

INTRODUCTORY GUIDANCE ON THE NEW 2004 SOLVENT EMISSIONS REGULATIONS

1. This document outlines the requirements of The Solvent Emissions (England and Wales) Regulations 2004, SI 107, which came into force on 20 January 2004 (the “SED Regulations”) <http://www.legislation.hmso.gov.uk/si/si2004/20040107.htm> . Appended is a separate note containing a legal explanation of the eight regulations which comprise the SED Regulations.

This document is an introduction and is not a substitute for reading the SED Regulations and the Solvent Emissions Directive. Nor does it contain guidance on technical issues. Further guidance will be issued shortly, as set out at the end of this note.

2. This note is intended for local authorities in England and Wales who have been given new regulatory responsibilities under the SED Regulations, and for operators of the installations affected by the Regulations.

The Solvent Emissions Directive

3. The SED Regulations give effect to European 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 “SED”)

http://europa.eu.int/eur-lex/pri/en/oj/dat/1999/l_085/l_08519990329en00010022.pdf *

or

http://europa.eu.int/eur-lex/en/search/search_oj.html then in “search by document number” click “directive”, insert year “1999” and number “13”. The search will reach the SED (currently the fifth listed document)*.

The SED applies to specified activities carried out at an installation (“SED activities”).

* corrigendum at http://europa.eu.int/eur-lex/pri/en/oj/dat/1999/l_240/l_24019990910en00240024.pdf

Directions

4. The SED was largely transposed by directions issued on 22 March 2002 under Part I of the Environmental Protection Act 1990 and under the Pollution Prevention and Control (England and Wales) Regulations 2000. The directions applied to all SED installations regulated at the time under the 1990 and 2000 legislation. They required regulators to exercise their powers to include the requirements of the SED in permits or authorisations. In particular, no new SED installations in sectors already regulated under the 1990 and 2000 legislation should have been operated without a permit which delivered the SED requirements, and operators of existing SED installations in these sectors should have submitted

substitution plans where substances or preparations assigned certain risk phrases were used.

5. The directions made under the 2000 Regulations will now be superseded by the SED Regulations and will be revoked shortly. The directions made under the 1990 Act will continue in force until the end of the transitional period (ie 2007). The directions are at <http://www.defra.gov.uk/environment/airquality/solvents/index.htm>.

SED in outline

6. SED activities listed in Annex I of the directive must be regulated by permit. The permit must deliver certain requirements.

7. There are two main compliance options:

- meeting a VOC **emission concentration limit** and fugitive emission limits** and submitting annual or continuous monitoring results depending on the size of emissions (limit values in SED Annex IIA)
- using a solvent reduction approach to achieve the results that would be obtained from meeting a mass emission limit ("**reduction scheme**"). This approach is not to be employed where certain risk phrase compounds are used (methodology in SED Annex IIB).

In some cases (notably the coatings manufacturing and pharmaceuticals sectors) there is also the option of meeting a mass emission limit (total emission limit value)

8. A Solvent Management Plan (guidance in SED Annex III) must also be produced.

9. All new activities must now comply with the SED requirements before starting operation.

10. All existing activities must comply with the requirements by 31 October 2007, except

- an operator must notify the regulator by 31 October 2005 if it intended to use the a reduction scheme
- the reduction scheme involves calculating an annual reference limit and a target emission. The target emission x 1.5 must be complied with by 31 October 2005, and the target emission without a multiplication factor by 31 October 2007
- where a reduction scheme is not being used, any VOC abatement equipment installed after 1 April 2001 must comply with the emission concentration limits

- where substances/preparations used contain VOC and the nature/amount of the VOC means that they have a risk phrase R45, 46, 49, 60 and 61 (carcinogens, mutagens, and substances toxic to reproduction), the operator must in the shortest possible time work towards substituting the substance/preparation concerned so that the risk phrase(s) no longer applies ("**substitution**"). For discharges of these compounds and of halogenated compounds involving risk phrase R40, there are also emission limit values (if mass flows are above certain figures).

* initial guidance on the meaning of 'shortest possible time' is in the process guidance notes referred to in paragraph 18 below

- where an operator opts to comply with limit values and complies with either 50mg C/Nm³ (if using an incinerator as abatement) or 150 mg C/Nm³ (if using any other sort of abatement), compliance with the Annex IIA limit values is deferred until 1 April 2013 if the total emissions of the whole installation do not exceed what would have resulted had Annex IIA been fully complied with.

11. All substantial changes must have the substantially changed part of the activity treated as a new activity, but there is a waiver if the total emissions of the whole installation do not exceed what would have resulted had the substantially changed part been treated as a new installation.

12. SED defines words such as VOC, organic compound, installation, existing installation, preparation, substance, coating, and consumption.

SED Regulations

13. The SED Regulations give effect to the SED, including those outlined above <http://www.legislation.hmsso.gov.uk/si/si200401.htm>. **Please note the timescales by which actions must be taken.**

14. The Regulations extend the controls to the sectors not hitherto regulated under the 1990 or 2000 legislation:

sector	consumption threshold (tonnes)
dry cleaning	-
vehicle refinishing	0.5 - 1
vehicle coating in the course of manufacture	0.5 – 5
coating not in the course of manufacture	> 5
surface cleaning using certain specified compounds	> 1
surface cleaning not using certain specified compounds	> 2
rubber conversion not using carbon black	> 15
formulation and finishing of pharmaceuticals	> 50

purification of animal or vegetable oil or fat where the activity is incidental to the cooking for human consumption	> 10
purification of fats and vegetable oils derived from seeds, vegetable matter and/or animal matter	> 10
timber treatment treating less than 1000m ³ with solvent	> 25

Note: arising from a confusion in the paragraphing in the SED, the SED Regulations currently provide that the 5-tonne threshold applies to the coating of trailers. The threshold should, in fact, be 0.5 tonnes as for vehicle coating, and the Regulations will be corrected at the next opportunity.

Having considered responses to the supplementary consultation paper on transposition of the SED, the proposal for separate applications containing a substitution plan for these sectors has not been included. Such plans must now be included as part of the permit application.

15. The Regulations specify the following additional **timescales for action**:

- regulation 3 requires operators to apply for a variation notice by 20 May 2004 where they are putting a new SED installation into an existing process/installation, an existing SED installation is undergoing a substantial change, or an existing SED installation is already using a risk phrase substance or preparation. [This third case (use of R phrase substances/preparations) cannot constitute a substantial change if it is merely a matter of recording what the installation is already using and the proposed substitution plan.]
- regulation 6 requires that if an operator of an existing SED installation makes an application for a permit, variation or a supplementary application* and notifies he/she wishes to use the reduction scheme, he/she must use it from 31 October 2005

*supplementary applications arise where a PPC permit application has been made but not determined at the time the SED Regulations come into force.

- schedule 2 requires that operators make an application by 20 May 2004 for any new SED installation (ie one that is put into operation after 1 April 2001 – nearly three years ago)
- schedule 2 also requires an operator of an existing SED installation to apply for a permit by either 31 October 2005 (if intending to use the reduction scheme) or otherwise 31 October 2006.

16. Regulation 8 makes amendments to the PPC Regulations which give effect to the SED (as summarised above), notably:-

- incorporating SED definitions
- requiring that conditions are included in permits to deliver the SED requirements
- providing reduced application procedures for dry cleaners.

Fees and charges for sectors listed in paragraph 14 above

17. The application fees and subsistence charges are the same as for other Part B processes and installations, with the exception that the level of fees and charges for dry cleaners is the same as for small waste oil burners in the existing Part B charging schemes. The amended charging scheme which gives this effect can be found at <http://defraweb/environment/ppc/index.htm> .

Guidance

18. Defra and the Welsh Assembly Government intend to issue the following further guidance (with estimated dates of issue):

- an amplified version of this note (within 3 months)
- revised versions of 22 process guidance (PG) notes covering the SED sectors and incorporating the SED requirements, including a short guide to the use of these PGs (March 2004)
- a new PG note for the dry cleaning sector (consultation March 2004)

** FOOTNOTE TO PARA 7: fugitive emission limits apply to such emissions to soil and water as well as to air. It is Defra/WAG's current view that in most cases this is likely to make little practical difference to what operators are required to do, and should not normally result in the need to vary existing authorisations/permits which comply with the 2002 directions. The main cases where there could be implications is where abatement is by water scrubbing, when fugitive emissions from the water scrubbing will have to be included in the calculations.

Defra/WAG

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SED initial guidance~2 Feb

EXPLANATORY NOTE ON THE SOLVENT EMISSIONS (ENGLAND AND WALES) REGULATIONS 2004

The Solvent Emissions Directive (SED or the Directive) requires all installations carrying out activities listed in Annex I which are operated above the solvent consumption thresholds specified in Annex IIA to comply with certain emission limit values.

The majority of installations covered by the Directive are already regulated under either the Pollution Prevention and Control Regulations 2000 (the PPC Regulations 2000) or Part I of the Environmental Protection Act 1990 (the EPA 1990).

The Solvent Emissions (England and Wales) Regulations 2004 (the Regulations) use the existing pollution control regime set out under the PPC Regulations 2000 to deliver the requirements of the Directive. As a result, the transitional provisions in the PPC Regulations 2000 are being adjusted to ensure that in the majority of cases the PPC and the SED application requirements are combined. For a transitional period, for certain installations, the requirements of the Directive will be delivered through authorisations under the EPA 1990.

Regulation 1 – Citation, Commencement and Extent

Regulation 1 provides that the Regulations extend to England and Wales and shall come into force on the day after the day in which they are made.

Regulation 2 – Interpretation

Regulation 2 deals with definitions of words and expressions used in the Regulations.

It provides that words and expressions defined in regulation 2 or Schedule 3 to the PPC Regulations 2000 shall have the same meaning in these Regulations. In addition, there is a definition of “risk phrase substance or preparation”, which has been imported from the Directive. Operators using these substances or preparations shall be required to provide a timetable for substitution.

Regulation 3- Application for variation of an existing permit or authorisation in relation to installations covered by the Solvent Emissions Directive

Regulation 3 is a transitional provision requiring the holders of permits or authorisations granted under the EPA 1990 or the PPC Regulations 2000, who carry out solvent activities at the time of coming into force of the Regulations, to apply for variation of their permits or authorisations to incorporate the Directive requirements into those permits or authorisations (if those provisions have not already been incorporated).

This Regulation also requires the holders of permits or authorisations granted under the EPA 1990 or the PPC Regulations 2000 to apply for a variation of their permits in circumstances where the operator: (i) has made or proposes to make a substantial change in the operation of the SED installation; (ii) uses or proposes to use a risk phrase substance or preparation; or (iii) is proposing to install abatement equipment.

Regulation 3 provides that if an operator fails to comply with the requirements of this regulation the regulator may serve an enforcement notice under regulation 24(1) of the PPC Regulations 2000. Failure to comply with an enforcement notice is an offence under regulation 32 of the PPC Regulations 2000.

Regulation 4 – Application for extension of an existing permit in relation to installations covered by the Solvent Emissions Directive

Regulation 4 sets out transitional provisions for those installations which at the time of coming into force of the Regulations are subject to a permit under the PPC Regulations 2000 which only covers part of an SED installation and the prescribed date (the date for making a SED application) for the remaining part of the SED installation has not yet passed. In these circumstances the operator, on the coming into force of the regulations, is entitled to make an application to extend the scope of the permit to incorporate the whole of the SED installation.

If the operator makes an application to have the permit extended, the regulator shall issue a variation notice to the operator specifying how the permit shall be extended, the conditions which will be imposed on the part of the installation covered by the extension and the date from which the extension will take effect.

Regulation 5 – Supplementary applications in relation to installations covered by the Solvent Emissions Directive

Regulation 5 sets out transitional provisions enabling the operator to make supplementary applications modifying applications made under regulation 10 of the PPC Regulations 2000 which have not yet been determined, in the following circumstances-

- (a) the operator wishes to make a substantial change in the operation of the SED installation, to install abatement equipment, or to begin using phrase substance or preparation before the original application has been determined;
- (b) the operator wishes to use a reduction scheme (i.e. an scheme specified in Annex IIB of the Directive) and the original application has not been determined by the regulator by 31 August 2005; or
- (c) where the application in connection with an installation which includes SED activities, which are also partly activities falling within another description in sections 1.1 to 6.9 of Schedule 1 to the PPC Regulations 2000 has not been determined by the time the prescribed date for the remaining part of the SED installation takes place.

Regulation 6 – Duty for operators applying to use a reduction scheme

Regulation 6 sets out the duties of operators wishing to operate a SED installation in accordance with the requirements of a reduction scheme (i.e. a scheme which complies with Annex IIB of the Directive).

Regulation 6 requires that operators making applications for extending, varying or obtaining permits, or making supplementary applications under regulation 5, indicating that they intend to use a reduction scheme shall, from 31st October 2005 until the determination date for the SED installation, operate the SED installation in accordance with the requirements of the proposed reduction scheme.

Regulation 6(3) provides that if an operator fails to comply with the requirements of this regulation the regulator may serve an enforcement notice, which shall be treated as an enforcement notice under regulation 24(1) of the PPC Regulations 2000. Failure to comply with such a notice is an offence under regulation 32 of the PPC Regulations 2000.

Regulation 7 – Duration of regulations 3 to 6

Regulation 7 specifies the duration of the transitional arrangements set out in regulations 3 to 7 of the Regulations.

It provides that regulations 3 to 6 shall cease to have effect on 1 November 2007 (the sunset date), except in those cases where an application for a permit has been made under regulation 10 of the PPC Regulations 2000 and the application has not been determined prior to the sunset date. It further defines what is the “determination date” for the purposes of this regulation.

Regulation 8 – Amendment to the Pollution Prevention (England and Wales) Regulations 2000

Regulation 8 makes amendments to the PPC Regulations 2000 to incorporate the requirements of the Directive.

Regulation 8(1) inserts new Directive definitions into regulation 2(1) of the PPC Regulations 2000. These include new definitions of “substantial change”, and “installation” to incorporate the additional requirements specified in the Directive, as well as new definitions of organic compounds, reduction scheme, SED activity and SED installation, etc.

Regulation 8(4) amends regulation 8(4) of the PPC Regulations 2000 to provide that the functions conferred on the local authority in connection with SED installations shall be exercisable for the purpose of preventing and reducing emissions of volatile organic compounds to into air, soil and water (and not only reducing emissions to air, as in the case with all other Part B installations).

Regulation 8(6) inserts a new regulation 12A to the 2000 Regulations requiring permits authorising the operation of an SED installation to include such conditions as the regulator considers necessary to give effect to the provisions of the Directive.

Regulation 8(9) and Schedule 1 to the Regulations add a new Section 7 to Schedule 1 to the 2000 Regulations (description of PPC activities). The new Section 7 provides for any of the activities listed in the table when operated above solvent consumption thresholds for that activity to be Part B activities.

In addition, Regulation 8(9) also disapplies some exclusions in the PPC Regulations 2000 for SED activities (e.g. “de minimis” exemption in paragraph 2 of Part 2 of Schedule 1 to the PPC Regulations (trivial releases into the air) shall not apply to solvent activities).

Regulation 8(10) amends the transitional arrangements in Schedule 3 to the PPC Regulations 2000 and inserts new Parts 3 and 4 to that Schedule as set out in Schedule 2 to the Regulations.

The new Parts 3 and 4 of Schedule 3 to the PPC Regulations set out all necessary transitional arrangements in respect of SED installations by specifying the prescribed dates in which operators of these activities are required to apply for PPC/SED permits.

Regulation 8(11) amends the provisions in Schedule 4 to the PPC Regulations 2000 dealing with the required contents for application for permits, in order to add new requirements and modify existing requirements to apply only to applications for permits to operate installations which contain an SED installation.

Regulation 8(12) amends Schedule 7 to the PPC Regulations 2000 dealing with applications for variation of conditions in permits to include additional requirements and exclusions to applications for the variation of conditions of permits which relate to the operation of an SED installation.