

2011 No. 285

ENVIRONMENTAL PROTECTION

**The Pollution Prevention and Control (Scotland) Amendment
Regulations 2011**

<i>Made</i> - - - -	<i>27th June 2011</i>
<i>Laid before the Scottish Parliament</i>	<i>29th June 2011</i>
<i>Coming into force</i> - -	<i>4th October 2011</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2 of the Pollution Prevention and Control Act 1999(a) (“the 1999 Act”) and all other powers enabling them to do so.

In accordance with section 2(4) of the 1999 Act, they have consulted with the Scottish Environment Protection Agency, such bodies and 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 or persons as they consider appropriate.

Citation and commencement

1. These Regulations may be cited as the Pollution Prevention and Control (Scotland) Amendment Regulations 2011 and come into force on 4th October 2011.

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

2. The Pollution Prevention and Control (Scotland) Regulations 2000(b) are amended as follows.

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

(a) omit the definition of “general binding rules”;

(b) after the definition of “hazardous waste” insert—

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

(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 Pollution Prevention and Control Act 2009 (the “2009 Act”), and by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2008 (S.I. 2008/1776). Directives 2008/98/EC (O.J. L 312, 22.11.2008, p.3), Directive 2008/1/EC (O.J. L 24, 29.01.2008, p.8; as amended by Directive 2009/31/EC) and Directive 2000/60/EC (O.J. L 327, 22.12.2000, p.1; as amended by Directives 2008/105/EC and 2009/31/EC, and by Decision 2455/2001/EC) were designated for the purposes of paragraph 20 of Part 1 of Schedule 1 to the 2009 Act by S.S.I. 2010/131. Directive 2008/112/EC (O.J. L 345, 23.12.2008, p.68) was designated for the purposes of paragraph 20(2)(c) of Part 1 of Schedule 1 to the 2009 Act by S.S.I. 2010/235.

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

“hybrid permit” means a permit containing one or more standard rules conditions together with one or more other conditions included pursuant to regulations 9, 9C, 9D, 9E, or 9F;”;

- (c) for the definition of “the IPPC Directive” substitute—

““the IPPC Directive” means Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control(a);”;
- (d) after the definition of “revocation notice” insert—

““rule-making authority” means the Scottish Ministers or SEPA;”;
- (e) after the definition of “specified waste management activity” insert—

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

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

“standard rules condition” has the meaning given by regulation 10A(1);

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

4. In regulation 4 (fit and proper person)—

- (a) omit paragraphs (5)(b) and (7); and
- (b) in paragraph (6)(c)(ii), after “office” insert “in another body corporate”.

5. In regulation 7 (permits: general provisions)—

- (a) for paragraph 2 substitute—

“(2) Subject to paragraphs (3) and (4), where an application is duly made to SEPA, it shall either—

 - (a) grant the permit subject to the conditions required or authorised to be imposed by or under regulations 9, 9C, 9D, 9E, 9F or 10A, or regulation 10 of the 2003 Regulations; or
 - (b) refuse the permit.”;
- (b) at the beginning of paragraph (8) insert “Subject to paragraph (8A);”;
- (c) after paragraph (8) insert—

“(8A) A standard rules permit other than a hybrid permit authorising the operation of a standard installation or Part A standard mobile plant shall include either—

 - (a) the plan specified in paragraph (8); or
 - (b) the national grid reference number of—
 - (i) in the case of mobile plant, its site;
 - (ii) in the case of an installation, the location of the installation.”.

6. In regulation 9 (conditions of permits: specific requirements)—

- (a) in paragraph (1)(c), for “Part A” substitute “Part B”; and
- (b) at the end of paragraph (12) insert “, or by a standard rule which has effect as the result of a standard rules condition”.

7. In each of regulations 9C (conditions of permits: solvents), 9D(1) (conditions of permits: batteries), 9E(1) (conditions of permit: waste oils) and 9F(1) (conditions of permit: incineration etc.), at the beginning insert “Subject to regulation 10;”.

(a) O.J. L 24, 29.1.2008, p.8: as amended by Directive 2009/31/EC of the European Parliament and of the Council (O.J. L 140, 5.6.2009, p.114.).

8. For regulation 10 (general binding rules) substitute—

“Standard rules

10.—(1) Subject to paragraph (2) and regulations 10A to 10F, a rule-making authority may make, revise or revoke rules (“standard rules”) which apply to installations or mobile plant described in the rules.

(2) A rule-making authority shall only make or revise standard rules if it is satisfied that the operation of installations or mobile plant will, to the extent that it is covered by standard rules, result in the same level of environmental protection, and in the case of Part A installations and Part A mobile plant the same high level of integrated pollution prevention and control, as would result were there no standard rules and such installations or mobile plant operated under the conditions that would be included in permits under regulations 9, 9C, 9D, 9E, or 9F.

(3) A rule-making authority must keep under review all standard rules made by the authority and revise those rules whenever it considers necessary, in order to follow developments in best available techniques or otherwise.

(4) In this regulation and regulations 10A to 10F, references to revising standard rules include partial revocation of a set of standard rules, and references to revoking standard rules mean revoking a set of standard rules in their entirety.

Standard rules: conditions of permit

10A.—(1) SEPA may specify in a permit granted under regulation 7 for a standard installation or standard mobile plant that the contents of any relevant set of standard rules as revised from time to time are conditions of the permit (“a standard rules condition”), without prejudice to any other conditions required or authorised to be imposed under regulations 9, 9C, 9D, 9E, or 9F.

(2) Where an installation or mobile plant in respect of which a permit has previously been granted under regulation 7 becomes a standard installation or standard mobile plant, SEPA may vary the permit under regulation 13 so as to include a standard rules condition.

(3) Where a permit contains a standard rules condition and any other condition of that permit is inconsistent with any of the relevant standard rules, the rules shall prevail to the extent of that inconsistency.

Consultation on standard rules

10B.—(1) Before making, revising or revoking any set of standard rules, a rule-making authority must consult—

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

(2) Paragraph (1) does not apply in respect of any revision which effects only minor administrative change.

(3) The duty in paragraph (1) may be satisfied in relation to the making of standard rules by a consultation carried out wholly or partially before the coming into force of this regulation.

Rules made, revised or revoked by the Scottish Ministers

10C. After making, revising or revoking any set of standard rules, the Scottish Ministers must notify SEPA and provide it with a copy of the rules or of the revision or revocation.

Publication of standard rules

10D.—(1) Where a rule-making authority has made any standard rules, SEPA must publish them on its website.

(2) Standard rules conditions referring to those standard rules may be inserted under regulation 10A(1) and (2) from the day following the date of publication.

Revision of standard rules

10E.—(1) Where a rule-making authority has revised any set of standard rules, SEPA must notify operators holding standard rules permits of—

- (a) the revision;
- (b) the date on which the revision is expected to be published on the SEPA website under paragraph (2); and
- (c) the date on which the revision is expected to take effect in accordance with paragraph (3).

(2) Once paragraph (1) has been complied with, SEPA must publish on the SEPA website—

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

(3) The date on which the revision will take effect is—

- (a) in the case of a revision effecting only minor administrative change, the day following the date of publication under paragraph (2);
- (b) in any other case, twelve weeks after the date of publication under paragraph (2).

Revocation of standard rules

10F.—(1) Where a rule-making authority revokes a set of standard rules, SEPA must publish the revocation on its website.

(2) SEPA must not include any standard rules conditions relating to those standard rules in a permit after publication of the revocation.

(3) A standard rules condition relating to those standard rules which was included in a permit prior to publication of the revocation shall continue to apply until such time as that permit is next varied under these Regulations, and the relevant standard rules although revoked shall continue to have effect in relation to such a permit until that time.

(4) SEPA must ensure that such a permit is varied as soon as reasonably practicable following publication of the revocation.”.

9. In regulation 13 (variation of permits)—

(a) for paragraph (1) substitute—

“(1) SEPA may vary the conditions of a permit, and shall do so if it appears to SEPA for any reason that regulations 8, 9, 9C, 9D, 9E, 9F, or regulation 10 of the 2003 Regulations, require conditions to be included which are different from the subsisting conditions.”;

(b) for paragraph (4) substitute—

“(4) Where an application is duly made under paragraph (2), SEPA shall determine in accordance with regulations 8, 9, 9C, 9D, 9E, 9F or 10A, or regulation 10 of the 2003 Regulations, whether to vary the conditions of the permit.”; and

(c) after paragraph (4) insert—

“(4A) Where an application made under paragraph (2) relates to a permit which does not authorise any specified waste management activity, and the proposed variation would authorise such an activity, regulation 7(4) and (5) apply as if the application was an application for a permit.”.

10.—(1) In regulation 14(8) (transfer of permits), omit the first occurrence of “in writing (or in electronic form)”.

(2) In regulation 15(7) (application to surrender a permit for a Part A installation or mobile plant), omit “in writing (or in electronic form)”.

11. In regulation 22 (appeals)—

(a) after paragraph (8) insert—

“(8A) The determination of an appeal under paragraph (5) which relates to a decision to include in a permit a standard rules condition shall not affect the continued validity of the relevant standard rules.”; and

(b) in paragraph (11), for “and 9 (other than paragraph (2))” substitute “, 9 (other than paragraph (2)), 9C, 9D, 9E, 9F, and 10A”.

12. In regulation 23(3) (directions to SEPA), for “Article 17(1)” substitute “Article 18(1)” and for “Article 17(2)” substitute “Article 18(2)”.

13. In Schedule 1 Part 1 Section 1.1 (combustion)—

(a) in Part A, omit paragraph (b);

(b) in Part B, omit paragraphs (c), (d) and (e);

(c) in the provisions on interpretation of Part B, omit paragraph 2; and

(d) in the paragraph headed “Interpretation of Section 1.1”, omit the definitions of “waste oil” and “recovered oil”.

14. In Schedule 1 Part 1 Section 3.5 (other mineral activities) Part B paragraph (a), for “, other than the cutting of stone” substitute “(other than the cutting of stone)”.

15. In Schedule 1 Part 1, after Section 6.9 (intensive farming) insert—

“SECTION 6.10

Carbon capture and storage

PART A

Capture of carbon dioxide streams from an installation for the purposes of geological storage pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23rd April 2009 on the geological storage of carbon dioxide(a).

PART B

NIL.”.

16. In Schedule 2 (best available techniques) paragraph 1(1), for “Article 16(2)” substitute “Article 17(2)”.

(a) O.J. L 140, 5.6.2009, p.114.

17. In Schedule 4 (grant of permits)—

- (a) in paragraph 1(1)(a), for “section 736 of the Companies Act 1985(a)” substitute “section 1159 of the Companies Act 2006(b)”;
- (b) in paragraph 1(1)(b), after “plant” where first occurring insert “other than a standard installation or Part A standard mobile plant which is not a hybrid installation or mobile plant.”;
- (c) after paragraph 1(1)(b) insert—
 - “(ba) in the case of an application for a permit to operate a standard installation or Part A standard mobile plant which is not a hybrid installation or mobile plant—
 - (i) the address of the site of the installation or mobile plant, and in the case of mobile plant its national grid reference;
 - (ii) the name of the local authority within whose area that site is situated; and
 - (iii) in the case of an installation the national grid reference of the location of the installation on that site.”;
- (d) for paragraph 1(1)(m) substitute—
 - “(m)in the case of an application to operate a standard installation or mobile plant, a statement as to whether the applicant wishes any permit granted to be a standard rules permit.”;
- (e) omit paragraph 3;
- (f) for paragraph 8(a) substitute—
 - “(a) the authorisation of a Part B standard installation which is not a hybrid installation; or”;
- (g) omit paragraph 10(a);
- (h) after paragraph 10 insert—
 - “**10A.** Paragraph 9(a) and (e) do not apply to an application for a permit to operate a Part B standard installation which is not a hybrid installation.”;
- (i) in paragraph 14(1), for “(6)” substitute “(7)”; and
- (j) in paragraph 17, for “Article 17” substitute “Article 18”.

18. In Schedule 7 (variation of conditions)—

- (a) after paragraph 1(e) insert—
 - “(ea) any information which the operator wishes SEPA to take into account when considering whether the operator is a fit and proper person to carry out any specified waste management activity which would be authorised by those variations.”;
- (b) omit paragraph 4(4)(a);
- (c) in paragraph 6(1), for “(6)” substitute “(7)”;
- (d) in paragraph 6A(3), for both occurrences of “applicant” substitute “operator”;
- (e) in paragraph 7(1)(b), for “4(1)(b)(i)” substitute “4(1)(a)”;
- (f) in paragraph 8, for “permit” substitute “variation”; and
- (g) in paragraph 9, for “Article 17” substitute “Article 18”.

19. In Schedule 8 (appeals)—

- (a) after paragraph 2(1)(b) insert—

(a) 1985 c.6; section 736 was inserted by section 144(1) of the Companies Act 1989 (c.40).
(b) 2006 c.46.

- “(ba) in the case of an appeal under regulation 22(2) against a variation notice served in connection with a partial transfer under regulation 14, before the expiry of the period of six months beginning with the date of the notice;”;
- (b) at the beginning of paragraph 2(1)(c) insert “subject to paragraph (ba),”; and
- (c) in paragraph 2(2), after “(a)” insert “, (ba)”.

St Andrew’s House,
Edinburgh
27th June 2011

STEWART STEVENSON
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note does not form part of these Regulations)

These Regulations amend the Pollution Prevention and Control (Scotland) Regulations 2000 (the “PPC Regulations”).

Regulation 3 amends the interpretation provisions in the PPC Regulations to define terms used in connection with the standard rules provided by these Regulations, and to replace the old definition of the Integrated Pollution Prevention and Control Directive with a definition referring to Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention and control (O.J. L 24, 29.1.2008, p.8) (the “new IPPC Directive”).

Regulation 4 amends regulation 4 (fit and proper person) of the PPC Regulations, which applies where SEPA requires to determine whether or not a person is a fit and proper person to carry out a specified waste management activity, by—

- (a) omitting paragraph (5)(b) so that SEPA, in considering whether to treat a person as not being a fit and proper person on the basis that the management of that activity will not be in the hands of a technically competent person, will no longer require to treat the qualifications and experience prescribed in regulations made under section 74(6) (meaning of “fit and proper person”) of the Environmental Protection Act 1999 (c. 43) as the qualifications and experience required of a person who is to be considered as technically competent;
- (b) amending paragraph (6), so that SEPA when considering whether to treat a body corporate as not being a fit and proper person, will be able to take into account that a person who is a director or similar officer of that body held office in another body corporate at the time that the second such body committed a relevant offence; and
- (c) omitting paragraph (7), which provides for activities involving the disposal of specified types of waste, so that a person who has applied to Waste Management Industry Training and Advisory Board for a certificate of technical competence shall not for that reason alone be treated as a technically competent person for the purposes of regulation 4 of the PPC Regulations.

Regulations 5(a), 11(b) and 13(a) and (b) amend the PPC Regulations with the effect that SEPA shall when (say) granting a permit require in addition to impose such conditions as are needed to ensure that the requirements of regulations 9C to 9F of those Regulations are met.

Regulations 5(b) and (d), 6(b), 7, 8, and 17(b) to (d) and (f) and (h) amend the PPC Regulations with the effect that regulation 10 (general binding rules) is repealed, and replaced with new provision based on inserted regulations 10 to 10F under which the Scottish Ministers or SEPA may make standard rules which apply to installations or mobile plant described in such rules. The effect is that SEPA may specify in a permit granted under regulation 7 (permits: general provision) of the PPC Regulations that the contents of any set of standard rules are to be conditions of the permit.

Regulations 6(a), 14, 17(j) and 18(c) to (f) correct minor errors in the PPC Regulations.

Regulation 9(b) inserts a new paragraph (4A) into regulation 13 (variation of permits) of the PPC Regulations, so that an application for variation of a permit which would if granted have the effect of authorising a specified waste management activity for the first time, shall be treated as an application for a permit in respect of that activity. The effect is that SEPA will require to determine whether or not the permit holder is a fit and proper person to carry out such an activity in accordance with regulation 4 of the PPC Regulations.

Regulation 10 amends regulations 14 (transfer of permits) and 15 (application to surrender a permit) of the PPC Regulations so that an agreement between SEPA and an applicant to extend the period after which a transfer application is deemed to be refused, or in which notification of determination of a surrender application must be given, does not require to be in writing.

Regulation 11(a) amends regulation 22 (appeals) of the PPC Regulations, so that the determination by the sheriff of an appeal against a decision to include a standard rules condition in a permit does not affect the validity of the standard rules in question.

Regulations 12, 17(j) and 18(g) effect minor changes to the PPC Regulations needed as a consequence of the new IPPC Directive.

Regulations 13, 17(e) and (g) and 18(b) amend Schedules 1 (Part 1 (activities)), 4 (grants of permit) and 9 (variations of conditions) to the PPC Regulations, so that burning of waste oil, recovered oil or fuel manufactured from waste is no longer either a Part A activity (if burned in an appliance with a net rated thermal input of three megawatts or more) or a Part B activity (if burned in an appliance with an input of less than three megawatts).

Regulation 15 inserts a new Section 6.10 concerning carbon capture and storage into Chapter 6 (other activities) of Schedule 1 Part 1, so that the capture of carbon dioxide streams for the purposes of geological storage is now a relevant activity. The regulation transposes point 6.9 of Annex I to the new IPPC Directive, as inserted by Article 37 of Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide (O. J. L 140, 5.6.2009, p. 114).

Regulation 17(a) effects a minor change to the PPC Regulations needed as a consequence of the repeal of the Companies Act 1985 (c.6).

Regulation 18(a) amends paragraph 1 of Schedule 7 to the PPC Regulations, so that any person applying for a variation of a permit shall when appropriate provide SEPA with information relevant to whether the person is a fit and proper person to carry out a specified waste management activity.

Regulation 19 amends Schedule 8 (appeals) to the PPC Regulations, with the effect that an appeal against a condition attached to a transferred permit and an appeal against a variation notice in connection with a partial transfer are both subject to a 6 month time limit.

A Business and Regulatory Impact Assessment has been prepared in respect of the standard rules provisions, and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Environment Quality Division, Scottish Government, Victoria Quay, Edinburgh EH6 6QQ. An assessment has not prepared for the other provisions as they have no impact on the cost of business.

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