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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2012 No.**

**The Pollution Prevention and  
Control (Scotland) Regulations 2012**

**PART I  
GENERAL**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Pollution Prevention and Control (Scotland) Regulations 2012.

(2) These Regulations come into force on 7th January 2013.

(3) These Regulations extend to Scotland only.

**Interpretation: general**

2.—(1) In these Regulations—

“abatement equipment” means, in relation to solvent emission activities, equipment used to abate the effects of emissions of volatile organic compounds,

“baseline report” means a report as described in paragraph 1(3) of Schedule 4,

“battery” means any source of electrical energy generated by direct conversion of chemical energy and consisting of one or more primary battery cells (non-rechargeable) or one or more secondary battery cells (rechargeable; an accumulator), but does not include any battery excluded from the scope of the Batteries Directive by Article 2(2) of that Directive,

“change in operation” means a change in the nature or functioning of an installation or mobile plant, or an extension of the installation or plant, which may have consequences for the environment (see also the definition of “substantial change in operation”),

“co-incineration” and “incineration” have the same meanings as in Section 5.1 of Part 1 of Schedule 1,

“directly associated activity” means—

(a) in relation to an activity carried out in a stationary technical unit and falling within any description in Part 1 of Schedule 1, any directly associated activity which has a technical connection with the activity carried out in the unit and which could have an effect on pollution, and

(b) in relation to a solvent emission activity, any directly associated activity which has a technical connection with the solvent emission activity carried out on the same site and which could have an effect on any discharge of volatile organic compounds into the environment,

“emission” means in relation to—

- (a) Part A installations, the direct or indirect release of a substance, a vibration, heat or noise from individual or diffuse sources in an installation into the air, water or land,
- (b) Part B installations, the direct release of a substance or heat from individual or diffuse sources in an installation into the air,
- (c) mobile plant, the direct release of a substance or heat from the plant into the air, and
- (d) a solvent emission activity—
  - (i) the direct release of a substance in waste gases into the air from individual or diffuse sources forming part of that activity, and
  - (ii) the direct or indirect release of fugitive emissions,

“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 same meaning as in regulation 55,

“environmental inspection” means the actions necessary to check and promote compliance of installations and mobile plant with permit conditions and, where necessary, to monitor the environmental impact of activities carried out under a permit, including as required—

- (a) site visits,
- (b) monitoring of emissions and checks of internal reports and follow-up documents,
- (c) verification of self-monitoring,
- (d) checking of techniques used, and
- (e) checking of the adequacy of environmental management of the installation,

“environmental inspection plan” has the same meaning as in regulation 53,

“environmental quality standard” means the set of requirements which must be fulfilled at a given time in respect of a particular environment as set out in Union legislation,

“fugitive emissions” means, in relation to solvent emission activities, any emission of volatile organic compounds not in waste gases into air, soil or water as well as solvents contained in any products, unless otherwise stated in Part 2 of Annex VII of the Industrial Emissions Directive,

“hazardous substance” means substances or mixtures as defined in Article 3 of the Hazardous Substances Regulation,

“hazardous waste” means waste which displays one or more of the hazardous properties listed in Annex III of the Waste Framework Directive,

“hybrid installation or mobile plant” means an installation or mobile plant which is subject to a hybrid permit, and cognate expressions are construed accordingly,

“hybrid permit” means a permit combining a standard rules condition with one or more other conditions under Part III of these Regulations,

“industrial battery” means any battery or battery pack which is—

- (a) designed exclusively for industrial or professional uses,
- (b) used as a source of power for propulsion in an electric vehicle,
- (c) unsealed, but is not an automotive battery, or
- (d) sealed, but is not a portable battery,

“installation” means—

- (a) a stationary technical unit where one or more activities listed in Schedules 1 or 2 are carried out, and

(b) any other location on the same site where any other directly associated activities are carried out,

and references to an installation include references to part of an installation,

“landfill” has the same meaning as in Article 2(g) of Council Directive 1999/31/EC on the landfill of waste<sup>(1)</sup>,

“mobile plant” has the meaning given by regulation 12,

“off-site condition” has the meaning given by regulation 24,

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

“organic compound” means any compound containing carbon and one or more of hydrogen, halogens, oxygen, sulphur, phosphorus, silicon or nitrogen, with the exception of carbon oxides and inorganic carbonates and bicarbonates,

“Part A installation” and “Part B installation” have the same meanings as regulation 12,

“permit” means, unless the context requires otherwise, a permit granted by SEPA in accordance with these Regulations,

“pollution” means emissions as a result of human activity which may—

- (a) be harmful to human health or the quality of the environment,
- (b) cause offence to any human sense,
- (c) result in damage to material property, or
- (d) 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,

“portable battery” means any battery or battery pack which is sealed, can be hand-carried by an average natural person without difficulty, and is neither an automotive battery nor an industrial battery,

“prescribed fee” means a fee prescribed for a matter in a scheme imposing charges made by SEPA under section 41 of the 1995 Act<sup>(2)</sup>,

“register” means the register maintained by SEPA under regulation 64,

“reduction scheme” means a reduction scheme which complies with Part 5 of Annex VII of the Industrial Emissions Directive,

“the relevant date” has the meaning given by regulation 1(1) of the Landfill Regulations,

“revocation notice” has the meaning given by regulation 50,

“rule-making authority” means the Scottish Ministers or SEPA,

“separately collected waste” means waste which has been collected and transported in accordance with section 34(2I) of the 1990 Act,

“site report” means a report as described in paragraph 1(2) of Schedule 4

“solvents installation” has the same meaning as in regulation 12, and an activity carried out at such an installation is referred to as a “solvent emission activity”,

“SEPA” means the Scottish Environment Protection Agency<sup>(3)</sup>,

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(1) OJ L 182, 16.7.1999, p.1, as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p.11), Regulation (EC) No 1137/2008 (OJ L 311, 21.11.2008, p.1), and Directive 2011/97/EU (OJ L 328, 10.12.2011, p.49).

(2) 1995 c.25. Section 41 has been relevantly amended by paragraph 2 of schedule 2 to the Climate Change (Scotland) Act 2009 (asp12), by S.I. 2007/1711, 2007/3106, 2008/3087 and 2009/890, and by S.S.I. 2003/235.

(3) SEPA is established by section 20 of the Environment Act 1995 (c.25).

“specified waste management activity” means an activity comprising—

- (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 or recovery of waste falling within Sections 5.3, 5.4 or 5.6 of that Part of that Schedule, or
- (c) the disposal or recovery of waste in a waste incineration installation,

“standard installation” or “standard mobile plant” means an installation or mobile plant described in standard rules, and cognate expressions are construed accordingly,

“standard rules” has the meaning given by regulation 36,

“standard rules condition” has the meaning given by regulation 37,

“standard rules permit” means a permit containing one or more standard rules conditions and, in relation to any set of standard rules, means a permit containing a standard rules condition in respect of those rules,

“start up and shut down operations” means, in relation to solvent emission activities, operations excluding regular oscillating activity phases whilst bringing an activity, an equipment item or a tank into or out of service or into or out of an idling state,

“substance” includes any chemical element and its compounds and any biological entity or micro-organism, with the exception of—

- (a) radioactive substances within the meaning of Council Directive 96/29/Euratom laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation<sup>(4)</sup>,
- (b) genetically modified organisms within the meaning of Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC<sup>(5)</sup>, and
- (c) genetically modified micro-organisms within the meaning of Directive 2009/41/EC of the European Parliament and of the Council on the contained use of genetically modified micro-organisms (recast)<sup>(6)</sup>,

“substantial change in operation” means a change in operation which SEPA considers may have a significant negative effect on human health or the environment, or which in itself constitutes the carrying out of an activity described in Part 1 of Schedules 1 or 2 that exceeds any threshold capacity specified in those Schedules, and includes the—

- (a) carrying out of solvent emissions activity—
  - (i) at a small solvents installation, where there is a change of the nominal capacity leading to an increase in emissions of volatile organic compounds of more than 25 percent,
  - (ii) at any other solvents installation, where a change of the nominal capacity leads to an increase in emissions of volatile organic compounds of more than 10 percent,
 and for that purpose—

“input” has the same meaning as in Part 4 of Schedule 2 (see the definition of “consumption”),

“nominal capacity” means the maximum mass input of organic solvents at the installation averaged over one day, if that installation is operated at its design output under conditions other than start up and shut down operations or relating to the maintenance of equipment, and

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(4) OJ L 159, 29.6.96, p.1.

(5) OJ L 106, 17.4.2001, p.1; as amended by Commission Decision 2000/6123/EC (OJ L 200, 30.7.2002, p.22), Regulation (EC) No 1829/2003 (OJ L 268, 18.10.2003, p.1), Regulation (EC) No 1830/2003 (OJ L 268, 18.10.2003, p.25) and Directive 2000/27/EC of the European Parliament and of the Council (OJ L 81, 20.3.2008, p.45).

(6) OJ L 125, 21.5.2009, p.75.

“small solvents installation” means a solvents installation—

- (i) which falls within the lower threshold band of items 1, 3, 4, 5, 8, 10, 13, 16 or 17 of the table in Part 2 of Annex VII to the Industrial Emissions Directive, or
- (ii) for the activities which fall under one of the other items of that Part and which has a solvent consumption of less than 10 tonnes per year,
- (b) extension of the rated thermal input of a combustion plant as defined in Article 3(25) of the Industrial Emissions Directive by 50 megawatts or more,
- (c) incineration or co-incineration for the first time of hazardous waste, and for that purpose “hazardous waste” has the meaning given in Section 5.1 of Part 1 of Schedule 1,

“suspension notice” has the meaning given by regulation 56(1) and (4),

“variation notice” has the meaning given by regulation 46,

“volatile organic compound” means—

- (a) any organic compound having a vapour pressure of 0.01 kPa or more at 293.15K or having a corresponding volatility under the particular conditions of use, or
- (b) the fraction of creosote having a vapour pressure of 0.01 kPa or more at 293.15K,

“waste” means any substance or object which the holder discards or intends or is required to discard,

“waste gases” means, in relation to solvent emission activities, the final gaseous discharge containing volatile organic compounds or other pollutants from a stack or abatement equipment into the air,

“waste incineration installation” means that part of an installation or any mobile plant where—

- (a) waste is incinerated or co-incinerated in an incineration or co-incineration plant falling within Part A of Section 5.1 of Part 1 of Schedule 1, or
- (b) any activity falling within Part 1 of that Schedule is carried out in an incineration or co-incineration plant as defined in Section 5.1 of that Part of that Schedule, and

“waste management licence” means a waste management licence within the meaning of Part II of the 1990 Act.

(2) For the purposes of these Regulations—

- (a) where an installation or any 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 is to be treated as the operator of the installation or mobile plant, and
- (b) where an installation or any mobile plant has ceased to be in operation, the person who holds the permit which applies to the installation or mobile plant is to 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.

### **Interpretation: enactments etc.**

3.—(1) In these Regulations—

“1990 Act” means the Environmental Protection Act 1990(7),

“1995 Act” means the Environment Act 1995(8),

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(7) 1990 c.43.

(8) 1995 c.25.

“2000 Regulations” means the Pollution Prevention and Control (Scotland) Regulations 2000(9),

“Batteries Directive” means Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC(10),

“EIA Directive” means Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (codification)(11),

“Hazardous Substances Regulation” means Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006(12),

“Industrial Emissions Directive” means Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (recast)(13),

“Landfill Regulations” means the Landfill (Scotland) Regulations 2003(14),

“Waste Framework Directive” means Directive 2008/98/EC of the European Parliament and of the Council on waste(15),

(2) An expression in relation to batteries defined in Article 3 of the Batteries Directive has the same meaning in these Regulations as in that Directive.

(3) A reference to any other term defined in the Industrial Emissions Directive has the same meaning in these Regulations as in that Directive.

#### **Interpretation: best available techniques, etc.**

##### **4. In these Regulations—**

“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,

“BAT conclusions” means a document containing the parts of a BAT reference document laying down the conclusions on best available techniques, their description, information to assess their applicability, the emission levels associated with the best available techniques, associated monitoring, associated consumption levels and, where appropriate, relevant site remediation measures,

“BAT reference document” means a document, resulting from the exchange of information organised for the purposes of Article 13 of the Industrial Emissions Directive, drawn up for defined activities and describing, in particular applied techniques, present emissions and consumption levels, techniques considered for the determination of best available techniques

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(9) S.S.I. 2000/323; as amended by paragraph 7 of Part 2 of schedule 1 to the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), by S.I. 2007/2325, and by S.S.I. 2002/493, 2003/146, 170, 221 and 235, 2004/26, 110, 112 and 512, 2005/101, 340 and 510, 2006/127, 2008/410, 2009/247 and 336, 2010/236 and 2011/171, 226, 285 and 418, and 2012/148.

(10) OJ L 266, 26.9.2006, p.1, as amended by Directives 2008/12/EC (OJ L 76, 19.3.2008, p.39) and 2008/103/EC (OJ L 327, 5.12.2008, p.7).

(11) OJ L 175, 28.1.2012, p.40.

(12) OJ L No 353, 31.12.2008, p.1; as amended by Commission Regulation (EC) No 790/2009 (OJ L No 235, 5.9.2009, p.1) and Commission Regulation (EC) No 286/2011 (OJ L 83, 30.3.2011, p.1).

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

(14) S.S.I. 2003/235; as amended by paragraph 8 of schedule 2 to the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), and by S.S.I. 2003/343, 2009/247, 2010/60, 2011/226 and 2012/148.

(15) OJ L 312, 22.11.2008, p.3.

as well as BAT conclusions and any emerging techniques, giving special consideration to the matters listed in Schedule 3,

“best” means, in relation to techniques, most effective in achieving a high general level of protection of the environment as a whole,

“best available techniques” mean 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 the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole,

“emerging technique” means a novel technique for an industrial activity that, if commercially developed, could when compared to existing best available techniques provide—

- (a) a higher level of protection of the environment, or
- (b) at least the same level of protection of the environment and higher cost savings,

“emission levels associated with the best available techniques” means the range of emission levels obtained under normal operating conditions using a best available technique, or combination of best available techniques, as described in BAT conclusions, expressed as an average over a given period of time, under specified reference conditions, and

“techniques” includes both the technology used and the way in which an installation is designed, built, maintained, operated and decommissioned.

#### **SEPA: duties relating to best available techniques**

5.—(1) SEPA must ensure that it follows or is informed of—

- (a) developments in best available techniques, and
- (b) the publication of any new or updated BAT conclusions.

(2) SEPA must where appropriate exercise its functions so as to encourage the development and application of emerging techniques, in particular for any technique identified in a BAT reference document.

(3) SEPA must have regard to any guidance by the Commission under Article 27 of the Industrial Emissions Directive relating to the development and application of emerging techniques.

#### **SEPA: application forms**

6. SEPA may require any application made to it under any provision of these Regulations to be made in writing on a form made available by SEPA.

#### **SEPA: information relating to right of appeal**

7. SEPA must, when issuing any decision or determination in respect of which there exists a right of appeal to the Scottish Ministers under these Regulations, inform all persons who have such a right of the existence of the right.

#### **The Scottish Ministers and SEPA: service of notices**

8.—(1) A notice served or given by the Scottish Ministers or by SEPA under these Regulations or the Landfill Regulations must be in writing.

(2) A notice may be served on or given to a person by leaving it at the proper address of the person or by sending it by post to that person at that address.

(3) A notice may—

- (a) in the case of a body corporate, be served on the secretary or clerk of the 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 purposes of this regulation, and of section 7 of the 1978 Act 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 is the last known address of that person, except that—
- (a) in the case of a body corporate or their secretary or clerk, it is 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 is the principal office of the partnership.
- (5) The principal office of a company registered outside of the United Kingdom, or of a partnership carrying on business outside the United Kingdom, is their principal office within the United Kingdom.
- (6) 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 within the meaning of paragraph (4) as the address at which that person (or someone on behalf of that person) will accept notices of the same description as that notice, the specified address is also be treated for the purposes of this regulation and section 7 of the 1978 Act as the proper address of that person.
- (7) In this regulation, “1978 Act” means the Interpretation Act 1978<sup>(16)</sup>.

### **Electronic communications**

- 9.—(1) In these Regulations—
- (a) “writing” includes electronic communications within the meaning of section 15 (general interpretation) of the Electronic Communications Act 2000<sup>(17)</sup>, and
  - (b) a reference to a form includes an electronic form.
- (2) Where an application is sent electronically—
- (a) any fee, map or plan that is required to accompany the application may be sent to SEPA separately, and
  - (b) the application is not be treated as having being received by SEPA until the last thing so required has also been received.

## **PART II**

### **COMPETENT AUTHORITY**

#### **SEPA: designation as competent authority**

**10.** SEPA is designated as the competent authority responsible for carrying out the obligations arising from the Industrial Emissions Directive.

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<sup>(16)</sup> 1978 c.30.

<sup>(17)</sup> 2000 c.7; section 15 was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).



**PART III**  
**GRANTING OF PERMITS**  
**CHAPTER 1**  
**General**

**Permits: requirement for a permit**

**11.**—(1) This regulation applies to—

- (a) a Part A installation,
- (b) a Part B installation
- (c) any mobile plant, and
- (d) a solvents installation.

(2) No person may operate an installation or any plant to which this regulation applies except under, and to the extent, authorised by a permit.

**Permits: interpretation**

**12.**—(1) In these Regulations—

“Part A installation” means an installation where an activity listed under the heading “Part A” in any Section of Part 1 of Schedule 1 is carried out,

“Part B installation” means an installation where an activity listed under the heading “Part B” in any Section of that Part is carried out, other than a Part A installation,

“mobile plant” means plant which is—

- (a) designed and intended to move or be moved regularly from place to place with a view to being used at each place (or if not so designed capable of being, and intended to be, so moved), and
- (b) used to carry out an activity listed under the heading “Part B” in any Section of Part 1 of Schedule 1, and

“solvents installation” means an installation where an activity listed in the table in Part 1 of Schedule 2 is operated above the solvent consumption threshold for that activity (a “solvent emissions activity”).

(2) An installation or mobile plant where an activity is carried out from time to time does not cease to require a permit in respect of the activity during those times when the activity is not carried out.

(3) An installation or mobile plant where an activity is described by reference to a threshold is such an installation or plant where the installed capacity is above the threshold, whether or not it is operated below the threshold.

(4) A Part B installation is not such an installation in respect of any activity which requires a waste management licence<sup>(18)</sup>.

(5) For an installation—

- (a) where an activity described in Part B of Section 1.1 of Part 1 of Schedule 1 is carried out, any associated storage, handling or shredding of tyres which are to be burned as part of that activity is not part of the activity,

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(18) 1990 c.43.

- (b) where an activity described in paragraph (e) of Part B of Section 2.2 of Part 1 of Schedule 1 is carried out, any associated storage or handling of scrap which is to be heated as part of that activity (other than loading the scrap into a furnace) is not part of the activity,
- (c) where an activity described in paragraph (a) of Part B of Section 5.1 of Part 1 of Schedule 1 is carried out, any associated storage or handling of wastes and residues which are to be incinerated is not part of the activity,
- (d) where an activity described in Part B of Section 6.4 of Part 1 of Schedule 1 is carried out, any associated cleaning of used storage drums prior to painting or their incidental handling in connection with such cleaning is not part of the activity.

**Permits: application for a permit**

- 13.—(1) SEPA must on receiving a duly made application for a permit either—
- (a) grant a permit subject to the conditions required, or authorised, to be imposed by or under these Regulations, or regulation 10 of the Landfill Regulations, or
  - (b) refuse the application.
- (2) SEPA must refuse to grant an application for a permit if it considers that the applicant will not—
- (a) be the person who will have control over the operation of the installation or mobile plant concerned after the grant of the permit, or
  - (b) ensure that the installation or mobile plant is operated so as to comply with the conditions which would be included in the permit.
- (3) An application for a permit must be accompanied by any prescribed fee.
- (4) An application for a permit may be withdrawn at any time before it is determined.
- (5) Schedule 4 has effect.

**Permits: authorised operations**

- 14.—(1) A permit may authorise the operation of more than one—
- (a) Part A installation,
  - (b) Part B installation,
  - (c) mobile plant, or
  - (d) solvents installation,
- on the same site if operated by the same operator.
- (2) Where the operation of mobile plant is authorised by a permit, and the—
- (a) plant is used to carry out an activity on the site of an installation authorised by a separate permit, and
  - (b) mobile plant and installation permits impose different requirements as respects the carrying out of the activity,

the requirements of the installation permit shall prevail to the extent of any inconsistency in those requirements.

(3) Subject to paragraph (4), a permit for an installation must include a map or plan showing the site, and the location on the site, of the installation.

(4) A standard rules permit for an installation, other than a hybrid permit in respect of a standard installation, must include either—

- (a) a plan as specified in paragraph (3), or

- (b) the national grid reference number of the location of the installation.

#### **Permits: powers to include conditions**

15.—(1) SEPA may include a condition in a permit—

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

(2) SEPA may exercise the power in paragraph (1) separately from any requirement or power to include a condition in a permit provided for elsewhere in these Regulations.

(3) SEPA must not include any condition in a permit for the purpose only of securing the health of persons at work (within the meaning of Part I of the Health and Safety at Work etc. Act 1974<sup>(19)</sup>).

#### **Permits: consolidation**

16.—(1) SEPA may, where a permit is varied under regulation 46, or where a partial transfer, surrender or revocation of a permit is effected under regulations 47 to 50, replace the permit with a consolidated permit.

(2) SEPA may, where more than one permit is granted in respect of installations on the same site operated by the same operator, replace those permits with a consolidated permit.

(3) SEPA may, where more than one permit applies to mobile plant operated by the same operator, replace those permits with a consolidated permit.

#### **Permits: greenhouse gas emissions**

17.—(1) SEPA must not, where emissions of a pollutant from an installation are subject to conditions imposed for the purposes of regulation 10(2) and (3) of the ETS Regulations, include an emission limit value in a permit in respect of those emissions unless—

- (a) the installation is an excluded installation for the purposes of regulation 11 of the ETS Regulations, or  
(b) it considers the emission limit value is necessary to ensure that no significant local pollution is caused.

(2) SEPA may, in respect of an activity that is a Schedule 1 activity for the purpose of the ETS Regulations<sup>(20)</sup>, choose not to impose a requirement under these Regulations relating to energy efficiency in respect of combustion units or other units emitting carbon dioxide.

(3) Paragraph (2) does not apply to the requirement in regulation 29(1)(b).

(4) In this regulation—

“emission limit value” includes any parameter or technical measure referred to in regulation 25(3), and

“ETS Regulations” means the Greenhouse Gas Emissions Trading Scheme Regulations 2005<sup>(21)</sup>.

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<sup>(19)</sup> 1974 c.37.

<sup>(20)</sup> “Schedule 1 activity” is defined in regulation 2(1) of the Greenhouse Gas Emissions Trading Scheme Regulations 2005.

<sup>(21)</sup> S.I. 2005/925, as relevantly amended by S.I. 2005/2903, 2006/737, 2007/465, 3433 and 3538, 2010/675, 1513 and 1996 and 2011/1506 and 2911

### Permits: fit and proper person

18.—(1) SEPA may grant a permit in respect of a specified waste management activity only if it is satisfied—

- (a) that the applicant is a fit and proper person to carry out that activity, and
- (b) planning permission is in force under the 1997 Act where the use of the site for the activity requires such permission.

(2) A certificate under section 150 of the 1997 Act in relation to such use of the site is to be treated as if it were planning permission for that use.

(3) SEPA must determine whether a person is a fit and proper person by reference to ability of a person to fulfil the conditions of the permit which apply, or will apply, to the carrying out of that activity.

(4) A person is not a fit and proper person if, in particular, it appears to SEPA that—

- (a) the person or a relevant person has been convicted of a relevant offence,
- (b) the person has not made adequate financial provision (by way of security or an equivalent arrangement) to ensure that—
  - (i) obligations (including after-care provisions) arising from the permit in relation to the activity are met, and
  - (ii) any closure procedures required under the permit in relation to that activity are followed,
- (c) the person and all staff engaged in carrying out such an activity will not be provided with adequate professional technical development and training, or
- (d) the management of such an activity will not be in the hands of a technically competent person.

(5) Paragraph (4)(a) does not apply where SEPA considers it appropriate to treat the person as being a fit and proper person.

(6) Paragraph (4)(b) does not apply in respect of landfill sites specified in regulation 6 of the Landfill Regulations.

(7) In this regulation—

“1997 Act” means the Town and Country Planning (Scotland) Act 1997(22),

“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 carried out—
  - (i) in the course of that person’s employment by the holder or proposed holder, or
  - (ii) 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,
- (b) a body corporate which has been convicted of a relevant offence committed when the holder or proposed holder 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 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 in another body corporate at a time when a relevant offence for which that body corporate has been convicted was committed, and

“relevant offence” means an offence prescribed under section 74(6) of the 1990 Act<sup>(23)</sup> for the purposes of section 74(3)(a) of that Act.

#### **Permits: transfer and cessation**

- 19.—(1) A permit may be transferred only in accordance with regulation 47.
- (2) A permit ceases to have effect only in accordance with regulations 48 to 50.

### CHAPTER 2

#### Schedule 1 activities

#### **Schedule 1 activities**

- 20. Schedule 1 has effect.

#### **Schedule 1: general principles**

- 21.—(1) SEPA must on determining the conditions of a permit—
  - (a) take account of the general principles in paragraph (2), and
  - (b) in the case of a Part A installation, the additional general principles in paragraph (3).
- (2) The general principles are that Part A installations, Part B installations and mobile plant should be operated in such a way that—
  - (a) all the appropriate preventative measures are taken against pollution, in particular through application of the best available techniques, and
  - (b) no significant pollution is caused.
- (3) The additional general principles are that—
  - (a) installations should be operated in such a way that—
    - (i) waste generation is prevented, and where waste is produced it is, in order of priority and in accordance with the Waste Framework Directive prepared for re-use, recycled recovered or, where that is technically and economically impossible, disposed of while avoiding or reducing any impact on the environment,
    - (ii) energy is used efficiently, and
    - (iii) the necessary measures are taken to prevent accidents and limit their consequences, and
  - (b) the necessary measures are taken on final cessation of activities to avoid any pollution risk, and to return the site of the installation to a satisfactory state.

#### **Schedule 1 conditions : best available techniques**

- 22.—(1) It is a condition of a permit for a Part A or Part B installation or any mobile plant that the operator must use the best available techniques for preventing or, where that is not practicable, reducing emissions from an installation or mobile plant.

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(23) 1990 c.43; see regulation 3 of S.S.I. 2011/228.

(2) Paragraph (1) does not apply to the extent that any other condition of a permit, or a standard rule which has effect as a standard rules condition, has the same effect.

### **Schedule 1 conditions: general provisions**

**23.**—(1) SEPA must include in a permit for—

- (a) a Part A installation the conditions SEPA considers appropriate—
  - (i) to comply with paragraph (2), and
  - (ii) to ensure, when taken with regulation 22, a high level of protection for the environment as a whole taking particular account for that purpose of the general principles in regulation 21, and
- (b) a Part B installation or any mobile plant, the conditions SEPA considers appropriate, when taken with regulation 22, for the purpose of preventing or, where that is not practicable, reducing emissions into the air, taking particular account for that purpose of the general principles set out in regulation 21(2).

(2) A permit for a Part A installation must include conditions—

- (a) aimed at minimising long distance or trans-boundary pollution,
- (b) ensuring, where necessary, appropriate protection of the soil and groundwater including requirements for the regular maintenance and surveillance of measures taken to prevent emissions to soil and groundwater,
- (c) ensuring, where necessary, appropriate monitoring and management of waste produced by the installation,
- (d) setting out the steps to be taken prior to the operation of the installation and after the definitive cessation of operations,
- (e) relating to any period when the installation will not operate normally, including as required conditions relating to start up and shut down operations, leaks, malfunctions, momentary stoppages and definitive cessation of operations,
- (f) setting out suitable emission monitoring requirements specifying measurement methodology, frequency, and evaluation procedure, including in particular—
  - (i) appropriate requirements in respect of the surveillance of measures taken to prevent emissions to soil and groundwater,
  - (ii) appropriate requirements in respect of the periodic monitoring of soil and groundwater in relation to relevant hazardous substances likely to be found on the site, having regard for that purpose to the possibility of soil and groundwater contamination at the site,
  - (iii) ensuring, where regulation 25(7) applies, that results of emission monitoring are available for the same periods of time and for the same reference conditions as for the emission levels associated with the best available techniques,
- (g) requiring the operator to supply SEPA regularly, and at least annually, with—
  - (i) the results of the monitoring of emissions, and
  - (ii) the other required data that enables SEPA to verify compliance with the permit conditions, and
  - (iii) where regulation 25(7) applies, a summary of the results of emission monitoring which allows a comparison with the emission levels associated with the best available techniques,
- (h) requiring the operator to inform SEPA, without delay, of any incident or accident significantly affecting the environment, and

- (i) in respect of assessment of compliance with the emission limit values.
- (3) For the purposes of paragraph (2)(f)—
  - (a) emission monitoring requirements must where applicable be based on conclusions on monitoring as described in BAT conclusions, and
  - (b) periodic monitoring of—
    - (i) groundwater must be carried out at least every 5 years, and
    - (ii) soil must be carried out at least every 10 years,unless such monitoring is based on a systematic appraisal of the risks of contamination of groundwater and soil.

#### **Schedule 1 conditions: off-site conditions**

**24.**—(1) SEPA may include in a permit for a Part A or Part B installation a 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 (an “off-site condition”), whether or not the operator is not entitled to carry out such works or to do that thing in relation to the land.

(2) A person whose consent would be required to carry out such works, or to do that thing, must grant (or join in granting) the operator such rights in relation to the land as will enable the operator to comply with an off-site condition.

(3) Schedule 6 has effect.

#### **Schedule 1 conditions: emission limit values and environmental quality standards**

**25.**—(1) SEPA must ensure that a permit for a Part A or Part B installation or any mobile plant includes such conditions as it considers appropriate to comply with paragraphs (2) to (14).

(2) Subject to paragraph (3), a permit must include emission limit values for—

- (a) polluting substances listed in Schedule 5, and
- (b) other polluting substances,

likely to be emitted in significant quantities from an installation or any mobile plant, having regard for that purpose to the nature of the pollutant, and in the case of a Part A installation the potential for emissions to transfer pollution from one environmental medium to another.

(3) SEPA may supplement or replace an emission limit value by an equivalent parameter or technical measure ensuring an equivalent level of protection for the environment.

(4) An emission limit value must apply at the point at which the emissions leave the installation or mobile plant, any dilution before that point being disregarded for the purpose of determining the value.

(5) An emission limit value may apply to groups of pollutants rather than to individual pollutants.

(6) Where any BAT conclusions contain an emission level associated with the best available techniques described in the conclusions, an emission limit value must—

- (a) ensure that, under normal operating conditions, emissions do not exceed the levels associated with the best available techniques laid down in the BAT conclusions, and
- (b) be expressed for the same or a shorter period of time, and under the same reference conditions, as for the emission levels associated with the best available techniques.

(7) An emission limit value under paragraph (6) may be set at a different value, in terms of values, periods of time, and reference conditions, provided that SEPA—

- (a) assesses the results of emissions monitoring at least annually,

- (b) is satisfied on assessment that emissions under normal operating conditions have not exceeded the levels associated with the best available techniques during that period, and
  - (c) ensures that the results of emissions monitoring are available for the same period of time and reference conditions as for the emission levels associated with the best available techniques.
- (8) Where any BAT conclusions describe best available techniques, but do not contain an emission level associated with the techniques, an emission limit value must—
- (a) be determined by giving special consideration to the matters specified in Schedule 3, and
  - (b) ensure a level of environmental protection equivalent to the techniques described in the BAT conclusions.
- (9) SEPA may set stricter permit conditions that those achievable by the use of best available techniques as described in BAT conclusions.
- (10) Where there are no BAT conclusions for an activity, an emission limit value must be based on the best available techniques in relation to the installation or mobile plant concerned, as determined by giving special consideration to the matters specified in Schedule 3.
- (11) Where an environment quality standard requires stricter conditions than those achievable by the use of best available techniques SEPA—
- (a) must include additional measures or other emission limit values in a permit, and
  - (b) may include other measures to comply with the standard.
- (12) SEPA may set a less strict emission limit value under paragraph (6) for an installation if—
- (a) an assessment shows that achievement of the emission levels associated with the best available techniques as described in any BAT conclusions would lead to disproportionately higher costs compared to environmental benefits due to the—
    - (i) the geographical location or local environmental conditions of the installation, or
    - (ii) technical characteristics of the installation,
  - (b) the value set—
    - (i) does not exceed the emission limit values set out in the Annexes to the Industrial Emissions Directive, and
    - (ii) ensures that no significant pollution is caused and that a high level of protection of the environment as a whole is achieved, and
  - (c) the permit specifies the reasons for setting the value, including the result of the assessment and the justification for the conditions imposed.
- (13) SEPA may set a less strict emission limit value for an installation or any mobile plant than would otherwise be required under paragraphs (6), (8) or (10) for a total period not exceeding 9 months for the purpose of testing and use of an emerging technique.
- (14) SEPA may take into account the effect of a waste water treatment plant when determining the emission limit values applying in relation to indirect releases into water from a Part A installation provided that—
- (a) doing so does not lead to higher levels of pollution, and
  - (b) the permit ensures an equivalent overall level of protection of the environment.
- (15) In this regulation, “less strict emission limit value” means a value that is less than the value that would otherwise be set if based on best available techniques.



### **Schedule 1 conditions: large combustion plants**

26. SEPA must ensure that a permit contains such conditions as it considers necessary to give effect to the provisions of Chapter III and Annex V of the Industrial Emissions Directive.

### **Schedule 1 conditions: titanium dioxide**

27. SEPA must ensure that a permit for an installation producing titanium dioxide contains such conditions as it considers necessary to give effect to the provisions of Chapter VI and Annex VIII of the Industrial Emissions Directive.

### **Schedule 1 conditions: mixing separately collected waste**

28. SEPA must ensure that on or after 1st January 2014 a permit granted or varied for an activity described in Chapter 5 of Part 1 of Schedule 1, or in Section 6.8 of Chapter 6 of that Part, contains any condition SEPA considers necessary to ensure that no separately collected waste is mixed with any other waste or any material, to the extent that mixing would hamper further recycling.

### **Schedule 1 conditions: incineration and co-incineration of waste**

29.—(1) SEPA must ensure that a permit granted or varied for the incineration or co-incineration of—

- (a) waste contains such conditions as SEPA considers necessary to—
  - (i) give effect to the provisions of Chapter IV and Annex VI of the Industrial Emissions Directive,
  - (ii) ensure that on or after 1st January 2014 no separately collected waste capable of being recycled is incinerated or co-incinerated,
- (b) waste with energy recovery contains such conditions as SEPA considers necessary to ensure that that the recovery of energy takes place with a high level of energy efficiency,
- (c) municipal waste contains such conditions as SEPA considers necessary to ensure where practicable that no waste including non-ferrous metals or hard plastics is incinerated or co-incinerated.

(2) For the purposes of paragraph (1)(a)(i), paragraph 2.1(c) of Part 6 of Annex VI to the Industrial Emissions Directive is to be read as if for “and dioxins and furans” there is substituted “dioxins, furans, dioxin-like polychlorinated biphenyls and polycyclic aromatic hydrocarbons”.

### **Schedule 1 conditions: incineration of batteries**

30.—(1) SEPA must ensure that a permit for the incineration of waste contains a condition prohibiting the incineration of waste industrial and automotive batteries.

(2) Such a condition does not prohibit the incineration of residues of any batteries that have undergone both treatment and recycling, provided that the treatment and recycling—

- (a) used best available techniques, in terms of the protection of health and the environment, and
- (b) complied, at a minimum, with Union legislation, in particular as regards health and safety and waste management.

### **Schedule 1 conditions: waste oils**

31.—(1) SEPA must ensure that a permit for an activity relating to waste oils contains a condition ensuring that, so far as technically feasible and economically viable—

- (a) waste oils having different characteristics are not mixed, and
- (b) waste oils are not mixed with other kinds of waste or substances, if such mixing would impede their treatment.

(2) In this regulation, “waste oils” and “treatment” have the same meanings as in the Waste Framework Directive.

### **Schedule 1 conditions: volatile organic compounds**

**32.**—(1) SEPA must ensure that a permit for a specified activity contains any condition SEPA considers necessary to ensure compliance with—

- (a) Directive [94/63/EC](#) of the European Parliament and Council on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations(**24**), and
- (b) Directive [2009/126/EC](#) of the European Parliament and the Council on stage II petrol vapour recovery during the refuelling of motor vehicles at service stations(**25**).

(2) In this regulation, “specified activity” means an activity described in paragraphs (b) to (e) of Part B of Section 1.2 of Part 1 of Schedule 1.

## CHAPTER 3

### Schedule 2 activities

#### **Schedule 2 activities**

**33.** Schedule 2 has effect.

#### **Solvents: conditions**

**34.** SEPA must ensure that a permit contains such conditions as it considers necessary to give effect to the provisions of Chapter V of and Annex VII to the Industrial Emissions Directive.

#### **Solvents installations: abatement equipment**

**35.**—(1) The operator of a solvents installation who proposes to install abatement equipment must apply for a variation under regulation 46, and must not install that equipment until after any variation is granted.

(2) Paragraph (1) does not apply where the total emissions of the solvents installation after installation will not exceed those which would have been permitted had the installation been subject to a permit containing conditions necessary to ensure compliance with Articles 59 to 62 of and, Annex VII to, the Industrial Emissions Directive.

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(24) OJ L 365, 31.12.1994, p.24; as amended by Regulation (EC) No. 1882/2003 (OJ L 284, 31.10.2003, p.1) and Regulation (EC) No. 1137/2008 (OJ L 311, 31.11.2008, p.1).

(25) OJ L 285, 31.10.2009, p.36.

## PART IV

### STANDARD RULES

#### Standard rules

**36.**—(1) A rule-making authority may make, revise or revoke rules (“standard rules”) which apply to an installation or any mobile plant described in the rules.

(2) A rule-making authority must, when making or revising standard rules, ensure that the rules—

- (a) give effect to the best available techniques for preventing, or where that is not practicable reducing, emissions from an installation or any mobile plant, and
- (b) so far as relating to an activity set out in Annex I to the Industrial Emissions Directive, do not prescribe the use of any technique or specific technology in order to ensure compliance with Articles 14 and 15 of that Directive.

(3) A rule-making authority may only make or revise standard rules if it is satisfied that the operation of an installation or any mobile plant will, to the extent that it is covered by a standard rules condition, result in—

- (a) the same level of environmental protection, and
- (b) in the case of Part A installations, the same high level of integrated pollution prevention and control,

as would result were there no standard rules condition and the installation or mobile plant were operated under the conditions that would be included under Part II of these Regulations.

(4) A rule-making authority must—

- (a) keep standard rules made by the authority under review, and
- (b) revise any such rules whenever it considers necessary to do so in order to—
  - (i) follow developments in best available techniques, or
  - (ii) ensure compliance with the Industrial Emissions Directive.

(5) A rule-making authority must ensure that standard rules made by them contain a reference to the Industrial Emissions Directive.

(6) A reference to revising standard rules includes a partial revocation of the rules.

#### Standard rules: conditions

**37.**—(1) SEPA may specify in a permit for a standard installation or standard mobile plant that standard rules are to be conditions of the permit (“a standard rules condition”).

(2) A reference in a permit to standard rules is to the rules as revised from time to time.

(3) A standard rules condition may be combined with any other condition under Part III of these Regulations.

(4) If a standard rules condition is inconsistent with any other condition of a permit, the standard rules condition shall prevail to the extent of that inconsistency.

(5) If an installation or mobile plant becomes a standard installation or standard mobile plant, SEPA may vary the permit for the installation or plant so as to include a standard rules condition.

#### Standard rules: consultation

**38.**—(1) A rule-making authority must before making, revising or revoking standard rules consult—

- (a) those persons appearing to the authority to be representative of the interests of those communities likely to be affected by the proposed rules, revision or revocation,
- (b) those operators appearing to the authority to be likely to be so affected, and
- (c) such other persons as appear to the authority to be likely to be affected by or otherwise have an interest in the proposed rules, revision or revocation.

(2) Paragraph (1) does not apply where the authority considers that a revision effects only minor administrative changes to standard rules.

#### **Standard rules: rules by the Scottish Ministers**

**39.** The Scottish Ministers must on making, revising or revoking standard rules—

- (a) give notice to SEPA of that fact, and
- (b) provide SEPA with a copy of the rules, the revision or the revocation.

#### **Standard rules: publication**

**40.**—(1) SEPA must publish any standard rules made by or notified to SEPA.

(2) A standard rules condition may be included in a permit from the day following the date of publication.

#### **Standard rules: revision**

**41.**—(1) SEPA must on standard rules being revised give notice to an operator with a standard rules permit of the—

- (a) revision,
- (b) date on which the revision is expected to be published, and
- (c) date on which the revision is expected to take effect.

(2) SEPA must after giving such notice publish the—

- (a) revision,
- (b) standard rules as amended by the revision, and
- (c) date on which the revision will take effect.

(3) A revision will take effect—

- (a) if it makes only minor administrative changes, on the day following the date of publication, or
- (b) in any other case, twelve weeks after that date.

#### **Standard rules: revocation**

**42.**—(1) SEPA must publish any revocation of standard rules made by or notified to it.

(2) SEPA must not include a standard rules condition relating to revoked rules in a permit after such publication.

(3) A standard rules condition included in a permit before any revocation will apply until the permit is varied, and the revoked rules continue to have effect in relation to the permit until the variation.

(4) SEPA must vary a permit affected by a revocation as soon as reasonably practicable after publication of the revocation.

#### **Part IV: interpretation**

43. In this Part of these Regulations, “publish” and cognate terms means publish on the SEPA web site.

## **PART V**

### **REVIEW, VARIATION AND CESSATION OF PERMITS**

#### **Permits: review of conditions**

44.—(1) SEPA must review the conditions of a permit—

- (a) if pollution caused by an installation or mobile plant is of such significance that the emission limit values in the permit need to be revised, or new emission limit values need to be included,
- (b) if the operational safety of the activities carried out in the installation or mobile plant requires other techniques to be used,
- (c) where it is necessary to comply with a new or revised environmental quality standard in accordance with Article 18 of the Industrial Emissions Directive,
- (d) within 4 years after the date of publication of BAT conclusions relating to the main activity of an installation if the permit relates to an activity in respect of which those conclusions were published, and
- (e) where the permit relates to an activity not covered by any BAT conclusions and a development in best available techniques allows for the significant reduction of emissions at the installation or mobile plant.

(2) A review under paragraph (1)(d) or (e) must take into account all the new or updated BAT conclusions adopted under Article 13(5) of the Industrial Emissions Directive since the permit was granted, or last reviewed.

(3) SEPA must in addition periodically review the conditions of a permit.

(4) SEPA may review the conditions of a permit at any other time.

(5) SEPA must on carrying out a review—

- (a) have regard to the results of emissions monitoring and other data that enables a comparison with the best available techniques (including if applicable techniques described in BAT conclusions), and
- (b) ensure that the permit complies with the Industrial Emissions Directive, if necessary by variation or revocation of the permit.

#### **Permits: proposed change in operation**

45.—(1) An operator of an installation or mobile plant in respect of which a permit is granted must give notice to SEPA of a proposed change in operation (a “change notice”) at least 14 days before making the change.

(2) A change notice must—

- (a) be in writing, and
- (b) contain a description of the proposed change in operation.

(3) SEPA must acknowledge receipt of a change notice.

(4) A change notice is not necessary if—

- (a) the operator applies for a variation of the permit before a change in operation is made, and
- (b) that application describes the proposed change.

(5) An operator must not make a change during any period beginning with the date of service on the operator of a notice under regulation 63(2) and ending on the date on which the operator provides the required information.

#### **Permits: variation**

**46.—**(1) SEPA must vary a permit if it considers it necessary to do so in order to ensure that the permit complies with Part II of these Regulations or regulation 10 of the Landfill Regulations.

(2) SEPA may vary the conditions of a permit at any other time.

(3) The operator of an installation or mobile plant in respect of which a permit is granted may in addition apply to SEPA for a variation of the permit.

(4) An application for variation must be accompanied by any prescribed fee.

(5) An application for variation may be withdrawn at any time.

(6) Regulation 18 applies to a variation that will authorise a specified waste management activity for the first time as if the variation were an application for a permit.

(7) Schedule 7 has effect.

(8) SEPA must on varying a permit give notice to the operator (a “variation notice”) specifying the—

- (a) variation of the conditions of the permit, and
- (b) date on which the variation is to take effect,

and unless the variation notice is withdrawn it has effect on the date so specified.

(9) A variation notice must, unless the notice relates to an application for variation, require the operator to pay the fee within the period specified in the notice.

(10) SEPA must give notice to the operator if an application for variation is refused.

(11) This regulation and Schedule 7 apply to a variation of a provision of a permit in the same manner as they apply to the variation of a condition.

#### **Permits: transfer**

**47.—**(1) SEPA may transfer all or part of a permit to another person where paragraphs (2) or (3) apply.

(2) This paragraph applies where the existing and proposed permit holders make a joint application to SEPA to approve the transfer of all or part of a permit.

(3) This paragraph applies where SEPA considers that all or part of a permit should be transferred to a new holder, and the proposed holder consents to the transfer.

(4) An application for a transfer must be accompanied by the permit and by any prescribed fee.

(5) An application for a transfer must include the address, telephone number and email address for each of the existing and proposed permit holders and (if different) a correspondence address.

(6) An application for a partial transfer must—

- (a) identify the installation or mobile plant to which the transfer applies, and
- (b) in the case of an installation, include a map or plan identifying the part of the site to which the application relates.

(7) An application for the transfer of a permit in respect of a specified waste management activity must include any information that it is intended SEPA should consider when determining whether the transferee is a fit and proper person, and for that purpose regulation 18 applies to a transfer in the same manner as it applies to the grant of a permit.

(8) SEPA must approve an application for transfer unless it considers that the—

- (a) proposed holder will not be the person with control of the operation of the installation or mobile plant after any transfer,
- (b) in the case of a permit authorising the carrying out of a specified waste management activity, the proposed holder is not a fit and proper person for the purposes of regulation 18, or
- (c) the proposed holder will not ensure compliance with the permit conditions.

(9) SEPA must effect a transfer—

- (a) in the case of a partial transfer—
  - (i) by issuing a new permit to the proposed holder for that part of the installation or mobile plant to which the transfer relates, and
  - (ii) returning the original permit to the existing holder endorsed in respect of the transfer and any variation of the permit conditions,
- (b) in any other case, by endorsing the permit in respect of the new holder and any variation of the permit conditions.

(10) A transfer of all or part of a permit has effect on the date specified in the permit or the endorsement, provided that where paragraph (2) applies the date must be as agreed by the existing and proposed permit holders.

(11) SEPA may vary the conditions of a permit only if it considers it necessary to do so to take account of the transfer.

(12) SEPA must where paragraph (2) applies give notice to the existing and proposed permit holders if it decides not to approve the transfer.

(13) The existing permit holder may by notice to SEPA hold the application as being refused if SEPA have failed to make a determination within the specified period.

(14) In paragraph (13), the specified period is the period of two months beginning with the date of receipt of an application under paragraph (2), or such longer period as SEPA may agree in writing with the existing and proposed permit holders.

### **Permits: surrender of a Part A permit**

**48.**—(1) The operator of a Part A installation may apply to SEPA to surrender all or part of a permit for the installation.

(2) An application must be accompanied by the permit and any prescribed fee.

(3) An application must provide—

- (a) the telephone number, address and email address of the operator and (if different) a correspondence address,
- (b) in the case of a partial surrender, a description of the part to be surrendered including a map or plan of the site,
- (c) a report describing the condition of the site affected by the surrender (the “closure report”), identifying in particular any changes from the condition of the site as described in the—
  - (i) site report, and
  - (ii) where applicable, the baseline report,

- (d) a description of the steps that have been taken to avoid pollution risks from the site, including any steps that have been taken to—
  - (i) return the site to a satisfactory state, and
  - (ii) remove, control, contain or reduce any relevant hazardous substance in soil and groundwater.
- (4) SEPA may by notice—
  - (a) require the operator to provide further information in relation to the site as specified in the notice within the period so specified,
  - (b) treat the application as having been withdrawn if the information is not provided within that period.
- (5) SEPA must determine an application within—
  - (a) the 3 month period beginning on the date of receipt of the application, or
  - (b) such longer period as SEPA and the operator may agree in writing.
- (6) The 3 month period does not include any period beginning with the date on which notice under paragraph (4)(a) is served and ending on the date on which the information is provided.
- (7) The operator may by notice to SEPA hold the application as being refused at the end the period provided for under paragraph (5) if SEPA have failed to make a determination within that period.
- (8) SEPA must approve an application if it is satisfied that all appropriate measures have been taken to—
  - (a) avoid pollution risk resulting from the operation of the installation,
  - (b) return the site to a satisfactory state, taking into account the technical feasibility of the measures,
  - (c) remove, control, contain or reduce any relevant hazardous substance in soil or groundwater so that the site, taking into account its the current or approved future use, ceases to pose a significant risk to human health or the environment.
- (9) SEPA must give notice of approval or rejection of the application to the operator (the “determination notice”).
- (10) If the application is approved the permit (or part of the permit) ceases to have effect on the date specified in the determination notice.
- (11) SEPA may vary a condition of the permit if it considers it necessary to do so as a result of approval of a partial surrender, and the condition as varied has effect on the date specified in the determination notice.
- (12) In this regulation a reference to any relevant hazardous substance only includes such a substance that is in soil or groundwater as a result of the permitted activities.
- (13) In this regulation—
  - “Part A installation” does not include that part of an installation where a relevant waste activity is carried out,
  - “pollution risk” includes—
    - (a) subject to sub-paragraph (b), only those risks arising from the carrying out of an activity under the permit after the date of the permit,
    - (b) in respect of a specified waste management activity, only those risks arising after the relevant date,
  - “relevant date” means—



(a) where an activity was carried out under a waste management licence that ceased to have effect under section 35(11A) of the 1990 Act<sup>(26)</sup> on the date of the permit, the date of the licence, or

(b) the date of the permit,

“relevant waste activity” means the incineration of non-hazardous waste—

(a) in an incineration plant with a capacity of less than 1 tonne per hour, or

(b) in a co-incineration plant, unless the incineration is carried out as part of any other Part A activity,

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

### **Permits: notification of surrender of an installation or mobile plant permit**

**49.**—(1) This regulation applies where an operator of an installation, other than a Part A installation for the purposes of regulation 48 or any mobile plant ceases or intends to cease operation of all or part of the installation or mobile plant.

(2) An operator may give notice to SEPA of the surrender of all or any part of a permit.

(3) A notice under paragraph (2) (a “surrender notice”) must include—

(a) the operator’s telephone number, address and email address and (if different) a correspondence address,

(b) in the case of a partial surrender of a permit applying to a Part B installation, 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,

(c) in the case of a partial surrender of a permit applying to mobile plant, a list of the mobile plant to which it applies, and

(d) the date on which the surrender is to take effect.

(4) The date on which the surrender is to take effect must be at least 28 days after the date on which the surrender notice is served on SEPA.

(5) A permit ceases to have effect—

(a) on the date specified in the surrender notice, or

(b) to the extent of the surrender in the case of partial surrender—

(i) on that date, or

(ii) where paragraph (6) applies, on the later of that date or the date of variation of the remaining part of the permit.

(6) SEPA must if it considers it necessary to vary the conditions of the permit to take account of a partial surrender—

(a) give notice to the operator that it intends to vary the permit, and

(b) serve a variation notice on the operator under regulation 46.

### **Permits: revocation of permits**

**50.**—(1) SEPA may at any time revoke all or part of permit by serving a notice (“a revocation notice”) on the operator.

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(26) 1990 c.43. Section 35(11A) of the 1990 Act was inserted by S.S.I. 2000/323.

- (2) SEPA may in particular serve a revocation notice where—
- (a) a permit authorises the carrying out of a specified waste management activity and it appears to SEPA that the operator has ceased to be a fit and proper person by reason of—
    - (i) the operator or a relevant person having been convicted of a relevant offence within the meaning of regulation 18, or
    - (ii) the management of the activity has 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 to the extent that it authorises the operation of some of the installations or mobile plant to which it applies,
  - (c) revoke a permit only to the extent that 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 must specify—
- (a) the date on which the revocation takes effect (which must be at least 28 days after the date on which the notice is served), and
  - (b) in the case of a partial revocation, the extent to which the permit is being revoked.
- (5) Where a permit for a Part A installation is revoked under paragraph (3)(a) or (b), and SEPA considers that the operator must take steps in respect of the installation once no longer operating to—
- (a) avoid any pollution risk resulting from the operation of the installation on the site,
  - (b) return the site to a satisfactory state, taking into account the technical feasibility of the steps, or
  - (c) remove, control, contain or reduce any relevant hazardous substance in soil or groundwater so that the site, taking into account its the current or approved future use, ceases to pose a significant risk to human health or the environment,
- the revocation notice must specify any steps that must be taken in respect of the site (or part of the site where applicable) that are further to those required by the permit.
- (6) Subject to regulation 58(10) and paragraph (7), a permit ceases to have effect in whole or part from the date specified in the notice.
- (7) Where paragraph (5) applies, the permit—
- (a) continues to have effect in so far as it requires steps to be taken until SEPA issues a certificate of completion stating that it is satisfied that the steps have been taken, and
  - (b) any steps specified under paragraph (5) are to be treated as conditions of the permit, and regulations 46, 55, and 67 apply in relation to such steps, and to any other conditions in the permit which require steps to be taken until SEPA issues a certificate of completion.
- (8) SEPA may withdraw a revocation notice before the date on which the revocation has effect.
- (9) Regulation 48(12) applies for the purpose of deciding in this regulation whether a pollution risk results from the operation of a Part A installation as it applies for the purposes of regulation 48.

## PART VI

### COMPLIANCE

#### **SEPA: duty to ensure compliance**

**51.** SEPA must take such action under these Regulations as may be necessary for the purpose of ensuring that the conditions of a permit are complied with.

#### **Operators: duty to report breach of permit**

**52.** An operator of an installation or any mobile plant must immediately give notice to SEPA of any breach of a condition of the permit for the installation or mobile plant.

#### **SEPA: environmental inspection plan**

**53.—**(1) SEPA must maintain an environmental inspection plan in respect of Part A installations.

(2) An environmental inspection plan must—

- (a) include a general assessment of relevant significant environmental issues,
- (b) state the geographical area, and the installations, covered by the plan,
- (c) provide for the carrying out of environmental inspections, and
- (d) provide for the frequency of environmental inspections.

(3) An environmental inspection plan may be comprised of one or more plans, documents or strategies, and may be prepared at a national, regional or local level.

(4) SEPA must regularly review, and where appropriate update or replace, an environmental inspection plan.

#### **SEPA: environmental inspection of Part A installations**

**54.—**(1) SEPA must carry out an environmental inspection of a Part A installation.

(2) SEPA must, in particular, ensure that an environmental inspection is carried out—

- (a) to investigate as soon as possible—
  - (i) serious environmental complaints,
  - (ii) serious environmental accidents, and
  - (iii) incidents and occurrences of non-compliance, and
- (b) where appropriate, before granting a permit and on the review or variation of a permit.

(3) The period between site visits for the purpose of an environmental inspection must be based on a systematic appraisal of risk, and must not exceed—

- (a) one year for an installation posing the highest risk,
- (b) three years for an installation posing the lowest risk.

(4) An additional site visit must take place within 6 months of the identification in an environmental inspection of an important case of non-compliance with permit conditions.

(5) SEPA must prepare a report on a site visit (a “site visit report”) describing its—

- (a) findings regarding compliance with the permit, and
- (b) conclusions on whether any further action is needed.

(6) SEPA must notify a site visit report to the operator of the installation within 2 months of the site visit taking place.

(7) SEPA must include the particulars of a site visit report in the register within 4 months of the site visit taking place.

(8) In this regulation, “systematic appraisal of risk” means an appraisal by SEPA of the environmental risks of an installation based on—

- (a) the potential and actual impacts on human health and the environment taking into account the levels and types of emissions, the sensitivity of the local environment, and the risk of accidents,
- (b) the record of compliance with permit conditions, and
- (c) participation by the operator in the Union eco-management and audit scheme under Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)(27).

#### **SEPA: enforcement notices**

**55.**—(1) SEPA may serve a notice (an “enforcement notice”) on the operator of an installation or mobile plant in respect of which a permit is granted if it considers that—

- (a) the operator has contravened, is contravening, or is likely to contravene any condition of a permit, or
- (b) an incident or accident significantly affecting the environment has occurred as a result of the operation of the installation or mobile plant.

(2) An enforcement notice served under sub-paragraph (a) of paragraph (1) must—

- (a) state why SEPA consider that there is, or is likely to be, such a contravention,
- (b) specify the matter constituting the contravention, or making it likely that the contravention will arise (as the case may be), and
- (c) specify the steps the operator must take to remedy the contravention, or to remedy the matter making it likely that the contravention will arise (as the case may be).

(3) An enforcement notice served under sub-paragraph (b) of paragraph (1) must specify the steps that the operator must take—

- (a) to limit the environmental consequences of the incident or accident, and
- (b) to prevent further possible incidents or accidents.

(4) An enforcement notice must specify the period within which steps must be taken.

(5) The steps that may be specified in an enforcement notice may, without prejudice to the generality of paragraph (3), include steps that must be taken to remedy the effects of any pollution caused by the contravention.

(6) The operator of the installation or mobile plant must comply with an enforcement notice.

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

#### **SEPA: suspension notices**

**56.**—(1) SEPA must give notice under this regulation to the operator of an installation or any mobile plant if it considers that any aspect of the operation of the installation or mobile plant—

- (a) poses an immediate danger to human health,

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(27) OJ L 342, 22.12.2009, p.1.

- (b) threatens to create an immediate significant adverse effect upon the environment, or
  - (c) involves some other risk of serious pollution.
- (2) Paragraph (1) does not apply where SEPA intends to arrange for steps to be taken under regulation 57(1) in relation to such operation of the installation or mobile plant.
- (3) Paragraph (1) applies whether or not the particular manner of operation is regulated by, or contravenes, a condition of the permit.
- (4) SEPA may give notice under this regulation to an operator carrying out specified waste management activities if it considers that the operator has ceased to be a fit and proper person in relation to those activities by reason of management of the activities having ceased to be in the hands of a technically competent person.
- (5) A notice under paragraph (1) or (4) (a “suspension notice”) must—
- (a) state why SEPA considers that the suspension notice is required,
  - (b) in the case of a suspension notice under paragraph (1), specify—
    - (i) the nature of the harm that is being (or may be) caused by the operation of the installation or mobile plant,
    - (ii) the steps that must be taken to remedy the harm or remove a risk, and
    - (iii) the period within which those steps must be taken,
  - (c) state the extent to which the permit ceases to have effect to authorise the operation of the installation or mobile plant, or the carrying out of an activity in the installation or by means of the mobile plant, and
  - (d) where the permit is to continue to have effect to authorise an activity any steps, in addition to those already required under the permit, that are to be taken in carrying out that activity.
- (6) The operator of the installation or mobile plant must comply with a suspension notice.
- (7) A permit ceases to have effect, to the extent stated in the suspension notice, on service of the notice.
- (8) SEPA may withdraw a notice at any time, and must withdraw a notice if satisfied—
- (a) in the case of a notice under paragraph (1), that the steps required by the notice to remove the risk of pollution have been taken,
  - (b) in the case of a notice under paragraph (4), that the management of the activities is in the hands of a technically competent person.

### **SEPA: power to prevent or remedy pollution**

57.—(1) SEPA may arrange for steps to be taken to remove an imminent risk of serious pollution if it considers that the operation of any installation or mobile plant regulated by a permit, or the operation in a particular manner, involves such a risk.

(2) SEPA may arrange for steps to be taken towards remedying the effects of pollution caused by the commission of an offence under regulation 67(1)(a), (b) or (d).

(3) SEPA must, at least seven days before steps are taken under paragraph (2), give notice to the operator of those steps.

(4) SEPA may recover the cost of taking steps under this regulation from the operator of the installation or mobile plant concerned.

(5) Paragraph (4) does not apply in respect of costs—

- (a) for steps taken under paragraph (1), if the operator shows that there was no imminent risk of serious pollution requiring any such steps to be taken,

- (b) which the operator shows to have been unnecessarily incurred by SEPA.

## PART VII

### APPEALS

#### Appeals to the Scottish Ministers and to the sheriff

**58.**—(1) A person—

- (a) who has been refused a permit after an application under regulation 13,
- (b) who has been refused the variation of a permit after an application under regulation 46,
- (c) who is aggrieved by the conditions attached to a permit granted to that person—
  - (i) after application under regulation 13, or
  - (ii) by a variation notice following an application under regulation 46,
- (d) whose application for a transfer under regulation 47 has been refused, or who is aggrieved by the conditions attached to a permit to take account of such transfer,
- (e) whose application under regulation 48 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,
- (f) whose request to begin closure procedure is not approved under regulation 17(3)(b) of the Landfill Regulations,
- (g) who is aggrieved by a decision under paragraph 1(3)(b) of Schedule 5 to the Landfill Regulations,

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

(2) A person—

- (a) who is served with a variation notice (other than in respect of an application for variation),
- (b) a revocation notice,
- (c) an enforcement notice,
- (d) a suspension notice, or a
- (e) closure notice under regulation 18(1) of the Landfill Regulations,

may appeal against the notice to the Scottish Ministers.

(3) Paragraphs (1) and (2) do not apply where the decision or notice (as the case may be) gives effect to a direction under paragraph (4), or under—

- (a) regulation 60,
- (b) paragraph 19(7) of Schedule 4, or
- (c) 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,
- (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,

and the Scottish Ministers may give directions as to the conditions to be attached to the permit. where they exercise a power in sub-paragraph (b) or (c).

(5) On determining an appeal against a notice under paragraph (2), the Scottish Ministers may—

- (a) quash or affirm the notice,
- (b) if affirming it, may do so either in its original form or with such modifications as they think fit.

(6) An appeal may be taken to the sheriff against a determination by the Scottish Ministers under paragraphs (4) and (5) by—

- (a) SEPA, or
- (b) any person referred to in paragraphs (1) or (2) who is affected by the determination.

(7) The appeal referred to in paragraph (6) must be made by summary application within 21 days from the date of the decision of the Scottish Ministers.

(8) In disposing of an appeal taken under paragraph (6), the sheriff may take any step open to the Scottish Ministers under paragraphs (4) and (5).

(9) The determination or disposal of an appeal which relates to a decision to include in a permit a standard rules condition does not affect the continued validity of the relevant standard rules.

(10) In an appeal under—

- (a) paragraph (1)(c), (d) or (e) in relation to a conditions attached to a permit, the bringing of the appeal does not suspend the operation of the condition, and
- (b) paragraph (2), the bringing of the appeal does not suspend the operation of an enforcement notice, a suspension notice or a variation notice.

(11) In an appeal under paragraph (2) against a revocation notice, the notice if affirmed does not take effect until—

- (a) expiry of the period referred to in paragraph (7), or
- (b) withdrawal of the appeal.

(12) In an appeal under paragraph (1)(g) in relation to closure procedure, or under paragraph (2) against a closure notice, the closure procedure may not begin until—

- (a) determination of the appeal, or
- (b) withdrawal of the appeal.

(13) Where the Scottish Ministers give directions as to a condition to be included in a permit—

- (a) Part II of these Regulations, and
- (b) regulation 37, or the appropriate provisions of regulation 10 of the Landfill Regulations,

apply as if SEPA were determining whether to include the condition.

(14) Schedule 8 has effect.

(15) In an appeal under paragraph (1)(g) where a waste management licence (“a licence”) is in force, this regulation and Schedule 8 apply as if a reference—

- (a) to a permit is a reference to a licence,
- (b) to an operator is a reference to a licence holder, and
- (c) to an installation or mobile plant is a reference to a landfill.

### **Interest for the purposes of the Industrial Emissions Directive**

**59.** Any non-governmental organisation promoting environmental protection and meeting any requirements under the law is deemed to have an interest for the purposes of Article 25(1)(a) of the Industrial Emissions Directive, and rights capable of being impaired for the purposes of Article 25(1)(b) of that Directive.

## **PART VIII**

### **THE SCOTTISH MINISTERS**

#### **Scottish Ministers: directions to SEPA**

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

(2) Without prejudice to paragraph (1), the Scottish Ministers may direct SEPA—

- (a) to exercise (or refrain from exercising) any functions under these Regulations or the Landfill Regulations,
- (b) to exercise (or refrain from exercising) any function in such circumstances, or in such manner, as may be specified,
- (c) as to the objectives which are to be achieved by any condition of a permit.

(3) Where the Scottish Ministers receive information under Article 26(1) of the Industrial Emissions Directive in relation to the operation of an installation outside of the United Kingdom, they must direct SEPA to take such steps as SEPA consider appropriate for the purposes of—

- (a) bringing the information to the attention of the persons in Scotland likely to be affected by the operation of the installation, and
- (b) providing such persons with an opportunity to comment on that information.

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

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

#### **Scottish Ministers: guidance to SEPA**

**61.**—(1) The Scottish Ministers may issue guidance to SEPA with respect to the carrying out of any of its functions under these Regulations or the Landfill Regulations.

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

#### **Scottish Ministers: emission plans**

**62.**—(1) Subject to paragraph (3), 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) This regulation does not apply to an emission plan.



- (4) In this regulation—
- (a) “emission” means the direct or indirect release of any substance from individual or diffuse sources into the air, water or land, and
  - (b) “emission plan” has the meaning given in the Large Combustion Plants (National Emission Reduction Plan) Regulations 2007(28).

## PART IX

### INFORMATION AND PUBLICITY

#### **Scottish Ministers and SEPA: powers in respect of information**

**63.**—(1) The Scottish Ministers may by written notice require SEPA to provide such information about the discharge of a function of SEPA under these Regulations or the Landfill Regulations as is specified in the notice.

(2) The Scottish Ministers or SEPA may by written notice, for the purposes of the discharge of their functions under these Regulations or the Landfill Regulations, require any person to provide such information as is specified in the notice, in such form and within such period as is specified in the notice.

(3) For the purposes of this regulation the—

- (a) discharge by the Scottish Ministers of an obligation of the United Kingdom under the Union Treaties or any international agreement relating to the environment is treated as a function of theirs under these Regulations, and
- (b) compilation of an inventory of emissions (whether or not from installations or mobile plant) is treated as a function of SEPA under these Regulations.

(4) The information which a person may be required to furnish under paragraph (2) does 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.

#### **SEPA: public register**

**64.**—(1) Subject to regulations 65 and 66 and to paragraphs 2 to 4 of Schedule 9, SEPA must maintain a register (“the register”) containing the particulars described in paragraph 1 of that Schedule.

(2) Where, by virtue of regulation 66, information of any description is excluded from the register under this regulation, a statement must be entered in the register indicating the existence of information of that description.

(3) SEPA must—

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

(4) The register may be kept in any form.

(5) The Scottish Ministers may give SEPA directions requiring the removal from the register of any specified information—

- (a) not prescribed for inclusion by paragraph 1 of Schedule 9, or
- (b) which, under regulation 66, ought to have been excluded from the register.

**Register: exclusion of information affecting national security**

**65.**—(1) Information must not be included in the register if and so long as a direction by the Secretary of State or the Scottish Ministers<sup>(29)</sup> is in force in relation to that information under section 21 of the 1990 Act.

(2) Information must not be included in the register if and so long as a direction by the Secretary of State is in force in relation to that information under section 20(6) of the 1990 Act.

(3) A direction under section 21(2) of the 1990 Act applies to the register as it applies to the register maintained under section 20 of that Act (“the 1990 Act register”), and no information referred by SEPA under section 21(2)(b) of that Act shall be included in the register until the question of its inclusion is determined for the purposes of that section.

(4) A direction under section 20(6) of the 1990 Act applies to the register as it applies to the 1990 Act register.

(5) Section 21(3) and (4) of the 1990 Act apply to the register as it applies to the 1990 Act register, and no information notified under section 21(4)(b) of that Act may be included in the register until the question of its inclusion is determined for the purposes of section 21 of that Act.

**Register: exclusion of confidential information**

**66.**—(1) No information relating to the affairs of any individual or business may be included in the register 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 must 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) SEPA is deemed to have determined, at the end of the period referred to in sub-paragraph (a), that information is not commercially confidential if—

- (a) it fails to give notice of determination of an application under paragraph (2) within the period allowed by or under paragraph (3), and
- (b) the applicant notifies SEPA in writing that it has so failed.

(5) Subject to section 113 of the 1995 Act, 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 must (unless the information is the subject of an application under paragraph (2))—

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<sup>(29)</sup> The functions of the Secretary of State under section 21(1), (2) and (4) of the Environmental Protection Act 1990 (c.43) so far as they are exercisable in or as regards Scotland may by virtue of Article 3 of S.I. 1999/1750 be exercised by the Scottish Ministers after consultation with the Secretary of State.

- (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 representations are made SEPA must, 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 must 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 must 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) must—

- (a) give the Scottish Ministers notice of the appeal together with—
  - (i) a statement of the grounds of appeal, and
  - (ii) 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
- (b) send SEPA, at the same time, a copy of that notice and those statements.

(8) The Scottish Ministers—

- (a) may, before giving notice of their determination of an appeal under paragraph (6), afford the appellant and SEPA an opportunity of appearing before and being heard by a person appointed by them and must do so in any case where a request is duly made by the appellant or SEPA to be so heard, and
- (b) must, when issuing their determination, advise the appellant of the right of appeal under paragraph (13).

(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 notwithstanding that the information may be commercially confidential.

(10) Information excluded from the register ceases to be commercially confidential at the end of—

- (a) the period of four years beginning with the date of the determination by virtue of which it was excluded,
- (b) such shorter period as may be specified in the notice of that determination for the purpose of this paragraph,

provided that the person who provided the information may apply to SEPA for the information to remain excluded on the ground that it should be treated as commercially confidential, and SEPA must determine whether or not that is the case.

(11) Paragraphs (6) to (8) 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 including it in the register would prejudice to an unreasonable degree the commercial interests of that individual or person.

(13) SEPA, or the person referred to in paragraph (6)(a), may appeal to the sheriff against the decision of the Scottish Ministers made under that paragraph.

(14) An appeal under paragraph (13) is by summary application, and must be made within 21 days of the decision of the Scottish Ministers under paragraph (6).

## PART X

### PROVISION AS TO OFFENCES

#### Offences

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

- (a) to contravene regulation 11,
- (b) to fail to comply with or to contravene a condition of a permit,
- (c) to fail to comply with regulation 45(1),
- (d) to fail to comply with the requirements of—
  - (i) an enforcement notice,
  - (ii) a suspension notice, or
  - (iii) a closure notice under regulation 18(1) of the Landfill Regulations,
- (e) to fail, without reasonable excuse, to comply with any requirement imposed by a notice under regulation 63(2),
- (f) to fail, without reasonable excuse, to comply with regulation 52,
- (g) 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 the Landfill Regulations, or
  - (ii) for the purpose of obtaining the grant of a permit issued under these Regulations to that person or any other person, or
  - (iii) for the purpose of obtaining the variation, transfer or surrender of a permit,
- (h) intentionally to make a false entry in any record required to be kept under a condition of a permit,
- (i) with intent to deceive, to forge or use a document issued or authorised to be issued under a condition of a permit, or required for any purpose under such a condition, or to make or possess a document so closely resembling any such document as to be likely to deceive,
- (j) to fail to comply with an order made by a court under regulation 70,
- (k) to fail to comply with Part 3 of Schedule 2.

(2) A person guilty of an offence under sub-paragraph (a), (b), (d), (f) or (j) of paragraph (1) is liable—

- (a) on summary conviction, to a fine not exceeding £40,000 or to imprisonment for a term not exceeding twelve 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), (e) or (g) to (k) of paragraph (1) is 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 is committed by a body corporate or a partnership and is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of—
- (a) any director, manager, secretary or other similar officer of the body corporate, or
  - (b) 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) is guilty of that offence and is liable to be proceeded against and punished accordingly.
- (5) Where the affairs of a body corporate are managed by its members, paragraph (4) applies 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.

#### **Courts: enforcement**

**68.** SEPA may, if it considers that proceedings for an offence under regulation 67(1)(d) would not afford an effective remedy against a person who has failed to comply an enforcement notice or a suspension notice, take proceedings in any court of competent jurisdiction for the purpose of securing compliance with such a notice.

#### **Courts: admissibility of evidence**

**69.**—(1) A statement by an operator made to SEPA for the purposes of complying with regulation 52 may only be used in a prosecution for an offence under regulation 67(1)(f) where in giving evidence the operator makes a statement inconsistent with it.

(2) 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 is admissible as evidence that that condition has not been observed.

#### **Courts: power to order cause of offence to be remedied**

**70.**—(1) Where a person is convicted of an offence under regulation 67(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 matter, that person is not liable under regulation 67 in respect of the matter if it continues during the time fixed by the order of the court or any further time allowed under paragraph (2).

## PART XI

### CROWN APPLICATION, ETC

#### **Application to the Crown**

**71.**—(1) Subject to the provisions of this regulation, these Regulations and the Landfill Regulations bind the Crown.

(2) No contravention by the Crown of any provision of these Regulations or the Landfill Regulations makes the Crown criminally liable for the contravention, and no proceedings may be taken against the Crown under these Regulations, 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) The provisions of these Regulations and the Landfill Regulations apply to persons in the public service of the Crown as they apply to other persons.

(4) If the Secretary of State has certified in relation to functions under these Regulations or the Landfill Regulations that it is requisite or expedient in the interests of national security that powers of entry exercisable under section 108 of the 1995 Act should not be exercisable in respect of premises held or used by or on behalf of the Crown, then those powers are not so exercisable.

(5) The following persons are 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.

#### **Transitional provisions**

**72.** Schedule 10 has effect.

#### **Consequential amendments**

**73.** Schedule 11 has effect.

**Revocations**

74. Schedule 12 has effect.

St Andrew's House,  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers