Draft Regulations laid before Parliament under section 2(8) of the Pollution Prevention and Control Act 1999, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2004 No.

ENVIRONMENTAL PROTECTION, ENGLAND AND WALES

The Solvent Emissions (England and Wales)Regulations 2004

Made - - - -	*2004*
Coming into force - -	*2004*

The Secretary of State, in exercise of the powers conferred upon her by section 2 of the Pollution Prevention and Control Act 1999(**1**), having in accordance with section 2(4) of that Act consulted the Environment Agency, such bodies or persons appearing to her to be representative of the interests of local government, industry, agriculture and small businesses respectively as she considers appropriate, and such other bodies and persons as she considers appropriate, hereby makes the following Regulations, a draft of which has, in accordance with section 2(8) of the 1999 Act, been laid before, and approved by resolution of, each House of Parliament:

Citation, commencement and extent

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

(2) These Regulations extend to England and Wales.

Interpretation

2.—(1) In these Regulations—

"the 2000 Regulations" means the Pollution Prevention and Control (England and Wales) Regulations 2000(**2**);

(**1**) 1999 c. 24. The Secretary of State can exercise these powers only in relation to England and Wales: see section 53 of the Scotland Act 1998 (c. 46) and section 5(3) of the 1999 Act. Directive 1999/13/EC was designated for the purposes of paragraph 20 of Schedule 1 to the 1999 Act by The Pollution Prevention and Control (Designation of Council Directive on Solvent Emissions) Regulations 2003, S.I. 2003/948.

(**2**) S.I. 2000/1973, amended by S.I. 2001/503, 2002/275, 2002/1559, 2002/1702, 2002/2469, 2002/2688, 2002/2980 and 2003/1699.

"authorisation" means an authorisation granted under section 6 of the Environmental Protection Act 1990(**3**);

"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(**4**) as last amended by Commission Directive 98/98/EC(**5**), is assigned or needs to carry the risk phrases R45, R46, R49, R60 or R61; and a substance or preparation "becomes a risk phrase substance or preparation" when, because of its content of volatile organic compounds, it is assigned or needs to carry one or more of those risk phrases.

(2) Subject to regulation 3(15), in these Regulations, words and expressions which are defined in Regulation 2 of, or Schedule 3 to, the 2000 Regulations shall have the same meaning as in those Regulations.

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—

(a) an installation contains—

(i) a new SED installation; or

(ii) an existing SED installation which underwent a substantial change in operation, or at which abatement equipment was installed on or after 1st April 2001 and before the coming into force of these Regulations; or

(iii) an existing SED installation at which a risk phrase substance or preparation began to be used before the coming into force of these Regulations; and

(b) the affected part of the SED installation 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 17 of the 2000 Regulations for a variation of the conditions of that permit.

(2) Where—

(a) abatement equipment was installed in an existing SED installation on or after 1st April 2001 and before the coming into force of these Regulations;

(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 A"; and

(c) that part of the SED installation is on the 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 either make an application under section 11 of the Environmental Protection Act 1990 for a variation of the conditions of the authorisation; or make an application for a permit to operate the whole installation under regulation 10 of the 2000 Regulations.

(3) Where—

(a) an installation contains an existing SED installation at which a risk phrase substance or preparation began to be used before the coming into force of these Regulations; and

(**3**) 1990 c. 43.
(**4**) OJ 196, 16.8.1967, p. 1.
(**5**) OJ L 355, 30.12.1998, p. 1.

(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 make an application under section 11 of the Environmental Protection Act 1990 for a variation of the conditions of the authorisation.

(4) Subject to paragraph (1), where an installation which contains an existing SED installation is subject to a permit, the operator of the installation shall by the SED date make an application under regulation 17 of the 2000 Regulations for a variation of the conditions of that permit.

(5) Subject to paragraph (2), where the activities carried out in an existing SED installation—

(a) fall wholly within any description set out in Schedule 1 to the 1991 Regulations under the heading "Part A"; and

(b) are wholly covered by an authorisation,

the operator shall by the SED date make an application under section 11 of the Environmental Protection Act 1990 for a variation of the conditions of the authorisation or make an application for a permit to operate the whole installation under regulation 10 of the 2000 Regulations.

(6) Paragraphs (1) to (5) do not apply if the permit or authorisation already includes all conditions necessary to meet the requirements of the Solvent Emissions Directive.

(7) Where—

(a) an operator of an installation containing 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 17 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 positive determination date.

(8) Where—

(a) an operator of an installation containing 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 set out in Schedule 1 to the 1991 Regulations under the heading "Part A"; and

(c) that part of the SED installation is wholly covered by an authorisation,

the operator shall either make an application under section 11 of the Environmental Protection Act 1990 for a variation of the conditions of the authorisation or make an application for a permit to operate the whole installation under regulation 10 of the 2000 Regulations, and may not install the abatement equipment before the positive determination date.

(9) Where—

(a) an operator of an installation containing an existing SED installation proposes to start 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 make an application under regulation 17 of the 2000 Regulations for a variation of the conditions of the permit or an application under section 11 of the Environmental Protection Act 1990 for a variation of the conditions of the authorisation, and the operator may not begin using the substance or preparation before the positive determination date.

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

(a) a substance or preparation used in an SED 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 4 months beginning on the date on which the risk phrase is assigned to that substance or preparation make an application under regulation 17 of the 2000 Regulations for a variation of the conditions of the permit or an application under section 11 of the Environmental Protection Act 1990 for a variation of the conditions of the authorisation.

(11) Paragraphs (1) and (7) shall not apply to an installation containing an 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 substantially changed part of the SED installation 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.

(12) An application under this regulation shall contain the information specified in paragraph 1C of Part 1 of Schedule 4 to the 2000 Regulations.

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

(14) A notice served under paragraph (13) shall be treated for the purposes of the 2000 Regulations as an enforcement notice served under regulation 24(1) of the 2000 Regulations.

(15) For the purposes of this regulation—

"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;

"positive 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 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 sections 1.1 to 6.9 of Part 1 of Schedule 1 and associated activities) and the prescribed date for part of the SED installation has not yet passed, the operator may make an application to extend the scope of the permit to incorporate the whole of the SED installation.

(2) Subject to paragraph (3), the provisions of regulation 17 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 17(2) of the 2000 Regulations.

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

(a) regulation 17 of the 2000 Regulations shall apply as if—

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

"(4) Where an application is duly made to the regulator under regulation 4(1) of the Solvent Emissions (England and Wales) Regulations 2004, the regulator shall either extend the scope of the permit subject to the conditions required or authorised to be imposed by regulations 11, 12 and 12A or refuse to extend the permit";

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

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

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

"(7) Where the regulator decides on an application under regulation 4(1) of the Solvent Emissions (England and Wales) Regulations 2004 not to extend the permit, it shall give notice of its decision to the operator";

(b) Schedule 7 shall apply as if—

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

(ii) at the end of paragraph 1 there were inserted a new sub-paragraph (h) as follows—

"(h) in the case of an application for a variation to extend the scope of the permit in respect of an SED installation the information specified in paragraph 1C of Part 1 of Schedule 4";

(iii) in paragraph 4(1) "or" were deleted from the end of sub-paragraph (a); "or" were inserted at the end of sub-paragraph (b); and there were inserted a new sub-paragraph (c) as follows—

"(c) an application is made under regulation 4(1) of the Solvent Emissions (England and Wales) Regulations 2004 to extend the scope of the permit";

(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 (England and Wales) Regulations 2004 to extend the scope of the permit, the extension of the scope of the permit";

(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), (4), (7), (9) or (10) and an application for a variation to extend the scope of the permit under paragraph (1) may be made combined in one application.