of its determination on the operator and the relevant period for the installation shall be the period determined by sub-paragraph (4).</p> <p>(9) SEPA shall serve notice of its determination of any application made under sub-paragraph (5) within 2 months of receiving the application.</p> <p>(10) Where there is more than one operator of an installation, an application under sub-paragraph (5) shall be made by the operators of the installation jointly and the references in sub-paragraphs (6) to (8) to the operator shall be construed as a reference to all of the operators.</p> <p>(11) For the purpose of sub-paragraphs (5) to (9) the primary activity of an installation is the activity the carrying out of which constitutes the primary purpose for operating the installation.</p> <p>3. For the purpose of paragraphs 1 and 2, where separate applications are made to operate different parts of a Part A installation–</p> | |

- (a) the date by which applications have been made in relation to all parts of the installation shall be treated as the date on which an application for a permit to operate the installation is made;
- (b) an application for a permit to operate the installation shall only be treated as having been duly made if each of the separate applications are duly made;
- (c) the determination date for the installation shall be, in relation to each part of the installation which is covered by a separate application, the determination date for that part of the installation.

4.—(1) Where there is a substantial change in the operation of an existing Part A installation on or after 31st October 1999 and before the transitional date, the prescribed date for that part of the installation affected by the change shall be—

- (a) where an application for a permit authorising the operation of that part of the installation is duly made before the transitional date, the determination date for that part of the installation;
- (b) where no such application is made, the transitional date.

(2) Where there is a substantial change in the operation of an existing Part A installation on or after the transitional date, the prescribed date for that part of the installation affected by the change shall be the date on which the change is made if earlier than the date which would be the prescribed date for the installation under paragraph 2.

5.—(1) Subject to sub-paragraph (2), an application for a permit to operate an existing Part A installation or Part A mobile plant shall not be made before the beginning of the relevant period for that installation or mobile plant without the consent of SEPA.

(2) Where an operator of an existing Part A installation proposes to make a substantial change in the operation of the installation the operator may make an application before the beginning of the relevant period for a permit to operate that part of the installation that will be affected by the substantial change.

6. In this Part of this Schedule—

“determination date” means—

- (a) for an installation, part of an installation or mobile plant in relation to which a permit is granted, the date on which it is granted, whether in pursuance of the application for the permit or, on an appeal, of a direction to grant it;
- (b) for an installation, part of an installation or mobile plant 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 installation, part of an installation or mobile plant in relation to which a permit is refused and—
 - (i) no appeal is made to the Scottish Ministers 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;
 - (ii) following determination of an appeal to the Scottish Ministers, no appeal is then made to the sheriff, the twenty second day after that determination; or
 - (iii) where any further appeal is taken, the day after the expiry of the period allowed for appeal therefrom (or, if there is no such date, the date of final determination of such appeal);

“existing” means, in relation to a Part A installation or a Part A mobile plant—

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- (a) an installation or mobile plant which is put into operation before 31st October 1999; or
- (b) an installation or mobile plant which is put into operation on or after that date but before 31st October 2000, provided that—
 - (i) the operation of the installation or mobile plant was authorised by the relevant authorisation before 31st October 1999; or
 - (ii) an application for such authorisation was duly made before that date;

“new” means, in relation to a Part A installation or a Part A mobile plant, an installation or plant which is put into operation on or after 31st October 1999 other than an existing Part A installation or Part A mobile plant;

“relevant authorisation” means, in relation to the operation of a Part A installation or Part A mobile plant—

- (a) where the operation of the installation or mobile plant immediately before 31st October 1999 requires an authorisation under Part I of the Environmental Protection Act 1990, an authorisation under that Part of that Act;
- (b) where the operation of the installation or mobile plant immediately before 31st October 1999 requires a waste management licence under Part II of the Environmental Protection Act 1990, a waste management licence under that Part of that Act;
- (c) in any other case, planning permission granted under the Town and Country Planning (Scotland) Act 1997;

“relevant period” shall be interpreted in accordance with paragraph 2(5);

“transitional date” means the date 6 months after the date on which these Regulations come into force.

PART 2

PART B INSTALLATIONS AND MOBILE PLANT

7. The prescribed date for a new Part B installation or new Part B mobile plant is the relevant date for that installation or mobile plant.

8. The prescribed date for an existing Part B installation or existing Part B mobile plant is the determination date for that installation or mobile plant.

9.—(1) Subject to the following provisions of this paragraph, no application for a permit to operate an existing Part B installation or existing Part B mobile plant shall be made to SEPA.

(2) Where an operator of a Part B installation or a Part B mobile plant proposes to put the installation or mobile plant into operation during the 4 month period ending on the relevant date for the installation or mobile plant, that person may make an application for a permit to operate that installation or mobile plant.

(3) The operator of an existing Part B installation or existing Part B mobile plant shall, unless that person has made an application to operate the installation or mobile plant under sub-paragraph (2), be deemed to have made an application for a permit to operate that installation or mobile plant six months before the first review date for the existing Part B authorisation (calculated in accordance with section 6(6) of the Environmental Protection Act 1990⁽²⁷⁾) falling after the relevant date for that installation or mobile plant.

⁽²⁷⁾ Section 6(6) is amended and section 6(6A) is inserted by paragraph 3(2) of Schedule 10 to these Regulations.

(4) Where sub-paragraph (3) applies in relation to an existing Part B installation and different parts of the installation are operated by different operators, each operator shall be deemed to have been made an application to operate that part of the installation which they operate.

(5) Schedule 4 shall not apply to a deemed application under sub-paragraph (3).

(6) SEPA shall give notice of its determination of a deemed application under sub-paragraph (3) to the applicant within the period of 12 months beginning with the date on which the application is deemed to have been made and if SEPA fails to give notice of its determination within that period the application shall, if the applicant notifies SEPA in writing (or in electronic form acceptable to it) that the applicant treats the failure as such, be deemed to have been refused at the end of that period.

(7) Where sub-paragraph (3) applies SEPA shall, within 2 months of the date on which the application is deemed to have been made, notify the operator of the installation or mobile plant of the deemed application and of the requirements of sub-paragraph (6).

(8) Where separate applications are deemed to have been made under sub-paragraph (4) to operate different parts of a Part B installation the prescribed date for the installation shall be, in relation to each part of the installation covered by a separate application, the determination date for that part of the installation.

10. For the purpose of this Part of this Schedule the relevant date for a Part B installation or a Part B mobile plant shall be 31st December 2002.

11. In this Part of this Schedule—

“determination date”, in relation to an installation or mobile plant to which this Part applies, has the same meaning as in Part 1 of this Schedule;

“existing” means, in relation to a Part B installation or Part B mobile plant, an installation or mobile plant which is put into operation before the relevant date for that installation or mobile plant;

“new” means, in relation to a Part B installation or Part B mobile plant, an installation or mobile plant which is put into operation on or after the relevant date for that installation or mobile plant;

“relevant date” shall be interpreted in accordance with paragraph 10.

SCHEDULE 4

Regulation 7(12)

GRANT OF PERMITS

PART 1

APPLICATIONS FOR PERMITS

1.—(1) An application to SEPA for a permit under regulation 7 shall be in writing (or in electronic form acceptable to it) and, subject to paragraphs 2 and 3, shall contain the following information:—

- (a) the name of the applicant, his telephone number, address (including post code) and e-mail address (if any) and, if different, any address or e-mail address to which correspondence relating to the application should be sent and, if the applicant is a body corporate, its registered number, the address of its registered or principal office and, if that body corporate is a subsidiary of a holding company (within the meaning of section 736 of the

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Companies Act 1985(28)), the name of the ultimate holding company and the address of its registered or principal office;

- (b) in the case of an application for a permit to operate an installation or Part A mobile plant, the address of the site of the installation or mobile plant and its national grid reference, a map or plan showing that site and, in the case of an installation, the location of the installation on that site, and the name of any local authority in whose area the site is situated;
- (c) in the case of an application for a permit to operate a Part B mobile plant, the name of the local authority in whose area the applicant has his principal place of business and the address of that place of business or, where the operator of the mobile plant has his principal place of business outside of Scotland, the name of the local authority in whose area the plant was first operated or, where the plant has not been operated in Scotland, the local authority in whose area it is intended by the operator that the plant will first be operated;
- (d) in the case of an application for a permit to operate a Part A installation or a Part A mobile plant, a site report containing the information required by sub-paragraph (2);
- (e) a description of the installation or mobile plant, the activities listed in Part 1 of Schedule 1 to be carried out in the installation or by means of the mobile plant, and, in the case of an installation, any other directly associated activities to be carried out on the same site as the installation which will have a technical connection with those listed activities and which could have an effect on pollution;
- (f) the raw and auxiliary materials and other substances and the energy to be used in or generated by the carrying out of the activities referred to in paragraph (e);
- (g) the nature, quantities and sources of foreseeable emissions from the installation or mobile plant into each environmental medium, and a description of any foreseeable significant effects of the emissions on the environment;
- (h) the proposed technology and other techniques for preventing or, where that is not practicable, reducing and rendering harmless emissions from the installation or mobile plant;
- (i) the proposed measures to be taken to monitor the emissions;
- (j) a description of the measures to be taken for the prevention and recovery of waste generated by the operation of the installation or mobile plant;
- (k) a description of any proposed additional measures to be taken to comply with the general principles set out in regulation 8(2);
- (l) in the case of an application for a permit to operate a Part A installation, any relevant information obtained or conclusion arrived at in relation to the installation pursuant to articles 5, 6 and 7 of Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment(29);
- (m) in the case of an application for a permit to operate an installation or mobile plant covered by general binding rules, a statement as to whether the applicant wishes the aspects of the operation of the installation or mobile plant covered by the requirements in the rules to be subject to those requirements instead of conditions included in the permit pursuant to regulation 9;
- (n) in the case of an application for a permit that will authorise the carrying out of a specified waste management activity at an installation or by means of mobile plant, any information which the applicant wishes SEPA to take into account when considering whether the applicant is a fit and proper person to carry out that activity;

(28) [1985 c. 6](#); section 736 was substituted by section 144(1) of the Companies Act [1989 \(c. 40\)](#).

(29) O.J. No. L 175, 5.7.85, p. 40 (as amended by Council Directive [97/11/EC](#) (O.J. No. L 73, 14.3.97, p.5)).

(o) any additional information which the applicant wishes SEPA to take into account in considering the application;

(p) a non-technical summary of the information referred to in the previous sub-paragraphs.

(2) The site report required by paragraph 1(d) shall describe the condition of the site of the installation or Part A mobile plant and shall, in particular, identify any substance in, on or under the land which may constitute a pollution risk.

2. Paragraphs 1(1)(f), (j), and (p) shall not apply in relation to an application for a permit to operate a Part B installation or a Part B mobile plant, and, in relation to such an application, the reference to emissions from the installation or mobile plant into each environmental medium in paragraph 1(1)(g) shall be read as a reference to emissions from the installation or mobile plant into the air.

3.—(1) Paragraph 1 shall apply in relation to an application for a permit to operate an installation involving the burning of waste oil in an appliance with a rated thermal input of less than 0.4 megawatts 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 number, if any, of the appliance used for the burning of the waste oil, and the name of its manufacturer, its rated thermal input of the appliance and whether or not it is constructed or adapted so as to comply with the specification for fixed, flued fan-assisted heaters in Part 2 of the specification for oil-burning air heaters published by the British Standards Institution and numbered BS 4256 1972;

(f) details of the type of fuel to be used and its source;

(g) details of the height and location of any chimney through which waste gases produced by the appliance would be carried away and details of the efflux velocity of the waste gases leaving such a chimney produced by the appliance in normal operation;

(h) details of the location of the fuel storage tanks of the appliance;”.

(2) In this paragraph and in paragraphs 8 and 10 “waste oil” has the same meaning as in Section 1.1 of Part 1 of Schedule 1.

4. SEPA may, by notice to the applicant, require that person to furnish such further information specified in the notice, within the period so specified, as it may require for the purpose of determining the application and if the applicant fails to furnish the specified information within the period specified, the application shall, if SEPA gives notice to the operator that it treats the failure as such, be deemed to have been withdrawn at the end of that period.

5. Subject to paragraph 23, the applicant shall, within a period of 28 days beginning 14 days after the day on which the application is made, advertise the application—

(a) in the case of an application for a permit to operate an installation or Part A mobile plant, in one or more newspapers circulating in the locality in which the installation or mobile plant covered by the application will be operated; and

(b) in the case of an application for a permit to operate a Part A installation or Part A mobile plant, in the Edinburgh Gazette.

6. An advertisement required by paragraph 5 shall—

(a) state the name of the applicant;

(b) in the case of an application for a permit to operate an installation or Part A mobile plant, state the address of the site of the installation or mobile plant;

(c) describe briefly the activities in Part 1 of Schedule 1 to be carried out in the installation or mobile plant;

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- (d) state that the application contains a description of any foreseeable significant effects of emissions from the installation or mobile plant on the environment;
- (e) state where any register which contains particulars of the application may be inspected and that it may be inspected free of charge;
- (f) explain that any person may make representations to SEPA in writing (or in electronic form acceptable to it) within the period of 28 days beginning with the date of the advertisement and give SEPA's address (including its e-mail address) for receiving the representations;
- (g) explain that any such representations made by any person will be entered in a public register unless that person requests in writing (or in electronic form acceptable to SEPA) that they should not be so entered, and that where such a request is made there will be included in the register a statement indicating only that representations have been made which have been the subject of such a request.

7. Where an application is for a permit to operate more than one installation or mobile plant the application and the advertisement required by paragraph 5 shall contain the information required by paragraphs 1 and 6 respectively in relation to each installation or mobile plant.

8. Paragraph 5 shall not apply in relation to an application for a permit to operate an installation involving only the burning of waste oil in an appliance with a rated thermal input of less than 0.4 megawatts or the carrying out of an activity falling within paragraph (c)(ii) of Part B of Section 1.2 of Part 1 of Schedule 1 (unloading of petrol at service stations).

PART 2

DETERMINATION OF APPLICATIONS

9. Subject to paragraph 23, SEPA shall, within 14 days of receiving an application for a permit, give notice of the application, enclosing a copy of it, to the following persons:—

- (a) in the case of an application for a permit to operate an installation or Part A mobile plant, the Health Board in whose area the installation or mobile plant will be operated;
- (b) in the case of an application for a permit to operate a Part A installation or Part A mobile plant —
 - (i) the Food Standards Agency⁽³⁰⁾;
 - (ii) where the operation of the installation or mobile plant may involve the release of any substance into a sewer vested in a water and sewerage authority (established under the Local Government etc. (Scotland) Act 1994⁽³¹⁾), that authority;
 - (iii) where the operation of the installation or mobile plant may involve an emission which may affect a site of special scientific interest or a European site (within the meaning of regulation 10(1) of the Conservation (Natural Habitats, &c.) Regulations 1994⁽³²⁾), Scottish Natural Heritage (and where such operation may involve an emission which may affect such a site in England, the Nature Conservancy Council for England);
 - (iv) where the operation of the installation or mobile plant may involve the release of any substance into a harbour managed by a harbour authority (within the meaning of section 57 (1) of the Harbours Act 1964⁽³³⁾), that harbour authority;

⁽³⁰⁾ See section 1 of the Food Standards Act 1999 (c. 28).

⁽³¹⁾ 1994 c. 39.

⁽³²⁾ S.I. 1994/2716.

⁽³³⁾ 1964 c. 40.

- (c) in the case of an application for a permit to operate a Part B installation where the operation of the installation may involve an emission which may affect a site of special scientific interest or a European site (within the meaning of regulation 10(1) of the Conservation (Natural Habitats, &c.) Regulations 1994), Scottish Natural Heritage (and where such operation may involve an emission which may affect such a site in England, the Nature Conservancy Council for England);
- (d) in the case of an application for a permit to operate a Part A installation or a Part B installation on a site in respect of which a nuclear site licence is required under section 1 of the Nuclear Installations Act 1965⁽³⁴⁾ or in respect of which a major accident prevention policy document is required under regulation 5 of the Control of Major Accident Hazards Regulations 1999⁽³⁵⁾ or a safety report is required under regulation 7 of those Regulations, the Health and Safety Executive⁽³⁶⁾;
- (e) in the case of all applications, the local authority in whose area the installation is situated or the mobile plant is intended to be operated and such other persons as the Scottish Ministers may direct.

10. Paragraph 9 shall not apply in relation to an application for a permit to operate an installation involving only the burning of waste oil in an appliance with a rated thermal input of less than 0.4 megawatts.

11.—(1) If SEPA proposes to grant a permit subject to an off-site condition, it shall, before granting the permit, give a notice which complies with sub-paragraph (2) to every person appearing to it to be a person falling within sub-paragraph (3).

(2) A notice served under sub-paragraph (1) shall—

- (a) set out the off-site condition in question;
- (b) indicate the nature of the works or things which that condition might require the holder of the permit to carry out or do; and
- (c) specify the period allowed for the purpose of paragraph 12 for making representations to SEPA relating to the condition or its possible effects and the manner in which any such representations are to be made.

(3) A person falls within this sub-paragraph if—

- (a) that person is the owner, tenant or occupier of the land; and
- (b) that land is land in relation to which it is likely that, as a consequence of the permit being issued subject to the off-site condition in question, rights will have to be granted by virtue of regulation 9(13) to the holder of the permit.

(4) In sub-paragraph (3), “owner” means the person (other than a creditor in a heritable security not in possession of the security subjects) for the time being entitled to receive or who, if the land were let, would be entitled to receive, the rents of the land in connection with which the land is used and includes a trustee, factor, guardian or curator and in the case of public or municipal land includes the persons to whom management of the land is entrusted.

12.—(1) Any representations made by any persons within the period allowed shall be considered by SEPA in determining the application.

(2) For the purpose of sub-paragraph (1), the period allowed for making representations is—

- (a) in the case of persons to whom notice is given pursuant to paragraph 9 or 11, the period of 28 days beginning with the date on which notice is given under the relevant paragraph;

⁽³⁴⁾ 1965 c. 57; section 1 was amended by S.I. 1974/2056 and S.I. 1990/1918.

⁽³⁵⁾ S.I. 1999/743.

⁽³⁶⁾ See section 10 of the Health and Safety at Work etc. Act 1974 (c. 37).

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- (b) in the case of other persons, the period of 28 days beginning with the date on which the application is advertised pursuant to paragraph 5.

13. In the case of an application for a permit to operate a Part A installation, any relevant information obtained or conclusion arrived at pursuant to Articles 5, 6 and 7 of Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment in relation to the installation shall be taken into consideration by SEPA in determining the application.

14.—(1) The Scottish Ministers may give directions to SEPA requiring that any particular application or any class of applications for a permit shall be referred to them for determination pending a further direction under sub-paragraph (6).

(2) SEPA shall inform the applicant of the fact that the application is being referred to the Scottish Ministers and forward to them any representations which have been made to SEPA within the period allowed.

(3) Where an application for a permit is referred to them under sub-paragraph (1), the Scottish Ministers may afford the applicant and SEPA an opportunity of appearing before and being heard by a person appointed by them and they shall do so in any case where a request is duly made by the applicant or SEPA to be so heard.

(4) A request under sub-paragraph (3) shall be in writing (or in electronic form) and shall be made within the period of 21 days beginning with the day on which the applicant is informed that the application is being referred to the Scottish Ministers.

(5) Paragraphs 4(2) to (10) of Schedule 8 shall apply to a hearing held under sub-paragraph (3) as they apply to a hearing held under paragraph 4(1) of that Schedule but with the following modifications:—

- (a) with the substitution in sub-paragraph (3) for the reference to the appellant of a reference to the applicant;
- (b) with the substitution in sub-paragraph (4)—
 - (i) for the reference to the appeal of a reference to the application; and
 - (ii) for the reference to every person mentioned in paragraph 3(1)(a) of Schedule 8 and every person mentioned in paragraph 3(1)(b) and (c) of that Schedule who has made representations to the Scottish Ministers of a reference to every person who was required to be given notice under paragraph 9 of this Schedule and to any person who made representations to SEPA with respect to the subject matter of the application;
- (c) with the substitution in sub-paragraph (7)—
 - (i) for the reference in sub-paragraph (7)(a) to the appellant of a reference to the applicant;
 - (ii) for the reference in sub-paragraph (7)(c) to any person required under paragraph 3(1) (a) of Schedule 8 to be notified of the appeal of a reference to any person required under paragraph 9 of this Schedule to be notified of the application.

(6) In relation to SEPA and the applicant, regulation 22(5) and (6) shall apply to any determination by the Scottish Ministers of any application referred to them under sub-paragraph (1) as it applies to decisions made by the Scottish Ministers under regulation 22(1) or (2).

(7) On determining any application transferred under this paragraph the Scottish Ministers shall (or, on determining an appeal, the sheriff, may) give to SEPA such a direction as considered fit as to whether it is to grant the application and, if so, as to the conditions that are to be attached to the permit by means of the variation notice.

15.—(1) Except in a case where an application has been referred to the Scottish Ministers under paragraph 14 and subject to paragraph 18, SEPA shall give notice of its determination of an application for a permit within the period of 4 months beginning with the day on which it received the application or within such longer period as may be agreed with the applicant.

(2) For the purpose of calculating the 4 month period mentioned in sub-paragraph (1), no account shall be taken of—

- (a) any period beginning with the date on which notice is served on the applicant under paragraph 4 and ending on the date on which the applicant furnishes the information specified in the notice;
- (b) any period allowed for making representations in relation to a notice given pursuant to paragraph 11 in so far as that period does not overlap with any other period allowed for making representations in accordance with paragraph 12;
- (c) where a matter falls to be determined for the purposes of regulation 28 or under regulation 29, any period beginning with the date on which the period of 28 days referred to in paragraph 5 ends and ending on the date on which the application is advertised in accordance with paragraph 23(a).

16. If SEPA fails to give notice of its determination of an application for a permit within the period allowed by or under paragraph 15, the application shall, if the applicant notifies SEPA in writing (or in electronic form acceptable to SEPA) that the applicant treats the failure as such, be deemed to have been refused at the end of that period.

17. Where the Scottish Ministers are aware that the operation of an installation carrying out an activity listed in Annex I to the Directive in Scotland is likely to have significant negative effects on the environment of another Member State, or where another Member State likely to be significantly affected so requests, they shall forward to the Secretary of State a copy of the application to operate that installation for onward transmission to the other Member State at the same time as the application is advertised pursuant to paragraph 5 (or as soon as they become so aware or receive such a request, if they become so aware or receive such a request after the application is advertised but before the application is determined) in order that the application may serve as the basis for any consultations necessary in the framework of the bilateral relations between the United Kingdom and the other Member State on a reciprocal and equivalent basis, as referred to in Article 17 of the Directive.

18.—(1) Where an application is forwarded for onward transmission to another Member State pursuant to paragraph 17 the Scottish Ministers shall notify the applicant and SEPA and, in a case where the application has not been referred to them under paragraph 14—

- (a) SEPA shall not determine the application until the Scottish Ministers have notified it in writing (or in electronic form) that the bilateral consultations mentioned in paragraph 17 have been completed and have forwarded to it any representations duly made on the application by persons in the other Member State which have been forwarded to the Scottish Ministers; and
- (b) the 4 month period within which to give notice of determination of the application set out in paragraph 15 shall begin on the date on which SEPA receives notification from the Scottish Ministers that the bilateral consultations have been completed.

(2) In determining an application which is forwarded to another Member State pursuant to paragraph 17, SEPA, or the Scottish Ministers if the application has been referred to them, shall take into consideration any representations duly made in the other Member State which have been forwarded to the Scottish Ministers.

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19. In paragraphs 17 and 18, “Member State” shall be taken to include Norway, Iceland and Liechtenstein⁽³⁷⁾.

PART 3

NATIONAL SECURITY AND CONFIDENTIAL INFORMATION

20. The requirements of paragraph 5 of this Schedule shall not apply in so far as they would require the advertisement of information mentioned in paragraph 6 which is not to be included in the register by virtue of regulation 28 or 29.

21. Subject to paragraph 22, the requirements of paragraph 9 of this Schedule shall not apply in so far as they would require a person mentioned in that paragraph to be given information which is not included in the register by virtue of regulation 28 or 29.

22. Paragraph 21 does not apply in so far as—

- (a) in the case of an authority mentioned in paragraph 9(b)(ii), the information is about the release of any substance into a sewer vested in that authority;
- (b) in the case of Scottish National Heritage, the information is about the release of any substance which may affect a site of special scientific interest or a European site (within the meaning of regulation 10(1) of the Conservation (Natural Habitats, Etc.) Regulations 1994);
- (c) in the case of an authority mentioned in paragraph 9(b)(iv), the information is about the release of any substance into a harbour managed by that authority.

23. Where a matter falls to be determined for the purposes of regulation 28 or under regulation 29—

- (a) the period within which an advertisement is to be published under paragraph 5 shall be 28 days beginning 14 days after the day on which the matters to be determined for the purposes of regulation 28 or under regulation 29, as the case may be, are finally disposed of;
- (b) the period for notification under paragraph 9 of this Schedule shall be the period of 14 days beginning 14 days after the day on which the matters to be determined for the purposes of regulation 28 or under regulation 29, as the case may be, are finally disposed of.

24. For the purposes of paragraph 23 and paragraph 13 of Schedule 7, the matters to be determined under regulation 29 are finally disposed of—

- (a) in a case where SEPA determines under regulation 29(2) or (4) that the information in question is commercially confidential, on the date of SEPA’s determination;
- (b) in a case where SEPA determines under regulation 29(2) or (4) that the information in question is not commercially confidential, on the date on which any period for bringing an appeal expires without an appeal being brought or, if such an appeal is brought, on the date of the final determination of the appeal or, as the case may be, the date on which the appeal is withdrawn.

(37) The Directive is extended to the European Economic Area by the decision of the EEA Joint Committee No. 27/97 of 30th April 1997 (O.J. L 242, 4.9.97, p.76).

SCHEDULE 5

Regulation 9(17)

POLLUTANTS

Indicative list of the main polluting substances to be taken into account if they are relevant for fixing emission limit values—

AIR

1. Sulphur dioxide and other sulphur compounds
2. Oxides of nitrogen and other nitrogen compounds
3. Carbon monoxide
4. Volatile organic compounds
5. Metals and their compounds
6. Dust
7. Asbestos (suspended particulates, fibres)
8. Chlorine and its compounds
9. Fluorine and its compounds
10. Arsenic and its compounds
11. Cyanides
12. Substances and preparations which have been proved to possess carcinogenic or mutagenic properties or properties which may affect reproduction via the air.
13. Polychlorinated dibenzodioxins and polychlorinated dibenzofurans

WATER

1. Organohalogen compounds and substances which may form such compounds in the aquatic environment
2. Organophosphorus compounds
3. Organotin compounds
4. Substances and preparations which have been proved to possess carcinogenic or mutagenic properties or properties which may affect reproduction in or via the aquatic environment
5. Persistent hydrocarbons and persistent and bioaccumulable organic toxic substances
6. Cyanides
7. Metals and their compounds
8. Arsenic and its compounds
9. Biocides and plant health products
10. Materials in suspension
11. Substances which contribute to eutrophication (in particular, nitrates and phosphates)
12. Substances which have an unfavourable influence on the oxygen balance (and can be measured using parameters such as BOD, COD, etc.).

SCHEDULE 6

Regulation 9(17)

COMPENSATION IN RELATION TO OFF-SITE CONDITIONS

1.—(1) This Schedule applies in any case where—

- (a) an operator is required by an off-site condition in that person's permit to carry out works or do other things in relation to land not forming part of the site of the installation or mobile plant notwithstanding that such person is not entitled to carry out the works or do the things;
- (b) a person whose consent is required has, pursuant to the requirements of regulation 9(13), granted, or joined in granting, to the operator any rights in relation to the land; and
- (c) those rights, or those rights together with other rights, are such as will enable the operator to comply with any requirements imposed on the operator by the off-site condition.

(2) In this Schedule –

“grantor” means a person mentioned in sub-paragraph (1)(b);

“relevant interest” means an interest in land in respect of which rights have been granted pursuant to the requirements of regulation 9(13).

2. In a case where this Schedule applies, any person who has granted, or joined in granting, the rights in question shall be entitled to be paid compensation under this Schedule by the operator.

3. Subject to paragraph 6(3) and (5)(b), compensation shall be payable under this Schedule for loss and damage of the following descriptions:—

- (a) depreciation in the value of any relevant interest to which the grantor is entitled which results from the grant of the rights;
- (b) depreciation in the value of any other interest in land to which the grantor is entitled which results from the exercise of the rights;
- (c) loss or damage, in relation to any relevant interest to which the grantor is entitled, which—
 - (i) is attributable to the grant of the rights or the exercise of them;
 - (ii) does not consist of depreciation in the value of that interest; and
 - (iii) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance if that interest had been acquired compulsorily under the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947⁽³⁸⁾ in pursuance of a notice to treat served on the date on which the rights were granted;
- (d) damage to, or injurious affection of, any interest in land to which the grantor is entitled which is not a relevant interest, and which results from the grant of the rights or the exercise of them;
- (e) loss in respect of work carried out by or on behalf of the grantor which is rendered abortive by the grant of the rights or the exercise of them
- (f) the amount of any valuation and legal expenses reasonably incurred by the grantor in granting the right and in the preparation of the application for and the negotiation of the amount of compensation (up to the point of referral to the Lands Tribunal for Scotland under paragraph 8(2)).

4.—(1) Subject to sub-paragraph (2), an entitlement to compensation under this Schedule arises on the date of the grant of the rights.

(38) 1947 c. 42.

(2) Where, after a grant of rights pursuant to regulation 9(13), the conditions of the permit which rendered the grant of rights necessary are upheld on the final determination of an appeal against those conditions, the entitlement to compensation arises on the date of the final determination of the appeal.

5.—(2) An application for compensation under this Schedule shall be made by the grantor—

- (a) within 12 months from the date on which the entitlement to compensation arises in the case of that grantor; or, as the grantor may decide,
- (b) within six months from the date on which the rights are first exercised.

(2) An application shall be made in writing (or in electronic form) to the operator to whom the rights were granted and delivered at or sent by pre-paid post to the last known address for correspondence of that person.

(3) The application shall contain, or be accompanied by—

- (a) a copy of the grant of rights in respect of which the grantor's entitlement arises, and of any plans attached to that grant;
- (b) a description of the exact nature of any interest in land in respect of which compensation is applied for;
- (c) a statement of the amount of compensation applied for, distinguishing the amounts applied for under each of sub-paragraphs (a) to (f) of paragraph 3, and showing how the amount applied for under each sub-paragraph has been calculated; and
- (d) where the date on which the entitlement to compensation arises is ascertained in accordance with paragraph 4(2), a copy of the notice of the final determination of the appeal.

6.—(1) The amount to be paid by way of compensation under this Schedule shall be assessed in accordance with the following sub-paragraphs.

(2) The rules set out in section 12 of the Land Compensation (Scotland) Act 1963⁽³⁹⁾ (rules for assessing compensation) shall, so far as applicable and subject to any necessary modifications, have effect for the purposes of this paragraph as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(3) No account shall be taken of any enhancement of the value of any interest in land, by reason of any building erected, work done or improvement or alteration made on any land in which the grantor is, or was at the time of erection, doing or making, directly or indirectly concerned, if the Lands Tribunal for Scotland is satisfied that the erection of the building, the doing of the work, the making of the improvement or the alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(4) In calculating the amount of any loss under paragraph 3(e), expenditure incurred in the preparation of plans or on other similar preparatory matters, shall be taken into account.

(5) Where the interest in respect of which compensation is to be assessed is subject to a standard security, within the meaning of section 9 of the Conveyancing and Feudal Reform (Scotland) Act 1970⁽⁴⁰⁾—

- (a) the compensation shall be assessed as if the interest were not subject to that security;
- (b) no compensation shall be payable in respect of the interest of the creditor (as distinct from the interest which is subject to the security); and

⁽³⁹⁾ 1963 c. 51. Section 12 was repealed in part by the Planning and Compensation Act 1991 (c. 34), Schedules 17 and 19.

⁽⁴⁰⁾ 1970 c. 35. Section 9 was amended by the [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000](#) (2000 asp 5), section 31, Schedule 10, paragraph 32(6) and Schedule 11.

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- (c) any compensation which is payable in respect of the interest which is subject to the security shall be paid (subject to the maximum due thereunder) to the creditor in that security or, if there is more than one creditor, to the first ranking of such creditors and shall, in either case, be applied by such creditor as if it were proceeds of sale.

7.—(1) Compensation payable under this shall carry interest at the rate for the time being prescribed under section 40 of the Land Compensation (Scotland) Act 1963 from the date specified in sub-paragraph (2) until payment.

(2) The date specified in this sub-paragraph is—

- (a) in the case of compensation payable by virtue of paragraph 3(a) or (b), the date of depreciation;
- (b) in the case of compensation payable by virtue of paragraph 3(c), (d) or (e), the date on which the loss is sustained or the damage done or, where injurious affection is sustained, the date of the injurious affection;
- (c) in the case of compensation payable by virtue of paragraph 3(f), the date on which the expenses become payable.

(3) If it appears to any person (“the first person”) that the first person may become liable to pay to another person (“the second person”) compensation under this Schedule or interest under this paragraph the first person may, if the second person requests in writing for the first person to do so, make one or more payments on account of such compensation or interest.

(4) If, after a payment has been made by any person under sub-paragraph (3)—

- (a) it is agreed or determined that compensation or interest is not liable to be paid; or
- (b) by reason of any agreement or determination, any payment under that sub-paragraph is shown to be excessive,

the payment or, as the case may be, excess shall be recoverable by that person.

8.—(1) Amounts of compensation determined under this Schedule shall be payable—

- (a) where the operator and the grantor or creditor in a standard security agree that a single payment is to be made on a specified date, on that date;
- (b) where the operator and the grantor or such a creditor agree that payment is to be made in instalments at different dates, on the date agreed as regards each instalment;
- (c) in any other case, subject to any direction of the Lands Tribunal for Scotland, as soon as reasonably practicable after the amount of the compensation has been finally determined.

(2) Any question of the application of paragraph 6(3) or of disputed compensation shall be referred to and determined by the Lands Tribunal for Scotland.

(3) In relation to the determination of any such question, sections 9 and 11 of the Land Compensation (Scotland) Act 1963 (procedure on reference to the Lands Tribunal and expenses)⁽⁴¹⁾ shall apply as if—

- (a) the reference in section 9(1) of that Act to section 8 of that Act were a reference to sub-paragraph (2), and
- (b) references in section 11 of that Act to the acquiring authority were references to the operator.

⁽⁴¹⁾ Section 9 was amended by the Local Government, Planning and Land Act 1980 (c. 65), Schedule 33, paragraph 7(2).

SCHEDULE 7

Regulation 13(8)

PART 1

APPLICATIONS FOR VARIATION OF CONDITIONS

1. An application under regulation 13(2) for the variation of the conditions of a permit shall be in writing (or in electronic form) and shall contain the following information:—

- (a) the name of the applicant, that person's telephone number, address (including post code) and e-mail address (if any) and, if different, the address or e-mail address to which correspondence relating to the application should be sent;
- (b) in the case of a permit to operate an installation or Part A mobile plant, the address of the site of the installation or mobile plant to which the permit applies;
- (c) if appropriate, a description of the proposed change in the operation of the installation or mobile plant requiring the variation and a statement of any changes as respects the matters dealt with in paragraph 1(1)(f) to (k) of Schedule 4 which would result if the proposed change were made;
- (d) in the case of a variation required by a proposed substantial change in the operation of a Part A installation, any relevant information obtained or conclusion arrived at in relation to the proposed change pursuant to articles 5, 6 and 7 of Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment⁽⁴²⁾;
- (e) an indication of the variations to the conditions of the permit which the operator wishes SEPA to make;
- (f) any additional information which the operator wishes SEPA to take into account in considering the application.

2. If a proposed change in the operation of a Part A installation or Part A mobile plant will result in additional land being included within the site of the installation or mobile plant, the application shall also contain a site report for that additional land describing the condition of the land, in particular, identifying any substance in, on or under the land which may constitute a pollution risk.

3. SEPA may, by notice in writing (or in electronic form) to the applicant, require the applicant to furnish such further information specified in the notice, within the period so specified, as it may require for the purpose of determining the application and where the applicant fails to furnish the specified information within the period specified, the application shall, if SEPA gives notice to the operator that it treats the failure as such, be deemed to have been withdrawn at the end of that period.

PART 2

DETERMINATION OF APPLICATIONS FOR VARIATIONS AND VARIATION NOTICES

4.—(1) Subject to paragraphs (3) and (4), this paragraph applies where—

- (a) an application is made for the variation of the conditions of a permit under regulation 13(2) which will authorise a substantial change in the operation of an installation or mobile plant; or

⁽⁴²⁾ O.J. No. L 175, 5.7.85, p.40 (as amended by Council Directive [97/11/EC](#) (O.J. No. L 73, 14.3.97 p.5)).

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- (b) SEPA proposes to serve a variation notice under regulation 13(5) otherwise than for the purposes of determining an application mentioned in paragraph (a) and the variation will authorise a substantial change in the operation of an installation or mobile plant.
- (2) Subject to sub-paragraphs (3) and (4), this paragraph shall also apply where an application is made for the variation of the conditions of a permit under regulation 13(2) or SEPA proposes to serve a variation notice under regulation 13(5) and SEPA determine that in the particular circumstances the procedure set out in the following sub-paragraphs should be followed even though no substantial change is involved (so that paragraph (1) does not apply).
- (3) This paragraph shall not apply where SEPA proposes to serve a variation notice—
 - (a) which has been modified to take account of representations made in accordance with this paragraph in relation to the SEPA's previous proposal to serve the notice without the modifications; or
 - (b) in order to comply with a direction given by the Scottish Ministers.
- (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 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.
- (5) Where this paragraph applies, SEPA shall—
 - (a) notify the operator that the paragraph applies by virtue of sub-paragraph (1) or a determination under sub-paragraph (2) and of any fee prescribed in respect of the variation on the application of this paragraph under section 41 of the Environment Act 1995;
 - (b) in the case of a proposed variation notice, serve a copy of the proposed notice on the operator;
 - (c) give notice of the application or proposed variation notice, enclosing a copy of it, to the persons to whom notice would have to be given in accordance with paragraph 9 of Schedule 4 in the case of an application for a permit to operate the installation or mobile plant.
- (6) In the case of an application to which this paragraph applies—
 - (a) SEPA shall, subject to paragraph 15(a), comply with sub-paragraph (5) within 14 days of receiving the application;
 - (b) if the applicant does not pay to SEPA any fee notified under sub-paragraph (5)(a) within 28 days of the notification, the application shall be deemed to have been withdrawn.
- (7) For the purpose of calculating the 14 day period mentioned in sub-paragraph (6)(a), no account shall be taken of any period beginning with the date on which notice is served on an operator under paragraph 3 and ending on the date on which the operator furnishes the information specified in the notice.
- (8) Subject to paragraph 15(b), an operator notified under sub-paragraph (5)(a) shall, within 28 days beginning on the day on which the notification is made, advertise the application or proposed variation notice, as the case may be—
 - (a) in the case of a variation affecting the operation of an installation or Part A mobile plant, in one or more newspapers circulating in the locality in which the installation or mobile plant is operated; and
 - (b) in the case of a Part A installation or Part A mobile plant, in the Edinburgh Gazette.
- (9) An advertisement required by sub-paragraph (8) shall—
 - (a) state the name of the operator;

- (b) in the case of a variation affecting the operation of an installation or Part A mobile plant, state the address of the site of the installation or mobile plant concerned;
- (c) describe briefly the activities in Part 1 of Schedule 1 carried out in the installation or by means of the mobile plant and the change in the operation of the installation or mobile plant that will be authorised by the variation;
- (d) state where any register containing particulars of the application or proposed variation notice may be inspected and that it may be inspected free of charge;
- (e) explain that any person may make representations to SEPA in writing (or in electronic form acceptable to it) within the period of 28 days beginning with the date of the advertisement and give the address of SEPA for receiving the representations;
- (f) explain that any such representations made by any person will be entered in a public register unless that person requests in writing (or in electronic form) that they should not be so entered, and that where such a request is made there will be included in the register a statement indicating only that representations have been made which have been the subject of such a request.

(10) Sub-paragraph (8) 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 which is only used to carry out an activity falling within paragraph (c)(ii) of Part B of Section 1.2 of Part 1 of Schedule 1 (unloading of petrol at service stations).

(11) Any representations made by any person within the period allowed shall be considered by SEPA in determining the application or before serving the variation notice.

(12) For the purpose of sub-paragraph (11), the period allowed for making representations is—

- (a) in the case of persons notified pursuant to sub-paragraph (5)(c), the period of 28 days beginning with the date on which notice of the application or proposed variation notice was given under that sub-paragraph;
- (b) in the case of other persons, the period of 28 days beginning with the date on which the application or proposed variation notice was advertised pursuant to sub-paragraph (8).

(13) Where this paragraph applies by virtue of sub-paragraph (1) to a variation affecting the operation of a Part A installation, any relevant information obtained or conclusion arrived at pursuant to Articles 5, 6 and 7 of Council Directive [85/337/EEC](#) on the assessment of the effects of certain public and private projects on the environment in relation to the substantial change shall be taken into consideration by SEPA in determining the application or before serving the variation notice.

5.—(1) If SEPA proposes to serve a variation notice which will result in the inclusion of an off-site condition in the permit concerned, it shall, before serving the variation notice, give a notice which complies with sub-paragraph (3) to every person appearing to it to be a person falling within sub-paragraph (2).

(2) A person falls within this sub-paragraph if—

- (a) that person is the owner, tenant or occupier of the land; and
- (b) that land is land in relation to which it is likely that, as a consequence of the off-site condition in question, rights will have to be granted by virtue of regulation 9(13) to the holder of the permit.

(3) A notice served under sub-paragraph (1) shall—

- (a) set out the off-site condition in question;
- (b) indicate the nature of the works or things which that condition might require the holder of the permit to carry out or do; and

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- (c) specify a period, not being less than 28 days beginning on the date on which the notice is served, in which representations may be made to SEPA relating to the condition or its possible effects and the manner in which any such representations are to be made.
- (4) In sub-paragraph (2), “owner” has the same meaning as in paragraph 11(4) of Schedule 4.
- (5) Any representations made by a person notified under sub-paragraph (1) within the period of 28 days beginning with the date on which notice was given under that sub-paragraph shall be considered by SEPA before serving the variation notice.

6.—(1) The Scottish Ministers may give directions to SEPA requiring that any particular application under regulation 13(2) or any class of such applications shall be referred to them for determination pending a further direction under sub-paragraph (6).

(2) SEPA shall inform the applicant of the fact that the application is being transmitted to the Scottish Ministers and shall forward to the Scottish Ministers any representations which have been made to it within the period allowed.

(3) Where an application for the variation of the conditions of a permit is referred to them under sub-paragraph (1), the Scottish Ministers may afford the applicant and SEPA an opportunity of appearing before and being heard by a person appointed by them and they shall do so in any case where a request is duly made by the applicant or SEPA to be so heard.

(4) A request under sub-paragraph (3) shall be in writing (or in electronic form) and shall be made within the period of 21 days beginning with the day on which the applicant is informed that the application is being transmitted to the Scottish Ministers.

(5) Paragraphs 4(2) to (10) of Schedule 8 shall apply to a hearing held under sub-paragraph (3) as they apply to a hearing held under paragraph 4(1) of that Schedule but with the following modifications:—

- (a) with the substitution in sub-paragraph (3) for the reference to the appellant of a reference to the applicant;
- (b) with the substitution in sub-paragraph (4)—
 - (i) for the reference to the appeal of a reference to the application; and
 - (ii) for the reference to every person mentioned in paragraph 3(1)(a) of Schedule 8 and every person mentioned in paragraph 3(1)(b) and (c) of that Schedule who has made representations to the Scottish Ministers in writing of a reference to every person who was required to be notified under paragraph 3(4)(b) of this Schedule and to any person who made representations to SEPA with respect to the subject matter of the application;
- (c) with the substitution in sub-paragraph (7)—
 - (i) for the reference in sub-paragraph (7)(a) to the appellant of a reference to the applicant;
 - (ii) for the reference in sub-paragraph (7)(c) to any person required under paragraph 3(1)(a) of Schedule 8 to be notified of the appeal of a reference to any person required under paragraph 3(4)(b) of this Schedule to be notified of the application.

(6) In relation to SEPA and the applicant, regulation 22(5) and (6) shall apply to any determination by the Scottish Ministers of any application referred to them under sub-paragraph (1) as it applies to decisions made by the Scottish Ministers under regulation 22(1) or (2).

(7) On determining any application transferred under this paragraph, the Scottish Ministers shall (or, on determining an appeal, the sheriff, may) give to SEPA such a direction as considered fit as to whether it is to grant the application and, if so, as to the conditions that are to be attached to the permit by means of the variation notice.

7.—(1) Except in a case where an application has been referred to the Scottish Ministers under paragraph 6 and, subject to paragraph 10, SEPA shall give notice of its determination of an application under regulation 13(2)—

- (a) where the consultation and advertising procedure set out in paragraph 4 applies, within the period of 4 months beginning with the day on which it received the application;
- (b) where that procedure does not apply, within the period of 3 months beginning with the day on which it received the application,

or, in either case, within such longer period as may be agreed with the applicant.

(2) For the purpose of calculating the periods mentioned in sub-paragraphs (1)(a) and (b) no account shall be taken of—

- (a) any period beginning with the date on which notice is served on an operator under paragraph 3 and ending on the date on which the operator furnishes the information specified in the notice;
- (b) any period allowed for making representations in relation to a notice given pursuant to paragraph 5 in so far as that period does not overlap with any other period allowed for making representations in accordance with paragraph 4(12);
- (c) where a matter falls to be determined for the purposes of regulation 28 or under regulation 29, any period beginning with the date on which the period of 28 days referred to in paragraph 4(8) ends and ending on the date on which the application is advertised in accordance with paragraph 15(b).

8. If SEPA fails to give notice of its determination of an application for a permit within the period allowed by or under paragraph 7, the application shall, if the applicant notifies SEPA in writing (or in electronic form acceptable to it) that the applicant treats the failure as such, be deemed to have been refused at the end of that period.

9. Where the Scottish Ministers are aware that an application or proposal to serve a variation notice mentioned in paragraph 4(1) relates to a substantial change in the operation of an installation carrying out activities listed in Annex I to the Directive which is likely to have significant negative effects on the environment of another Member State, or where another Member State likely to be significantly affected so requests, the Scottish Ministers shall, at the same time as the application or proposed variation notice is advertised pursuant to paragraph 4(8) (or as soon as they become so aware or receive such a request, if they become so aware or receive such a request after the application or proposed variation notice is published but before the application is determined or the variation notice is served), forward a copy of the application or proposed variation notice to the Secretary of State for onward transmission to the other Member State, in order that the application or proposed variation notice may serve as the basis for any consultations necessary in the framework of the bilateral relations between the United Kingdom and the other Member State on a reciprocal and equivalent basis, as referred to in Article 17 of the Directive.

10. Where an application or proposal to serve a variation notice is forwarded to the Secretary of State for onward transmission to another Member State pursuant to paragraph 9, the Scottish Ministers shall notify the operator of the installation concerned and SEPA and—

- (a) SEPA shall not determine the application (where the application has not been referred to the Scottish Ministers under paragraph 6) or serve the variation notice until the Scottish Ministers have notified it in writing (or in electronic form) that the bilateral consultations required by paragraph 9 have been completed and have forwarded to it any representations duly made on the application or proposed variation by persons in the other Member State which have been forwarded to the Scottish Ministers; and
- (b) in the case of an application to be determined by SEPA, the time period within which to determine the application set out in paragraph 7 shall begin on the day on which it

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receives that notification by the Scottish Ministers that the bilateral consultations have been completed.

11. In determining an application or before serving a variation notice which has been forwarded to another Member State pursuant to paragraph 7, SEPA, or, in the case of an application, the Scottish Ministers if the application has been referred to them, shall take into consideration any representations duly made in the other Member State which have been forwarded to the Scottish Ministers.

12. In paragraphs 9 to 11, “Member State” shall be taken to include Norway, Iceland and Liechtenstein.

PART 3

NATIONAL SECURITY AND CONFIDENTIAL INFORMATION

13. The requirements of paragraph 4(8) of this Schedule shall not apply in so far as they would require the advertisement of information mentioned in paragraph 4(9) which is not to be included in the register by virtue of regulation 28 or 29.

14. Paragraphs 21 and 22 of Schedule 4 shall apply in relation to the requirement to give notice under paragraph 4(5)(b) of this Schedule as they apply to the requirement to give notice under paragraph 9 of that Schedule.

15. Where a matter falls to be determined for the purposes of regulation 28 or under regulation 29—

- (a) the period for notification under paragraph 4(5)(b) of this Schedule shall be the period of 14 days beginning 14 days after the day on which the matters to be determined for the purposes of regulation 28 or under regulation 29, as the case may be, are finally disposed of;
- (b) the period within which an advertisement is to be published under paragraph 4(8) shall be 28 days beginning 14 days after the day on which the matters to be determined for the purposes of regulation 28 or under regulation 29, as the case may be, are finally disposed of.

SCHEDULE 8

Regulation 22(13)

PROCEDURES IN CONNECTION WITH APPEALS TO THE SCOTTISH MINISTERS

1.—(1) A person who wishes to appeal to the Scottish Ministers under regulation 22 shall give to the Scottish Ministers written notice of the appeal together with the documents specified in sub-paragraph (2) and shall at the same time send to SEPA a copy of that notice together with copies of the documents specified in sub-paragraph (2)(a) and (f).

(2) The documents mentioned in sub-paragraph (1) are—

- (a) a statement of the grounds of appeal;
- (b) a copy of any relevant application;
- (c) a copy of any relevant permit;
- (d) a copy of any relevant correspondence between the appellant and SEPA;
- (e) a copy of any decision or notice which is the subject matter of the appeal;

- (f) a statement indicating whether the appellant wishes the appeal to be in the form of a hearing or to be disposed of on the basis of written representations.
- (3) An appellant may withdraw an appeal by notifying the Scottish Ministers in writing (or in electronic form) and shall send a copy of that notification to SEPA.

2.—(1) Subject to sub-paragraph (2), notice of appeal in accordance with paragraph 1 is to be given—

- (a) in the case of an appeal under regulation 22(1), before the expiry of the period of six months beginning with the date of the decision or deemed decision which is the subject matter of the appeal;
- (b) in the case of an appeal under regulation 22(2) against a revocation notice, before the date on which the revocation takes effect;
- (c) in the case of an appeal under regulation 22(2) against a variation notice, an enforcement notice or a suspension notice, before the expiry of the period of two months beginning with the date of the notice which is the subject matter of the appeal.

(2) The Scottish Ministers may in a particular case allow notice of appeal to be given after the expiry of the periods mentioned in sub-paragraph (1)(a) or (c).

3.—(1) Subject to sub-paragraph (4), SEPA shall, within 14 days of receipt of the copy of the notice of appeal sent in accordance with paragraph 1, give notice of it to—

- (a) any person who was required to be given notice of the subject matter of the appeal under paragraph 9 of Schedule 4 or paragraph 4(5)(c) of Schedule 7;
- (b) any person who made representations to SEPA with respect to the subject matter of the appeal; and
- (c) any person who appears to SEPA to have a particular interest in the subject matter of the appeal.

(2) A notice under sub-paragraph (1) shall—

- (a) state that notice of appeal has been given;
- (b) state the name of the appellant and, where the appeal concerns an installation or Part A mobile plant, the address of the site of the installation or mobile plant;
- (c) describe the application or permit to which the appeal relates;
- (d) state that representations with respect to the appeal may be made to the Scottish Ministers in writing (or in electronic form) by any recipient of the notice within a period of 21 days beginning with the date of the notice and that copies of any representations so made will be furnished to the appellant and to SEPA;
- (e) explain that any such representations made by any person will be entered in a public register unless that person requests in writing (or in electronic form) that they should not be so entered, and that where such a request is made there will be included in the register a statement indicating only that representations have been made which have been the subject of such a request;
- (f) state that if a hearing is to be held wholly or partly in public, a person mentioned in sub-paragraph (1)(b) or (c) who makes representations with respect to the appeal and any person mentioned in sub-paragraph (1)(a) will be notified of the date of the hearing.

(3) SEPA shall, within 14 days of sending a notice under sub-paragraph (1), notify the Scottish Ministers of the persons to whom and the date on which the notice was sent.

(4) In the event of an appeal being withdrawn, SEPA shall give notice of the withdrawal to every person to whom notice was given under sub-paragraph (1).

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4.—(1) Before determining an appeal under regulation 22, the Scottish Ministers may afford the appellant and SEPA an opportunity of appearing before and being heard by a person appointed by him (the “appointed person”) and they shall do so in any case where a request is duly made by the appellant or SEPA to be so heard.

(2) A hearing held under sub-paragraph (1) may, if the appointed person so decides, be held wholly, or held to any extent, in private.

(3) Where the Scottish Ministers cause a hearing to be held under sub-paragraph (1), they shall give the appellant and SEPA at least 28 days written notice (or such shorter period of notice as they may agree) of the date, time and place fixed for the holding of the hearing.

(4) In the case of a hearing which is to be held wholly or partly in public, the Scottish Ministers shall, at least 21 days before the date fixed for the holding of the hearing—

- (a) where the appeal relates to the operation of an installation or Part A mobile plant, publish a copy of the notice mentioned in sub-paragraph (3) in a newspaper circulating in the locality in which the installation or mobile plant is operated;
- (b) serve a copy of that notice on every person mentioned in paragraph 3(1)(a) and on every person mentioned in paragraphs 3(1)(b) and (c) who has made representations to the Scottish Ministers.

(5) The Scottish Ministers may vary the date fixed for the holding of any hearing and sub-paragraphs (3) and (4) shall apply to the variation of a date as they applied to the date originally fixed.

(6) The Scottish Ministers may also vary the time or place for the holding of a hearing and shall give such notice of any such variation as appears to them to be reasonable.

(7) The persons entitled to be heard at a hearing are—

- (a) the appellant;
- (b) SEPA; and
- (c) any person required under paragraph 3(1)(a) to be notified of the appeal.

(8) Nothing in sub-paragraph (7) shall prevent the appointed person from permitting any other persons to be heard at the hearing and such permission shall not be unreasonably withheld.

(9) After the conclusion of a hearing, the appointed person shall make a report to the Scottish Ministers in writing (or in electronic form acceptable to them) which shall include the conclusions and recommendations of that person or the reasons for not making any recommendation.

(10) Subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973⁽⁴³⁾ (which relates to the costs of and holding of local inquiries) shall apply to hearings held under this paragraph by an appointed person as they apply to inquiries held under that section, but with the following modifications, that is to say:—

- (a) with the substitution in subsection (3) (notice of inquiry) for the reference to the person appointed to hold the inquiry of a reference to the appointed person;
- (b) with the substitution in subsection (4) (evidence) for the reference to the person appointed to hold the inquiry and, in paragraph (b), the reference to the person holding the inquiry of references to the appointed person;
- (c) with the substitution in subsection (6) (expenses of witnesses etc.) for the references to the Minister causing the inquiry to be held of a reference to the appointed person or the Scottish Ministers;
- (d) with the substitution in subsection (7) (expenses) for the references to the Minister of references to the appointed person or the Scottish Ministers;
- (e) with the substitution in subsection (7A) (recovery of entire administrative expense)—

(43) 1973 c. 65; section 210 was amended by the Housing and Planning Act 1986 (c. 63), Schedule 11, paragraph 39.

- (i) for the first reference to the Minister of a reference to the appointed person or the Scottish Ministers;
 - (ii) in paragraph (a), for the reference to the Minister of a reference to the Scottish Ministers; and
 - (iii) in paragraph (b), for the reference to the Minister holding the inquiry of a reference to the Scottish Ministers;
- (f) with the substitution in subsection (7B) (power to prescribe daily amount)–
- (i) for the first reference to the Minister of a reference to the Scottish Ministers;
 - (ii) in paragraphs (a) and (c), for the references to the person appointed to hold the inquiry of references to the appointed person; and
 - (iii) in paragraph (d), for the reference to the Minister of a reference to the appointed person or the Scottish Ministers; and
- (g) with the substitution in subsection (8) (certification of expenses) for the reference to the Minister, the reference to him and the reference to the Crown of references to the appointed person or the Scottish Ministers.

5.—(1) Where the appeal is to be disposed of on the basis of written representations, SEPA shall submit any written representations to the Scottish Ministers not later than 28 days after receiving a copy of the documents mentioned in paragraph 1(2)(a) and (f) .

(2) The appellant shall make any further representations by way of reply to any representations from SEPA not later than 17 days after the date of submission of those representations by it.

(3) Any representations made by the appellant or SEPA shall bear the date on which they are submitted to the Scottish Ministers.

(4) When SEPA or the appellant submits any representations to the Scottish Ministers they shall at the same time send a copy of them to the other party.

(5) The Scottish Ministers shall send to the appellant and SEPA a copy of any representations made to them by the persons mentioned in paragraph 3(1) and shall allow the appellant and SEPA a period of not less than 14 days in which to make representations on them.

(6) The Scottish Ministers may in a particular case–

- (a) set later time limits than those mentioned in this paragraph;
- (b) require exchanges of representations between the parties in addition to those mentioned in paragraphs (1) and (2).

6.—(1) The Scottish Ministers shall give notice to the appellant of their determination of the appeal and shall provide the appellant with a copy of any report mentioned in paragraph 4(9).

(2) The Scottish Ministers shall at the same time send–

- (a) a copy of the documents mentioned in sub-paragraph (1) to SEPA and to any persons required under paragraph 3(1)(a) to be notified of the appeal; and
- (b) a copy of their determination of the appeal to any person mentioned in paragraph 3(1)(b) and (c) who made representations to the Scottish Ministers and, if a hearing was held, to any other person who made representations in relation to the appeal at the hearing.

7. Where a determination of the Scottish Ministers is quashed on appeal, the Scottish Ministers–

- (a) shall send to the persons notified of their determination under paragraph 6, a statement of the matters with respect to which further representations are invited for the purposes of further consideration of the appeal;

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- (b) shall afford to those persons the opportunity of making, within 28 days of the date of the statement, written representations in respect of those matters; and
- (c) may, as they think fit, cause a hearing to be held or reopened and, if they do so, paragraphs 4(2) to (10) shall apply to the hearing or the reopened hearing as they apply to a hearing held under paragraph 4(1),

and paragraph 6 shall apply to the redetermination of the appeal as it applies to the determination of an appeal.

SCHEDULE 9

Regulation 27(5)

REGISTERS

1. Subject to regulations 28 or 29, the register maintained by SEPA under regulation 27 shall contain—

- (a) all particulars of any application made to SEPA for a permit;
- (b) all particulars of any notice to the applicant by SEPA under paragraph 4 of Schedule 4 and paragraph 3 of Schedule 7 and of any information furnished in response to such a notice;
- (c) all particulars of any advertisement published pursuant to paragraph 5 of Schedule 4 or paragraph 4(8) of Schedule 7 and of any representations made by any person in response to such an advertisement, other than representations which the person who made them requested should not be placed in the register;
- (d) in a case where any such representations are omitted from the register at the request of the person who made them, a statement by SEPA that representations have been made which have been the subject of such a request (but such statement shall not identify the person who made the representations in question);
- (e) all particulars of any representations made by any person required to be given notice under paragraph 9 of Schedule 4 or paragraph 4(5)(c) of Schedule 7;
- (f) all particulars of any permit granted by SEPA;
- (g) all particulars of any notification of SEPA given under regulation 12(1);
- (h) all particulars of any application made to SEPA for the variation, transfer or surrender of a permit;
- (i) all particulars of any variation, transfer and surrender of any permit granted by SEPA;
- (j) all particulars of any revocation of a permit granted by SEPA;
- (k) all particulars of any enforcement notice or suspension notice issued by SEPA;
- (l) all particulars of any notice issued by SEPA withdrawing an enforcement notice or a suspension notice;
- (m) all particulars of any notice of appeal under regulation 22 against a decision by SEPA or a notice served by it and of the documents relating to the appeal mentioned in paragraph 1(2)(a), (d) and (e) of Schedule 8;
- (n) all particulars of any representations made by any person in response to a notice given under paragraph 3(1) of Schedule 8, other than representations which the person who made them requested should not be placed in the register;
- (o) in a case where any such representations are omitted from the register at the request of the person who made them, a statement by SEPA that representations have been made which

have been the subject of such a request (but such statement shall not identify the person who made the representations in question);

- (p) all particulars of any written notification of the determination by the Scottish Ministers (or, as the case may be, the sheriff) of an appeal and any report accompanying any written notification;
- (q) details of any conviction of any person for any offence under regulation 30(1) which relates to the operation of an installation or mobile plant under a permit granted by SEPA, or without such a permit in circumstances where one is required by regulation 6, including the name of the person, the date of conviction and, in the case of a conviction, the penalty imposed and the name of the Court;
- (r) all particulars of any monitoring information relating to the operation of an installation or mobile plant under a permit granted by SEPA which has been obtained by it as a result of its own monitoring or furnished to it in writing (or in electronic form acceptable to it) by virtue of a condition of the permit or under regulation 26(2);
- (s) in a case where any such monitoring information is omitted from the register by virtue of regulation 29, a statement by SEPA, based on the monitoring information from time to time obtained by or furnished to it, indicating whether or not there has been compliance with any relevant condition of the permit;
- (t) all particulars of any other information furnished in compliance with a condition of the permit, a variation notice, enforcement notice or suspension notice, or regulation 26(2);
- (u) where a permit granted by SEPA authorises the carrying out of a specified waste management activity, all particulars of any waste management licence (within the meaning of regulation 15(13)) which ceased to have effect on the granting of the permit in so far as they may be relevant for the purpose of determining under regulation 15 whether any pollution risk results from the carrying out of such an activity on the site covered by the permit;
- (v) all particulars of any report published by SEPA relating to an assessment of the environmental consequences of the operation of an installation in the locality of premises where the installation is operated under a permit granted by it; and
- (w) all particulars of any direction (other than a direction given for the purposes of section 20 of the Environmental Protection Act 1990 and applied in respect of the register maintained under regulation 27 by virtue of regulation 28) given to SEPA under any provision of these Regulations.

2. Where an application is withdrawn by the applicant at any time before it is determined, all particulars relating to that application which are already in the register shall be removed from that register not less than two months and not more than three months after the date of withdrawal of the application, and no further particulars relating to that application shall be entered in the register.

3. Where, following the amendment of Schedule 1, these Regulations ceases to apply to a description of installation or mobile plant, all particulars relating to units of that description shall be removed from the register not less than two months and not more than three months after the date on which the amendment comes into force.

4. Nothing in paragraph 1 shall require SEPA to keep in the register maintained by it—

- (a) monitoring information relating to a particular installation or mobile plant four years after that information was entered in the register; or
- (b) information relating to a particular installation or mobile plant which has been superseded by later information relating to that installation or mobile plant four years after that later information was entered in the register,

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but this paragraph shall not apply to any aggregated monitoring data relating to overall emissions of any substance or class of substance from installations or mobile plant generally or from any class of installations or mobile plant.

SCHEDULE 10

Regulation 36

CONSEQUENTIAL AMENDMENTS

PART 1

PUBLIC GENERAL ACTS

Control of Pollution Act 1974

1. After section 30I(1) of the Control of Pollution Act 1974(interpretation)(44), insert after paragraph (b)–

“(ba) a permit granted by SEPA under regulations made under section 2 of the Pollution Prevention and Control Act 1999;”.

Income and Corporation Taxes Act 1988

2. In section 91A(6) of the Income and Corporation Taxes Act 1988 (waste disposal : restoration payments)(45), after paragraph (b) insert–

“(ba) a permit granted under regulations under section 2 of the Pollution Prevention and Control Act 1999, or”.

Environmental Protection Act 1990

3.—(1) The Environmental Protection Act 1990(46) has effect subject to the following amendments.

(2) In section 6 (authorisations : general provisions)–

(a) at the beginning of subsection (6) insert “Subject to subsection (6A) below;”;

(b) after that subsection insert–

“(6A) Subsection (6) above shall not require a review of the conditions of an authorisation to be carried out if–

(a) the prescribed process covered by the authorisation is carried on in a new Part A installation or by means of a new Part A mobile plant;

(b) the prescribed process covered by the authorisation is carried on in an existing Part A installation or by means of an existing Part A mobile plant and the review would be carried out within the period of two years ending at the beginning of the relevant period for that installation or mobile plant;

(c) the prescribed process covered by the authorisation is carried on in an existing Part B installation or by means of an existing Part B mobile plant and the review

(44) 1974 c. 40. Section 30I was inserted by the Environment Act 1995, Schedule 16, paragraph 2.

(45) Section 91A was inserted by the Finance Act 1990 (c. 29), section 78.

(46) 1990 c. 43.

would be carried out within the two year period ending on the relevant date for that installation or mobile plant.

(6B) In subsection (6A) above, “new Part A installation”, “existing Part A installation”, “new Part A mobile plant”, “existing Part A mobile plant”, “relevant period”, “existing Part B installation”, “existing Part B mobile plant” and “relevant date” have the meanings given in Schedule 3 to the Pollution Prevention and Control (Scotland) Regulations 2000.”.

(3) In section 34(1)(duty of care as respects waste)–

(a) in subsection (1), after paragraph (a) insert–

“(aa) to prevent any contravention by any other person of regulation 6 of the Pollution Prevention and Control (Scotland) Regulations 2000 or of a condition of a permit granted under regulation 7 of those Regulations;”;

(b) in paragraph (c)(ii), after the words “that section”, insert “or any condition of a permit granted under regulation 7 of those Regulations;”.

(4) In section 35 (waste management licences : general)–

(a) in subsection (11) after “until” insert “it ceases to have effect under subsection (11A) below,”;

(b) after subsection (11) insert–

“(11A) A licence shall cease to have effect if and to the extent that the treatment, keeping or disposal of waste authorised by the license is authorised by a permit granted under regulations under section 2 of the Pollution Prevention and Control Act 1999.”.

(5) In section 78YB (interaction of contaminated land provisions with other enactments)(47), after subsection (2) insert–

“(2A) This Part shall not apply if and to the extent that–

(a) any significant harm, or pollution of controlled waters, by reason of which the land would otherwise fall to be regarded as contaminated, is attributable to the final disposal by deposit in or on land of controlled waste); and

(b) enforcement action may be taken in relation to that activity.

(2B) A remediation notice shall not be served in respect of contaminated land if and to the extent that–

(a) the significant harm, or pollution of controlled waters, by reason of which the contaminated land is such land is attributable to an activity (other than the final disposal by deposit in or on land of controlled waste); and

(b) enforcement action may be taken in relation to that activity.

(2C) In subsections (2A) and (2B) above–

“controlled waste” has the meaning given in section 75(4) of this Act;

“enforcement action” means action under regulation 19 (enforcement notices) or regulation 21(2) (power of the Scottish Environment Protection Agency to remedy pollution) of the Pollution Prevention and Control (Scotland) Regulations 2000.”.

(6) In section 79(10) (restrictions on taking proceedings for statutory nuisance)(48), for the words “or (e)” substitute “,(e) or (g)” and for “paragraph (g) or (ga)” substitute “paragraph (ga)”.

(47) Section 78YB was inserted by section 57 of the Environment Act 1995 (c. 25).

(48) Section 79(10) was amended by paragraph 2(d) of Schedule 17 to the Environment Act 1995.

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Clean Air Act 1993

- 4.—(1) The Clean Air Act 1993⁽⁴⁹⁾ has effect subject to the following amendments.
- (2) In section 31(4) (regulations about sulphur content of oil fuel for furnaces or engines)—
- (a) in paragraph (a), after which is, insert “(i)” and after “1990” insert “or (ii) part of an installation subject to regulation by the Scottish Environment Protection Agency under regulations made under the Pollution Prevention and Control Act 1999”; and
 - (b) in paragraph (b), for “such furnaces” substitute “furnaces within sub-paragraph (i) of paragraph (a) above and of the Scottish Environment Protection Agency to enforce those provisions in relation to furnaces within sub-paragraph (ii) of that paragraph”.
- (3) In section 36 (notices requiring information about air pollution), after subsection (2) insert—
- “(2A) If the notice relates to an installation subject to regulations made under section 2 of the Pollution Prevention and Control Act 1999, the person on whom the notice is served shall not be obliged to supply any information which, as certified by the Scottish Environment Protection Agency, is not of a kind which is being supplied to it for the purposes of those regulations.”
- (4) After section 41 (relation to the Environmental Protection Act 1990) insert—

“Relation to Pollution Prevention and Control Act 1999

41A.—(1) Where an activity is subject to regulations under section 2 of the Pollution Prevention and Control Act 1999 (regulation of polluting activities) Parts I to III of this Act shall not apply as from the determination date for the activity in question.

(2) The “determination date”, for an activity, is—

- (a) in the case of an activity for 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) in the case of an activity for which a permit is refused, the date of refusal or, on appeal, of the affirmation of the refusal.

(3) In subsection (2) “permit” means a permit under regulations under section 2 of the Pollution Prevention and Control Act 1999 and the reference to an appeal is a reference to an appeal under those regulations.”.

Environment Act 1995

- 5.—(1) The Environment Act 1995⁽⁵⁰⁾ has effect subject to the following amendments.
- (2) In section 56(1) (interpretation of Part I of the 1995 Act), after paragraph (a) of the definition of “environmental licence” in relation to SEPA insert—
- “(aa) a permit granted by SEPA under regulations under section 2 of the Pollution Prevention and Control Act 1999”.
- (3) In section 108(15) (powers of entry -interpretation) after paragraph (m) of the definition of “pollution control functions” insert—
- “(n) in relation to SEPA, regulations under section 2 of the Pollution Prevention and Control Act 1999;”.
- (4) In section 114(2)(a) (power to delegate functions relating to appeals), after sub-paragraph (vii) insert—

⁽⁴⁹⁾ 1993 c. 11.

⁽⁵⁰⁾ 1995 c. 25.

“(viii) regulations under section 2 of the Pollution Prevention and Control Act 1999 extending to Scotland”.

(5) In Schedule 20, in paragraph 4(3) (holding of inquiries and other hearings by appointed persons)—

(a) omit “or” at the end of paragraph (b); and

(b) insert after paragraph (c)—

“; or

(d) regulation 22 of the Pollution Prevention and Control (Scotland) Regulations 2000.”.

Finance Act 1996

6.—(1) The Finance Act 1996⁽⁵¹⁾ has effect subject to the following amendments.

(2) In section 43A(4)⁽⁵²⁾ (contaminated land)—

(a) omit “or” at the end of paragraph (f); and

(b) insert after paragraph (g)—

“(h) an enforcement notice served under regulation 19 of the Pollution Prevention and Control (Scotland) Regulations 2000;

(j) a suspension notice served under regulation 20 of those Regulations; or

(k) an order under regulation 33 of those Regulations.”.

(3) After section 67(b) (operators of landfill sites) insert—

“(ba) the person who is at the time concerned the holder of the permit, where section 66(ba) above applies;”.

PART 2

SUBORDINATE LEGISLATION

The Radioactive Substances (Hospitals) Exemption Order 1990

7. In the definition of “site licence” in article 2(1) of the Radioactive Substances (Hospitals) Exemption Order 1990⁽⁵³⁾, after “1990” insert “or a permit under the Pollution Prevention and Control (Scotland) Regulations 2000”.

The Environmental Protection (Prescribed Processes and Substances) Regulations 1991

8. After regulation 3 of the Environmental Protection (Prescribed Processes and Substances) Regulations 1991⁽⁵⁴⁾ insert—

⁽⁵¹⁾ 1996 c. 8.

⁽⁵²⁾ Section 43A was inserted by the Landfill Tax (Contaminated Land) Order 1996 (S.I. 1996/1529).

⁽⁵³⁾ S.I. 1990/2512.

⁽⁵⁴⁾ S.I. 1991/472; to which there are amendments not relevant to these Regulations.

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“Exclusion of prescribed processes under control of the Pollution Prevention and Control (Scotland) Regulations 2000

3A.—(1) Where a process which is being carried on under an authorisation requires a permit under the Pollution Prevention and Control (Scotland) Regulations 2000 authorising the carrying on of that process in an installation or by means of mobile plant and an application is made (or deemed to have been made) under those Regulations for the permit, that process shall, from the determination date for the installation or mobile plant, as the case may be, no longer be taken to fall within a description in Schedule 1.

(2) Where a process which is not being carried on under an authorisation requires a permit under those Regulations authorising the carrying on of that process in an installation or by means of mobile plant, that process shall not be taken to fall within a description in Schedule 1 from the date on which the permit is required.

(3) In this regulation, “installation” and “mobile plant” have the meanings given in regulation 2(1) of the Pollution Prevention and Control (Scotland) Regulations 2000 and “determination date” has the meaning given in Schedule 3 to those Regulations.”.

The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991

9. At the end of Schedule 1 to the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991(**55**) insert “The Pollution Prevention and Control (Scotland) Regulations 2000.”.

The Environmental Protection (Duty of Care) Regulations 1991

10. In the Table in regulation 2 of the Environmental Protection (Duty of Care) Regulations 1991(**56**), after the second entry in column 1 insert—

“A person who is the holder of a permit under the Pollution Prevention and Control (Scotland) Regulations 2000 which authorises the carrying out of a specified waste management activity within the meaning of those Regulations.”.

The Waste Management Licensing Regulations 1994

11.—(1) The Waste Management Licensing Regulations 1994(**57**) have effect subject to the following amendments.

(2) In regulation 1(3) after the definition of “the 1991 Regulations” insert—

““the 2000 Regulations” means the Pollution Prevention and Control (Scotland) Regulations 2000;”.

(3) In regulation 3 (relevant offences) after paragraph (n) insert—

“(o) regulation 30(1) of the 2000 Regulations.”.

(4) In regulation 10 (public registers)—

(a) after paragraph (1)(n) insert—

“(o) in Scotland, the following information contained in any register maintained by the Scottish Environment Protection Agency under regulation 27 of the 2000 Regulations to the extent that it relates to a specified waste management activity carried out in the area of the authority:—

(55) S.I. [1991/1624](#); Schedule 1 was amended by S.I. [1994/1137](#) and S.I. [1996/972](#).

(56) S.I. [1991/2839](#); to which there are amendments not relevant to these Regulations.

(57) S.I. [1994/1056](#); relevantly amended by S.I. [1995/288](#) and [1996/972](#).

- (i) current or recently current permits granted under the 2000 Regulations;
 - (ii) variation notices under regulation 13 of the 2000 Regulations varying such permits;
 - (iii) revocation notices under regulation 17 of those Regulations and suspension notices under regulation 20 of those Regulations issued in relation to such permits;
 - (iv) notices of determination issued under regulation 16 of those Regulations in relation to applications made to surrender such permits.”;
- (b) in paragraph (4), after “waste management licence” where those words first occur insert “and permits granted under the 2000 Regulations”;
- (c) after paragraph (4) insert—

“(5) The Scottish Environment Protection Agency shall furnish waste regulation authorities with the particulars necessary to enable them to discharge their duty under paragraph (1)(o).”.
- (5) In regulation 11 (information to be excluded or removed from register), after paragraph (2) insert—

“(3) Regulation 10(1)(o) shall not require a register maintained by a waste regulation authority under that sub-paragraph to contain any information which has been superseded by later information after 4 years have elapsed from that later information being entered in the register.”.
- (6) In regulation 16 (exclusion from waste management licensing)—
 - (a) after paragraph (1)(b) insert—

“(ba) the deposit in or on land, recovery or disposal of waste under a permit granted under the 2000 Regulations to operate a Part A installation;
 - (bb) the disposal of waste under a permit granted under the 2000 Regulations where the activity is or forms part of an activity within paragraph (a) or (b) of Part A of Section 5.1 (incineration) of Part 1 of Schedule 1 to those Regulations;
 - (bc) the disposal of waste under a permit granted under the 2000 Regulations where the activity is or forms part of an activity within paragraph (a) or (b) of Part B of Section 5.1 (incineration) of Part 1 of Schedule 1 to those Regulations in so far as the activity results in the release of substances into the air;”;
- (b) for “and (b)” in paragraph (2) substitute “, (b) and (bc)”;
- (c) after paragraph (2) insert—

“(3) In paragraph (1)(ba) “Part A installation” has the meaning given by regulation 2(1) of the 2000 Regulations.”.
- (7) In paragraph (10) of regulation 18 (registration in connection with exempt activities)—
 - (a) in sub-paragraph (a), after “Schedule 3” in sub-paragraph (i) insert “and carried out under an authorisation granted under Part I of the 1990 Act”;
 - (b) after sub-paragraph (a) insert—

“(aa) in the case of an exempt activity falling within—

 - (i) paragraph 1A, 2A, 3 or 24 of Schedule 3 and carried out under a permit under the 2000 Regulations;
 - (ii) paragraph 4 of Schedule 3 if it involves the coating or spraying of metal containers as or as part of an activity within Part B of Section 6.4 (coating activities and printing) of Part 1 of Schedule 1 to the 2000 Regulations and

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the activity is for the time being the subject of a permit granted under those Regulations, or if it involves storage related to that activity; or

- (iii) paragraph 12 of Schedule 3 if it involves the composting of biodegradable waste as or as part of an activity within paragraph (a) of Part B of Section 6.8 (treatment of animal and vegetable matter) of Part 1 of Schedule 1 to the 2000 Regulations, the compost is to be used for the purpose of cultivating mushrooms and the activity is for the time being the subject of a permit granted under those Regulations, or if it involves storage related to that activity,

the Scottish Environment Protection Agency granting the permit under the 2000 Regulations authorising the exempt activity;”.

- (8) In regulation 20(2)(a), after “1990 Act” insert “a permit under the 2000 Regulations,”.

- (9) In Schedule 3–

- (a) after paragraph 1 insert–

“1A.—(1) The use, under a permit under the 2000 Regulations, of waste glass as part of an activity within Part B of Section 3.3 (the manufacture of glass and glass fibre) of Part 1 of Schedule 1 to the 2000 Regulations if the total quantity of waste glass so used in that activity does not exceed 600,000 tonnes in any period of twelve months.

(2) The storage, at the place where the activity is carried out, of any such waste which is intended to be so used.”;

- (b) after paragraph 2 insert–

“2A.—(1) The operation, under a permit under the 2000 Regulations, of a scrap metal furnace with a design holding capacity of less than 25 tonnes to the extent that it is or forms part of an activity within paragraph (a) or (d) of Part B of Section 2.1 (ferrous metals) or paragraph (a) or (b) of Part B of Section 2.2 (non-ferrous metals) of Part 1 of Schedule 1 to the 2000 Regulations.

(2) The loading or unloading of such a furnace in connection with its operation in a manner covered by the exemption conferred by sub-paragraph (1).

(3) The storage, at the place where such a furnace is located (but not in cases where that place is used for carrying on business as a scrap metal dealer) of scrap metal intended to be submitted to an operation covered by the exemption conferred by sub-paragraph (1).”;

- (c) in paragraph 3(a), after “the 1990 Act” insert “or a permit under the 2000 Regulations” and after “1991 Regulations” insert “or an activity within Part B of any Section of Part 1 of Schedule 1 to the 2000 Regulations”;
 - (d) in paragraph 3(d), after “1990 Act” insert “or a permit under the 2000 Regulations” and after “1991 Regulations” insert “or an activity within Part B of Section 1.1 of Part 1 of Schedule 1 to the 2000 Regulations”;
 - (e) in paragraph 24(1), after “1991 Regulations” insert “or under a permit under the 2000 Regulations, to the extent that it is or forms part of an activity within paragraph (a) of Part B of Section 3.5 (other mineral activities) of Part 1 of Schedule 1 to the 2000 Regulations”;
 - (f) in paragraph 29(1), after “1991 Regulations” insert “or an exempt incineration plant for the purposes of Section 5.1 of Part 1 of Schedule 1 to the 2000 Regulations”;
 - (g) in paragraph 44(3), after “1991 Regulations” insert–
 - “or an activity described in Section 2.1 (other than in paragraph (d) of Part B) of Part 1 of Schedule 1 to the 2000 Regulations”;

- (h) in paragraph 44(4), after “1991 Regulations” insert—
“or an activity described in Part A of Section 2.2 of Part 1 of Schedule 1 to the 2000 Regulations”;
- (i) in paragraph 45(2)(a) after “1990 Act” insert “or a permit under the 2000 Regulations”.
- (10) In Schedule 4—
 - (a) in paragraph 1, after “under Part I of the 1990 Act,” in the definition of “permit” insert “a permit under the 2000 Regulations.”;
 - (b) after paragraph 2(4) insert—
“(5) In a case where the recovery or disposal of waste is or forms part of an activity carried out at a Part B installation and requires a waste management licence, nothing in sub-paragraph (1) shall require a competent authority to discharge its functions under—
 - (a) the 2000 Regulations for any purpose other than preventing or, where that is not practicable, reducing emissions into the air;
 - (b) Part II of the 1990 Act for the purpose of preventing or reducing emissions into the air.
 - (6) In sub-paragraph (5), “Part B installation” has the meaning given by regulation 2(1) of the 2000 Regulations.”;
 - (c) in paragraph 3(1), at the end of Table 5 in sub-paragraph (1) insert—

| | |
|---|--|
| <i>“The Scottish Environment Protection Agency, the Scottish Ministers or a person appointed under section 114(1)(a) of the Environment Act 1995.</i> | <i>Their respective functions in relation to permits under the 2000 Regulations except in relation to the carrying out of an exempt activity under such permits.”.</i> |
|---|--|

The Conservation (Natural Habitats, &c.) Regulations 1994

- 12.** After regulation 84 of the Conservation (Natural Habitats, &c.) Regulations 1994⁽⁵⁸⁾ insert—

“Permits under the Pollution Prevention and Control (Scotland) Regulations 2000

84A.—(1) Regulations 48 and 49 (requirement to consider effect on European site) apply in relation to the granting of a permit under the Pollution Prevention and Control (Scotland) Regulations 2000.

(2) Where in such a case the competent authority consider that any adverse effects of the plan or project on the integrity of a European site would be avoided if the permit were subject to conditions, they may grant a permit, or cause a permit to be granted, subject to those conditions.

(3) Regulations 50 and 51 (requirement to review existing decisions and consents, &c.) apply to any such permit as is mentioned in paragraph (1).

(4) Where on the review of such a permit the competent authority consider that any adverse effects on the integrity of a European site of the carrying out or, as the case may be, the continuation of activities authorised by it would be avoided by a variation of the permit, they may vary it, or cause it to be varied, accordingly.

(5) Where any question arises as to agreeing to a plan or project, of affirming a permit on review, under regulation 49 (considerations of overriding public interest), the competent

⁽⁵⁸⁾ S.I. [1994/2716](#); to which there are amendments not relevant to these Regulations.

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authority shall refer the matter to the Scottish Ministers who shall determine the matter in accordance with that regulation and give directions to the authority accordingly.”.

The Special Waste Regulations 1996

13.—(1) In regulation 15 of the Special Waste Regulations 1996⁽⁵⁹⁾ (registers)—

(a) after paragraph (6) insert—

“(6A) Where, by virtue of regulation 16(1)(ba) or (bb) of the 1994 Regulations, section 33(1)(a), (b) and (c) of the 1990 Act does not apply to any of the activities carried on at a site at which special waste is received, paragraph (5) shall have effect as if any reference to the surrender or revocation of a person’s waste management licence were a reference to the surrender or revocation of his permit under the Pollution Prevention and Control (Scotland) Regulations 2000 for the site in question.”;

(b) in paragraph (7), after “paragraph (6)” insert “or (6A)”.

(2) In regulation 17(2) (restrictions on mixing special waste) of those Regulations, in paragraph (a), after “1990 Act” insert “or under a permit granted under the Pollution Prevention and Control (Scotland) Regulations 2000”.

The Landfill Tax Regulations 1996

14. In regulation 33(4) of the Landfill Tax Regulations 1996⁽⁶⁰⁾, after paragraph (g) insert—

“(h) an enforcement notice served under regulation 19 of the Pollution Prevention and Control (Scotland) Regulations 2000;

(i) a suspension notice served under regulation 20 of those Regulations;

(j) an order under regulation 33 of those Regulations.”.

The Specified Risk Material Regulations 1997

15.—(1) The Specified Risk Material Regulations 1997⁽⁶¹⁾ have effect subject to the following amendments.

(2) In regulations 24(9)(a)(i) and (b)(i), after “1990” insert “or a permit granted under the Pollution Prevention and Control (Scotland) Regulations 2000”.

(3) In regulation 24(10), after “1990” insert “or the Pollution Prevention and Control (Scotland) Regulations 2000”.

(4) In the second column of the table in Schedule 2, after “1990” in the entry corresponding to regulation 24(9) in the first column of that table insert “or authorised under the Pollution Prevention and Control (Scotland) Regulations 2000”.

The Groundwater Regulations 1998

16.—(1) The Groundwater Regulations 1998⁽⁶²⁾ have effect subject to the following amendments.

⁽⁵⁹⁾ S.I. 1996/972; to which there are amendments not relevant to these Regulations.

⁽⁶⁰⁾ S.I. 1996/1527.

⁽⁶¹⁾ S.I. 1997/2965; to which there are amendments not relevant to these Regulations.

⁽⁶²⁾ S.I. 1998/2746.

(2) In the definition of “authorisation” in regulation 1(3), omit “and” at the end of paragraph (c) and after paragraph (d) insert—

“; and

(e) a permit under the Pollution Prevention and Control (Scotland) Regulations 2000 in so far as it authorises the operation of a Part A installation or Part A mobile plant within the meaning of those Regulations;”.

(3) After “(integrated pollution control)” in regulation 3 insert “and the Pollution Prevention and Control (Scotland) Regulations 2000”.

Contaminated Land (Scotland) Regulations 2000

17.—(1) The Contaminated Land (Scotland) Regulations 2000⁽⁶³⁾ have effect subject to the following amendments.

(2) In regulation 2—

(a) after paragraph (1)(d) insert—

“(da) land on which an activity has been or is being carried on in a Part A installation or by means of Part A mobile plant under a permit where the activity does not comprise solely things being done which are required by way of remediation;”;

(b) after paragraph (3) insert—

“(3A) In paragraph (1)(da) above, “Part A installation”, “Part A mobile plant” and “permit” have the same meaning as in the Pollution Prevention and Control (Scotland) Regulations 2000.”.

(3) In paragraph 13 of Schedule 4—

(a) after “section 78YB(1)” insert “or 78YB(2B)”;

(b) in sub-paragraph (c), after “section 27” insert “or by means of enforcement action (within the meaning of section 78YB(2C))”.

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. They set out, for Scotland, a pollution control regime for the purpose of implementing the Integrated Pollution Prevention and Control Directive (Council Directive [96/61/EC](#)) and for regulating other environmentally polluting activities not covered by the Directive.

The list of controlled activities and the type of pollution control

The Regulations control the operation of any installation or mobile plant carrying out any of the activities listed in Part 1 of Schedule 1 to the Regulations. Installations or mobile plant used to carry

(63) [S.S.I. 2000/178](#).

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out activities listed in Schedule 1 (Part A installations and mobile plant) are subject to integrated pollution control by SEPA.

Procedural and substantive requirements

Part I of the Regulations (regulations 1 to 5) sets out general provisions. There are definitions in regulations 2 and 3. The other regulations in Part I deal with such general matters as the meaning of fit and proper person for the purposes of the Regulations and setting out the obligation to use best available techniques.

Part II (regulations 6 to 17) deals with the need for a permit to operate an installation or mobile plant covered by the Regulations (regulation 6), the procedure for granting permits and the contents of permits (regulations 7 to 11 and Schedules 4 and 5), and the treatment of permits once granted (regulations 12 to 17 and Schedule 7). The basic requirement for the content of permits (regulation 9) is to impose emission limit values based on the best available techniques. Schedule 6 sets out the compensation provisions applicable where a person is required under regulation 9 to allow an operator of an installation or Part A mobile plant to carry out work on that person's land. Regulation 10 enables the Scottish Ministers to make general binding rules containing requirements which may apply instead of conditions included in permits. Regulations 11 and 13 to 17 and Schedule 7 deal with the review, variation, transfer, surrender and revocation of permits. Regulation 12 requires an operator of a permitted installation to give SEPA notice of any proposed change in the operation of that installation.

Part III (regulations 18 to 21) contains the enforcement powers under the Regulations. Part IV (regulation 22) and Schedule 8 provide for appeals. Part V (regulations 23 to 25) enables the Scottish Ministers to give directions and guidance to SEPA and to make plans relating to emissions. Part VI (regulations 26 to 29) deals with information and publicity. Part VII (regulations 30 to 33) sets out offences for contraventions of the Regulations and provides for enforcement by the Court of Session and the admissibility of evidence. Part VIII and Schedule 10 deal with the consequential amendments required by the introduction of the pollution control regimes in the Regulations.

Transitional provisions

Schedule 3 sets out the transitional provisions for bringing installations and mobile plant under the control of the Regulations. Installations and mobile plant will be phased into the Regulations over an eight year period. These Regulations will supersede the controls in Part I of the Environmental Protection Act 1990 Act and, consequently, that Part of that Act will in due course be repealed. A regulatory impact assessment has been prepared and copies can be obtained from the Environmental Protection Unit, Scottish Executive, Victoria Quay, Edinburgh, EH6 6QQ. A copy has been placed in the library of the Parliament.

Copies of the British Standard 'Laboratory fume cupboards' (BS72548 : Part I : 1990), referred to in paragraph 6 of Part 2 of Schedule 1 to the Regulations and BS4256 1972 referred to in paragraph 3(1) of Part 1 of Schedule 4 to the Regulations, can be obtained from any of the sales 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.