

2004 No. 26

ENVIRONMENTAL PROTECTION

The Solvent Emissions (Scotland) Regulations 2004

Made - - - - *27th January 2004*

Coming into force in accordance with regulation 1(1)

The Scottish Ministers, in exercise of the powers conferred by section 2 of the Pollution Prevention and Control Act 1999^(a) and of all other powers enabling them in that behalf, having in accordance with section 2(4) of that Act consulted the Scottish Environment Protection Agency, such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses respectively as they consider appropriate, and such other bodies and persons as they consider appropriate, hereby make the following Regulations, a draft of which has, in accordance with section 2(8) of that Act, been laid before, and approved by a resolution of, the Scottish Parliament:

Citation, commencement and extent

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

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the 1990 Act” means the Environmental Protection Act 1990^(b);

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

“authorisation” means an authorisation granted under section 6 of the 1990 Act.

(2) Subject to regulation 3(17), in these Regulations, any word or expression used which is defined in regulation 2 of, or Schedule 3 to, the 2000 Regulations shall have the same meaning as it has in those Regulations.

^(a) 1999 c.24. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) as read with section 5(3) of the said Act of 1999. Council Directive 1999/13/EC on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations (“the Solvent Emissions Directive”) (O.J. No. L 85, 29.3.99, p.1) was designated for the purposes of paragraph 20(2)(c) of Schedule 1 to the 1999 Act by the Pollution Prevention and Control (Designation of the Solvent Emissions Directive) (Scotland) Order 2003 (S.S.I. 2003/ 600).

^(b) 1990, c.43; to which there are amendments not relevant to these Regulations.

^(c) S.S.I. 2000/323, as amended by S.S.I. 2002/493; S.S.I. 2003/146, 170 and 235.

(3) Any other word or expression used both in these Regulations and in the Solvent Emissions Directive has the same meaning for the purposes of these Regulations as it has for the purposes of that Directive.

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

3.—(1) Where an installation which—

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

the operator shall within the period of 4 months beginning on the date of coming into force of these Regulations make an application under regulation 13 of the 2000 Regulations for a variation of the conditions of that permit.

(2) Where on or after 1st April 2001 and before the date of coming into force of these Regulations—

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

the operator shall within the period of 4 months beginning on the date of coming into force of these Regulations—

- (i) make an application under section 11 of the 1990 Act for a variation of the conditions of the authorisation; or
- (ii) subject to the consent of SEPA, in the case of an SED installation falling wholly within any description of processes set out in Schedule 1 to the 1991 Regulations under the heading “Part A”, either make an application under section 11 of the 1990 Act for a variation of the conditions of the authorisation or make an application for a permit to operate the whole installation under regulation 7 of the 2000 Regulations.

(3) Where before the date of coming into force of these Regulations—

- (a) an installation which contains a new or an existing SED installation began using a risk phrase substance or preparation; and
- (b) the SED installation or part of the SED installation in which the substance or preparation is used is subject to an authorisation,

the operator shall within the period of 4 months beginning on the date of coming into force of these Regulations—

- (i) make an application under section 11 of the 1990 Act for a variation of the conditions of the authorisation; or
- (ii) subject to the consent of SEPA, in the case of an SED installation falling wholly within any description of processes set out in Schedule 1 to the 1991 Regulations under the heading “Part A”, either make an application under section 11 of the 1990

Act for a variation of the conditions of the authorisation or make an application for a permit to operate the whole installation under regulation 7 of the 2000 Regulations.

(4) Where on or after 1st April 2001 and before the date of coming into force of these Regulations–

- (a) an installation which contains a new or an existing SED installation underwent a substantial change in operation;
- (b) the activities carried out in the affected part of the SED installation fall wholly within any description of processes set out in Schedule 1 to the 1991 Regulations under the heading “Part B”; and
- (c) that part of the SED installation is on the date of coming into force of these Regulations wholly covered by an authorisation,

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

(5) Subject to paragraph (1), where an installation which contains an existing SED installation is subject to a permit, the operator shall by the SED date make an application under regulation 13 of the 2000 Regulations for a variation of the conditions of that permit.

(6) Subject to paragraphs (2) and (4), where the activities carried out by an existing SED installation–

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

the operator shall by the SED date, and subject to the consent of SEPA, either make an application under section 11 of the 1990 Act for a variation of the conditions of the authorisation or make an application for a permit to operate the whole installation under regulation 7 of the 2000 Regulations.

(7) Paragraphs (1) to (6) do not apply if SEPA has already included in the permit or authorisation all conditions necessary to meet the requirements of the Solvent Emissions Directive.

(8) Where after the date of coming into force of these Regulations–

- (a) an operator of an installation which contains a new or an existing SED installation proposes to make a substantial change in the operation of that SED installation or to install abatement equipment; and
- (b) the affected part of the SED installation is subject to a permit,

the operator shall make an application under regulation 13 of the 2000 Regulations for a variation of the conditions of the permit and may not make the substantial change in operation or install the abatement equipment before the determination date.

(9) Where after the date of coming into force of these Regulations–

- (a) an operator of an installation which contains a new or an existing SED installation proposes to install abatement equipment;
- (b) the activities carried out in the affected part of the SED installation fall wholly within any description of processes set out in Schedule 1 to the 1991 Regulations whether under the heading “Part A” or “Part B”; and
- (c) that part of the SED installation is wholly covered by an authorisation,

the operator shall–

- (i) make an application under section 11 of the 1990 Act for a variation of the conditions of the authorisation; or
- (ii) subject to the consent of SEPA, in the case of an SED installation falling wholly within any description of processes set out in Schedule 1 to the 1991 Regulations under the heading “Part A”, either make an application under section 11 of the 1990

Act for a variation of the conditions of the authorisation or make an application for a permit to operate the whole installation under regulation 7 of the 2000 Regulations and may not install the abatement equipment before the determination date.

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

- (a) an operator of an installation which contains a new or an existing SED installation proposes to make a substantial change in the operation of that installation;
- (b) the activities carried out in the affected part of the SED installation fall wholly within any description of processes set out in Schedule 1 to the 1991 Regulations under the heading “Part B”; and
- (c) that part of the SED installation is wholly covered by an authorisation,

the operator shall make an application under section 11 of the 1990 Act for a variation of the conditions of the authorisation; and may not make the substantial change in operation before the determination date.

(11) Where after the date of coming into force of these Regulations–

- (a) an operator of an installation which contains a new or an existing SED installation proposes to begin using a risk phrase substance or preparation, and
- (b) the SED installation or part of the SED installation in which it is proposed to use the risk phrase substance or preparation is subject to a permit or an authorisation;

the operator shall–

- (i) where the installation is subject to a permit, make an application for a variation of the conditions of the permit; or
- (ii) subject to sub-sub-paragraph (iii), where the installation is subject to an authorisation, make an application under section 11 of the 1990 Act for a variation of the conditions of the authorisation; or
- (iii) subject to the consent of SEPA, in the case of an SED installation falling wholly within any description of processes set out in Schedule 1 to the 1991 Regulations under the heading “Part A” and which is subject to an authorisation, either make an application under section 11 of the 1990 Act for a variation of the conditions of the authorisation or make an application for a permit to operate the whole installation under regulation 7 of the 2000 Regulations,

and the operator may not begin using the substance or preparation before the determination date.

(12) Where after the date of coming into force of these Regulations–

- (a) a substance or preparation used in a new or an existing installation becomes a risk phrase substance or preparation, and
- (b) the SED installation or part of the SED installation in which the substance or preparation is used is subject to a permit or an authorisation,

the operator shall within the period of 4 months beginning on the date on which the risk phrase is assigned to that substance or preparation–

- (i) where the installation is subject to a permit, make an application for a variation of the conditions of the permit; or
- (ii) subject to sub-sub-paragraph (iii), where the installation is subject to an authorisation, make an application under section 11 of the 1990 Act for a variation of the conditions of the authorisation; or
- (iii) subject to the consent of SEPA, in the case of an SED installation falling wholly within any description of processes set out in Schedule 1 to the 1991 Regulations under the heading “Part A” and which is subject to an authorisation, either make an application under section 11 of the 1990 Act for a variation of the conditions of the authorisation or make an application for a permit to operate the whole installation under regulation 7 of the 2000 Regulations.

(13) Paragraphs (1), (4), (8) and (10) shall not apply to an installation containing an SED installation which has undergone, undergoes or will undergo a substantial change in operation where the total emissions of the SED installation do not exceed those that would have been permitted had the affected part been subject to a permit containing conditions necessary to ensure that the SED installation complied with the requirements of Articles 5, 8 and 9 of the Solvent Emissions Directive.

(14) An application under this regulation—

- (a) shall contain the information specified in paragraph 1C of Part 1 of Schedule 4 to the 2000 Regulations; and
- (b) in relation to an application under paragraphs (2), (3), (4), (6), (9), (10), (11), and (12), paragraph 1C of Part 1 of Schedule 4 to the 2000 Regulations shall be read as if the reference to an “application for a permit” included a reference to “an application under section 11 of the 1990 Act for a variation of the conditions of an authorisation”.

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

(16) A notice served under paragraph (15) shall be treated for the purposes of these Regulations as an enforcement notice served under regulation 19(1) of the 2000 Regulations.

(17) For the purposes of this regulation—

“determination date” means—

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

“the SED date” means—

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

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

4.—(1) Where the prescribed dates for an installation, which is already in part subject to a permit, are determined in accordance with paragraph 18(5) of Part 4 of Schedule 3 to the 2000 Regulations (determination of the prescribed date for an SED installation carrying out activities which are only partly also activities falling within any section of Chapters 1 to 6 of Part 1 of Schedule 1 and any directly associated activities) and the prescribed date for part of the SED installation has not yet passed, the operator may make an application to vary the permit to extend its scope to incorporate the whole of the SED installation.

(2) Subject to paragraph (3), the provisions of regulation 13 of and Schedule 7 to the 2000 Regulations shall apply to an application under paragraph (1) as if it were an application for a variation of a permit under regulation 13(2) of the 2000 Regulations.

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

(a) regulation 13 shall apply as if—

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

“(4) Where an application is duly made to SEPA under regulation 4(1) of the Solvent Emissions (Scotland) Regulations 2004, SEPA shall either vary the permit to

extend its scope subject to the conditions required or authorised to be imposed by regulations 9 and 9C or refuse so to vary the permit.”;

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

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

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

“(7) Where SEPA decides on an application under regulation 4(1) of the Solvent Emissions (Scotland) Regulations 2004 not to vary the permit to extend its scope, it shall give notice of its decision to the operator.”;

(b) Schedule 7 shall apply as if–

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

(ii) in paragraph (h) after “conditions of the permit” there were inserted “(including an application under regulation 4(1) of the Solvent Emissions (Scotland) Regulations 2004)”;

(iii) at the end of paragraph 4(1) there were inserted after sub-paragraph (b)–

“; or

(c) an application is made under regulation 4(1) of the Solvent Emissions (Scotland) Regulations 2004 to vary the permit to extend its scope”; and

(iv) at the end of paragraph 4(9)(c) there were inserted “or, in the case of an application under regulation 4(1) of the Solvent Emissions (Scotland) Regulations 2004 to vary the permit to extend its scope, the extended scope of the permit that will be authorised by the variation”.

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

(5) An application for a variation of the conditions of a permit under regulation 3(1), (5), (8), (11) and (12) and an application for variation to extend the scope of the permit under paragraph (1) may be combined in one application.

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

5.—(1) Where the prescribed dates for an installation, which is already in part subject to an authorisation, are determined in accordance with paragraph 18(7) of Part 4 of Schedule 3 to the 2000 Regulations (determination of the prescribed date for an SED installation carrying out activities which are only partly also activities falling within any section of Chapters 1 to 6 of Part 1 of Schedule 1 and any directly associated activities) and the anticipated prescribed date for the SED installation has not yet passed, the operator may make an application under section 11 of the 1990 Act for a variation of the conditions of the authorisation, to extend its scope to incorporate the whole of the SED installation.

(2) Where after the date of coming into force of these Regulations, an application for a variation is made under paragraph (1) in respect of proposals by the operator to–

(a) make a substantial change in the operation of the SED installation;

(b) install abatement equipment; or

(c) begin using a risk phrase substance or preparation,

the operator may not implement any of the proposals before the determination date for that variation.

(3) An application for a variation of the conditions of an authorisation under regulation 3(2), (3), (4), (6), (9), (10), (11) or (12) and an application for a variation to extend the scope of the authorisation under paragraph (1) may be combined in one application.

(4) For the purposes of this regulation—

“anticipated prescribed date” shall have the same meaning as it has for the purposes of Part 4 of Schedule 3 to the 2000 Regulations; and

“determination date” shall have the same meaning as it has for the purposes of regulation 3 of these Regulations.

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

6.—(1) Where an operator has made or is deemed to have made an application under regulation 7 of the 2000 Regulations to operate an installation containing an SED installation (the “original application”) and—

- (a) the operator wishes to make a substantial change in the operation of the SED installation, to install abatement equipment, to begin using a risk phrase substance or preparation or a substance or preparation used in the installation becomes a risk phrase substance or preparation before the original application has been determined; or
- (b) the operator wishes to use a reduction scheme and the original application has not been determined by SEPA by 31st August 2005; or
- (c) in relation to an installation for which the prescribed date is determined in accordance with paragraph 18(5) of Part 4 of Schedule 3 to the 2000 Regulations (determination of the prescribed date for an SED installation carrying out activities which are only partly also activities falling within any section of Chapters 1 to 6 of Part 1 of Schedule 1 and any directly associated activities), the original application is not determined by SEPA before the date for which the operator is required to apply for a permit for the remaining part of the installation,

the operator may make a supplementary application to SEPA.

(2) A supplementary application under paragraph (1) shall contain—

- (a) in the case of an application under paragraph (1)(a), a description of the substantial change in the operation or abatement equipment to be installed or the risk phrase substance or preparation to be used or which has been assigned;
- (b) in the case of an application under paragraph (1)(b), details of the proposed reduction scheme; and
- (c) any other information which would be required under Schedule 4 to the 2000 Regulations to be included in an application to operate the installation which is not in the original application.

(3) Where an operator makes a supplementary application under paragraph (1) then subject to the consent of SEPA—

- (a) the original application shall be amended to include the provisions of the supplementary application; and
- (b) the resulting application shall be deemed to have been made on the date the supplementary application is made.

Determinations in relation to deemed applications

7.—(1) Where in respect of an SED installation—

- (a) an application for a variation of an authorisation is made under regulation 3 (“the first application”);

- (b) before the determination of that application, an application for a permit to operate that installation is deemed to have been made in accordance with paragraph 9(3) and (4) of Schedule 3 to the 2000 Regulations (“the deemed application”); and
- (c) SEPA determines that both the first application and the deemed application should be granted,

SEPA may grant a permit in respect of both applications, rather than granting separately a variation of the authorisation to which the first application relates.

(2) Where a permit is granted in accordance with paragraph (1), the notice of determination given by SEPA under paragraph 9(6) of Schedule 3 to the 2000 Regulations and the notification to the operator under paragraph 9(7) of that Schedule to those Regulations, shall relate to both the first application and the deemed application.

Duty for operators applying to use a reduction scheme

8.—(1) Where, in respect of an existing SED installation an operator makes—

- (a) an application for a permit; or
- (b) an application for a variation of the conditions of an existing permit or authorisation under regulation 3 or for an extension of an existing permit under regulation 4; or
- (c) an application for an extension of an existing authorisation under regulation 5; or
- (d) a supplementary application under regulation 6,

and indicates a wish to use a reduction scheme in respect of that SED installation, the operator shall, from 31st October 2005 until the determination date for the SED installation, operate the SED installation in accordance with the requirements of the reduction scheme.

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

(3) Where SEPA considers that an operator has failed, is failing or is likely to fail to comply with any of the requirements under paragraph (1), SEPA may serve a notice on the operator requiring that operator to comply with such requirements as are specified in the notice and specifying the period within which they shall be complied with.

(4) A notice served under paragraph (3) shall be treated for the purposes of these Regulations as an enforcement notice served under regulation 19(1) of the 2000 Regulations.

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

(6) A notice served under paragraph (5) shall be treated for the purposes of these Regulations as a notice served under regulation 26(2) of the 2000 Regulations.

Amendment to the Pollution Prevention and Control (Scotland) Regulations 2000

9. The 2000 Regulations shall be amended in accordance with regulations 10 to 21 of these Regulations.

10. In regulation 2(1) (interpretation: general)—

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

“and “substantial change in operation” means, in relation to an installation or mobile plant, a change in operation which, in the opinion of SEPA, may have significant negative effects on human beings or the environment or which in itself constitutes the carrying out of an activity falling within Schedule 1 exceeding any threshold capacity therein, and shall include (except in relation to Part 1 of Schedule 3)—

- (i) in relation to a small SED installation which does not fall wholly within the scope of the IPPC Directive, a change of the nominal capacity leading to an increase of emissions of volatile organic compounds of more than 25 percent;
 - (ii) in relation to all other SED installations which do not fall wholly within the scope of the IPPC Directive, a change of the nominal capacity leading to an increase of emissions of volatile organic compounds of more than 10 percent”;
- (b) delete the definition of “the Directive” and after the definition of “installation” insert–
 - ““the IPPC Directive” means Council Directive 96/61/EC concerning integrated pollution prevention and control(a)”;
- (c) after the definition of “change in operation” insert–
 - ““directly associated activity” means–
 - (i) in relation to an activity carried out in a stationary technical unit and falling within any description in any section of Chapters 1 to 6 of Part 1 of Schedule 1, any directly associated activity which has a technical connection with the activity carried out in the stationary technical unit and which could have an effect on pollution, and
 - (ii) in relation to an SED activity, any directly associated activity which has a technical connection with the SED activity carried out on the same site and which could have an effect on any discharge of volatile organic compounds into the environment;”;
- (d) for the definition of “installation” substitute–
 - ““installation” means (except where used in the term SED installation)–
 - (a) a stationary technical unit where one or more activities listed in Part 1 of Schedule 1 are carried out; and
 - (b) any other location on the same site where any other directly associated activities are carried out;
 and, other than in Schedule 3, references to an installation include references to part of an installation;”;
- (e) in the definition of “mobile plant” before “Part 1” insert “any section of Chapters 1 to 6 of”;
- (f) after the definition of “mobile plant” insert–
 - ““new SED installation” and “existing SED installation” shall be interpreted in accordance with Schedule 3;”;
- (g) after the definition of “off-site condition” insert–
 - ““organic compound” means any compound containing at least the element carbon and one or more of hydrogen, halogens, oxygen, sulphur, phosphorus, silicon or nitrogen, with the exception of carbon oxides and inorganic carbonates and bicarbonates;”;
- (h) after the definition of “pollution” insert–
 - ““reduction scheme” means a reduction scheme which complies with Annex IIB of the Solvent Emissions Directive;”;
- (i) after the definition of “revocation notice” insert–
 - ““SED activity” means any activity falling within the section in Chapter 7 of Part 1 of Schedule 1 where operated above the solvent consumption thresholds specified for that activity as set out in that section of that Chapter;
 - ““SED installation” means–
 - (i) a stationary technical unit where one or more SED activities are carried out; and

(a) O.J. No. L 257, 10.10.96, p.26, to which there are amendments not relevant to these Regulations.

- (ii) any other location on the same site where any other directly associated activities are carried out;

“small SED installation” means an SED installation which falls within the lower threshold band of items 1, 3, 4, 5, 8, 10, 13, 16 or 17 of Annex IIA to the Solvent Emissions Directive or, for the other activities of Annex IIA, which have a solvent consumption of less than 10 tonnes/year;

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

- (j) after the definition of “variation notice” insert–

““volatile organic compound” means–

- (i) any organic compound having a vapour pressure of 0.01 kPa or more at 293.15K or having a corresponding volatility under the particular conditions of use, or
- (ii) the fraction of creosote which exceeds a vapour pressure of 0.01 kPa at 293.15K;”.

11. For all occurrences of the words “the Directive” throughout the Regulations substitute “the IPPC Directive”.

12. In regulation 6(2) (requirement for permit to operate installation and mobile plant)–

- (a) between sub-paragraphs (b) and (c) delete “and”;
- (b) after sub-paragraph (c) insert–
 - “; and
- (d) referred to in Parts 3 and 4 of Schedule 3, the date set out or determined in accordance with those Parts”.

13. In regulation 7(2) (permits: general provisions) after “regulation 9 (or the applicable provisions of regulation 10 of the 2003 Regulations)” insert “or regulation 9C”.

14. In regulation 9 (conditions of permits: specific requirements)–

- (a) at the beginning of paragraph (1)(c), insert “subject to paragraph (1B),”;
- (b) after paragraph (1A), insert–
 - “(1B) In relation to an SED installation, conditions shall be included in a permit for the purpose of preventing or reducing emissions of volatile organic compounds into air, soil and water as well as preventing the inclusion of solvents, or reducing the amount of solvents contained, in any products.”.

15. After regulation 9, insert–

“9C. Conditions of permits: solvents

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

16. In regulation 10 (general binding rules)–

- (a) in paragraph (2), for “regulation 9” substitute “regulations 9 and 9C”;
- (b) in paragraph (3), for “regulation 9” substitute “regulations 9 and 9C”.

17. In regulation 13 (variation of permits)–

- (a) in paragraph (1), for “regulations 8 and 9” substitute “regulations 8, 9 or 9C”;

(a) O.J. No. L 85, 29.3.1999, p.1.

- (b) in paragraph (4), for “regulations 8 and 9” substitute “regulations 8, 9 or 9C of these Regulations”.

18. In Schedule 1 (activities and installations and mobile plant)–

- (a) at the end of Part 1 there is inserted a new Chapter 7 as set out in Schedule 1 to these Regulations;
- (b) in Part 2–
 - (i) in paragraph 2, for sub-paragraph (2) substitute–

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

 - (i) an SED activity, or
 - (ii) an activity which may give rise to an offensive smell noticeable outside the site where the activity is carried out.”;
 - (ii) in paragraphs 3, 4, 5, 6 and 7, before “Part 1” insert “any section of Chapters 1 to 6 of”;
 - (iii) after paragraph 7 insert–

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

and
 - (iv) in paragraphs 9(4) and 10 after “Part B”, insert “(other than a description in Chapter 7 of Part 1)”;
- (c) at the beginning of paragraph 18(d) of Part 3, insert “Subject to sub-paragraph (e),”; and
- (d) after paragraph 18(d) of Part 3 insert–

“;

 - (e) sub-paragraph (d) shall not apply where the associated activity referred to in that sub-paragraph is an activity which forms part of an SED installation”.

19. In Schedule 3 (prescribed dates and transitional arrangements)–

- (a) in paragraph 5 of Part 1,
 - (i) in sub-paragraph (1), after “sub-paragraph (2)”, insert “and (3)”; and
 - (ii) after sub-paragraph (2) insert–

“(3) An operator may make an application before the beginning of the relevant period in accordance with regulation 3 of the Solvent Emissions (Scotland) Regulations 2004.”;
- (b) in paragraph 9 of Part 2,
 - (i) after sub-paragraph (2), insert–

“(2A) An operator of an SED installation may with the consent of SEPA make an application for a permit before the date on which an application would otherwise be deemed to have been made under sub-paragraph (3).”;
 - (ii) in sub-paragraph (3), after “sub-paragraph (2)”, insert “or (2A)”; and
- (c) after Part 2 there are inserted new Parts 3 and 4 as set out in Schedule 2 to these Regulations.

20. In Schedule 4 (grant of permits)–

- (a) in paragraph 1(1)(d), after “Section 5.1 of Part 1 of Schedule 1” insert “or an SED activity or part of an SED activity (and any directly associated activities) which does not also fall within any description in any section of Chapters 1 to 6 of Part 1 of Schedule 1 (and any directly associated activities);
- (b) in paragraph 1(1)(e), delete from “which will have a technical connection” to “pollution”;
- (c) in paragraph 1(1)(m), after “regulation 9” insert “and 9C”;

(d) after paragraph 1B(a), insert–

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

- (a) where the operator of an SED installation wishes to use a reduction scheme, details of the proposed reduction scheme;
- (b) where there are used in an SED installation substances or preparations which, because of their content of volatile organic compounds classified as carcinogens, mutagens, or toxic to reproduction under Directive 67/548/EEC(b) are assigned or need to carry the risk phrases R45, R46, R49, R60 and R61, a timetable for replacing as far as possible such substances or preparations by less harmful substances or preparations within the shortest possible time taking into account any guidance published under Article 7 of the Solvent Emissions Directive or, in the case of halogenated volatile organic compounds which are assigned or need to carry the risk phrase R40, how the emission limit value in Article 5(8) of the Directive will be complied with.

(2) Where the prescribed date for the installation is determined in accordance with paragraph 18(5) of Part 4 of Schedule 3 (determination of the prescribed date for an SED installation carrying out activities which are only partly also activities falling within any section of Chapters 1 to 6 of Part 1 of Schedule 1 and any directly associated activities), sub-paragraph (1) shall not apply to an application to operate that part of the installation in which an activity falling within any section of Chapters 1 to 6 of Part 1 of Schedule 1 is carried out.”;

(e) after paragraph 3 insert–

“**3A.** Paragraph 1(1) shall apply in relation to an application for a permit to operate an installation in which dry cleaning (as defined in paragraph (2) of Part B of Chapter 7 of Part 1 of Schedule 1 (SED activities)) is carried out, as if the following sub-paragraphs were substituted for sub-paragraphs (e) to (h)–

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

(f) for paragraph 8 substitute–

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

- (a) the burning of waste oil (as defined in Section 1.1 of Chapter 1 of Part 1 of Schedule 1) in an appliance with a rated thermal input of less than 0.4 megawatts; or
- (b) the carrying out of an activity falling within paragraph (c)(ii) of Part B of Section 1.2 of Part 1 of Schedule 1 (unloading of petrol at service stations); or

(a) Paragraph 1B was inserted by S.S.I. 2003/170, regulation 12(b).

(b) O.J. 196, 16.8.1967, p.1 as last amended by Commission Directive 98/98/EC (O.J. L 355, 30.12.1998, p.1).

- (c) dry cleaning as defined in paragraph (2) of Part B of Chapter 7 of Part 1 of Schedule 1 (SED activities).”; and
- (g) for paragraph 10 substitute–
 - “10. Paragraph 9 shall not apply in relation to an application for a permit to operate an installation involving only–
 - (a) the burning of waste oil (as defined in Section 1.1 of Chapter 1 of Part 1 of Schedule 1) in an appliance with a rated thermal input of less than 0.4 megawatts; or
 - (b) dry cleaning as defined in paragraph (2) of Part B of Chapter 7 of Part 1 of Schedule 1 (SED activities).”

21. In Schedule 7 (applications for variation of conditions)–

- (a) after paragraph 1(g), insert–
 - “(h) in the case of an application for a variation of the conditions of a permit in respect of an SED installation the information specified in paragraph 1C of Part 1 of Schedule 4.”;
- (b) in paragraph 2, after “Part A mobile plant” insert “(but excluding a change in the operation of part of the installation which carries out an SED activity (and any directly associated activities) which does not also fall within any description in any section of Chapters 1 to 6 of Part 1 of Schedule 1 (and any directly associated activities))”; and
- (c) for paragraph 4(4) substitute–
 - “(4) This paragraph shall not apply in relation to an application for a variation of the conditions of a permit or a proposed variation notice in relation to an installation involving only–
 - (a) the burning of waste oil (as defined in Section 1.1 of Chapter 1 of Part 1 of Schedule 1) in an appliance with a rated thermal input of less than 0.4 megawatts; or
 - (b) dry cleaning as defined in paragraph (2) of Part B of Chapter 7 of Part 1 of Schedule 1 (SED activities).”.

Amendment of the Environmental Protection (Prescribed Processes and Substances) Regulations 1991

22. The 1991 Regulations shall have effect subject to the following amendments–

- (a) in regulation 5 (enforcement)–
 - (i) at the beginning of paragraph (2) thereof, for “The descriptions of processes” substitute “Subject to paragraph (3), the descriptions of processes”;
 - (ii) after paragraph (2), insert–
 - “(3) Where in an SED installation activities are carried out falling within any description of processes set out in Schedule 1 under the heading “Part B”, such processes in such an installation are so designated for central control.
 - (4) For the purposes of this regulation and regulation 6, “SED installation” shall have the same meaning as it has for the purposes of the Pollution Prevention and Control (Scotland) Regulations 2000.”;
- (b) in regulation 6 (prescribed substances: release into the air, water or land),
 - (i) at the beginning of paragraphs (2) and (3), insert–
 - “Subject to paragraphs (4) and (5).”;
 - (ii) after paragraph (3), insert–

“(4) Paragraphs (2) and (3) of this regulation shall not apply in relation to any description of processes in an SED installation as designated in accordance with regulation 5(3) of these regulations.

(5) In relation to any description of processes in an SED installation as designated in accordance with regulation 5(3) of these regulations, volatile organic compounds as well as solvents contained in any products are prescribed as substances the release of which into the air, water or land as fugitive emissions is subject to control under those sections.

(6) For the purpose of this regulation, “volatile organic compounds”, “organic compounds” and “fugitive emissions” shall have the same meaning as they have for the purposes of Council Directive 1999/13/EC on the limitation of emissions of volatile organic compounds due to the use of solvents in certain activities and installations(a).”.

ALLAN WILSON

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
27th January 2004

(a) O.J. No. L85, 29.3.1999, p.1. Definitions of “volatile organic compound”, “organic compound” and “fugitive emissions” are set out in Article 2(17), 2(16) and 2(10) respectively of the Directive.

SCHEDULE 1

Regulation 18(a)

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

“CHAPTER 7: SOLVENT EMISSIONS

Section 7: SED Activities

PART A

NIL

PART B

The activities listed in column 1 of the table below if they are operated above the solvent consumption thresholds specified for those activities as set out in column 2 of that table.

<i>Activity</i>	<i>Solvent consumption threshold in tonnes/year</i>
Heatset web offset printing	15
Publication rotogravure	25
Other rotogravure, flexography, rotary screen printing, laminating or varnishing units	15
Rotary screen printing on textile/cardboard	30
Surface cleaning using substances or preparations which because of their content of volatile organic compounds classified as carcinogens, mutagens or toxic to reproduction under Directive 67/548/EEC(a) are assigned or need to carry one or more of the risk phrases R45, R46, R49, R60 or R61, or halogenated volatile organic compounds which are assigned or need to carry the risk phrase R40	1
Other surface cleaning	2
Vehicle coating and vehicle refinishing	0.5
Coil coating	25
Other coating activities, including metal, plastic, textile (except rotary screen printing on textile), fabric, film and paper coating	5
Winding wire coating	5

(a) O.J. 196, 16.8.1967, p.1 as last amended by Commission Directive 98/98/EC (O.J. L 355, 30.12.1998, p.1).

<i>Activity</i>	<i>Solvent consumption threshold in tonnes/year</i>
Coating activity applied to wooden surfaces	15
Dry cleaning	0
Wood impregnation	25
Coating activity applied to leather	10
Footwear manufacture	5
Wood and plastic lamination	5
Adhesive coating	5
Manufacture of coating preparations, varnishes, inks and adhesives	100
Rubber conversion	15
Vegetable oil and animal fat extraction and vegetable oil refining activities	10
Manufacturing of pharmaceutical products	50

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

(2) For the purposes of this Part–

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“organic solvent” means any volatile organic compound which is used–

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

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

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

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

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

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

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

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

“rubber conversion” means–

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

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

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

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

“varnish” means a transparent coating;

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

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

(a) O.J. L 42, 23.2.1970, p.1; relevant amending directives are: Council Directive 92/53/EEC (O.J. L 225, 10.08.1992, p.1) and Commission Directive 2001/116/EC (O.J. L 18, 21.1.2002, p.1).
 (b) O.J. L 42, 23.2.1970, p.1 as amended by Directive 97/27/EC (O.J. L 233, 25.8.1997, p.1).

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

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

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

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

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

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

(3) Without prejudice to sub-paragraph (4), an activity shall be deemed to operate above the solvent consumption threshold specified for that activity under this Part if the activity is likely to be operated above that threshold in any period of 12 months, having regard where relevant to any operation above that threshold in any period of 12 months before the date of coming into force of the SED Regulations.

(4) In this Part, “SED Regulations” shall have the same meaning as it has for the purposes of Parts 3 and 4 of Schedule 3 to these Regulations.”.

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

“PART 3

SED installations

12. The prescribed date for a new SED installation is–

- (a) in relation to a new SED installation brought into operation before the date of coming into force of the SED Regulations–
 - (i) where an application for a permit to operate the SED installation is made before the expiry of a period 4 months beginning on the date of coming into force of the SED Regulations, the determination date for the SED installation;
 - (ii) where no such application is made, the day after the expiry of the period of 4 months beginning on the date of coming into force of the SED Regulations; and
- (b) in relation to all other new SED installations, the date of coming into force of the SED Regulations.

13.—(1) Subject to paragraphs 14 and 15, the prescribed date for an existing SED installation is–

- (a) where an application for a permit to operate the SED installation is duly made by the relevant date, the determination date for the SED installation;
- (b) where no such application is made, 1st November 2006.

(2) For the purposes of sub-paragraph (1) the relevant date for an existing SED installation is–

- (a) for installations wishing to use the reduction scheme, 31st October 2005; and
- (b) for all other installations, 31st October 2006.

14.—(1) Where on or after 1st April 2001 and before the date of coming into force of the SED Regulations there was a substantial change in the operation of an existing SED installation, the prescribed date for the affected part shall be–

- (a) where an application for a permit authorising the operation of that part of the installation is duly made before the expiry of a period 4 months beginning on the date of coming into force of the SED Regulations, the determination date for the SED installation;
- (b) where no such application is made, the day after the expiry of a period of 4 months beginning on the date of coming into force of the SED Regulations.

(2) Where after the date of coming into force of the SED Regulations, an existing SED installation undergoes a substantial change in operation, the prescribed date for the affected part shall be the date on which the change is made, if earlier than the date which would be the prescribed date for the SED installation under this Part.

(3) Sub-paragraphs (1) and (2) do not apply to that part of the SED installation which undergoes a substantial change in operation where the total emissions of the SED installation do not exceed those that would have been permitted had the affected part been

subject to a permit containing conditions necessary to ensure that the SED installation complied with the requirements of Articles 5, 8 and 9 of the Solvent Emissions Directive.

15.—(1) Where on or after 1st April 2001 and before the date of coming into force of the SED Regulations, abatement equipment was installed in an existing SED installation, the prescribed date for the affected part shall be—

- (a) where an application for a permit authorising the operation of the affected part is duly made before the expiry of a period of 4 months beginning on the date of coming into force of the SED Regulations, the determination date for the SED installation;
- (b) where no such application is made, the day after the expiry of a period of 4 months beginning on the date of coming into force of the SED Regulations.

(2) Subject to sub-paragraph (3), where after the date of coming into force of the SED Regulations abatement equipment is installed in an installation, the prescribed date for the affected part shall be the date on which the abatement equipment is installed if earlier than the date which would be the prescribed date for the SED installation under this Part.

(3) Where the abatement equipment is to be installed in an installation in respect of which the operator has made an application to use a reduction scheme, the prescribed date for the affected part shall be the determination date for that part.

16.—(1) Where an existing SED installation uses at the date of coming into force of the SED Regulations a risk phrase substance or preparation, the prescribed date for the SED installation shall be—

- (a) where an application for a permit authorising the operation of the part of the installation in which the substance or preparation is used is duly made before the expiry of a period 4 months beginning on the date of coming into force of the SED Regulations, the determination date for the SED installation;
- (b) where no such application is made, the day after the expiry of a period of 4 months beginning on the date of coming into force of the SED Regulations.

(2) Where after the date of coming into force of the SED Regulations, an existing SED installation begins using a risk phrase substance or preparation, the prescribed date for the SED installation shall be the date on which the substance or preparation is first used.

(3) Where after the date of coming into force of the SED Regulations a substance or preparation used in an existing SED installation becomes a risk phrase substance or preparation, the prescribed date for the SED installation shall be the date four months after the date on which the risk phrase is assigned to that substance or preparation.

17.—(1) Expressions used both in this Part and Part 4 and in the Solvent Emissions Directive have the same meaning for the purposes of those Parts as they have for the purposes of that Directive.

(2) In this Part—

“abatement equipment” means equipment used to abate the effects of emissions of volatile organic compounds;

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

“determination date” means—

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

- (i) if the applicant for the permit appeals against the refusal, the date of the affirmation of the refusal;
 - (ii) if no appeal is made to the Scottish Ministers against the refusal, the date immediately following the last day, determined in accordance with paragraph 2 of Schedule 8, on which notice of appeal might have been given;
 - (iii) following the determination of an appeal to the Scottish Ministers, no appeal is then made to the sheriff, the twenty second day after that determination;
 - (iv) where any further appeal is taken, the day after the expiry of the period allowed for appeal therefrom or, if there is no such date, the date of final determination of such appeal;
- (c) for an SED installation or part of an SED installation in relation to which an application is withdrawn in accordance with regulation 5(5) or is deemed to have been withdrawn in accordance with paragraph 4 of Schedule 4, the date the application is withdrawn, or is deemed to have been withdrawn;

“existing SED installation” means an SED installation which was–

- (a) put into operation before 1st April 2001; or
- (b) put into operation on or after that date but before 1st April 2002, provided that–
 - (i) the operation of the installation was authorised by the grant of a permit or authorisation before 1st April 2001; or
 - (ii) an application for such a permit or authorisation was duly made before that date,

and where an installation becomes authorised as an SED installation for the first time as a result of a variation granted for the purposes of sections 10 or 11 of the Environmental Protection Act 1990 or regulation 13 of the 2000 Regulations, references in this definition to the grant of a permit or authorisation shall be construed as references to that variation and not to the original grant of the permit or authorisation, and references to the grant of a permit or authorisation shall be construed as references to the service of a notice giving effect to that variation;

“halogenated volatile organic compound” means a volatile organic compound containing bromine, chlorine, fluorine or iodine;

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

“risk phrase substance or preparation” means–

- (a) in relation to an SED activity other than dry cleaning (as defined in paragraph (2) of Part B of Chapter 7 of Part 1 of Schedule 1), a substance or preparation which, because of its content of volatile organic compounds classified as carcinogens, mutagens, or toxic to reproduction under Directive 67/548/EEC^(a) is assigned or needs to carry the risk phrases R45, R46, R49, R60 and R61 or, in the case of halogenated volatile organic compounds, is assigned or needs to carry the risk phrase R40 and a substance or preparation “becomes a risk phrase substance or preparation” when, because of its content of volatile organic compounds or, as the case may be, halogenated volatile organic compounds, it is assigned or needs to carry one or more of those risk phrases;
- (b) in relation to dry-cleaning (as defined in paragraph (2) of Part B of Chapter 7 of Part 1 of Schedule 1), “risk phrase substance or preparation” means a substance or preparation which, because of its content of volatile organic compounds classified as carcinogens, mutagens, or toxic to reproduction under Directive 67/548/EEC^(b) is assigned or needs to carry the risk phrases R45, R46, R49, R60 and R61; and a substance or preparation “becomes a risk phrase substance or preparation” when,

^(a) O.J. 196, 16.8.1967, p.1 as last amended by Commission Directive 98/98/EC (O.J. L 355, 30.12.1998, p.1).

^(b) O.J. 196, 16.8.1967, p.1 as last amended by Commission Directive 98/98/EC (O.J. L 355, 30.12.1998, p.1).

because of its content of volatile organic compounds, it is assigned or needs to carry one or more of those risk phrases; and
“the SED Regulations” means the Solvent Emissions (Scotland) Regulations 2004.

PART 4

Application of Parts 1 to 3

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

(2) Where an installation is wholly an SED installation and only carries out activities which do not fall within any section of Chapters 1 to 6 of Part 1 of Schedule 1 the prescribed date for that installation shall be determined in accordance with Part 3.

(3) Subject to sub-paragraphs (4) to (7), the prescribed date for installations which carry out an activity falling within a description in any section of Chapters 1 to 6 of Part 1 of Schedule 1 (and any directly associated activities) shall be determined in accordance with Parts 1 or 2.

(4) Subject to sub-paragraphs (5) to (7), where an SED installation carries out activities which are also wholly or partly activities falling within any description in any section of Chapters 1 to 6 of Part 1 of Schedule 1 (and any directly associated activities), the prescribed date for that installation shall be determined in accordance with paragraphs 12 and 13 of Part 3 unless—

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

(5) Subject to sub-paragraph (6), where an installation—

- (a) carries out an SED activity and directly associated activities which are only partly also activities falling within a description in any section of Chapters 1 to 6 of Part 1 of Schedule 1 (and any directly associated activities); and
- (b) falls within sub-paragraph (4)(b),

the installation shall be regarded, for the purposes of this Schedule, as if it were two separate installations one consisting of the part of the installation carrying out activities under any section of Chapters 1 to 6 in Part 1 of Schedule 1 (and any directly associated activities) for which the prescribed date shall be determined in accordance with Parts 1 or 2 and the other consisting of the remainder of the installation for which the prescribed date shall be determined in accordance with Part 3.

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

(7) Where—

- (a) an installation carries out an SED activity and any directly associated activities which are—
 - (i) only partly also activities falling within a description in any section of Chapters 1 to 6 of Part 1 of Schedule 1 (and any directly associated activities); and

- (ii) the part of the installation falling within that description is subject to an authorisation;
- (b) the anticipated prescribed date for that installation under Part 1 or 2 is later than the anticipated prescribed date for the SED installation under Part 3; and
- (c) before the anticipated prescribed date for the SED installation under Part 3, an application for a variation of the authorisation is made in respect of the SED activity,

the prescribed date for the whole installation (including the part containing the SED installation) shall be determined in accordance with Parts 1 or 2.

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

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

19. In this Part–

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

“affected part” shall have the same meaning as it has for the purposes of Part 3 of this Schedule;

“anticipated prescribed date” means–

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

“existing SED installation” shall have the same meaning as it has for the purposes of Part 3 of this Schedule; and

“the SED Regulations” shall have the same meaning as it has for the purposes of Part 3 of this Schedule.”

(a) S.I. 1991/472; as amended by S.I. 1993/1749, 2405, 1995/3247, 1998/767 and S.S.I. 2000/323.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2 of the Pollution Prevention and Control Act (1999 c.24). They implement in Scotland the provisions of Council Directive 1999/13/EC on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations (“the Solvent Emissions Directive”) (O.J No. L 85, 29.3.1999, p.1).

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

The majority of SED installations are already regulated under either the Pollution Prevention and Control (Scotland) Regulations 2000 (S.S.I. 2000/323) (“the 2000 Regulations”) or Part 1 of the Environmental Protection Act 1990 (1990c.43) (“the 1990 Act”). These Regulations use the existing pollution control regime under the 2000 Regulations to deliver the requirements of the Solvent Emissions Directive. As a result, these Regulations adjust the transitional provisions under the 2000 Regulations to align them with the requirements of that Directive.

Regulations 3 to 8 deal with transitional arrangements to incorporate the requirements of the Solvent Emissions Directive into the existing pollution control regime either under the 1990 Act (as a precursor to full incorporation into the regime set out in the 2000 Regulations) or the 2000 Regulations.

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

Regulation 4 sets out transitional provisions dealing with the extensions of existing permits under the 2000 Regulations covering part of an SED installation mentioned in paragraph 18(5) of Part 4 of Schedule 3 to the 2000 Regulations (as inserted by regulation 19(c)) with the purpose of extending the scope of those permits to incorporate the whole of the SED installation.

Regulation 5 provides for the variation of existing authorisations under the 1990 Act covering part of an SED installation mentioned in paragraph 18(7) of Part 4 of Schedule 3 to the 2000 Regulations (as inserted by regulation 19(c)) with the purpose of extending the scope of those authorisations to incorporate the whole of the SED installation.

Regulation 6 enables the operator of an installation to make a supplementary application modifying an application for a permit which has already been made under regulation 7 of the 2000 Regulations in the circumstances specified in paragraphs (1)(a) to (c) of that regulation.

Regulation 7 makes provision to enable SEPA to grant a permit under the 2000 Regulations in respect of an SED installations where, following an application for a variation of an authorisation under section 6 of the 1990 Act, an application for a permit is deemed to have been made in accordance with paragraph 9 of Schedule 3 to the 2000 Regulations.

Regulation 8 sets out the duties of operators wishing to operate an SED installation in accordance with the requirements of a reduction scheme as defined in regulation 2 of the 2000 Regulations as amended by these Regulations. This is in accordance with Article 4(3) and Annex IIB of the Solvent Emissions Directive.

Regulations 9 to 21 and Schedules 1 and 2 make amendments to the 2000 Regulations to incorporate the requirements of the Solvent Emissions Directive.

Regulation 10 amends regulation 2(1) of the 2000 Regulations to incorporate all the relevant definitions in Article 2 of the Solvent Emissions Directive. Further definitions in this Article are also transposed through paragraph 17 of the new Part 3 and paragraph 19 of the new Part 4 of

Schedule 3 to the 2000 Regulations, as inserted by regulation 19(c) of and Schedule 2 to these Regulations.

Regulation 12 amends the definition of “prescribed date” in regulation 6 of the 2000 Regulations to take account of the dates by which all SED installations must have a permit under the 2000 Regulations to be legitimately operated. The amendment takes into account the provisions setting out the prescribed dates for SED installations in Parts 3 and 4 of Schedule 3 to the 2000 Regulations, as inserted by regulation 19(c) of and Schedule 2 to these Regulations.

Regulations 13 and 14 respectively amend regulations 7 and 9 of the 2000 Regulations whilst regulation 15 inserts a new regulation 9C into the 2000 Regulations. This is to ensure that permits authorising the operation of an SED installation include such conditions as SEPA considers necessary to give effect to the provisions of the Solvent Emissions Directive and, in particular, the substantive requirements in Articles 5, 8 and 9 thereof. Regulation 17, which amends regulation 13 of the 2000 Regulations, makes similar provision in respect of the variation of existing permits authorised under the 2000 Regulations.

Regulation 16 amends regulation 10 of the 2000 Regulations to enable provision to be made for SED installations by the Scottish Ministers through general binding rules, where that is appropriate as an alternative to inclusion of conditions in permits, as envisaged by Article 5(1) of the Solvent Emissions Directive.

Regulation 18(a) and Schedule 1 insert a new Chapter 7 into Schedule 1 to the 2000 Regulations. The new Chapter 7 provides for the activities (“SED activities”) listed in the table in that chapter when operated above the solvent consumption thresholds for those activities to be Part B activities under the 2000 Regulations as required by Annexes I and IIA of the Solvent Emissions Directive.

Regulation 19(c) and Schedule 2 amend the transitional arrangements (“prescribed dates”) in Schedule 3 to the 2000 Regulations and inserts new Parts 3 and 4 to that Schedule.

Regulation 20 amends Schedule 4 to the 2000 Regulations to make provision for the content of applications for permits under the 2000 Regulations in respect of SED installations. In particular, a new paragraph 1C is inserted by regulation 20(d) to require applications to contain all the necessary information to show how the requirements of the Solvents Emissions Directive will be met.

Regulation 21 amends Schedule 7 to the 2000 Regulations to make provision for the content of applications for variations of existing permits under the 2000 Regulations in respect of SED installations.

Regulation 22 amends the Environmental Protection (Prescribed Processes and Substances) Regulations 1991 (“the 1991 Regulations”) to enable SEPA to regulate fugitive emissions of volatile organic compounds into the environment at large, in relation to activities currently designated as Part B processes under the 1991 Regulations.

These Regulations extend to Scotland only.

A regulatory impact assessment in relation to these Regulations has been prepared and copies of this can be obtained from the SEPA Sponsorship and Waste Unit, Scottish Executive Environment and Rural Affairs Department (SEERAD), Victoria Quay, Leith, EH6 6QQ.

2004 No. 26

ENVIRONMENTAL PROTECTION

The Solvent Emissions (Scotland) Regulations 2004

£4.50

© Crown Copyright 2004

Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland
150 02/04 19593

ISBN 0-11-062593-5



9 780110 625935