

## **BUSINESS AND REGULATORY IMPACT ASSESSMENT**

### **Business and Regulatory Impact Assessment for the transposition in Scotland of the Directive on Industrial Emissions (Integrated Pollution Prevention and Control) (recast) – 2010/75/EU – referred to in this document as ‘the Directive’.**

#### **Purpose and intended effect**

#### **Objective**

1. To meet the legislative requirements set out in the Directive by transposing them into Scottish legislation by the Directive deadline of 7 January 2013.

#### **Rationale for Government intervention**

2. This is a European Directive which requires transposition into national legislation by Member States. This document concerns transposition in Scotland; parallel transposition exercises are taking place in England and Wales and in Northern Ireland.
3. Failing to transpose the Directive would lead to infraction and the prospect of heavy daily fines for failure to transpose. Such fines range from €9.7m to €256.6m per year, or a maximum of €0.7m per day. This is in addition to a lump sum which depends on the nature of the infraction but is usually around €10m.

#### **Background**

##### **Industrial Emissions Directive**

4. The Directive on Industrial Emissions (Integrated Pollution Prevention and Control) (recast) – 2010/75/EU, (‘the Directive’) is a recast of seven existing Directives: those concerning integrated pollution prevention and control (2008/1/EC), large combustion plants (2001/80/EC), waste incineration (2000/76/EC), solvent emissions (1999/13/EC) and three concerning waste from the titanium dioxide industry. These are referred to as “component Directives”.
5. These component Directives already apply to many industrial installations in Scotland, ranging from power stations to intensive poultry farms and from waste incinerators to dry cleaners. These installations all present – often individually and certainly in aggregate – a significant risk in various ways to human health and the environment from polluting activities.
6. The way in which these component Directives have already been put into effect in Scotland is through the Pollution Prevention and Control (Scotland) Regulations 2000 (including a number of subsequent amendments since 2000).

## **Pollution Prevention and Control (PPC) Regime**

7. The Pollution Prevention and Control (PPC) regulatory regime is the principal means of eliminating or reducing emissions from a wide range of industrial sectors across Scotland. The Pollution Prevention and Control (Scotland) Regulations 2000 transposed the Integrated Pollution Prevention and Control (IPPC) EC Directive (2008/1/EC) in Scotland by establishing an integrated approach to controlling emissions from industrial sources to air, water and land. The regulations require SEPA to issue a single permit covering the whole of an installation. Industrial activities are classified as either Part A or Part B.

- Part A activities involve regulation of emissions to air, water and land.
- Part B activities involve regulation of emissions to air only.

8. In Scotland there are around 450 Part A installations and 1700 Part B installations.

## **PPC Regulations as vehicle for transposition**

9. Building on the existing well established PPC regime, the Scottish Government proposes to transpose the Directive by means of a new set of Pollution Prevention Control (Scotland) Regulations. These will be based on the Pollution Prevention and Control (PPC) (Scotland) Regulations 2000, amending these specifically for the purposes of transposing the Directive's requirements and also consolidating them to bring them fully up to date. Transposing the Directive on the basis of the existing PPC regime has advantages for regulators and operators. For many operators there will be little or no change to regulatory practice.

## **Scottish Government Outcomes**

10. Transposition of the Directive is consistent with the Scottish Government's National Performance Framework and overarching Purpose. It contributes to the following National Outcomes:

- We live in a Scotland that is the most attractive place for doing business in Europe.
- We value and enjoy our built and natural environment and protect it and enhance it for future generations.
- Our public services are high quality, continually improving, efficient and responsive to local people's needs.

## **Relation to other policy areas**

11. Besides their immediate significance for the direct protection of human health and the environment, elements of the component Directives, and hence the industrial emissions Directive, relate in various ways to several other policy areas. For example, the energy efficiency requirements which form part of IPPC are significant in respect of climate change mitigation policies, although there are provisions in Article 9 of the Directive to avoid possible 'double regulation' of

installations subject to the EU emissions trading scheme. The Directive also influences carbon capture and storage, both by requiring certain new large combustion plants to be 'capture ready' and also by applying IPPC to carbon capture activities.

12. Waste policy is another area upon which the Directive has an impact. The Directive continues IPPC requirements in respect of waste minimisation, although now expressed in terms of the new "Waste Hierarchy" set out in Directive 2008/98/EC. In bringing more waste treatment activities into IPPC, the intention of the Directive is to provide a consistent, BAT-based approach to the regulation of waste management techniques which can be used both for disposal and for recovery and which have the potential to cause environmental damage if they are not appropriately controlled. However, it remains to be seen how in detail these changes may affect the delivery of waste policy within the UK and other Member States.

## **Consultation**

### Within Government

13. During the development stage we have engaged with relevant Scottish Government colleagues and other bodies to help shape the options. This included the Legal Directorate, Environmental Quality Division, and the Better Regulation and Industry Engagement team and other government administrations in England, Wales and Northern Ireland. In addition, detailed consultations took place with SEPA which has had considerable experience in implementing the Pollution Prevention and Control (PPC) Regulations since the inception of the regulations in 2000.

### Business

14. In advance of the consultation discussions were held with a number of organisations representing sectors falling within the scope of PPC and which may be affected by the recast Directive. These sectors included glass manufacturing, power generation, chemical and petrochemical industry, food and drink, farming, and Scottish Water. Businesses within these sectors are located in both urban and rural areas.

### Public Consultation

15. A public consultation took place from 12 September to 24 October 2012. The contents of the 31 consultation responses received have been collated and assessed, and the process of liaising with interested industrial sectors and telling them how their comments have been acted upon is well under way.
16. No large changes to the draft regulations have been made as a result of consultation, but there have been several tweaks and improvements, some for clarity, some changing the effect of the regulations for very small numbers of operators. In addition, some sections of the regulations have been drafted since

the consultation document was published, along the lines indicated in the consultation.

17. Many consultation responses focus on issues around how the new Regulations are to be implemented in practice, and on the EU-driven process to develop BAT reference documents which set the environment standards which regulated industries will need to meet.
18. We intend to produce a report on the consultation process, to which will be attached a list of those consulted and those who have agreed to make their responses available. This report will be published on the Scottish Government website.

## Options

19. The availability of the Pollution Prevention and Control (Scotland) Regulations 2000 as an eminently suitable regulatory platform makes an amendment to it the obvious means of transposing the Directive in Scotland. This leads to the following options:

**Option 1:** amend the PPC Regulations to transpose the Directive fully but with no other amendments to Regulations. This would involve amendment of the PPC Regulations to incorporate the additional requirements of the Directive with a minimum of disturbance to the existing framework; or

**Option 2:** amend the PPC Regulations to transpose the Directive fully and to make further amendments so as to take advantage of some significant derogations available within the Directive and to address the existence of some unnecessary national requirements currently within the Regulations.

**Option 3:** do nothing. As explained at paragraph 2.2 above transposition is a European legal requirement and doing nothing would lead to infraction including the prospect of heavy fines. For this reason no further consideration is given to this option but the following sections on costs and benefits should be read whilst bearing in mind the very considerable fines associated with infraction proceedings.

## Sectors and groups affected

20. As a Recast, the Directive contains large amounts of text either completely unchanged from the component Directives or adapted from them without substantial change. But it also contains some substantively changed material (Annex A). Only the material substantively changed from the component Directives is considered in this draft impact assessment (referred to hereinafter as “the substantively changed requirements”).
21. SEPA currently have around 2150 PPC permits covering a wide range and scale of activities including power stations and oil/gas refineries, waste incineration and food industries and dry cleaners. Very many of these permits will be virtually unaffected by changes flowing from the Directive.

22. A study<sup>1</sup> has been conducted by AMEC Environment & Infrastructure UK Limited for the UK Government which includes detailed information on projected impacts, benefits and costs. The detail has not been disaggregated to the Scottish level; however, the position in Scotland is not significantly different to the UK.
23. The AMEC study analysed all the substantively changed requirements in the Directive for their potential impacts upon operators and regulators. Of these, only the following have been assessed as having impacts that would not have occurred under the implementation in Scotland of the component Directives:
- Changes to minimum requirements in respect of emission limit values applied to large combustion plants, with particular significance for the electricity supply industry.
  - Placing integrated pollution prevention and control (IPPC) requirements upon:
    - more waste treatment activities;
    - wood preservation activities;
    - independently operated wastewater treatment works serving only industrial activities subject to the Directive;
  - Clarification of the application of IPPC to installations producing foodstuffs from a mixture of animal and vegetable materials.

## **Benefits**

24. Options 1 and 2 are largely the same in terms of the projected benefits.
25. Like the component Directives, the Directive aims to provide a high level of protection for the environment taken as a whole. It therefore follows that the substantively changed requirements should help address social, wellbeing and health inequalities, although the precise way in which they do so will depend upon the technical characteristics and location of installations affected by the significant substantive changes and upon the quality of the environment in the locality.
26. Given that IPPC requirements address the need to prevent accidental discharges and to restore the site to a satisfactory state after the industrial activity has ceased, the substantive changes will also contribute to the health and safety of the workforce and of the community around the installation.
27. It follows that there will be no clear distinction between impacts in rural and urban areas: local criteria alone are key in determining impacts of the Directive and more particularly the impacts of the substantive changes it makes to the existing Directives. Similarly, there will generally be no distinction between regions except to the extent that there happens to be a concentration in particular areas or

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<sup>1</sup> The report, as well as Defra's Impact Assessment with the UK costs and benefits can be found at <http://www.defra.gov.uk/consult/2012/03/12/industrial-emissions-1203/>.

regions of installations affected by the significant substantive changes. By providing a high level of protection for the environment taken as a whole, the Directive's transposition in Scotland will help ensure that people and environments in deprived areas are afforded the same level of protection as those in more fortunate circumstances.

### Suppliers and skills

28. The inclusion of certain new industrial activities within IPPC will provide an opportunity for prospective suppliers of the necessary goods and services to compete for operators' business. This should encourage innovative approaches on the part both of operators in specifying their needs and of suppliers in responding to them. The Directive as a whole carries on the need under the component Directives for suitably skilled operating and regulatory staff.

### Carbon emissions

29. The compliance flexibilities available to operators of large combustion plants were included in the Directive in order to ease the transition to low carbon power generation by the early 2020s. Those flexibilities have both a direct and beneficial effect upon emissions of carbon dioxide over that period and link to the UK's efforts to encourage the demonstration and take up of low carbon alternatives.

### Large Combustion Plants – quantifiable pollution reduction

30. For the changes in respect of large combustion plants, the extent of pollutant reduction can be estimated. This is because the Directive requires that emission limit values (ELVs) for sulphur dioxide, nitrogen oxides and dust must, from 1 January 2016, be at least as stringent as those set out in the Directive's Annex V.

31. Benefits on a UK wide basis have been calculated<sup>2</sup> from the calculated reduction in greenhouse gas emissions and air pollution using DECC carbon prices and the damage cost values agreed by the Inter-departmental Group on Costs and Benefits. These values are estimates of the cost of the health and other impacts of marginal changes in emissions. The headline figure is £4,975m (with appropriate caveats).

### Other activities – not possible to quantify

32. For the other substantively changed requirements, estimating monetised benefits is currently not possible as evidence is not developed to place monetary values on the emissions of these pollutants. Amongst the 90 or more pollutants of air, water and/or land potentially involved only around four could potentially be monetised.

33. Moreover, even if damage costs were available, monetising the benefits of pollutant reductions would require estimates of the amount of each pollutant

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<sup>2</sup> Defra's impact assessment Annex A pA6. <http://www.defra.gov.uk/consult/files/industrial-emissions-ia-120312.pdf>

potentially abated as a direct result of compliance with permit conditions embodying the substantively changed requirements and this is impractical.

### Benefits associated with Option 2

34. Option 2 entails all the benefits described in the preceding paragraphs, with the added benefits of addressing unnecessary requirements (legacy activities) and the benefits associated with making use of the derogations which the Directive offers.

### Legacy activities

35. Industrial activities that are covered by existing regulations but which are not covered by the Directive have been considered. A number of these “legacy” activities can safely be removed from the Regulations either because the activity is not carried out here (e.g. destroying a railway vehicle containing asbestos by burning), the activity is adequately covered already by other parts of the Regulations (e.g. reforming natural gas), or can better be regulated in another way (e.g. removal of organo-tin anti-fouling agents at boatyards). This will simplify the Regulations and remove 8 sites from this level of regulation. We do not expect any significant financial benefit to businesses from this proposal, as the number of installations affected is small and some of those will still require to be regulated under a simpler regime. The proposals are in line with those from Defra.

### Derogations and flexibilities

36. We propose to use most of the derogations and flexibilities which the IED offers. Some of these are flexibilities for the regulator (SEPA) to apply in day to day practice such as the provision for the regulator to exercise discretion on the application of energy efficiency requirements to EU-ETS installations. Others affect in relatively minor ways how installations will in future need to meet regulatory standards – for example the proposal to disapply BAT from solvent activities. While it makes sense to consider using these flexibilities which may result in modest benefits to some regulated installations in Scotland, it is not possible to quantify these benefits meaningfully. They are likely to be very modest compared with the overall cost-benefit profile associated with transposing and implementing the directive.

### Benefits of consolidation exercise

37. As we must make significant changes to the PPC regulations in order to transpose the Directive it is sensible at the same time to consolidate existing regulations which were created in 2000 and have since then been subject to 25 sets of amendments. This consolidation will benefit both regulators and operators by making it easier to refer to one set of up to date regulations.

38. However this does not mean that the regulations are likely to remain unchanged for very long.

39. The Scottish Government has recently consulted on proposals for an integrated framework of environmental regulation to deliver a simpler legislative framework which will enable SEPA to focus greatest effort on the environmental problems that matter most. It will provide a more consistent range of enforcement tools so that, proportionate and effective action can be taken against those who would damage the environment. It is anticipated that the PPC regulations will be part of the package of environmental regulations considered in the better regulation programme.
40. The benefits of consolidating the PPC regulations are independent of whether Option 1 or Option 2 is decided upon.

## **Costs**

41. As is the case for the benefits, options 1 and 2 are largely the same in terms of the projected costs.
42. The costs of implementing the significant substantively changed components of the Directive fall into two main categories:
- administrative costs arising from the need for new or varied environmental permits which those changes bring; and
  - operating costs and, in some cases, capital costs upon operators of complying with those permit requirements.
43. Administrative costs are subdivided into those incurred by the regulator and by the operator. The regulator's costs arise from the task of considering applications for new or varied permits and reviewing existing permits. These costs will be recovered from operators through permit application charges and annual "subsistence" charges. These charges are made through schemes approved by Ministers which reflect the varying complexity of the regulator's task according to the industry sector involved and are intended to recover the regulator's costs fully.
44. The costs of complying with permit requirements vary considerably, even within industry sectors, according to the particular characteristics of each installation. Operating costs arise from the operation of pollution control techniques and of monitoring equipment. Capital expenditure may be required in order to reconfigure the installation so as meet new permit requirements. The compliance cost estimates have been made<sup>3</sup> after consultation with the regulatory agencies and the relevant industry and trade organisations.
45. Option 1 is assessed as entailing a best estimate net present value benefit over 15 years of £2.9bn, UK-wide.

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<sup>3</sup> Details of estimated UK-wide costs for the considered options can be found at <http://www.defra.gov.uk/consult/2012/03/12/industrial-emissions-1203/> The figures have not been disaggregated to Scottish figures.



46. In addition to the benefits of Option 1, Option 2 brings with it the prospect of annual UK cost savings to businesses of up to £0.7 million, with no significant impact on other benefits.
47. The full extent of those cost savings, and the possible identification of lost benefits in terms of environmental protection, will only become clear in the light of responses to consultation about the proposals and the finalised details thereafter.
48. The recommended option (Option 2) is not expected to have any impact on the competitiveness that Scottish companies currently face although it is noted that some of the companies that are affected operate on a global scale and therefore the impacts on a global market may be more difficult to predict.

### **Scottish Firms Impact Test**

49. The main concerns raised by the businesses we have spoken to and those who have responded to the consultation are about implementation of the Directive. Many of these concerns are about the new, tighter process for determining what constitutes “best available techniques” (BAT) and how this will feed into the fixing of permit conditions. While at present SEPA is able to determine what amounts to BAT by applying a set of criteria in the Directive, over time a set of “BAT reference documents” being developed at European level will become the basis which SEPA has to use. Industry is understandably concerned at what this might bring. SEPA is heavily involved in the BAT process, and industry bodies increasingly so. SEPA and Scottish Government will continue to emphasise to industry bodies the value of their contributions to discussions at a national level which influence the standards and procedures that are set at an EU level.
50. The National Farmers’ Union of Scotland (NFUS) is also concerned about EU IPPC legislation possibly expanding in future to include intensive cattle rearing activities and lower intensity poultry and pig establishments (current thresholds are 40000 poultry, 2000 production pigs or 750 sows) and to spreading of manure. These are the subject of studies commissioned by the European Commission, which are due to be concluded by the end of this year. They do not, however, affect the current work on transposition.
51. The application of the Directive to “independently operated wastewater treatment works serving only industrial activities subject to the Directive” has caused a challenge of being able to identify quite what is intended to be covered. This is a concern to Scottish Water, who have a number of plants which might be covered depending on the interpretation. In the draft Regulations, the wording of the Directive will be followed and SEPA will develop a position which meets the requirements of the Directive and protects the environment.
52. Other issues raised include various issues around when operators might need to update permits and the costs associated with doing so, in particular in relation to:
  - Enhanced requirements for baseline reporting and site restoration
  - Explicit requirements for environmental inspections
  - Instances in which installations might make use of the Article 15 derogation on emission limit values

53. On each of the above issues (as more widely), SEPA intend to work collaboratively with operators to establish how IED requirements will be met by specific permits, taking all relevant factors into consideration.

### **Competition Assessment**

54. The proposals are not expected to limit the number or range of suppliers, either directly or indirectly, or limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

### **Legal Aid Impact Test**

55. On the basis that operators will continue to endeavour to comply with permit or registration requirements as they do under the component Directives, there should be no effect upon the legal system by this proposal. Similarly, on the basis that regulators will continue to take robust, evidence-based decisions about permit conditions and their enforcement, there should be no significant increase in recourse to Judicial Review of those decisions.

56. Legal aid is only available to individuals i.e. not to incorporated bodies such as the majority of businesses which are covered by the PPC permitting regime. It is not expected, therefore, that the proposals would have any material impact on the effect on individuals' right of access to justice through availability of legal aid, the volume of legal aid applications or the cost to the legal aid fund.

### **Enforcement, sanctions and monitoring**

57. SEPA is responsible for issuing PPC permits and ensuring compliance with permit conditions. SEPA already has established practices for monitoring operators' performance and works with operators to help them comply with permit conditions. SEPA currently has a range of powers under the PPC Regulations to enable it to take enforcement action against breaches of conditions in permits. These include the issuing of enforcement notices, suspension notices and the revocation of permits. The most serious cases may be reported to the Procurator Fiscal. SEPA's enforcement policy is designed to ensure that appropriate action is taken, proportionate to the risk posed to the environment and seriousness of the offence. This policy and the existing enforcement powers under PPC would continue to apply in relation to standard rules permits. The proposals would not introduce any changes to the range of offences or penalties currently available in the PPC Regulations.

### **Implementation and delivery plan**

58. The Scottish Government will lay the statutory instrument in the Scottish Parliament. Should the proposals be introduced, the Scottish Government and SEPA will monitor and review the effectiveness of the new provisions to check that they continued to achieve the proposal's objectives or whether further legislative or administrative provisions are needed.

## **Post-implementation review**

59. Review date: 12/2017

## **Summary and recommendation**

60. **Option 2** is preferred on grounds of offering further regulatory simplification along with annual UK cost savings of some £1 million.

## **Declaration and publication**

61. I have read the impact assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**

**Date:**

**Minister for Environment and Climate Change**

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## ANNEX A

### ***SUBSTANTIVELY CHANGED REQUIREMENTS OF THE DIRECTIVE, HAVING IMPACTS THAT WOULD NOT HAVE OCCURRED UNDER THE IMPLEMENTATION IN SCOTLAND OF THE COMPONENT DIRECTIVES.***

#### **Minimum requirements for large combustion plants – Chapter III and Annex V**

1. The substantive changes in respect of large combustion plants will have an impact upon existing operators when they take effect from 1 January 2016. Those operators will need to decide whether to use the compliance flexibilities offered by the “limited life derogation” the transitional national plan, and operation for less than an average of 1,500 hours per year. Or they may decide to close a large combustion plant they operate by the end of 2015.
2. The impact upon operators of plants which receive their permit after 7 January 2013 will be by comparison much less since the design of such plants which are already under construction should have taken account of the tightened minimum requirements (which have been in prospect at least since December 2007). The costs for new entrants to sectors requiring a new large combustion plant are in any case very high (not least because of the need for construction labour resources) and it is unlikely that the changed requirements will significantly affect their entrance.
3. For all large combustion plant operators in the electricity supply industry, changed compliance costs may feed through into electricity prices for domestic and business users, but only under the supervision of Ofgem. Operators in other sectors may elect to reflect compliance cost changes in their prices to consumers, according to the dictates of the world-wide markets in which they operate. But the European Commission, in its impact assessment of its December 2007 proposal, considered that the changes ‘will lead to a much more level playing field for [all] the sectors concerned by narrowing the range over which emission limit values can be set. In the context of the liberalisation of the energy market, this option would also avoid unacceptable distortion of competition linked to very different levels of environmental standards currently applied in the electricity generation sector’.
4. The industrial emissions Directive requires that the sulphur dioxide, nitrogen oxides and dust emission limit values (ELVs) set for large combustion plants (LCPs) must be at least as stringent as those prescribed for various combinations of rated thermal input and fuel type. It also provides various optional “bounded flexibilities” through which those ELVs can be relaxed or not applied.
5. The transitional national plan (TNP) enables operators to opt to place plants in the TNP. In this, each plant will be subject to an overall annual emissions cap instead of concentration based ELVs. This emissions cap reduces between 2016 and 2020 providing time – and therefore compliance cost flexibility - for the plant to make the transition between ELVs it faces under the current

Directives and the more stringent ELVs required by the industrial emissions Directive.

6. The “limited life derogation” (LLD) provides an option for an operator to operate a plant for no more than 17,500 hours, starting from 1 January 2016 and in any event to cease operation by 31 December 2023. Under this derogation the ELVs set in the permit for such plant at 31 December 2015 will at least be maintained for the remaining operating life of the LCP.
7. Consultants have modelled the impact of these provisions on a plant by plant basis for all existing UK LCPs.<sup>4</sup> However, there is significant uncertainty over the expected reaction of any individual LCP due to the limited availability of plant by plant information and the large number of factors that may influence each plant’s decision(s) in addition to the IED. Therefore, the plant by plant modelling has been based on readily available information and informed judgement selecting representative plant. The results are orientated towards providing an indication of sector level impacts (electricity supply industry, iron and steel, refineries and other) due to the high uncertainties at a plant level. The results of this modelling are set out in the consultant’s report which also describes in detail the approach to modelling.

#### **Waste treatment activities – Directive Annex I, point 5.3(b)**

8. The substantive changes in respect waste treatment activities will expose existing operators to additional compliance costs that will vary according to the quality of their existing operation in terms of environmental protection. However, all will already have permits giving effect to the requirements of the Directive on waste which include the use of ‘measures to ensure that waste management is carried out without endangering human health [and] without harming the environment’. The additional impact of IPPC controls should prove limited in a sector which is typically dominated by large companies with additional costs perhaps being passed on to their customers. From 7 January 2013, new entrant operators will need a permit incorporating IPPC, but should be able to configure their operation beforehand to meet the requirements at least cost. Nevertheless, there is a risk that the extension of IPPC to more waste treatment activities might adversely affect, in particular, waste recovery activities in ways which cannot be quantifiably predicted
9. The current IPPC Directive covers disposal of non-hazardous waste but not, with a few exceptions, its recovery. The European Commission’s own impact assessment pointed out that recovery activities are very often similar in nature and therefore in potential environmental impact to disposal activities and that this inconsistent coverage may have resulted in possible distortion of competition between disposal and recovery activities. The recast Directive therefore places non-hazardous waste recovery and disposal activities on a

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<sup>4</sup> <http://www.google.co.uk/url?q=http://www.defra.gov.uk/consult/files/industrial-emissions-amec-ia-lcp-120312.pdf&sa=U&ei=SbJIUOqiPOOr0QXZ34CoAg&ved=0CBYQFjAB&usg=AFQjCNF2zHmJT0WcWnx3MrMPHUh1eu5g>

similar footing, although with somewhat higher threshold for inclusion of recovery activities.

10. The recast has also removed a provision in the IPPC Directive which the UK had interpreted as dis-applying IPPC from any waste treatment activity which had been registered as exempt from the permitting requirements of the Waste Directive, irrespective of the treatment capacity.
11. Applying IPPC controls to waste recovery will require the regulator to consider what pollutant emissions (including noise and odour) are likely to be significant and to set permit conditions accordingly on the basis of BAT. Those conditions should cover all operating factors which may have a bearing upon pollutant release, including arrangements for reception and storage of waste on site and measures to prevent contamination of the site.
12. **Benefits** of reduced pollutant emissions will accrue accordingly, and public perception and acceptance of these sometimes controversial installations will be improved. In particular, applying IPPC controls:
  - to biological treatment activities will enable the regulator to address emissions of ammonia, nitrous oxide and methane - the European Commission reported estimated reductions of 5 kilotonnes, 2.5 kilotonnes and 7 kilotonnes for those substances respectively in the total emissions from the some 225 installations in the EU considered in its impact assessment;
  - to treatment of slags and ashes will enable the regulator to address dust emissions; and
  - to treatment in shredders of metal waste will enable the regulator to address emission of dust and the possibility of emissions of dioxins.
13. The **principal uncertainties** about the impact of this change arise from:
  - the number of installations affected and the extent of their current regulation: over half are currently unpermitted; many of the remainder will already be permitted as waste management activities under the EPR whilst a few may be operating under a waste exemption;
  - the extent and therefore the cost for each installation of the additional requirements which permitting under the Directive will involve; and
  - permit application and subsistence charges by the regulator: these will vary according to the precise nature of the activity at each installation.

#### **Wood preservation activities - Annex I, point 6.10**

14. The recast Directive adds to IPPC control the 'preservation of wood and wood products with chemicals with a production capacity exceeding 75 m<sup>3</sup> per day other than exclusively treating against sapstain'. Although some such activities will already be subject to controls under the solvent emissions Directive, others presenting broadly similar impacts to water and air which use chemicals other than solvents are not subject to EU environmental controls.

15. A study carried out by consultants has reported that the wood preservation industry has established a Code of Practice for Timber Treatment Installations. This outlines measures that should be taken to eliminate, or where this is not possible, minimise and render harmless any releases to air, water (surface and ground) or land. Discussions between consultants and operators of timber treatment installations confirmed that the Code of Practice is widely used within the sector. This, in combination with other existing regulatory controls, indicates an already existing high level of overall environmental protection that is comparable (in most aspects) to that likely to be required under IPPC. It is therefore not anticipated that any significant additional measures will be required by operators under the industrial emissions Directive.

16. The **principal uncertainties** about the impact of this change arise from:

- the number of installations affected and the precise extent of their current regulation;
- the extent and therefore the cost for each installation of the additional requirements which permitting under the Directive will involve; and
- permit application and subsistence charges by the regulator: these will vary according to the precise nature of the activity at each installation.

#### **Independently operated wastewater treatment works – Annex I, point 6.11**

17. The recast Directive adds to IPPC control those waste water treatment works which serve exclusively installations which are subject to IPPC, but which do not constitute directly associated activities of those installations so not currently subject to IPPC.

18. Waste water treatment works can affect the environment through unmanaged releases of waste water, sludge and biogas. These may cause land contamination, pollution of surface water and/or groundwater, and public nuisance due to odour. Application of IPPC would be expected to reduce instances of such releases but there is scant information on the extent of such reductions.

19. The **principal uncertainties** about the impact of this change arise from:

- the number of installations affected and the precise extent of their current regulation;
- the extent and therefore the cost for each installation of the additional requirements which permitting under the Directive will involve; and
- permit application and subsistence charges by the regulator: these will vary according to the precise nature of the activity at each installation.

#### **Producing foodstuffs from a mixture of animal and vegetable materials – Annex I point 6.4(b)(iii)**

20. Thresholds within the current IPPC Directive are set for production of foodstuffs from 75 tonnes/day of animal raw materials and 300 tonnes/day of

vegetable raw materials, leaving unclear what threshold applies where foodstuffs containing both animal and vegetable materials are produced. The industrial emissions Directive resolves this by using a formula which amounts to prescribing that the lower threshold applies if the amount of animal material in the product exceeds 10%.

21. The **principal uncertainties** about the impact of this change arise from:

- the number of installations affected - it is possible that close examination of the installations may show that the capacity thresholds are not in fact reached;
- the extent and therefore the cost for each installation of the additional requirements which permitting under the Directive will involve; and
- permit application and subsistence charges by the regulator: these will vary according to the precise nature of the activity at each installation.

### **Setting emission limit values – Articles 15(3), 15(4) and 21**

22. Article 15(3) requires the competent authority to ‘set emission limit values that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques as laid down in the decisions on BAT conclusions referred to in Article 13(5).

23. Article 9(4) of the current IPPC Directive states that ‘emission limit values and the equivalent parameters and technical measures.... shall be based on the best available techniques.....’. So, where emission levels associated with BAT (“BAT-AELs”) are known, particularly through their inclusion in existing BAT reference documents (“BREFs”), it is already implicit that ELVs should be set such that those levels are not exceeded. To that extent, **Article 15(3) does not bring about any fundamental change in the current regulatory position**: regulators must continue to take a BAT-based approach to setting ELVs as they should do already.

24. The **Article 15(3) requirement has no effect upon existing permits** until such time as relevant BAT conclusions are published by the European Commission after adoption as an implementing measure, either as a result of the review of a BREF or through direct adoption of existing BAT conclusions. From a programme of work currently being finalised by the European Commission, it is clear that the process of publication of adopted BAT conclusions is likely to extend, sector by sector, over the most of the rest of the present decade. And even when that stage is reached for each sector, under Article 21(3) there is a four year period after publication of the adopted BAT conclusions within which the permits concerned are to be reconsidered and updated and compliance with them achieved.

25. As part of that reconsideration, regulators will need to determine whether ELVs which are not consistent with the relevant BAT-AELs will need to be made so, or whether a derogation under Article 15(4) can be applied (if the operator so wishes).



26. Article 9(4) of the current IPPC Directive provides that, 'taking into account' the stated considerations, ELVs which allow emissions somewhat higher than those associated with the use of BAT may be set in permits. Article 15(4) of the industrial emissions Directive clarifies that position and makes it clear that such ELVs must be justified by an assessment showing that the costs of more stringent ELVs would be disproportionate to the environmental benefits. Article 15(4) also reminds the competent authority that:
- no significant pollution must be caused - as stated already in Article 11(a) of the Directive, in continuance of the requirement in Article 3(1)(b) of the current IPPC Directive; and
  - a high level of protection of the environment as a whole must be achieved – a stated purpose of both this Directive and the current IPPC Directive (Article 1 in each case).
27. So **Article 15(4) amounts to no significant regulatory change from what is already provided in the current IPPC Directive.**
28. Upon reconsideration of permits, it may be found in some cases that the actual emissions of the installation are consistent with BAT-AELs and that the permit ELVs can be changed accordingly with little or no practical impact upon the operator.
29. In cases where existing ELVs and the consequent emissions performance can be justified under the Article 15(4) derogation provision, there will similarly be no immediate practical impact upon the operator (although the operator may choose to consider whether, in the longer term, changes at the installation so as remove the need for the derogation would be cost-effective).
30. Where, upon permit reconsideration, ELVs and actual emissions performance are found to be inconsistent with BAT-AELs, and the regulator determines that the Article 15(4) derogation is not applicable, the operator will be faced with the need either to make the changes at the installation necessary to comply with revised ELVs or to cease operation.
31. **But the need to comply with revised ELVs can already arise under the current IPPC Directive and so does not constitute a new impact**, even though it could give rise to substantial costs to the operator. Rather, it is a potential impact of which operators should have been aware from the outset of the permitting of their installations under the IPPC Directive.
32. It must be borne in mind that regulators are obliged, already under Article 13 of the IPPC Directive and under Article 21 of the industrial emissions Directive, periodically to review permit conditions. **There can be no certainty, even had the IPPC Directive continued unchanged, that any ELVs allowing emissions above BAT-AELs would be allowed to remain unchanged.** It is therefore not possible unequivocally to attribute any additional impact in this respect to the transposition of the industrial emissions Directive.

33. Nevertheless, despite this analysis, it is recognised that the clarification of the current requirements in respect of setting ELVs which the Directive provides causes some misgiving and, inevitably, uncertainty. It may therefore be helpful to set out the principal issues - which have been present ever since IPPC came into effect – which will influence the existing impact upon operators of existing installations of the requirements clarified by the Directive. These are:

- the adoption of BAT conclusions: the conclusions are drawn from a process on information exchange in which all operators are able to participate and upon which Member States have a deciding voice through the “comitology” process set out in Article 75 of the Directive; it will be for all involved in that process to see that it works in way which is technically and economically justified by the facts;
- the timing of the publication of BAT conclusions;
- the competent authority’s decision on whether what will become the Article 15(4) derogation is justified: Government guidance<sup>61</sup> in that respect has been provided since the inception of IPPC and will be revised<sup>62</sup> in order to complement the transposition whilst maintaining a balanced approach to the assessment of the technical, economic and environmental considerations which must justify the derogation;
- the extent and ease of compliance of individual installations with ELVs set in current permits: this is a matter for individual operators and, if non-compliance is deemed likely or occurs, the regulator; and
- Individual operators’ overall investment plans for their installations.