

2014 No. 1975

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

**The Sulphur Content of Liquid Fuels (England and Wales)
(Amendment) Regulations 2014**

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| <i>Made</i> - - - - | <i>21st July 2014</i> |
| <i>Laid before Parliament</i> | <i>25th July 2014</i> |
| <i>Laid before the National Assembly for Wales</i> | <i>25th July 2014</i> |
| <i>Coming into force</i> - - | <i>29th August 2014</i> |

These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^(a).

The Secretary of State is designated^(b) for the purposes of section 2(2) of that Act in relation to the environment. The Welsh Ministers are vested with a designation^(c) for the purposes of section 2(2) of that Act in relation to measures relating to the assessment and management of ambient air quality and compliance with air quality limit values, target values and objectives.

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, make the following Regulations.

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Sulphur Content of Liquid Fuels (England and Wales) (Amendment) Regulations 2014 and come into force on 29th August 2014.
- (2) These Regulations extend to England and Wales.

Amendment of the Sulphur Content of Liquid Fuels (England and Wales) Regulations 2007

2. The Sulphur Content of Liquid Fuels (England and Wales) Regulations 2007^(d) are amended in accordance with regulations 3 to 9.

Regulation 2

3. For regulation 2 (interpretation) substitute—

(a) 1972 c.68.
(b) S.I. 2008/301.
(c) S.I. 2000/2812. By virtue of section 162 of, and paragraph 28(1) of Schedule 11 to, the Government of Wales Act 2006, c.32, this designation of the National Assembly for Wales now vests in the Welsh Ministers.
(d) S.I. 2007/79.

“2.—(1) In these Regulations—

“combustion plant” means any technical apparatus in which fuels are oxidised in order to use the heat generated;

“Council Directive 1999/32/EC” means Council Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC(a);

“gas oil” means any petroleum-derived liquid fuel—

- (a) that falls within CN code 2710 19 25, 2710 19 29, 2710 19 47, 2710 19 48, 2710 20 17 or 2710 20 19; or
- (b) where less than 65 per cent by volume (including losses) distils at 250°C and at least 85 per cent by volume (including losses) distils at 350°C by the ASTM D86 method,

but excluding marine fuels, diesel fuels (as defined by Article 2(2) of Directive 98/70/EC of the European Parliament and of the Council relating to the quality of petrol and diesel fuels(b)) and fuels used in non-road mobile machinery or agricultural tractors;

“heavy fuel oil” means any petroleum-derived liquid fuel—

- (a) that falls within CN code 2710 19 51 to 2710 19 68, 2710 20 31, 2710 20 35 or 2710 20 39;
- (b) which, by reason of its distillation limits, falls within the category of heavy oils intended for use as fuel and of which less than 65 per cent by volume (including losses) distils at 250°C by the ASTM D86 method; or
- (c) where the distillation cannot be determined by the ASTM D86 method, that is categorised as heavy fuel oil,

but excluding marine fuel and gas oil;

“marine fuel” means any petroleum-derived liquid fuel intended for use or in use on board a vessel, including those fuels defined in ISO 8217(c);

“sulphur content of liquid fuels permit” has the meaning given in regulation 4(5)(b).

(2) In paragraph (1)—

- (a) an ASTM method means a method laid down by the American Society for Testing and Materials in the 1976 edition of standard definitions and specifications for petroleum and lubricating products(d); and
- (b) the reference to a numbered CN code is a reference to the code set out in Annex I to Council Regulation 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff(e).

(3) Expressions used in these Regulations that also appear in Council Directive 1999/32/EC have the same meaning as they do in that Directive.”.

Regulation 4

4. For regulation 4 (maximum sulphur content of heavy fuel oil) substitute—

“4.—(1) No person shall use any heavy fuel oil that has a sulphur content exceeding 1 per cent by mass.

(2) Until 1st January 2016, paragraph (1) shall not apply to the use of heavy fuel oil—

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- (a) OJ L 121, 11.5.1999, p.13, last amended by Directive 2012/33/EU (OJ L 327, 27.11.2012, p. 1).
 - (b) OJ L 350, 28.12.1998, p.58, last amended by Commission Directive 2011/63/EU (OJ L 147, 2.6.2011, p. 15).
 - (c) ISO 8217 (1996) is described in the British Standard entitled, “Specification for Petroleum Fuels for marine oil engines and boilers”, published under the numbers BS MA100:1996 and ISO 8217:1996, which came into effect on 15th August 1996.
 - (d) The ASTM method is described in the 1999 Annual Book of the ASTM Standards: Section 5-Petroleum Products, Lubricants and Fossil Fuels, published by the American Society for Testing and Materials, November 1999.
 - (e) OJ L 256, 7.9.1987, p. 1, last amended by Council Regulation (EU) 2013/1326 (OJ L 334, 13.12.2013, p. 4).

- (a) in a new plant that—
 - (i) is subject to Article 4(1) of Directive 2001/80/EC and is operated in accordance with a permit containing a condition that emission limit values for sulphur dioxide are at least as stringent as those set out for new plants in Part A of Annex IV of that Directive; or
 - (ii) is subject to Article 4(2) of Directive 2001/80/EC and is operated in accordance with a permit containing a condition that emission limit values for sulphur dioxide are at least as stringent as those set out for new plants in Part B of Annex IV of that Directive;
 - (b) in an existing plant—
 - (i) operated in accordance with a permit containing a condition that emission limit values for sulphur dioxide are at least as stringent as those set out for new plants in Part A of Annex IV of Directive 2001/80/EC; or
 - (ii) that is a participating plant operated in accordance with a permit containing a condition prohibiting the monthly average emissions of sulphur dioxide from the plant from exceeding 1,700 mg/Nm³ at an oxygen content in the flue gas of 3 per cent by volume on a dry basis;
 - (c) in a combustion plant, other than a plant to which sub-paragraph (a) or (b) applies, that is operated in accordance with a permit containing a condition prohibiting the monthly average of emissions of sulphur dioxide from the plant from exceeding 1,700 mg/Nm³ at an oxygen content in the flue gas of 3 per cent by volume on a dry basis; or
 - (d) in a combustion plant, other than a gas engine, a gas turbine or a plant to which sub-paragraph (a) or (b) applies, that—
 - (i) forms part of a refinery; and
 - (ii) is operated in accordance with a permit containing a condition that the monthly average of emissions of sulphur dioxide averaged over all combustion plants in the refinery, irrespective of the type of fuel or fuel combination used, does not exceed 1,700 mg/Nm³ at an oxygen content in the flue gas of 3 per cent by volume on a dry basis.
- (3) As from 1st January 2016, paragraph (1) shall not apply to the use of heavy fuel oil—
- (a) in a combustion plant that—
 - (i) falls within the scope of Chapter III of Directive 2010/75/EU; and
 - (ii) is operated in accordance with a permit containing a condition that emission limit values for sulphur dioxide are at least as stringent as those set out in Annex V to that Directive;
 - (b) in a combustion plant that—
 - (i) falls within the scope of Chapter III of Directive 2010/75/EU;
 - (ii) is not subject to the emission limit values for sulphur dioxide set out in Annex V to that Directive; and
 - (iii) is operated in accordance with a permit containing a condition prohibiting the monthly average emissions of sulphur dioxide from the plant from exceeding 1,700 mg/Nm³ at an oxygen content in the flue gas of 3 per cent by volume on a dry basis;
 - (c) in a combustion plant, other than a plant to which sub-paragraph (a) or (b) applies, that is operated in accordance with a permit containing a condition prohibiting the monthly average emissions of sulphur dioxide from exceeding 1,700 mg/Nm³ at an oxygen content in the flue gas of 3 per cent by volume on a dry basis; or
 - (d) in a combustion plant, other than a gas engine, a gas turbine or a plant to which sub-paragraph (a) or (b) applies, that—
 - (i) forms part of a refinery; and

- (ii) is operated in accordance with a permit containing a condition that the monthly average of emissions of sulphur dioxide averaged over all combustion plants in the refinery, irrespective of the type or fuel or fuel combination used, does not exceed 1,700 mg/Nm³ at an oxygen content in the flue gas of 3 per cent by volume on a dry basis.

(4) An authority that grants a permit referred to in paragraph (2) or (3) shall carry out appropriate monitoring of emissions of sulphur dioxide to ensure that the limitations on emissions contained in that permit are not exceeded.

(5) In this regulation—

“Directive 2001/80/EC” means Directive 2001/80/EC of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from large combustion plants(a);

“Directive 2010/75/EU” means Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast)(b);

“existing plant” and “new plant” have the meaning given in Article 2(10) and 2(9) respectively of Directive 2001/80/EC;

“gas engine” and “gas turbine” have the meaning given in Article 3(34) and (33) respectively of Directive 2010/75/EU;

“participating plant” has the meaning given in regulation 3(1)(a) of the Large Combustion Plants (National Emission Reduction Plan) Regulations 2007(c);

“permit” means—

(a) if the operation of the combustion plant requires an authorisation or permit—

(i) an authorisation under Part I of the Environmental Protection Act 1990 (integrated pollution control and air pollution control by local authorities)(d); or

(ii) a permit under regulations made under section 2 of the Pollution Prevention and Control Act 1999 (regulation of polluting activities)(e); or

(b) a sulphur content of liquid fuels permit which—

(i) was granted for the purposes of the Sulphur Content of Liquid Fuels (England and Wales) Regulations 2000(f) and which is still subsisting; or

(ii) is granted under these Regulations.

(6) The Schedule (sulphur content of liquid fuels permits) has effect.”.

Regulation 5

5. For regulation 5 (maximum sulphur content in gas oil) substitute—

“5. No person shall use any gas oil that has a sulphur content exceeding 0.1 per cent by mass.”.

Regulation 6

6. For regulation 6 (sampling and analysis) substitute—

(a) OJ L 309, 27.11.2001, p. 1, last amended by Directive 2009/31/EC (OJ L 140, 5.6.2009, p. 114).

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

(c) S.I. 2007/2325; relevant amending instruments are S.I. 2007/3476, 2007/3538, 2010/675.

(d) 1990 c.43.

(e) 1999 c.24. Regulations made under that section relevant to this regulation are S.I. 2010/675, to which there are amendments not relevant to this regulation, and S.I. 2013/971.

(f) S.I. 2000/1460.

“6.—(1) The Secretary of State shall take all necessary measures to ensure that periodic sampling is carried out of heavy fuel oil and gas oil and that the samples are analysed to check that the use of those fuels complies with regulations 4(1) and 5.

(2) Sampling shall be carried out with sufficient frequency and in such a way that the Secretary of State is satisfied that the samples are representative of the fuels examined.

(3) The samples shall be analysed without undue delay.

(4) The reference method adopted for determining the sulphur content of fuels sampled pursuant to paragraph (1) shall be defined by EN ISO 8754:2003 or EN ISO 14596:2007(a).”.

New regulation 9

7. After regulation 8 (revocation and saving) insert—

“Review

9. The Secretary of State must from time to time—

(a) carry out, in relation to England, a review of these Regulations;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as reasonable, have regard to how Council Directive 1999/32/EC, which is being implemented by means of these Regulations, is implemented in other member States.

(3) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;

(b) assess the extent to which those objectives are achieved, and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before 29th August 2019.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.”.

Schedule 1

8.—(1) Schedule 1 (sulphur content of liquid fuel permits) is amended as follows.

(2) In the heading to that Schedule—

(a) omit “1”; and

(b) for “Regulation 4(5)” substitute “Regulation 4(6)”.

(3) In paragraph (1) for the words “an existing plant, new plant or other combustion plant” substitute “a combustion plant”, and after “regulation 4(2)” add “or (3)”.

(4) At the end of paragraph (2) add “or (3).”.

(a) EN ISO 8754:2003 is described in the British Standard entitled, “Petroleum Products-Determination of Sulphur content-Energy-dispersive X-ray fluorescence methods”, published under the number BS EN ISO 8754:2003, which came into effect on 14 August 2003 as amended by Amendment No. 14812 Corrigendum No. 1, which came into effect on 27 October 2003. EN ISO 14596:2007 is described in the British Standard entitled, “Petroleum Products. Determination of sulphur content. Wavelength-dispersive X-ray fluorescence spectrometry”, published under the number BS EN ISO 14596:2007, which came into effect on 31 October 2007.

Schedule 2

9.—(1) Schedule 2 (technical requirements for analysis samples) is omitted.

15th July 2014

Dan Rogerson
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

Signatory text

21st July 2014

John Griffiths
Minister for Natural Resources, Culture and Sport
One of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Sulphur Content of Liquid Fuels (England and Wales) Regulations 2007 (S.I. 2007/79) (“the 2007 Regulations”) to implement matters concerning heavy fuel oil and gas oil (except marine fuel) in Council Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels (OJ L 121, 11.5.1999, p. 13) as amended by Directive 2012/33/EU of the European Parliament and of the Council as regards the sulphur content of marine fuels (OJ L 327, 27.11.2012, p. 1).

Regulation 3 substitutes a new regulation 2 (interpretation) into the 2007 Regulations to amend the definitions of “gas oil” and “heavy fuel oil” and make other minor amendments. Regulation 4 substitutes a new regulation 4 (maximum sulphur content of heavy fuel oil) into the 2007 Regulations to amend the exceptions to the prohibition on the use of heavy fuel oil with a sulphur content exceeding 1 per cent by mass. Regulation 6 substitutes a new regulation 6 (sampling and analysis) into the 2007 Regulations to amend the reference method to be adopted for determining the sulphur content of fuels sampled pursuant to regulation 6(1) and make other minor amendments.

Regulation 7 inserts a review clause into the 2007 Regulations that will apply to the Secretary of State in relation to England. Regulation 8 makes minor consequential amendments to Schedule 1 of the 2007 Regulations. Regulation 9 omits Schedule 2 of the 2007 Regulations.

A full impact assessment in relation to England has not been produced for this instrument as no impact on the private or voluntary sector is foreseen.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

A transposition note is available from Industrial Pollution, Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London, SW1P 3JR and at www.defra.gov.uk. Copies have been placed in the library of each House of Parliament.

Copies of the British Standards publications referred to in these Regulations may be obtained from any of the outlets operated by the British Standards Institution, or by post from the British Standards Institution at Standards House, 389 Chiswick High Road, London W4 4AL. The 1999 Annual Book at ASTM Standards is available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428, USA.

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£6.00

UK2014072412 07/2014 19585

<http://www.legislation.gov.uk/id/uksi/2014/1975>

ISBN 978-0-11-111928-0



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