

WHISKY SECTOR – SHUTDOWN / RESTART (TRADE EFFLUENT)

1. Background

1.1 Having regard to our **Principles for Regulatory Approach to EU Exit and COVID-19** of December 2020, we have adopted this temporary regulatory position on the basis that any non-compliance covered by this Temporary Regulatory Position Statement (see below) is unavoidable, solely as a direct result of the impact of COVID-19, and will not lead to significant environmental harm.

1.2 We have adopted this Temporary Regulatory Position on whisky sector shutdown / restart. This Temporary Regulatory Position Statement will be published on [SEPA's Regulatory Approach hub](#) on our website.

1.3 This Temporary Regulatory Position Statement replaces SEPA's Temporary Regulatory Position Statement on Whisky Sector Shutdown / Restart (Trade Effluent), which applied from 9 April 2020.

2. SEPA position

2.1 This position relates to the shut down at short notice and potential start-up of Scotch Whisky production facilities as a consequence of COVID-19. Specifically the

discharge of trade effluent to receiving waters authorised under a water use licence under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 in connection with the operation of Scotch Whisky production facilities. This position only relates to the shut down and start up periods of such operations.

For the purposes of this Temporary Regulatory Position Statement, a start up period is the period of not more than 4 continuous weeks immediately after the commencement of operations at a facility after it has remained shut down for a continuous period of not less than 24 hours; and a shut down period is the period of not more than 5 continuous days immediately prior to the cessation of operations at a facility where it subsequently remains shut down for a continuous period of not less than 24 hours.

This Temporary Regulatory Position only applies to a single shut down period at each facility which occurs after the date of this Position Statement and a single start up period at each such facility after the date of this Position Statement, unless SEPA approves otherwise.

2.2 Subject to the operator complying with the conditions set out in section 3 of this Temporary Regulatory Position Statement, any failure by the operator to comply with the following requirements of its SEPA licence, permit or other authorisations (“Permit”) or other environmental regulatory requirements will not be treated as a non-compliance for compliance assessment or enforcement purposes:

- for any licence containing conditions with a two tier standard, any requirements to comply with the lower numerical limits ⁹ associated with parameters relating to

Biological Oxygen Demand (BOD) and any other numerical chemical concentration; or

- for any licence containing conditions with a single tier standard, any requirements to comply with the numerical limits associated with parameters relating to pH, Biological Oxygen Demand (BOD) and any other numerical chemical concentration where the limit is exceeded by less than 10% of the numerical limit for that parameter.

Provided that this paragraph 2.2 does not refer to, include or extend to any requirements to comply with discharge limits for parameters specified in a licence which relate to any instantaneous or a composite sample of effluent and in respect of which exceedances are not permitted (Upper Tier Limits)^h.

2.3 This Temporary Regulatory Position Statement only applies to those matters set out in paragraph 2.2 and covered by conditions set out in section 3. It does not apply to any other regulatory requirements and does not detract from any other statutory requirements applicable to the operator or their operations. All other conditions not referred to in this Temporary Regulatory Position Statement continue to apply as normal.

2.4 This Temporary Regulatory Position applies from 15 December 2020.

2.5 The operator should provide confirmation to SEPA in writing when returning to compliance with the requirements of the Permit or other environmental regulatory requirements as set out in paragraph 2.2 above, within 5 days of having done so.

3. Conditions that apply

Specific conditions

3.1 You must:

3.1.1 Where possible, before any shutdown (planned or otherwise) identify the potential causes of unplanned shut down (including staff availability, logistics supply resilience, and maintenance and repair requirements) and risk assess the likely occurrence, and the environmental risk of any unplanned shut down.

3.1.2 You must take reasonable steps to ensure that there are suitable quantities of spare and consumable parts available that may be needed on shut down or start up and to ensure that there are sufficient available staff or contractors to carry out a shut down or start up in accordance with these conditions and the conditions set out below.

3.1.3 Where it is lawful and reasonably practicable to do so, take reasonable steps to use alternative disposal arrangementsⁱ during the shut down period where necessary to ensure compliance with the conditions specified in paragraph 2.2.

3.1.4 Notify SEPA before any shut down and at least 24 hours prior to any start up commencing which is or may be covered by this Temporary Regulatory Position Statement.

General conditions

- 3.2 You must put in place and implement a written contingency plan to ensure that the conditions of this Temporary Regulatory Position Statement are met.
- 3.3 You must notify SEPA without delay if you cannot comply, or think you may not be able to comply, with the conditions in this Temporary Regulatory Position Statement.
- 3.4 You must take all such measures as are reasonably practicable to prevent and, where prevention is not possible, minimise and mitigate any impacts on the environment which result from the non-compliance with the requirements specified in paragraph 2.2.
- 3.5 The activity or activities which is/are the subject of these conditions must not cause harm or risk of harm to human health and must not cause harm or risk of harm to the environment to the following extent:
- 3.5.1 cause significant harm or risk of significant harm to water, air, soil, plants or animals;
 - 3.5.2 cause significant adverse effect, or risk of significant adverse effect to the countryside or places of special interest.
- 3.6 You must keep records to show that you have complied with the conditions in this Temporary Regulatory Position Statement for 12 months from the date this

Temporary Regulatory Position Statement was issued – these must be made available to SEPA on request.

- 3.7 In the event that, due to changing circumstances, you become able to comply with the requirements of your Permit or other regulatory requirements as set out at paragraph 2.2 above, you must return to compliance as soon as possible, notwithstanding that this Temporary Regulatory Position Statement remains in place.
- 3.8 This position statement applies only in Scotland.
- 3.9 This Temporary Regulatory Position Statement only applies where non-compliance is unavoidable and solely as a direct result of emergency resulting from COVID-19 outbreak.
- 3.10 The terms of this Temporary Regulatory Position Statement may be subject to periodical review and may be varied or withdrawn at any time.
- 3.11 SEPA reserves its discretion to depart from this Temporary Regulatory Position Statement and to take appropriate action as necessary.

Notes:

- (a) This position is intended to apply when sites are shutting down due to factors related to COVID-19 or restarting after such a shut down.
- (b) Most distilleries take 5 days to perform a controlled shut down, this enables all material to be processed normally and will not result in a breach of Licence conditions. However, sites may be required to close with less than 5 days notice due to factors beyond the operator's control, e.g. Government advice, staff shortage. In such instances part processed material will require to be disposed of which may result in a breach of licence condition. This position relaxes the licence conditions where a shut down is required to be completed in less than 5 days. This relaxation does not apply to controlled 5 day shut downs.
- (c) SEPA and the sector's preference is for controlled shutdown where possible, this should always be the first option.
- (d) This position applies to CAR Authorisations only, other regulatory requirements may be covered by separate Temporary Regulatory Position Statements (TRPS).
- (e) It is expected that this TRPS will apply to a site once, except in exceptional circumstances e.g. site producing volume disinfectant where SEPA approval will be needed.
- (f) Places of special interest include any designated site (e.g. SSSI or Special Area of Conservation).
- (g) Lower numerical limits refers to Lower Tier limits in licences containing conditions with Upper Tier limits and Lower Tier limits. A Lower Tier limit requires compliance with discharge limits for parameters specified in the licence but only where those discharge limits are associated with limits on the number of exceedances which are permitted in a series of samples taken over a year.

- (h) For the avoidance of doubt any sample of a discharge that, once analysed, breaches the higher numerical limit associated with that parameter (i.e. the upper tier limit of a two tier standard) will be considered a non-compliance for compliance assessment or enforcement purposes.
- (i) Preference is to utilise a long sea outfall, however other authorised disposal routes may be used.