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SCOTTISH STATUTORY INSTRUMENTS

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**2019 No. 26**

**The Environment (EU Exit) (Scotland)  
(Amendment etc.) Regulations 2019**

**PART 5**

Amendments to legislation concerning environmental protection

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

**13.**—(1) The Pollution Prevention and Control (Scotland) Regulations 2012<sup>(1)</sup> are amended as follows.

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

(a) for the definition of “battery” substitute—

““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—

(a) equipment connected with the protection of essential security interests, arms, munitions and war material, with the exclusion of products that are not intended for specifically military purposes, or

(b) equipment designed to be sent into space,”

(b) after the definition of “enforcement notice” insert—

““environmental impact assessment” means the process described in regulation 4 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017<sup>(2)</sup>,”

(c) for the definition of “environmental quality standard” substitute—

““environmental quality standard” means the set of requirements which must be fulfilled at a given time in respect of a particular environment as required under retained EU law.”

(3) In regulation 3(1) (interpretation: enactments etc.), omit the definition of “EIA Directive”.

(4) In regulation 3A(1) (interpretation: medium combustion plant)—

(a) before the definition of “existing medium combustion plant”, insert—

““Chapter III combustion plant” means a combustion plant, the total thermal input of which is equal to or greater than 50 megawatts, irrespective of the type of fuel used, other than—

(a) a plant in which the products of combustion are used for the direct heating, drying, or any other treatment of objects or materials,

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(1) S.S.I. 2012/360, as relevantly amended by S.S.I. 2014/267 and S.S.I. 2017/446.

(2) S.S.I. 2017/102, as relevantly amended by S.S.I. 2017/168.

- (b) a post-combustion plant designed to purify the waste gases by combustion which is not operated as an independent combustion plant,
- (c) a facility for the regeneration of catalytic cracking catalysts,
- (d) a facility for the conversion of hydrogen sulphide into sulphur,
- (e) a reactor used in the chemical industry,
- (f) a coke battery furnace,
- (g) a cowper,
- (h) any technical apparatus used in the propulsion of a vehicle, ship or aircraft,
- (i) a gas turbine or gas engine used on an offshore platform,
- (j) a plant which uses any solid or liquid waste as a fuel other than—
  - (i) vegetable waste from agriculture and forestry,
  - (ii) vegetable waste from the food processing industry, if the heat generated is recovered,
  - (iii) fibrous vegetable waste from virgin pulp production and from production of paper from pulp, if it is co-incinerated at the place of production and the heat generated is recovered,
  - (iv) cork waste,
  - (v) wood waste, other than wood with the exception of wood waste which may contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coating,

“Chapter IV plant” means an incineration plant or co-incineration plant which incinerates or co-incinerates solid or liquid waste other than—

- (a) a gasification or pyrolysis plant, if the gases resulting from the gasification or pyrolysis are purified to such an extent that they are no longer a waste prior to their incineration and can cause emissions no higher than those resulting from the burning of natural gas,
- (b) a plant treating only the following wastes—
  - (i) vegetable waste from agriculture and forestry,
  - (ii) vegetable waste from the food processing industry, if the heat generated is recovered,
  - (iii) fibrous vegetable waste from virgin pulp production and from production of paper from pulp, if it is co-incinerated at the place of production and the heat generated is recovered,
  - (iv) cork waste,
  - (v) wood waste, other than wood with the exception of wood waste which may contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coating,
  - (vi) radioactive waste,
  - (vii) animal carcasses regulated by Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 as it forms part of retained EU law,

- (viii) waste resulting from the exploration for, and the exploitation of, oil and gas resources from off-shore installations and incinerated on board the installations,
- (c) experimental plants used for research, development and testing in order to improve the incineration process which treat less than 50 tonnes of waste per year,  
“co-incineration” has the meaning given in Section 5.1 of Chapter 5 of schedule 1, and related expressions are to be construed accordingly,  
“co-incineration plant” has the meaning given in Section 5.1 of Chapter 5 of schedule 1,”
- (b) after the definition of “existing medium combustion plant” insert—  
““incineration plant” has the meaning given in Section 5.1 of Chapter 5 of schedule 1,”
- (c) in the definition of “medium combustion plant”—
  - (i) for sub-paragraph (a) substitute—  
“(a) a Chapter III combustion plant,”
  - (ii) after sub-paragraph (a) insert—  
“(aa) a Chapter IV plant,”
- (5) In regulation 4 (interpretation: best available techniques, etc.), for the definition of “BAT conclusions” substitute—  
““BAT conclusions” means a document annexed to a Decision establishing best available techniques which has been amended by the Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018(3) or included in regulations made in exercise of the power in regulation 9 of the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019(4) 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.”
- (6) In regulation 26 (schedule 1 conditions: large combustion plants)(5), after paragraph (2), insert—
  - (3) When interpreting the Industrial Emissions Directive for the purposes of these Regulations—
    - (a) Article 31(1) is to be read as if the words from “and with prior validation” to the end were omitted,
    - (b) Articles 31(1) and (2), 37(1) and 38(1) are to be read as if each of the references to “Member States” were a reference to “SEPA”.”
- (7) In regulation 27 (schedule 1 conditions: titanium dioxide)—
  - (a) the existing text becomes paragraph (1),
  - (b) after that paragraph, insert—  
“(2) When interpreting the Industrial Emissions Directive for the purposes of this regulation, in Articles 67 and 70(1) and (2), each of the references to “Member States” is to be read as if it were a reference to “SEPA”.”

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(3) [S.I. 2018/1407](#).

(4) [S.I. 2019/473](#).

(5) Regulation 26(2) was inserted by [S.S.I. 2018/391](#).

(8) In regulation 29 (schedule 1 conditions: incineration and co-incineration of waste), after paragraph (2), insert—

“(3) For the purposes of these Regulations, the Industrial Emissions Directive is to be read as if in that Directive—

- (a) in point (d) of Article 44, for “national and Union law” there were substituted “retained EU law”,
- (b) in Articles 48(1) and 50(7), for “Member States” there were substituted “SEPA”,
- (c) in Article 51—
  - (i) in paragraph 1, the second sentence were omitted,
  - (ii) paragraph 4 were omitted,
- (d) in Article 52(4), in point (a) after “documents required by” there were inserted “retained EU law which implemented”,
- (e) in Article 55(2) for “the report referred to in Article 72 shall include” there were substituted “the operator must keep and provide to SEPA”,
- (f) in paragraph 1 of Part 4 of Annex VI, in the definition of “V proc”, for “Union or national law” there were substituted “retained EU law”,
- (g) in Part 8 of Annex VI—
  - (i) in paragraph 1.1(d), for “Member States” there were substituted “SEPA”,
  - (ii) in paragraph 2(b), for “the Member State” there were substituted “SEPA”.

(9) In regulation 30(2)(b) (schedule 1 conditions: incineration of batteries), for “Union legislation” substitute “retained EU law”.

(10) After regulation 32(3) (schedule 1 conditions: volatile organic compounds)(6), insert—

“(4) For the purposes of these Regulations, [Directive 94/63/EC](#)(7) is to be read as if in that Directive—

- (a) in Article 4(1)—
  - (i) for “Member States”, at each place it occurs, there were substituted “the Scottish Ministers”,
  - (ii) the fifth subparagraph were omitted,
- (b) in paragraph 1 of Annex I, for “Member States may grant a derogation from this provision where required for the protection of special landscape areas which have been designated by national authority” there were substituted “SEPA may grant a derogation from this provision where required for the protection of National Parks or areas which are subject to local landscape designations”,
- (c) in paragraph 2 of Annex II—
  - (i) for “the United Kingdom” there were substituted “SEPA”,
  - (ii) for “the Commission” there were substituted “the Scottish Ministers”,
  - (iii) for “The Member States’ competent authorities” there were substituted “SEPA”,
- (d) in paragraphs 3 and 4 of Annex II for “the Member States’ competent authorities” there were substituted “SEPA”.

(6) Regulation 32(3) was inserted by [S.S.I. 2018/391](#).

(7) OJ L 365, 31.12.1994, p.24; as amended by Regulation (EC) No. 1882/2003 (OJ L 284, 31.10.2003, p.1) Regulation (EC) No. 1137/2008 (OJ L 311, 31.11.2008, p.1), [Directive 2009/126/EC](#) (285, 31.10.2009, p. 36) and Decision (EU) 2018/853 (OJ L 150, 14.6.2018, p. 155).

- (5) For the purposes of these Regulations, [Directive 2009/126/EC\(8\)](#), as last amended by Commission [Directive 2014/99/EU\(9\)](#), is to be read as if in [Directive 2009/126/EC](#)—
- (a) in paragraphs 1, 2 and 3 of Article 3, the words “Member States shall ensure that”, at each place they occur, were omitted,
  - (b) in Article 4—
    - (i) in paragraph 1, for the words from “Member States” to “such systems is” there were substituted “The petrol vapour capture efficiency of Stage II petrol vapour recovery systems must be”,
    - (ii) in paragraph 2 the words from “With effect from” to “Article 3,” were omitted,
  - (c) in Article 5—
    - (i) in paragraph 1—
      - (aa) the words “Member States shall ensure that” were omitted,
      - (bb) for “vapour recovery systems is” there were substituted “vapour recovery systems must be”,
    - (ii) in paragraph 2—
      - (aa) the words “Member States shall ensure that” were omitted,
      - (bb) for “the petrol vapour capture efficiency is” there were substituted “the petrol vapour capture efficiency must be”,
    - (iii) in paragraph 3 for “Member States shall ensure that it displays” there were substituted “it must display”.
- (11) In regulation 34(a) (solvents: conditions) for “Chapter V of and Annex VII to the Industrial Emissions Directive” substitute “Parts 2 and 3 of schedule 2”.
- (12) In regulation 35(2) (solvents: installations abatement equipment) for “Articles 59 to 62 of and, Annex VII to, the Industrial Emissions Directive” substitute “Part 2 of schedule 2”.
- (13) In regulation 36 (standard rules)—
- (a) in paragraph 2(b), for “Articles 14 and 15 of that Directive” substitute “regulations 23 and 25”,
  - (b) in paragraph 4(b)(ii), after “compliance with” insert “retained EU law implementing”,
  - (c) omit paragraph (5).
- (14) In regulation 44 (permits: review of conditions)—
- (a) in paragraph 1(c), omit “in accordance with Article 18 of the Industrial Emissions Directive”,
  - (b) for paragraph (2) substitute—
    - “(2) A review under paragraph (1)(d) or (e) must take into account all the BAT conclusions which have been amended by the Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018 or included in regulations made in exercise of the power in regulation 9 of the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 since the permit was granted, or last reviewed.”,
  - (c) in paragraph 5(b), for “the Industrial Emissions Directive” substitute “these Regulations”.
- (15) In regulation 59 (interest for the purposes of the Industrial Emissions Directive)—

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

(9) OJ L 304, 23.10.2014, p.89.

- (a) the existing text becomes paragraph (1),
- (b) after that paragraph insert—

“(2) For the purposes of paragraph (1), Article 25(1) of the Industrial Emissions Directive is to be read as if—

- (i) in the opening words for “Member States” there were substituted “The Scottish Ministers”,
- (ii) in point (b), for “a Member State” there were substituted “Scotland”.”.

(16) In regulation 60(3) (Scottish Ministers: directions to SEPA) for “under Article 26(1) of the Industrial Emissions Directive” substitute “from an EEA state”.

(17) In regulation 63(3) (Scottish Ministers and SEPA: powers in respect of information) for “the Union Treaties” substitute “retained EU law”.

(18) In chapter 5 of schedule 1 (activities and installations and mobile plant), for the opening words substitute—

“This chapter is to be interpreted in accordance with Article 3 of the Waste Framework Directive and the Special Waste Regulations 1996(10).”.

(19) In section 5.4 (disposal etc. of non-hazardous waste) of chapter 5 of schedule 1, for “Council Directive 91/271/EEC of 21st May 1991 concerning urban waste-water treatment (“Directive 91/271/EEC”)” substitute “the Urban Waste Water Treatment (Scotland) Regulations 1994(11)”.

(20) In section 5.7 (treatment of waste water) of chapter 5 of schedule 1 for “Directive 91/271/EEC” substitute “the Urban Waste Water Treatment (Scotland) Regulations 1994”.

(21) In Part A of section 6.10 (carbon capture and storage) of chapter 6 of schedule 1—

- (a) for “pursuant to” substitute “to which”,
- (b) insert at the end “would have applied immediately prior to exit day”.

(22) In schedule 1A (energy efficiency directive)—

- (a) in paragraph 3(c), for “approved under” to the end substitute “for which a licence has been granted under section 18 of the Energy Act 2008(12)”,
- (b) in paragraph 12(b), for “required by” substitute “carried out in compliance with”,
- (c) in paragraph 15, for “the Energy Efficiency Directive” substitute “this schedule”,
- (d) in paragraph 18—

- (i) the existing text becomes sub-paragraph (1),
- (ii) after that sub-paragraph, insert—

“(2) For the purposes of sub-paragraph (1), Annex II of the Energy Efficiency Directive is to be read as if —

- (a) in the seventh subparagraph of point (b) (beginning “CHP En”), the last sentence were omitted,
- (b) in point (c), for “Member States may” there were substituted “It is permissible to”,
- (c) in point (d)—
  - (i) the words “Member States may use” were omitted,
  - (ii) after “one year” there were inserted the words “may be used”.

(10) S.I. 1996/972; relevant amending instruments are S.S.I. 2004/112, S.S.I. 2011/226, S.S.I. 2018/219 and S.S.I. 2018/391.

(11) S.I. 1994/2842, as amended by S.I. 1996/973, S.S.I. 2003/273 and S.S.I. 2011/202.

(12) 2008 c.32, as amended by S.S.I. 2011/224, S.I. 2011/24532016 c.20 and S.I. 2017/524.

- (3) For the purposes of paragraphs 11 and 18(1), Part 2 of Annex IX of the Energy Efficiency Directive is to be read as if—
- (a) in the heading, for “Article 14(5) and (7)” there were substituted “paragraphs 11, 13 and 14”,
  - (b) in the first paragraph, for “the measures in Article 14(5) and (7)” there were substituted “paragraphs 11, 13 and 14 of schedule 1A of the Pollution Prevention and Control (Scotland) Regulations 2012(13)”,
  - (c) in the eighth paragraph, the words “for the purposes of Article 14(5)” were omitted,
  - (d) in the tenth and eleventh paragraphs, for “Member States”, at each place it occurs, there were substituted “the Scottish Ministers”.
- (23) In schedule 1B (medium combustion plant directive)—
- (a) in paragraph 1(7)(b), after “set out in” insert “retained EU law implementing”,
  - (b) in paragraph 10—
    - (i) for sub-paragraph (b) substitute—
      - “(b) “micro isolated system” means any system with consumption of less than 500 gigawatt hours in the year 1996, where there is no interconnection with other systems,”,
    - (ii) for sub-paragraph (c) substitute—
      - “(c) “small isolated system” means any system with consumption of less than 3000 gigawatt hours in the year 1996, where less than 5% of annual consumption is obtained through interconnection with other systems,”.
- (24) In schedule 2 (solvent emissions)—
- (a) in paragraph 7(14)—
    - (i) after sub-paragraph (1)(d) insert—
      - “(dd) Article 58,”,
    - (ii) after sub-paragraph (2) insert—
      - “(3) For the purposes of this schedule, the Industrial Emissions Directive is to be read as if—
        - (a) in Article 5(1) “or Union law” were omitted,
        - (b) in Article 5(3) for—
          - (i) the words “where Article 4 of [Directive 85/337/EEC](#) applies” there were substituted “in relation to which an environmental impact assessment is required”,
          - (ii) the words “Articles 5, 6, 7 and 9 of that Directive” there were substituted “an environmental impact assessment”,
        - (c) in Article 7—
          - (i) the words from “Without prejudice” to “environmental damage” were omitted,
          - (ii) for “Member States” there were substituted “SEPA”,

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(13) S.S.I. 2012/360, as amended by S.S.I. 2014/267, S.I. 2014/469, S.S.I. 2015/100, S.S.I. 2015/101, S.S.I. 2015/188, S.S.I. 2015/438, S.I. 2015/483, S.S.I. 2015/1973, S.S.I. 2016/39, S.S.I. 2017/446 and S.S.I. 2018/219.

(14) Paragraph 79(2) was inserted by S.S.I. 2018/391.

- (d) in Article 8, for “Member States”, at each place it occurs, there were substituted “SEPA”,
- (e) in Article 9(2), for “Member States” there were substituted “SEPA”,
- (f) in Article 59—
  - (i) in paragraph 1 for “Member States”, at each place it occurs, there were substituted “SEPA”,
  - (ii) in paragraph 1 the last subparagraph were omitted,
  - (iii) paragraph 4 were omitted,
- (g) in Article 60, for “Member States” there were substituted “SEPA”,
- (h) in Article 65(3), for the words “restrictions laid down in Article 4(1) and (2) of [Directive 2003/4/EC](#)” there were substituted “exceptions set out in regulation 10 of the Environmental Information (Scotland) Regulations 2004(15)”,
- (b) in paragraph 8, for the words “subparagraph (a) of Article 59 of the Industrial Emissions Directive” substitute “paragraph 7(1)(e)”,
- (c) in paragraph 9, for “paragraph 1 of Article 59(1) of the Industrial Emissions Directive” substitute “paragraph 7(1)(e)”,
- (d) in paragraph 10 (data reporting)—
  - (i) in sub-paragraph (1), for “Part 8 of Annex VII to the Industrial Emissions Directive” substitute “sub-paragraphs 3 to 6”,
  - (ii) in sub-paragraph (2), after “provided in a” insert “plan equivalent to a”,
  - (iii) after sub-paragraph (2), insert—
    - “(3) In the case of continuous measurements the emission limit values must be considered to be complied with if—
      - (a) none of the arithmetic averages of all valid readings taken during any 24 hour period of operation of an installation or activity except start-up and shut-down operations and maintenance of equipment exceeds the emission limit values,
      - (b) none of the hourly averages exceeds the emission limit values by more than a factor of 1.5.
    - (4) In the case of periodic measurements the emission limit values must be considered to be complied with if, in one monitoring exercise—
      - (a) the average of all the measurement values does not exceed the emission limit values,
      - (b) none of the hourly averages exceeds the emission limit values by more than a factor of 1.5.
    - (5) Compliance with requirements derived from Part 4 of Annex VII to the Industrial Emissions Directive must be verified on the basis of the sum of the mass concentrations of the individual volatile organic compounds concerned. For all other cases, compliance must be verified on the basis of the total mass of organic carbon emitted unless otherwise based on a limit derived from Part 2 of Annex VII to the Industrial Emissions Directive.

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(15) [S.S.I. 2004/520](#), to which there are amendments not relevant to these Regulations.



- (6) Gas volumes may be added to the waste gas for cooling or dilution purposes where technically justified but must not be considered when determining the mass concentration of the pollutant in the waste gas.”
- (e) in paragraph 11 (monitoring of emissions)—
- (i) the existing paragraph becomes sub-paragraph (1),
  - (ii) in sub-paragraph (1) for “Part 6 of Annex VII to the Industrial Emissions Directive” substitute “sub-paragraphs (2) to (4)”,
  - (iii) after sub-paragraph (1) insert—
    - “(2) Channels to which abatement equipment is connected, and which at the final point of discharge emit more than an average of 10 kilogrammes per hour of total organic carbon, must be monitored continuously for compliance.
    - (3) In other cases, SEPA must ensure that either continuous or periodic measurements are carried out. For periodic measurements at least three measurement values must be obtained during each measurement exercise.
    - (4) Measurements are not required where end-of-pipe abatement equipment is not needed to comply with these Regulations.”.
- (25) In schedule 4 (grant of permits)—
- (a) in paragraph 1(1)(n), for the words “Articles 5, 6, 7 and 9 of the EIA Directive” substitute “an environmental impact assessment”,
  - (b) in paragraph 3(a), after “Industrial Emissions Directive” insert “, as read with regulation 29(3).”,
  - (c) in paragraph 3(d), for the words “national and Union legislation” substitute “national legislation and retained EU law”,
  - (d) in paragraph 4, for the words “Chapter V and Annex VII of the Industrial Emissions Directive” substitute “of parts 2 and 3 of schedule 2”,
  - (e) in paragraph 9(h)(ii), for the words “consultations between Member States in accordance with Article 26 of the Industrial Emissions Directive” substitute “consultation with a Member State”,
  - (f) in paragraph 18—
    - (i) for sub-paragraph (a)(i) substitute—
      - “(i) an environmental impact assessment”,
    - (ii) in sub-paragraph (b) for “those Articles of the EIA Directive” substitute “an environmental impact assessment”,
  - (g) in paragraph 22(2), for “another” substitute “a”,
  - (h) in paragraph 23—
    - (i) in sub-paragraph (1)(a)(ii), for “BAT reference document” substitute “BAT conclusions”,
    - (ii) in sub-paragraph (2), for “another” substitute “a”,
  - (i) in paragraph 26—
    - (i) in sub-paragraph (1)(a) and (b), for “another”, at each place it occurs, substitute “a”,
    - (ii) in sub-paragraph (2)—
      - (aa) omit “other”,
      - (bb) omit the words “for the purposes of Article 26 of the Industrial Emissions Directive”,

- (cc) omit the words “having regard for that purpose to Article 26”,
- (j) in paragraph 27(a)—
  - (i) in head (i), omit the words “under Article 26 of the Industrial Emissions Directive”,
  - (ii) in head (ii), omit “other”,
- (k) in paragraph 28(2)(b), omit “other”.
- (26) In schedule 7 (variation of permits)—
  - (a) in paragraph 1(d), for the words “Articles 5, 6, 7 and 9 of the EIA Directive” substitute “an environmental impact assessment”,
  - (b) in paragraph 4(9)(g)(iii), for the words “between Member States” substitute “with a Member State”,
  - (c) in paragraph 4(13), for the words “Articles 5, 6, 7 and 9 of the EIA Directive” substitute “an environmental impact assessment”,
  - (d) in paragraph 7(2), for “another” substitute “a”,
  - (e) in paragraph 9(2), for “another” substitute “a”,
  - (f) in paragraph 10(1)(a)(ii), for the words “BAT reference document” substitute “BAT conclusions”,
  - (g) in paragraph 13—
    - (i) in sub-paragraph (1)(a), for “another” substitute “a”,
    - (ii) in sub-paragraph (2), omit the following words—
      - (aa) “other”,
      - (bb) “for the purposes of Article 26 of the Industrial Emissions Directive”,
      - (cc) “having regard for that purpose to Article 26”,
  - (h) in paragraph 14, omit the following words—
    - (i) “under Article 26 of the Industrial Emissions Directive”,
    - (ii) “other”,
  - (i) in paragraph 15(2)(b), omit “other”.
- (27) In schedule 10 (savings and transitional provisions)—
  - (a) in paragraph 11(3), for the words “give effect to Article 7 of the Industrial Emissions Directive” substitute “include either the condition specified in sub-paragraph (2) or a condition having equivalent effect”,
  - (b) in paragraph 12(3), for the words “Article 14(1)(d)(i) of the Industrial Emissions Directive” substitute “regulation 23(2)(g) (schedule 1 conditions: general provisions)”,
  - (c) in paragraph 13—
    - (i) in sub-paragraph (1), for from “at which an” to the end substitute “which is a Chapter III combustion plant”,
    - (ii) in sub-paragraph (5)(a), after “Directive” insert “as read with regulation 26 (schedule 1 conditions: large combustion plants)”.