

Environmental Permitting

General Guidance Manual on Policy and Procedures for A2 and B Installations

Local authority Integrated Pollution Prevention and Control (LA-IPPC) and Local Authority Pollution Prevention and Control (LAPPC)

Revised April 2012

Department for Environment, Food and Rural Affairs
Nobel House 17 Smith Square
London SW1P 3JR
Telephone 020 7238 6000
Website: <http://www.defra.gov.uk>

© Crown copyright 2012
Copyright in the typographical arrangement and design rests with the Crown.

This publication (excluding the Royal Arms and departmental logos) may be re-used free of charge in any format or medium for research for non-commercial purposes, private study or for internal circulation within an organisation. This is subject to it being re-used accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

For any other use of this material please [apply on-line](#) for a Click-Use Licence for Public Sector Information (PSI) or core material
<http://www.nationalarchives.gov.uk/doc/open-government-licence/>

or by writing to:

Office of Public Sector Information
Information Policy Team
St Clements House
2-16 Colegate
Norwich NR3 1BQ

Fax: 01603 723000
Email: licensing@cabinet-office.x.gsi.gov.uk

Information about this publication is available from:

Defra, Atmosphere and Local Environment
5F Ergon House
Horseferry Road
London SW1P 2AL
Tel: 020 7238 1687 or 08459 33 55 77

Email: control.pollution@defra.gsi.gov.uk

This document is available on the [Defra website](#): Published by the Department for Environment, Food and Rural Affairs

SHORT SUMMARY FOR BUSINESSES + MEMBERS OF THE PUBLIC

This General Guidance Manual advises on how the Local Authority Pollution Control system works.

The basics

Your local authority must by law regulate certain types of factory and other activities such as dry cleaners. This is to reduce any pollution they may cause and, in particular, to help improve air quality.

Businesses which operate these premises must have a permit.

Local authorities decide whether to give a permit. If they do so, they must write down how the pollution is to be minimised.

In the law, the premises are known as "installations". Some are called 'Part B', and local authorities can only deal with air pollution from them. Many different sorts of pollution are controlled at 'Part A2' installations.

Much of the information about permits must be put on a register. Anyone can ask their authority to see it. The public must also be consulted in various circumstances.

Which local authorities are regulators?

Your District or Borough Council is normally the regulator. If your area has only one Council (a Unitary Council), it is the regulator. The Port Health Authority may be the regulator in port areas.

Which installations are regulated?

Local authorities deal with about 80 different types of installation. Glassworks and foundries, rendering plant and maggot breeders, petrol stations and concrete crushers, sawmills and paint manufacturers, are some of the sorts regulated.

Regulations say exactly which installations need a permit. In several cases only bigger installations need one. If you want to know whether a particular installation needs a permit, ask your local authority or the Environment Agency.

Other installations (known as 'Part A1') are regulated by the Environment Agency. They are usually larger or more complex.

How do local authorities regulate?

- getting a permit

The operator of one of these installations must apply for a permit. He or she must pay a fee for doing so. This is to cover the local authority's costs. The Regulations say what information must be in the application.

The local authority must consider the application to decide whether or not to approve it. The authority must consult relevant members of the public and other organisations.

If the authority decides to issue a permit, it must include conditions. These conditions will say how pollution is to be minimised. The Government has published guidance for each type of installation. This says what are likely to be the right pollution standards. Under the law, the standards must strike a balance between protecting the environment and the cost of doing so. The authority must by law have regard to that guidance. The authority must also consider local circumstances.

If the authority decides to refuse a permit, a business can appeal to the Government. A business can also appeal if it has received a permit but does not agree with any of the conditions.

- after a permit is given

Once a permit is issued, the operator must comply with the permit conditions and pay an annual charge. This covers local authority costs of checking the permit is complied with.

Local authorities rate installations as high, medium or low risk. This is based on two things. First, what the environmental impact would be if something went wrong. Second, how reliable and effective the operator of the installation is. The annual charge is lower for low- and medium-risk installations.

Local authorities have powers if a business does not comply with its permit or operates without one. They can serve various sorts of legal notice. They can also take the business to Court. But authorities generally try to work with businesses to solve problems, and only use tough measures as a last resort. Their officers also often try to advise on money-saving ways of reducing pollution.

The legal side

You will find the law in the Environmental Permitting (England and Wales) Regulations 2010.

The Part B system is known as Local Authority Pollution Prevention and Control (LAPPC). The A2 system is Local Authority Integrated Pollution Prevention and Control (LA-IPPC).

The Regulations also implement some European Community Directives.

More information

If you want more guidance on the procedures you need to read bits of this Manual. The Manual and guidance on pollution standards are [on the internet](#). Chapter 1 summarises the basics in more detail. Chapters 2-9 describe how to make an application and get a permit.

Defra is the Government Department responsible for the system in England. Contact helpline@defra.gsi.gov.uk or telephone 08459 33 55 77.

The Welsh Government/LLwodraeth Cymru is responsible in Wales. Contact DeshWebCorrespondence@Wales.GSI.Gov.UK or telephone 0845 010 3300 (English) or 4400 (Welsh).

Members of the public and operators of installations can contact their local authority for information. Ask to speak to the pollution team in the Environmental Services Department. You will find all Councils listed on www.direct.gov.uk (click on "directories"). You can also ask your local library for the name and contact details of your Council. Or look in the information pages at the front of your telephone directory under "Government/Local authorities".

Some organisations advise businesses on ways of improving their environmental performance which may also save money. The advice may be free. You can find a list in chapter 32 of this General Guidance Manual.

This short summary only gives a basic outline. It should not be relied upon for any regulatory purpose.

Who should use this guidance document?

This guidance is intended to fulfil a number of functions.

for regulators:

- it constitutes statutory guidance issued by Government to local authority regulators under regulation 64 of the Environmental Permitting Regulations. As such, local authorities must have regard to it in carrying out their regulatory functions.
- it is intended to explain the main functions, procedures and terminology contained in the legislation, and to serve as a one-stop practical manual for day-to-day reference, which helps local authorities to be effective, efficient and consistent in discharging their new responsibilities.

By 'consistency' is meant adopting the same approach in the same circumstances – it should not be taken to mean uniformity of approach irrespective of differences in circumstances.

Environment Agency regulators need not have regard to the Manual other than to the extent that it clarifies its relationship with local authorities under the EP Regulations.

for regulated businesses:

- it provides firms operating, or planning to operate, LA-IPPC or LAPPC installations and mobile plant with a guide to the steps they will need to take in order to obtain and comply with the necessary permit. The application procedures are in Chapters 6 and 7.

If a business is unsure whether it is regulated or wants help understanding the regulatory requirements contained in this Manual, it should contact its relevant local authority. Paragraph 2.40 explains how to find which is your authority, and how to contact them.

The format is designed so that regulated businesses can dip into the Manual for relevant information and guidance, rather than read it from cover-to-cover.

for the public:

- it is designed to help members of the public who have a general interest in industrial pollution control. It also explains the procedures and requirements for factories and other installation which are regulated under local authority pollution control.

It aims to provide a generalised introduction to the systems of regulation. It also contains more detailed summary for anyone who wants to know more about specific aspects or to identify sources of further information.

Revision of the Manual

The electronic version of this publication is updated from time to time with new or amended guidance. The table below is an index to the March 2012 changes (minor amendments are generally not listed). Previous changes are listed in Annex XXII.

chapter/ paragraph where amendment can be found	nature of amendment
all of Manual	Welsh Assembly Government now Welsh Government
1.3	reference and links to 3 sets of EP amending regulations
2.12	updated reference to the LGA Knowledge Hub industrial pollution community, which replaced the same community on the LGA's Community of Practice
4.19	link to new guidance on charging for pre-application discussions
chapter 10	amendments because the Environment Agency has stopped all water charges for A2s
10.6	Environment Agency email address for A2 water discharge issues
chapter 23	amendments because the Environment Agency has stopped all water charges for A2s
23.38-40	new paras on use of the Localism Act general power of competence to charge for additional pre-application discussions
25.1	new guidance that a change of an operator's unique identifier at Companies House requires a transfer application
25.15	new provision dealing with transfers if the sole operator dies
25.15-20	new provision for transferring permits where the operator cannot be located. Also cross-reference in 25.2
27.7	new para on use of the risk-rating system to ensure monitoring data is submitted as required by permit conditions
27.28A	proforma inspection pads are understood to be commercially available
28.2	additional advice on enforcement approaches from the Macdonald Report on Better Regulation
28.2B	new advice to include reference to the Regulators' Compliance Code at the end of permits
31.31	reference to the Conservation (Habitats & Species) Regulations 2010 which consolidated and replaced the Conservation (Natural Habitats etc) Regulations 1994
32.14	new Manufacturing Advisory Service, which provides free and subsidised support for some businesses, including on environmental issues
35.6-35.21	amended/ new guidance repeating the free-standing guidance already issued on the Petrol Vapour Recovery Stage II Directive
Annex XII	list of prosecutions and penalties updated
Annex XXIII	reference to changes to the definitions of exemptions U8, T5, and T6 made by SI 2012/630
Part D	additional footnote in both A2 and Part B transfer application forms referring to the changes explained in paras 25.15-20

Contents

Getting started:

- page 2 short summary for businesses and members of the public
- ch 1, introduction
- ch 2, understanding key terminology

Start-up procedures:

- ch 3, permits and timetable
- ch 4, applications
- ch 6, deciding LA-IPPC applications
- ch 7, deciding LAPPC applications
- ch 9, consultation and public participation

Other procedures *where needed*:

- ch 8, confidentiality + access to information
- ch 10, dealing with water consent issues
- ch 18, site assessment + surrender of LA-IPPC permits
- ch 19, LAPPC permit surrender
- ch 24, permit variations
- ch 25, permit transfers
- ch 26, permit reviews
- risk-based regulation (inspection, monitoring, reporting)
- ch 28, enforcement
- ch 29, public registers + information
- ch 30, appeals

Other advice *where needed*:

- ch 11, operator competence
- ch 12, best available techniques
- ch 13, drafting permit conditions
- ch 23, fees and charges

Topics:

- ch 14, climate change levy etc
- ch 15, environmental quality standards and AQMAs
- ch 16, noise and vibration
- ch 17, odour control
- ch 20, accidents
- ch 21, waste minimisation
- ch 31, connections with other legislation
- ch 38, Environmental Damage Regulations
- ch 39, mobile plant
- ch 40, waste issues

Practicalities:

- ch 22, working with the Environment Agency
- ch 32, local authority good practice
- ch 33, Defra relations with local authorities and business

Directives:

- ch 34, Solvent Emissions/Paints Directives
- ch 35, Petrol Vapour Recovery Directive
- ch 36, Asbestos Directive
- ch 37, European Pollutant Release and Transfer Register

Part A

Short summary for businesses and members of the public:	pages 2-4
1. Introduction	14
2. Activities, installations, operators and local authorities	26
3. Permits and the timeframe for obtaining permits	36
4. LA-IPPC and LAPPC permit applications	41
5. Planning and LA-IPPC/LAPPC applications	50
6. Determining LA-IPPC (Part A2) applications	53
7. Determining LAPPC (Part B) applications	62
8. Confidentiality and access to information	64
9. Consultation and public participation	70
10. Dealing with water consent issues – LA-IPPC installations	77
11. Operator competence, including management systems	84
12. Best Available Techniques (BAT)	94
13. Drafting permit conditions	103
14. Climate Change Levy, UK Emissions Trading Scheme, and A2 installations	107
15. Environmental Quality Standards and Air Quality Management Areas	111
16. Noise and vibration	115
17. Odour control	117
18. Site assessment and restoration, and surrender of LA-IPPC permits	119
19. Surrender of LAPPC permits	131
20. Accidents and preventative measures	133
21. Waste minimisation – LA-IPPC installations	135
22. Working with the Environment Agency	138
23. Fees and charges	141
24. Variations to permits	150

25. Permit transfers	155
26. Permit reviews	159
27. Risk-based regulation of permitted installations - inspection, monitoring, and reporting	162
28. Enforcement	174
29. Public registers and information	185
30. Appeals	193
31. Connections with other legislation	201
32. Local authority good practice	208
33. Defra relationship with local authorities and business	214
34. Solvent Emissions Directive and the Paints Directive	221
35. Petrol vapour recovery directives	240
36. Asbestos directive	246
37. European Pollutant Release and Transfer Register	247
38. Mobile plant	251
39. Environmental Damage Regulations	263
40. Waste issues	267

Part B - Annexes

This is a [separate document](#) and contains the following. (There are no hypertext links from Part A to Part B, but there are links within Part B.)

Annex I	Glossary of Terms
Annex II	Useful websites, contacts, and list of guidance notes
Annex III	Definitions
Annex IV	National consultees
Annex V	Public Participation Directive (PPD) procedures: for LA-IPPC installations only
Annex VI	Content of applications
Annex VII	Good practice examples taken from additional guidance notes AQ 8 (04) and AQ 11(04) and the Atkins 2006 action plan
Annex VIII	Factors to be considered in determining BAT for LA-IPPC and LAPPC installations

Annex IX	EC Environmental Quality Standards Relevant to LAPPC and LA-IPPC
Annex X	Additional guidance on cost accounting, the risk methodology, and charging
Annex XI	Conditions of permits
Annex XII	Offences
Annex XIII	Content of register
Annex XIV	Triviality
Annex XV	List of sectors which participate in Climate Change Agreements
Annex XVI	Energy efficiency requirements under Climate Change Levy
Annex XVII	Applying the Habitats Regulations and the Wildlife and Countryside Act to applications for EP permits
Annex XVIII	Interface between the Clean Air Act and LA-IPPC/LAPPC
Annex XIX	European pollutant transfer and release register
Annex XX:	Solvent emissions Directive Q+A
Annex XXI:	Seriousness of water incidents
Annex XXII:	Previous amendments to the Manual
Annex XXIII:	Additional guidance on local authority regulation of waste operations

Part C – Application forms

This is a [separate document](#) and is available in Word format. It contains the following. (There are no hypertext links from Part A to Part C, but there are links within Part C.)

- A2 Application form
- A2 Surrender form
- A2 Transfer form
- A2 Variation form
- Part B Application form for most installations
 - Application form for dry cleaners
 - Application form for small waste oil burners
 - Application form for service stations
 - Application for vehicle refinishers
- Part B Surrender form
- Part B Transfer form
 - limited period transfer: mobile plant
- Part B Variation form

Part D - specimen notices and declarations, consultation letters, credit reference authorisation form, etc

This is a separate document which can be found at <http://environment/quality/pollution/ppc/localauth/pubs/guidance/manuals.htm> and is available in Word format. It contains the following. (There are no hypertext links from Part A to Part D, but there are links within Part D.)

- Consultation letter and advertisement
- Variation Notice

Suspension Notice (including notice for use when subsistence charges not paid)
Revocation Notice
Request for Information Notice
Further Information Notice
Credit reference authorisation form
Temporary transfer authorisation letter
Declaration of Reduced Operation ("Mothballing" charges)
Example framework for a basic Environmental Management System
Leaflet for employees of regulated businesses

Part A

Guidance on policy and procedures for the permitting of A2 and B installations

1. Introduction

What is LA-IPPC and LAPPC? What are A2 and B installations? Who should use this manual and how?

A2,B

The Manual

- 1.1. This Manual is the principal guidance issued by the Secretary of State for Environment, Food and Rural Affairs and Welsh Ministers on the operation of the following pollution control regimes regulated by local authorities:
 - Local Authority Integrated Pollution Prevention and Control (LA-IPPC), which covers what are known as A2 installations
 - Local Authority Pollution Prevention and Control (LAPPC), which covers what are known as Part B installations.
- 1.2. 1.1A. This guidance document is compliant with the [Code of Practice on Guidance on Regulation](#) - see page 6 which contains the "golden rules of good guidance". If you feel this guidance breaches the code, or notice any inaccuracies within the guidance, or have any queries please contact control.pollution@defra.gsi.gov.uk or ring on 020 7238 1692/5380. These regimes were regulated before under the Pollution Prevention and Control Regulations 2000. The Integrated Pollution Prevention and Control regime regulated by the Environment Agency (for installations known as A1 installations) also came under the PPC Regulations.
- 1.3. From 6 April 2008, the 2000 Regulations were replaced by the Environmental Permitting (England and Wales) Regulations 2007. From 6 April 2010, the 2007 Regulations have been superseded by the [Environmental Permitting \(England and Wales\) Regulations 2010](#) SI 2010/675 . The new Regulations, as their predecessors, are made under the Pollution Prevention and Control Act 1999. For the purposes of LAPPC and LA-IPPC the 2010 Regulations make few changes, and permits issued under the 2007 Regulations do not need any amendment. A key purpose of the 2007 and 2010 Regulations is to provide a common legislative platform for pollution regulation, and the 2010 Regulations extend this platform to include water discharge activities, radioactive substances activities and groundwater activities. (Note. Past experience suggests that the Regulations may be amended in future, and all users should check they are aware of any such amendments. As at April 2012, the main amendments of relevance were in [SI 2010/2172](#), [2011/2933](#) [petrol stations], and [SI 2012/630](#)).

- 1.4. Guidance on the essential components of the Environmental Permitting system is contained in the [Environmental Permitting Core Guidance](#) (plus accompanying set of Directive-specific guidance). This Manual incorporates relevant parts of that and adds practical advice on the operation of the local authority-regulated pollution control regimes with the aim of being a comprehensive handbook, so it should not normally be necessary to consult the Core or Directive Guidance in addition to the Manual. As well as reflecting the 2010 Regulations, it incorporates appropriate guidance published by Defra since 2003 (including so-called AQ additional guidance notes).

The brief, boxed description at the beginning of each chapter shows whether the chapter applies to LA-IPPC (marked “A2”) or LAPPC (marked (“B”), or both.

- 1.5. [deleted]

What is environmental permitting?

- 1.6. Some facilities could harm the environment or human health unless they are controlled. The Environmental Permitting regime requires operators to obtain an environmental permit for some facilities, the registration of exemptions for certain waste facilities, and ongoing supervision by regulators. The aim of the regime is to:
- protect the environment and human health,
 - deliver permitting and compliance effectively and efficiently in a way that provides increased clarity and minimises the administrative burden on both the regulator and the operators of facilities,
 - encourage regulators to promote best practice in the operation of regulated facilities, and
 - continue to fully implement European legislation.
- 1.7. The detailed legal requirements for installations covered by LA-IPPC and LAPPC are contained in the Environmental Permitting Regulations 2010, referred to above. These are referred to in the Manual as the EP Regulations (or EP Regulations 2010 for avoidance of doubt in specific cases) or EP regulation xx.

Transition to EP

- 1.8. The EP Regulations provided transitional arrangements for existing LAPPC and LA-IPPC permits so fresh applications for environmental permits were not required and the existing public register entries served for the new Regulations. Existing permits became environmental permits under the 2010 Regulations on 6 April 2010 - the date the EP Regulations came in to force (EP regulation 69). The regulator for these permits remained the same and will only change if there is a subsequent direction from the Secretary of State or Welsh Ministers.

- 1.9. Unlike under the 2007 Regulations, in accordance with EP regulation 75, any applications under PPC or under the 2007 Regulations, which had not been determined by 6 April 2010, are to be taken to have been made under the 2010 Regulations. The date the application was made is not affected.
- 1.10. Where existing PPC permits transfer in this way, they must be read as automatically containing the following condition (which in effect replaces the variation notification procedure which was contained in the PPC Regulations and has not been replicated in the EP Regulations – see paragraph 13.3 of the Manual):

“If the operator proposes to make a change in operation of the installation, he must, at least 14 days before making the change, notify the regulator in writing. The notification must contain a description of the proposed change in operation. It is not necessary to make such a notification if an application to vary this permit has been made and the application contains a description of the proposed change. In this condition ‘change in operation’ means a change in the nature or functioning, or an extension, of the installation, which may have consequences for the environment.”

To achieve this effect for any new EP permits, a specific condition would need to be included in the permit. (This is achieved by EP regulation 108(4) saving the provision in regulation 69(6) of the 2007 EP Regulations.)

- 1.11. In addition, for PPC permits that transfer automatically into EP, the implied BAT duty will continue when it becomes an EP permit (EP regulation 72(6)). However, for any new EP permits, a local authority wishing to adopt a similar approach to that under PPC will need to insert a specific condition. Authorities may wish to consider the following wording: "The best available techniques shall be used to prevent or, where that is not practicable, reduce emissions from the [installation] [mobile plant] in relation to any aspect of the operation of the [installation] [mobile plant] which is not regulated by any other condition of this permit.". (This is achieved by EP regulation 106(1) saving the provision in the 2007 EP Regulations and regulation 12(10) of the PPC Regulations.)

What is LA-IPPC?

- 1.12. The system of Local Authority Integrated Pollution Prevention and Control (LA-IPPC) applies an integrated environmental approach to the regulation of certain industrial activities (known as “A2” or “Part A2” installations). It involves determining the appropriate controls for industry to protect the environment through a single permitting process. This means that emissions to air, water (including discharges to sewer) and land, plus a range of other activities with an environmental impact, must be considered together. It also means that local authorities, if they approve an application for an environmental permit, must set permit conditions so as to achieve a high level of protection for the

environment as a whole. These conditions must be based on the use of the 'Best Available Techniques' (BAT), which balances the costs to the operator against the benefits to the environment. BAT is dealt with more fully in **Chapter 12**.

- 1.13. The primary aim of the EU IPPC Directive is to ensure a high level of environmental protection and so LA-IPPC aims to prevent emissions and waste production and where that is not practicable, reduce them to acceptable levels. Local authorities will be enforcing LA-IPPC to protect the environment as a whole, promote the use of clean technology, minimise waste at source, encourage innovation by leaving significant responsibility for developing satisfactory solutions to environmental issues with industry operators and to provide a one-stop shop for administering permits. LA-IPPC also takes the integrated approach beyond the initial task of permitting, including compliance monitoring, permit reviews, variations, transfers, through to the restoration of sites when industrial activities cease.

(The IPPC Directive was 'codified' in early 2008. This is an official consolidation of four previous amendments. [The Directive](#) is now numbered 2008/1/EC. The IPPC Directive, together with the Waste Incineration Directive and the Solvent Emissions Directive, have been 'recast' in a new, consolidated [Industrial Emissions Directive](#). This Directive must be transposed into UK law by 7 January 2013. Until UK legislation is changed, the IED does not affect LA-IPPC or LAPPC.

What is LAPPC ?

- 1.14. The installations regulated under LAPPC (Part B installations) are those whose air emissions have in most cases been regulated by local authorities under similar such controls since 1991. These installations are not within the scope of the IPPC Directive, but other directives (such as the Solvent Emissions Directive) may apply. LAPPC just regulates air emissions. The permitting arrangements are essentially the same as for LA-IPPC.

Regulation of waste installations

- 1.15. The following applies as a consequence of [The Environmental Permitting \(England\)\(Transitional - Exercise of Agency Functions at Part B installations\) Direction 2010](#). A parallel direction was issued for Wales. The directions give give local authorities waste regulatory responsibility for certain waste operations directly associated with a Part B installation, as described in paragraph a) below.

local authorities are responsible for regulating waste operations that are Part B activities, and may additionally have responsibility for regulating some waste operations, because

- a) they are listed in Schedule 3 to the EP Regulations 2010 but are not exempt because they are a directly-associated activity of a

Part B installation, by virtue of the EP regulation 5(1) definition of “exempt waste operation”, paragraph (a)(i), or

- b) they are not listed in Schedule 3, but are a directly-associated activity of a Part B installation and are the subject of a direction under EP regulation 33 to achieve a single regulator for the installation.

The case described in paragraph a) is a change brought about by the 2010 EP Regulations. The other cases described in b) and below, are unamended from the 2007 EP Regulations.

Where the operations described in a) above did not have a registered exemption before 6 April 2010, they must be covered by appropriate conditions contained in the Part B permit by that date. Otherwise the deadline is the end of September 2013. More guidance on this can be found in Chapter 40.

Any exempt waste operation that is on the same site as a Part B installation, but is not a directly associated activity (referred to here as a 'standalone' waste operation), remains separately regulated by means of a registration with the appropriate exemption registration authority, in most cases the Environment Agency but, as defined in paragraph 2 of Schedule 2, this could also be local authorities or Animal Health (see **Annex XXIII**).

Any other (non-exempt) standalone waste operation that is on the same site as a Part B installation is separately regulated by the Environment Agency under an environmental permit.

Any other (ie paragraph b)) waste operation which is directly associated with a Part B installation is separately regulated by the Environment Agency, but may be the subject of a direction under EP regulation 33 to achieve a single regulator for the installation.

In addition, under paragraph 2(2) of Schedule 2 of the 2007 EP Regulations, six of the waste exemptions were for local authorities to register.

The effect of the direction referred to above is that five of these waste operations continue under local authority regulatory control, but instead of being registered as exempt they should be incorporated by variation into the Part B permit. The sixth relates to on-farm mushroom composting operations which become Part B activities (see GGM paragraphs 40.11-13). For the five operations, if already registered, the deadline is the end of September 2013, and if not registered 6 April 2010.

The five exemptions are summarised in broad terms below (the numbers are the paragraph numbers in Schedule 3 to the 2007 EP Regulations).

- 2: loading or unloading a scrap metal furnace which is part of a Part B Section 2.1(a), (b) or (d), or a Part B Section 2.2 (a), (b) or (e) installation, or storing scrap metal there which is to be loaded into the furnace
- 3: secure storage of straw, poultry litter, wood, or solid fuel manufactured from waste using heat at a Part B poultry litter, wood etc installation
- 4(3): storing waste in connection with cleaning, washing, spraying or coating of packaging or containers (eg drum coaters) if the amount of waste stored exceeds a certain tonnage, or if a certain tonnage of metal containers is dealt with in any 7-day period
- 24: storing bricks, tiles or concrete under a certain tonnage at a place where they are to be crushed by a Part B Section 3.5(c) installation or mobile plant
- 43: storage at a Part B Section 3.3 glassworks of waste glass below a specified tonnage.

The full definitions are replicated in **Annex XXIII**.

The Environmental Permitting Regulations

1.16. The EP Regulations are structured rather differently to the previous PPC Regulations. In particular, many of the requirements which apply to LA-IPPC and LAPPC installations derive from EU Directives, and these are incorporated by reference to the relevant Directive rather than copied out in the Regulations – see especially EP regulation 35 and the schedules it refers to.

1.16A. The 2010 EP Regulations are substantially the same in relation to Part A2 and B installations compared with the 2007 Regulations. In particular, there will be no need to re-apply for any LA-IPPC or LAPPC permit as a result of the 2010 Regulations, and all applications in the pipeline will be automatically treated as applications under the 2010 Regulations.

The main changes are:

- numbering: the numbering of regulations 1-66 and Schedules 1-18 is unchanged. The public register provisions are now in Schedule 24
- most of the changes to the Regulations are to accommodate the water discharge, groundwater and radioactive substances regimes. There are, however, some detailed drafting changes as well, but these generally do not alter the meaning of the Regulations
- the regulation 2 definition of "pollution" is unchanged, but care should be taken because there is now a separate definition in relation to water discharges/groundwater. For A2 and B activities the relevant definition is the one for "other than in relation to a water discharge activity or groundwater activity"

- regulation 3 in the 2007 Regulations can now be found in paragraph 1 of Part 1 of Schedule 1 to the 2010 Regulations
- regulation 8 introduces the concept of a class of regulated facility for legal drafting purposes. PPC installations are one class, and mobile plant are another class
- regulation 33 of the 2010 Regulations specifies that directions transferring regulatory responsibility for a regulated facility cannot be issued in relation to any of the new classes of regulated facility
- regulation 38 (offences) is set out rather differently, but is unchanged in substance
- regulation 65(6) gives local authorities the power to serve a suspension notice for non-payment of charges
- regulations 69-105 deal with the transition from the various existing Regulations to the 2010 Regulations. Among other things, they provide that existing permits continue in effect without any action required, and likewise any directions and appeals.
- some of the definitions previously in Part 2 of Schedule 1 have been moved to paragraph 1 of Part 1 of Schedule 1
- paragraph (c) of Section 1.1 Part B of Schedule 1 (Part 2) has been split into paragraphs (c) and (d) to improve clarity
- gas odorising has been taken out of the Regulations. No installation which previously fell under paragraph (a)* of Section 1.2B of Schedule 1 (Part 2) of the 2007 Regulations now requires a permit. There is no need for permits to be revoked or surrendered. The numbering (lettering) within Section 1.2 B has changed as a result

*"Odorising natural gas or liquefied petroleum gas, except where that activity is related to a Part A activity"

- paragraph (b) of paragraph 1 of Section 6.8 of Schedule 1 (Part 2) has been amended so that the production of compost for growing mushrooms is a Part B activity, whether or not the compost is solely used on-farm (see paragraphs 40.11-13 of the Manual).
- Schedule 3 contains a revised list of exempt waste operations (see paragraph 1.15 above and Chapter 40 of the Manual)
- Schedule 14 now has a footnote to transpose the new Globally Harmonized System of Classification and Labelling of Chemicals in relation to the Solvent Emissions Directive (see paragraph 34.1A of the Manual)
- Schedule 24 provides that public registers must hold information for some of the newly-added regimes: the responsibility rests with the Environment Agency to provide authorities with the information

- SI 2010/676 corrects an error in the main 2010 EP Regulations relating to the storage limits for waste oils allowed under a waste exemption. The figure has been amended from 400 cubic metres to three cubic metres.

1.16B [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2010](#), SI 2172 came into force on 1 October 2010.

These made three changes:

- vegetable matter drying deregulation: an addition has been made to the list of excluded activities in Section 6.8: “(o) the drying of green crops”; and ‘green crops’ have been defined as meaning “alfalfa (Lucerne), clover, grass, perennial ryegrass, tall fescue and other similar crops;”.

The British Association of Green Crop Driers have agreed that their members will comply with a [Code of Practice](#). This in effect involves compliance with the operational practices in [PG6/27\(05\)](#) .

- powder coating manufacture deregulation: Section 6.5B(a)(ii) now only covers manufacture of powder coatings with a >200te capacity where the process uses lead chromate or triglycidyl isocyanurate. Most such activities do not use these substances.

The British Coating Federations have also agreed that their members will comply with a [Code of Practice](#). This in effect involves compliance with the operational practices in [PG6/9\(04\)](#) ..

In the unlikely event there are statutory nuisances arising from these deregulated premises, authorities will doubtless want to consider whether the codes of practice have been complied with as part of their assessment of Best Practicable Means.

- vacuum furnaces – some transfer from Part A2 to Part B: the 2.2 Part B(a) definition is unchanged, and means that any non-ferrous melting activity (except for the specified tin melting) in plant melting capacity of the plant is 4/20 tonnes or less, is Part B - unless the A2 or A1 definitions take precedence. The 2.2A(2) wording says
 - the plant melting capacity has to be more than 4/20 tonnes
AND
 - either
 - the plant has no furnaces, baths or other holding vessels which hold 5te or more, because the >5te ones are A1. However, if one of the furnaces is a vacuum furnace and that is 5te or more, this does not trigger A1

or

- irrespective of the holding capacity of any vessels, a vacuum furnace is used.

So, a plant which uses vacuum furnaces and has a melting capacity of >4/20 tonnes, then it is A2. It doesn't however become an A1 where the plant just uses vacuum furnaces for holding capacity, and those vacuum furnaces have a holding capacity of 5te or more.

- 1.17. Schedules 5-8 cover many of the procedures. For example, Schedule 7 (for LA-IPPC installations) and Schedule 8 (for LAPPC installations) impose a legal requirement on local authorities to exercise their permit functions to comply with specified articles in the IPPC Directive. Although Part B installations are not covered by the IPPC Directive, some of the directive requirements are nonetheless applied in relation to the control of emissions into air, as they were under PPC.
- 1.18. Each Directive implemented through the EP Regulations has been allocated to a specific schedule. The following is a list of those schedules most likely to be of relevance to LA-IPPC or LAPPC. The schedules are given legal effect by EP regulation 35.

Schedule	Abbreviated Directive name	Directive reference
7	Integrated Pollution Prevention and Control	2008/1/EC
9	Waste	2008/98/EC
10	Landfill	1999/31/EC
13	Waste incineration	2000/76/EC
14	Solvent emissions (SED)	1999/13/EC
16	Asbestos	87/217/EC
18	Petrol Vapour Recovery	94/63/EC

- 1.19. All the Directives can be searched for on the [EUROPA website](#) or by inserting the Directive reference into Google. The full reference for each of these Directives and amendments in the EU Official Journal can be found in the footnotes to EP regulation 2. In some cases the [EURLex website](#) contains consolidated versions of directives.
- 1.20. Where an installation falls under more than one Directive each set of Directive requirements must be met. For example, a waste incinerator must meet the requirements of the IPPC, Waste Incineration, and Waste Directives. This is because the subject matter of various European Directives overlaps to a certain extent.

1.21. Schedule 5 of the EP Regulations applies to all installations and deals with matters concerning refusal of applications in specified circumstances, surrender applications, the periodic review of permits, and periodic inspection of installations.

1.22. The EP Regulations comprise 109 regulations split into seven Parts. In one case the Part is split into five chapters.

Part	Title of Part	Regulations	what it covers
1	General	1-10	definitions + the requirements on giving notices, notifications and directions and on submitting forms
2	Environmental permits	11-31	chapter 1: application to the Crown + requirement for a permit chapter 2: grant of a permit + conditions, single site permits, consolidation, etc chapter 3: variation, transfer, revocation and surrender chapter 4: standard rules permits chapter 5: appeals
3	Discharge of functions	32-35	responsibility of local authorities and the Environment Agency for discharging functions, including directions to transfer responsibility
4	Enforcement and offences	36-44	notices, penalties, enforcement etc

5	Public registers	45-56	maintaining a register and requests for exclusion
6	Powers and functions of regulators etc	57-66	various provisions, including the basis for the local authority fees and charges scheme
7	Miscellaneous, transitionals, savings etc	67-109	as indicated by the second column of this table

1.23. There are 23 schedules. Key schedules are:

Schedule	what it covers
1	lists the activities covered under LA-IPPC (Part A2) and LAPPC (Part B)
2 + 3	deal with exempt waste operations
5 (Part 1)	contains the procedures for the grant, variation, transfer and surrender of permits
6	appeals procedures
7+8	legal requirement to comply with aspects of the IPPC Directive
9, 10, 13, 14, 16 + 18	legal requirement to comply with other directives (see paragraph 1.18 above)
24	public register procedures (this is the only one of these schedules to change its number in the 2010 Regulations)

“Savings”

1.24. [deleted]

How to use the Manual

1.25. This General Guidance Manual (GGM) is a guide to issues and procedures relating to the making of applications, writing and granting environmental permits, and regulating approved installations under the EP Regulations. The guidance in Parts A-D of the Manual should be used in conjunction with the series of notes on Best Available Techniques (BAT) for each of the sectors regulated. It is aimed at providing a strong framework for consistent and transparent regulation of

activities and installations. The GGM should be read in conjunction with the EP Regulations as may be amended from time to time.

- 1.26. The Manual comprises statutory guidance under EP regulation 64 which local authorities must have regard to. To this extent, it is an authoritative interpretation of the legislation. However, interpretation of the legislation in individual cases will ultimately be a matter for the courts. It should also be noted that the guidance (or revisions thereto) apply as at the date of publication. Although the electronic version of the Manual is being revised and updated from time to time, it should not be assumed that the Manual reflects all the latest developments or legislative changes. Links are given to various legislation and directives; in relying on these documents for decisions, Manual readers should check that they are using the latest version with any up-to-date amendments.
- 1.27. The Manual, together with the process and sector guidance notes advising on BAT for each sector, should provide the necessary basis for decisions in most cases. Where, however, an installation raises, for example, particularly complex or contentious issues, local authorities may want to refer to any of the more extensive guidance produced by the Environment Agency for their regulated Part A1 activities or to the other documents referenced in the Manual. We understand that the Environment Agency's guidance will be updated from time to time and the latest version will appear on their [website](#).
- 1.27A. A similar [manual and set of technical guidance notes](#) is issued by the Northern Ireland Department for the Environment.

Guidance updates

- 1.28. The Manual does not purport to address every question on all procedures under the LA-IPPC and LAPPC regimes. Where, in the light of experience, feedback or other developments, guidance is considered necessary on further matters, Defra will provide supplementary advice by amending the Manual, and intends to email all local authorities and relevant trade bodies alerting them to any such changes.
- 1.29. Readers should therefore check <http://www.defra.gov.uk/environment/quality/industrial/las-regulations/guidance/> to ensure they are using the most up-to-date version of the Manual. The electronic version should contain an index of amendments before the contents pages, although minor amendments, such as updating web references, wont be listed.
- 1.30. All web links were re-checked prior to publication of the April 2011. Defra and WG will endeavour to keep these up-to-date, but cannot guarantee doing so, especially with external web sites.
- 1.30A. Old versions of the Defra website, including documents that have been previously taken off the website, can still be found via [The National Archives](#) website. -

2. Activities, installations, operators and local authorities

Guidance on key terms used in the Environmental Permitting Regulations.

A2,B

- 2.1. LA-IPPC is concerned with controlling the environmental impact of installations which carry out any activities listed under the heading “Part A(2)” in Part 2 of Schedule 1 to the EP Regulations.
- 2.2. LAPPC is concerned with controlling the environmental impact arising from pollution emitted into air from installations listed under the heading “Part B” in Part 2 of Schedule 1.
- 2.3. The decision whether an activity or installation falls under LA-IPPC or LAPPC is determined by the EP Regulations. However, the process and sector guidance notes listed on the [Defra website](#) give a good indication of the industry sectors affected.

What is an activity?

- 2.4. An activity is an industrial activity forming part of an ‘installation’. Different types of activities are listed within Schedule 1 of the EP Regulations. They are broadly broken down into industrial sectors, grouping similar activities into chapters within this schedule. Other “associated” activities (not described in Schedule 1) may also form part of an installation, described in paragraph 2.6 below.
- 2.5. Activities can be carried out in installations or by mobile plant.

What is an installation?

- 2.6. **Annex III** explains the term ‘installation’. In summary, an installation comprises any relevant unit carrying out Part A2 or Part B activities listed in Schedule 1 to the EP Regulations. This includes any directly-associated activities which have a technical connection with the Schedule 1 activities and which could have an effect on pollution. Once the extent of an installation has been established, each activity (if listed in Schedule 1 or constituting a “directly associated activity” with a technical connection and which could have an effect on emissions and pollution) must be included in the permit. For the purposes of this Manual, any reference to “installation” should be taken to include “mobile plant” unless otherwise indicated.

What is a mobile plant?

- 2.7. A mobile plant, for the purposes of LA-IPPC and LAPPC, is any plant which is designed to move or be moved on roads or otherwise, and is used to carry on any activity. Guidance on the permitting of mobile crushing and screening plants can be found in appendix 2 of [PG3/16\(04\)](#). For LA-IPPC mobile plant, the guidance in the Environmental Permitting Core Guidance should also be taken into account.

A mobile plant is regulated by the local authority in whose area the operator has his or her principal place of business. If the operator does not have his or her principal place of business in England and Wales, the local authority will be the authority which granted the permit or, if there is no permit, the authority in whose area the plant is or will be first operated (EP regulation 32(3) and 4).

What is a regulated facility?

- 2.8. A regulated facility is the collective term used in the EP Regulations to refer to installations, mobile plant and waste operations.

What is a "class" of regulated facility?

- 2.8A. EP regulation 8 divides regulated facilities into seven classes, and it may on occasion be important to note this when reading the Regulations. The seven classes are:

- (a) an installation (where activities listed in Schedule 1 to the Regulations, and any directly associated activities are carried on
- (b) mobile plant (used to carry on either one of the Schedule 1 activities or a waste operation
- (c) a waste operation
- (d) a mining waste operation
- (e) a radioactive substances activity
- (f) a water discharge activity
- (g) a groundwater activity.

- 2.8B. Some regulated facilities may be “carried on as part of the operation of a regulated facility of another class”. These are: waste operations, mining waste operations, water discharge activities and groundwater activities - see EP regulation 8(4).

Some provisions of the Regulations apply to these classes of regulated facility differently according to whether or not they are carried on as part of the operation of another regulated facility. For example, any part of a permit which authorises a stand-alone water discharge activity may be

surrendered by notification, whereas any part of a permit which authorises a water discharge activity that is carried on as part of the operation of another regulated facility (such as an installation), can only be surrendered by application. There is more detail about this in the Environmental Permitting Core Guidance, including a table in Annex 2 of that guidance which summarise the regulatory provisions applicable to the different classes.

Is the installation A1, A2 (LA-IPPC) or B (LAPPC)?

2.9. In order to decide which regime an installation falls within it is necessary first to understand the activity that is being carried out. Part 2 of Schedule 1 of the EP Regulations must then be examined to see whether any of the descriptions apply to the activity. Part 2 must be read together with Part 1 of Schedule 1 which contains rules for interpretation.

2.10. If operators have doubts whether a particular installation is listed in Schedule 1, or which section is most applicable, they may find further helpful guidance in **Annex III** to this Manual. If an operator is still unsure, he or she should contact the relevant local authority or the local office of the Environment Agency. Your local authority will be

- the District, Borough or Unitary Council in the area where the installation is located (EP regulation 32(2)); or
- for mobile plant, the relevant Council in whose area your company has its principal place of business. As mentioned in paragraph 2.7, if the company does not have his/her principal place of business in England or Wales, your local authority will be the one which granted the permit or, if there is no permit, the one in whose area the plant is or will be first operated (EP regulation 32(3) and 4). If a mobile plant operator changes his or her principal place of business to another authority's area, the permit(s) can simply be transferred across administratively without the need for a fresh application.

Environment Agency contact details can be found [here](#).

2.11. In some cases, the question of whether an activity is a Part A1, A2 or B activity will depend on a capacity threshold. There is further information in Annex III on this. (The PPC Regulations specified that any LA-IPPC installation which involved a waste activity is automatically treated as an A1 installation for regulation by the Environment Agency. This provision has not been replicated in the EP Regulations 2007 or 2010. Therefore, it is open to the operator or regulators to seek to reverse the previous arrangement in individual cases by requesting a direction, after 6 April 2008, transferring regulation to LA-IPPC.)

2.12. Local authorities may also find help by speaking to colleagues in other authorities. There are various mechanisms. These include

- the pollution groupings which cover most if not all of England and Wales;

- the ‘link authority’ networking arrangements - the list of link groups can be found on the [industrial pollution control community of the Knowledge Hub](#) , for those who are members of the CoP, or put “link authorities – updated list for September 2009” into the Local Government Associate search engine at www.lacors.gov.uk (again, for members only). The sectors covered are waste wood combustion, foundries and ferrous metal, glass excluding lead glass, coal, crematoria, animal rendering, particleboard manufacturing, maggot breeding, printing on flexible packaging, painting as part of vehicle manufacture, animal feed compounding, aircraft coating, galvanizing, and brickworks;
- the Chartered Institute of Environmental Health ([CIEH](#)) EHCNet system of electronic communication; and
- the [industrial pollution control community of the Knowledge Hub](#) began as the Community of Practice for industrial pollution control. It was set up in March 2011 and by March 2012 when it migrated to the LGA Knowledge Hub it had nearly 400 members. The website is restricted to local authority officers, Defra, WG and the Environment Agency.

As a last resort, Defra or WG may be able to assist with legal/policy and procedural queries (although decisions will ultimately rest with authorities based on the facts of the particular case), and the Environment Agency’s Local Authority Unit (LAU) with technical queries.

Defra, WG and LAU contact details can be found [here](#). The LAU’s website is [here](#).

Neither Defra, WG nor the LAU can provide definitive advice on the meaning of any legislation – this is ultimately a matter for the courts; nor can they offer any case-specific advice which might be held to prejudice the decision of the Secretary of State or Welsh Ministers in the event of an appeal.

A single permit

- 2.13. An environmental permit can cover more than one regulated facility (EP regulation 17) but **not** a) where the facilities have different regulators or operators, or b) a mobile plant combined with a non-mobile facility. Paragraphs 2.14-19 give more detail.
- 2.14. A single environmental permit can only be granted for more than one regulated facility where:
 - the regulator is the same for each facility;
 - the operator is the same for each facility; and
 - all the facilities are on the same site (the exceptions to this are set out below).

- 2.15. Where the regulator and operator are the same, a single environmental permit can be granted to an operator for more than one mobile plant. Mobile plant do not have to be operating on the same site in order to be included in a single permit. (It is not intended that this will lead to a reduction in the current fees and charges levied on mobile plant.)
- 2.16. Regulated facilities have to be on the same site in order to be covered by the same permit (with the exception of mobile plant). Local authorities should consider the following factors in determining whether the facilities are on the same site:
- proximity: there should, however, be no simple ‘cut-off’ distance since some industrial complexes cover very large areas but still can be regarded as one site for permitting purposes;
 - coherence of a site: some regulated facilities will be within a single fenced area or may share security or emergency systems;
 - management systems: the extent to which the regulated facilities share a common management system is a relevant consideration.
- 2.17. It is expected that authorities will adopt a common sense approach to determining whether facilities should be regulated under one permit. This consideration should be based on achieving protection of the environment in the most efficient regulatory manner.
- 2.18. It is not possible to have a single permit for
- regulated facilities with different regulators or operators,
 - mobile plant combined with any other category of regulated facility.
- 2.19. Where several **activities** from different Parts of Schedule 1 are carried out in or as part of the same **installation**, the installation will be permitted according to what can be described as the “highest common denominator” (Schedule 1, Part 1, paragraph 2 to the EP regulations). So if Part A1, A2 and B activities were carried out at an installation, it would be permitted as an A1 installation and therefore by the Environment Agency. If Part A2 and Part B activities were carried out at an installation, it would be permitted as an A2 installation.

A single regulator for each site - directions

- 2.20. The Secretary of State or Welsh Ministers can issue a direction changing the regulator (EP regulation 33). This direction can be for a specific regulated facility or for a particular class of regulated facilities. A direction cannot however direct a local authority to exercise the Environment Agency's functions for a waste operation (unless that waste operation is part of an LA-IPPC or LAPPC installation or a mobile plant).
- 2.21. Where the Secretary of State or Welsh Ministers makes (or withdraws) a direction under EP regulation 33, this must be published on the relevant website. The local authority and the Environment Agency must be notified as well as any other person who will be affected by the direction.

2.22. It is anticipated that this power would be used in a way that helps simpler regulation and any other relevant environmental and regulatory consideration. These directions are therefore likely to be used mainly where there are regulated facilities on the same site but with different regulators. It is not possible to have a single permit with more than one regulator, so a direction to change regulators can allow a single permit for the site.

2.23. On the coming into force of the EP Regulations, regulated facilities remain regulated by their existing regulators unless a direction under EP regulation 33 is given. It is open to operators and/or regulators to apply under EP regulation 33 for a direction to transfer regulatory control between regulators at any time.

2.24. To seek a direction, the operator or either of the regulators may make a written request to the Secretary of State or to Welsh Ministers. This is most likely to arise where there is a waste operation taking place as part of a Part A2 or Part B installation. Paragraphs 2.28-2.32 below explain the procedures for directions.

2.25. The aim is to allocate regulatory responsibility to the regulator of the major activity on the site. The Secretary of State or Welsh Ministers will consider each case on its merits having regard to the views of the parties, but will be guided by the following criteria:

- where both sets of regulators and the operator call for a direction, the Secretary of State or Welsh Ministers will issue it unless they are aware of any regulatory or environmental protection reason not to;
- where there is disagreement among the three parties
 - a) if the disagreement is between the regulators, the Secretary of State or Welsh Ministers will need to be persuaded that there are sound regulatory or environmental protection reasons why regulation by a single regulator would be inappropriate;
 - b) if the operator disagrees, the Secretary of State or Welsh Ministers will need to be persuaded that there are sound regulatory or environmental protection reasons why regulation by a single regulator would be appropriate;
- the underlying principle will be to favour allocating regulatory responsibility based on which is the major activity on site and which is the regulator for that major activity.

2.26. This principle may, however, be influenced by the following:

- whether the 'minor' activity has disproportionate potential environmental impacts;
- whether the 'minor' activity gives rise to particular technical or other complexities;

- consistency with the way other similar sites in the sector are regulated;
- consistency with the way similar sites run by the same operator are regulated; and
- the views of the parties on the above criteria.

2.27. Where a single regulator has been determined, this may result in a whole-site environmental permit being drawn up (subject to paragraphs 2.14-19).

Directions: transitional situation

2.27A. [deleted]

Procedure for seeking a direction

2.28. The operator or either regulator may apply for a direction. Applications for England should be addressed to Defra, Nobel House, 17 Smith Square, London SW1P 3JR or helpline@defra.gsi.gov.uk, or, for Wales to the Welsh Government, Cathays Park, Cardiff CF10 3NQ. Applications should be marked “Environmental Permitting Regulations, Application for a Direction”. While there is no prescribed form for applications, they should be in writing and

- a) describe which activities a direction is wanted for;
- b) describe what other activities are on the site;
- c) enclose a copy of the relevant permits, where appropriate;
- d) give reasons why it is considered a direction should be made, having regard to the considerations in paragraphs 2.17, 2.22 and 2.26 above; and
- e) enclose any correspondence showing the views of other parties (ie the regulators and operator).

Where more than one party agrees with a proposal for a direction it can be submitted jointly.

2.29. Where an application is made by just one of the parties, it will be copied to the other parties with an invitation to comment. Those comments are then likely to be circulated to all parties with a further opportunity to give views. Defra or WG will then make a decision. In consequence joint applications are encouraged as they should reduce the amount of consultation needed.

2.30. If a direction is made, it will be sent to all parties and will normally specify an effective date some days later. During the intervening period, the regulator whose responsibilities are being transferred should pass the relevant papers for the transferred activities to the new regulator. Additional informal liaison between regulators will often be desirable.

- 2.31. All directions must be placed on the public register.
- 2.32. The transfer of regulatory responsibilities by direction may have implications for the fees and charges applicable. Any party contemplating a direction should first understand the charging consequences by consulting the charging schemes issued by the Environment Agency for the facilities they regulate and by Defra/WG for local authority-regulated facilities.

Fees and charges

- 2.33. Advice on fees and charges for cases of combined activities and installations can be found in **Chapter 23**.

Is the installation trivial?

- 2.34. There is a ‘triviality’ exemption for Part B installations only, where the substances released are of a trivial quantity with insignificant capacity to do harm and the pollution potential is so low as to be inconsequential. However the exemption does not apply to either SED installations or to Part B installations which may give rise to offensive odour. (Reference to this can be found in Schedule 1, Part 1, paragraph 6(2)(b) of the EP Regulations.) In all cases of triviality the local authority should satisfy itself that an installation is trivial by asking the operator a number of questions relating to that activity. Example sets of questions are in **Annex XIV**.

Are R+D activities excluded?

- 2.35. Since an amendment to the PPC Regulations in 2005 operators undertaking research, development and testing of new products and processes have been excluded from PPC regulation, with the exception of Solvent Emissions Directive (SED) activities. This has now been carried forward into Part 1, paragraph 3(c) of Schedule 1 of the EP Regulations:
- “An activity shall not be taken to be an activity falling within Sections 1.1 to 6.9 of Part 2 if it is –“... “carried on at an installation or mobile plant solely used for research, development and testing of new products and processes.”
- 2.36. This exclusion only applies to installations or mobile plant which carry out R+D/testing in a dedicated and separate facility and not where it is carried out as part of a listed activity or a directly associated activity within an installation. So, where research, development and testing is carried out on an installation that has a permit issued by a local authority, the R+D/ testing will be subject to the requirements of the permit.
- 2.37. This exclusion does not apply to stand-alone SED-installations or to SED activities within installations. It also does not apply to installations carrying out testing of materials for the purposes of quality assurance.

Who is the operator?

2.38. An operator is defined in EP regulation 7 as the person who has control over the operation of an installation or who will have control if it is not operating yet. Where an installation has ceased to be in operation, the person who holds the permit which applies to the installation or activity must be treated as the operator. The operator may be either a legal person eg a company, partnership or other corporate body, or a natural person eg an individual. In most cases a single operator will have to obtain a single permit for a single installation. In accordance with the guidance on the essential components of the environmental permitting system (referred in in paragraph 1.4 of the Manual) the operator “must demonstrably have the authority and ability to ensure that the environmental permit is complied with”.

2.38A. Local authorities should find that the following questions help decide whether the operators has the authority/ability to ensure compliance:

Does the operator/proposed operator have the authority and ability to:

- manage site operations through having day-to-day control of plant operation including the manner and rate of operation?
- ensure that permit conditions that will be imposed or which apply are effectively complied with?
- hire and fire key staff?
- make investment decisions?
- ensure that operations are shut down in an emergency?

2.38B. The Environment Agency has published [guidance on dealing with death, financial difficulties or striking off of an operator](#).

2.39. It is fairly uncommon for different operators to run different parts of a single A2 or B installation. This does not affect local authorities’ determination of what is the installation in the first place. Where this situation arises, each operator will need a separate environmental permit and be responsible for complying with its conditions. In such cases there should be no ambiguity over which operator has responsibility for which part of the installation. Operators will need to demonstrate to the authority that together all aspects of the operation are being properly managed and controlled.

Which organisation is my ‘local authority’?

2.40. Local authorities (or Councils) may be the district, borough, or unitary authority which covers your area. Also in the case of LAPPC, it may be your port health authority. An authority’s environmental health or environmental services department generally administers this regime - and it often helps when contacting them to refer to their pollution team. In order to find out which is your appropriate authority, you should contact the authority to which you pay either your business rates or, if you are a member of the public, your council tax. Alternatively you will

find the local authority listed in your telephone book, or you can ask at your local library. All local authority contact details are listed on their websites, which can be accessed through www.direct.gov.uk.

- 2.41. Port Health Authorities do not have powers in relation to LA-IPPC installations.
- 2.42. Local authorities will be aware that powers exist under section 101 of the [Local Government Act 1972 \(as amended\)](#) to transfer responsibility for a service (and money, such as income from fees and charges) from one authority to another. This might be appropriate where an installation straddles an authority boundary. It may also be a more effective and efficient means of regulation where a nearby authority has acquired greater skills or expertise for regulating a particular type of activity.
- 2.43. Furthermore, working with other authorities is a means by which authorities with few regulated activities may be able to secure greater critical mass and economies of scale. Known examples are where all the authorities in a county use the fire service or county trading standards officers to enforce LAPPC for petrol stations. Another possibility is where neighbouring authorities each regulate one LA-IPPC installation and might save effort and consolidate expertise by allowing one authority to lead on both. Lastly, some authorities have found that private sector contractors can better undertake the entire LAPPC/LA-IPPC function, or parts of it, or handle individual cases. The Government would expect authorities to consider all these options when considering what constitutes best value for running this service. Defra and WG will take into account these and other potential efficiency savings in reviewing the level of fees and charges annually. The then LG Regulation and CIEH issued [guidance on partnership working](#).

Appointment of a suitable person + delegation of decisions

- 2.44. Under section 108 of the [Environment Act 1995](#), powers of entry are only available to officers who appear suitable to the local authority, and have been authorised in writing to exercise any of the powers specified in section 108(4). Officers should therefore ensure that they have the appropriate written authorisation, and local authority managers should ensure that all officers so authorised have the necessary competence to undertake all their functions (see also final paragraph in **Chapter 11**). (Section 108(15) of the 1995 Act was amended by paragraph 16 of Schedule 10 to the PPC Regulations 2000, which inserted a references to a local authority for the purposes of regulations made under the Pollution Prevention and Control Act 1999. Therefore section 108 applies to the EP Regulations.)
- 2.45. Issues have arisen in the past over whether a particular officer has been formally delegated the authority by his or her Council to take particular decisions. Officers should ensure in all cases that they have the appropriate authority and be able to show evidence of this if challenged.

Single regulator: practical arrangements where a direction has been issued

2.46. Where a direction is issued transferring responsibility to the Environment Agency for regulating a Part B activity, it is expected that local authorities will as soon as possible, and normally within 15 working days:

- a) provide the relevant Environment Agency officer with all appropriate papers held relating to the regulation of that activity, and
- b) agree other necessary handover arrangements, which could amount to a face-to-face or telephone briefing, or a joint site visit.

Where a direction is served transferring responsibility to a local authority for a waste activity, or for any other reason, the Environment Agency has agreed that their relevant officer will do the same.

Cases where the same local authority is both the regulator and operator

2.47. Many local authorities have regulatory functions under the EP Regulations for crematoria that they themselves operate singly, or as part of a wider cremation authority. There could be other instances not involving crematoria. This amounts to self-regulation and, as such, it is important that authorities have clear and accountable policies to show how they will carry out their regulatory role. This should be no different to how they would act in relation to a privately-run crematorium.

2.48. Defra and the Welsh Government (WG) consider that authorities in the above position ought, at minimum, adhere to the following guidelines.

Guidelines

1. all statutory requirements must be complied with, including in relation to the making of applications, service of notices, and publication of information on the public register.
2. all consultation with public and national consultees required under the 2010 Regulations must be undertaken. In deciding what is an adequate amount of publicity, in accordance with **Chapter 9**, if in any doubt authorities should adopt a precautionary approach and publicise more rather than less.
3. decisions on applications, enforcement, and any other matters concerning the regulation of the crematorium or other installation, should be taken separately from those officials responsible for its operation. Any discussion between the operator-side and the regulatory-side should be suitably recorded.
4. in the event of

- a significant, unresolved disagreement between the two 'sides' of an authority,
- a significant actual or forecast compliance failure, or
- consideration of any enforcement action,

the authority's Chief Executive should be informed and asked to decide next steps. If this fails to achieve a satisfactory resolution, Defra or WG (as appropriate) should be informed so that consideration can be given to whether a direction should be given under EP regulation 33.

5. a copy of the authority's policy in relation to these cases should be placed on the public register so that it can be viewed by anyone looking at the register entry for the installation.

3. Permits and the timeframe for obtaining permits

Guidance on the type of permit needed and when required.

A2,B

What is a permit?

- 3.1. A permit is a document issued by a local authority to an operator allowing him or her to operate an installation or mobile plant subject to conditions. In this Manual “permit” is used to mean the same as “environmental permit” as used in the EP Regulations.
- 3.2. An application for a permit must be refused if the local authority considers that the applicant will not be the operator of the installation or mobile plant or will not operate the installation in accordance with the permit (Schedule 5, paragraph 13 of the EP Regulations).
- 3.3. Local authorities may follow the approach commonly adopted for the local authority pollution control regimes, whereby the key aspects of the process description are set down in the permit, together with all the major control parameters, including any limit values. This approach has the advantage of setting down in one document all the main requirements imposed on the operator. It may be clearer for the operator, for enforcement purposes, and for the public. If this approach is adopted, however, the permit must cover all the salient parameters and descriptions. So, if the permit did not specify that it was for the operation of a plant up to a certain capacity threshold, the operator might be able to exceed that threshold without breaching the permit and without seeking further approval.
- 3.4. Authorities may, alternatively, decide to rely on information in the application as forming part of the permit – such as the installation description and intended control measures. If this is done, the permit must make clear which aspects of the application are to be treated as permit conditions.
- 3.5. Guidance on drafting of permit conditions can be found in **Chapter 13**.

Simplified permits

- 3.6. At the time of publication, a simplified permitting system has been in place for a number of years for four sectors: small waste oil burners, petrol stations, dry cleaners, and vehicle refinishing activities which use PG6/34b(06) [revised as PG6/34(11)] as guidance. In these cases, the relevant process guidance note contains a specimen application form

and specimen permit, and the application fees and subsistence charges are lower. Defra and WG are intending to extend this approach can be extended to up to 20 other sectors as a result of the findings of the [‘Better Regulation Review of Part B Processes’](#). This will be handled through the so-called six year review of all the process guidances (PG) notes taking place between April 2009 and March 2013.

- 3.7. The second consultation paper on the new EPP regime issued in September 2006 stated: “since a form of simplified permitting arrangements are already in operation for certain local authority regulated sectors, it is proposed that the new form of standard rules permits will be operated in the first place only for Environment Agency regulated facilities. This will be reviewed after an initial period of operation.”. Until such time as a review is completed, EP regulations 26-30 do not apply, except insofar as an installation or waste operation which is subject to standard rules comes under local authority regulation as a result of a direction.

Granting a permit

- 3.8. Local authorities are required to either grant or refuse an application for an LA-IPPC or LAPPC permit. Authorities will grant LA-IPPC and LAPPC permits subject to conditions against which future enforcement action may be taken.
- 3.9. In the same way that it is beneficial for operators and authorities to hold pre-application discussions in certain cases, it will often be worthwhile for both parties to discuss the conditions the authority proposes to include. It is certainly good practice for authorities to send draft permits to operators for comment before issuing the formal document. Discussion can also usefully address any issues or questions relating to permit compliance. For LA-IPPC permits and LA-IPPC substantial variation applications, the Public Participation Directive consultation requirements apply, as described in **Chapter 9** and **Annex V**.
- 3.10. It is recommended that local authorities issue permits, with a covering letter drawing the operator’s attention to particular conditions which require immediate action, or which have a time limit applied to them. However, operators should not rely on the absence of such a letter as a reason for failing to comply with the permit. Further details on offences can be found in **Chapter 28**.

New and existing installations

- 3.11. **Chapter 1** explains that any outstanding applications made under the previous 2007 EP Regulations, the 2000 PPC Regulations, and Environmental Protection Act Part I, are now to be treated as applications made under the EP Regulations 2010.
- 3.12. As with the predecessor regimes, no new installation or substantial change to an existing installation may be operated without a permit or variation. It is an offence under EP regulation 38(1)(a) to operate a

regulated facility without a permit or to the extent authorised by that permit.

- 3.13. In the event that new categories of activity are subsequently added by future amendments to the EP Regulations, those amendment Regulations are likely to include deadlines by which applications must be made for new and existing installations.

4. LA-IPPC and LAPPC permit applications

How to apply for a permit and what to include in the application.

A2,B

4.1. This chapter is concerned with the preparation of LA-IPPC and LAPPC permit applications and identifying the information that they should contain. **Chapter 24** describes the possibilities for varying permit conditions after a permit has been issued.

Existing installations

4.2. To repeat previous chapters, any applications made before the new regulations came into force on 6 April 2010 are to be treated as applications made under the EP Regulations 2010.

4.3. [deleted]

New installations and substantial changes

4.4. The remainder of this chapter relates to applications for new LA-IPPC and LAPPC installations or mobile plant, and applications for substantial changes.

4.5. In accordance with Schedule 5, paragraph 2 of the EP Regulations, operators must make an application on the form provided by the local authority and must include the relevant fee. A specimen form is included in **Part C** of the Manual, together with specimen applications for variations, transfers and surrenders. All the forms can be found on the [Defra website in downloadable Word format](#). There are separate forms for A2s and Part Bs. As at the beginning of March 2010, forms were also available (although in not entirely complete versions) on the [Point of Single Contact for the EU Services Directive](#) (see paragraph 4.37 below).

4.6. EP regulation 10 allows forms to be made available on local authority websites and submitted by operators using electronic means. Authorities are strongly encouraged to make such arrangement. Examples of authorities having made Word versions of application documents available on their websites are:

- [West Berkshire Council](#)

- [Swansea Council](#).

An alternative, which avoids any possibility of the text on forms being altered, is to create interactive PDF forms. These contain form fields that can be selected and filled in.

4.7. The legal requirements are:

- any form provided by a local authority for an A2 installation must require the applicant to provide the information specified in Article 6(1) of the IPPC Directive. (Article 6(1) is reproduced in **Annex VI** of the Manual.) Any form provided for an A2 mobile plant must require the applicant to provide the Article 6(1) information but without the information specified in the fourth indent of this article.
- any form for a Part B installation or mobile plant must require the applicant to provide the Article 6(1) information, but without the information specified in the second, fourth and seventh indents. These requirements are set out in paragraph 4 of Schedules 6 and 7 to the EP Regulations.

4.8. Annex VI explains the requirements of Article 6(1) in more detail and indicates where any sectors have different application requirements (eg A2 waste incineration plant and dry cleaners).

4.9. Defra and WG are of the opinion that a very prescriptive/rigid application form can result in operators producing excessive and unnecessary amounts of information. It can also result in a less clear narrative in some cases. This can be a burden on both industry and on authorities, and make understanding of the material more difficult for authorities and also for the public if they wish to delve deeper than the non-technical summary.

4.10. Defra and WG recommend that authorities require applications to take the form of providing certain basic information in a prescribed format, and providing the remaining information in a way that suits the operators but cross-referenced clearly on the application form. This approach should help to ensure that all the necessary information is provided and that authorities and the public see the information in the same format in all case. It is the style adopted in the specimens in **Part C**.

4.11. More advice about the content of applications follows later in this chapter.

Preparation of applications

4.12. In the majority of cases, operators should apply for a permit when they have drawn up full designs, but before starting construction work (whether on a new installation or when making changes to an existing one). Where installations are not particularly complex or novel, the operator should usually be able to submit an application at the design stage containing all information the local authority needs to make a

determination. This would include proposals for management of the installation and training of operational staff. If, in the course of construction or commissioning, the operator wants to make any changes, which mean that the permit conditions have to be varied, the operator may apply for this in the normal way (see **Chapter 24**).

- 4.13. There is nothing in the EP Regulations to stop an operator beginning construction work before a permit has been issued or even before they have applied for one. However, the local authority may not necessarily agree with the operational techniques put in place. In these cases, the costs of replacing any incorrect techniques will not be included in the analysis of costs and benefits for identifying BAT (see **Chapter 12**). Therefore, to avoid any expensive delays and reconstruction work, it is in the operator's interest to submit applications at the initial design stages. Any investment or construction work that an operator carries out before they have got a permit will be at their own risk and an operator cannot expect any such costs to affect the local authority's decision.

Staged applications – new LA-IPPC Installations

- 4.14. LA-IPPC and LAPPC installations are unlikely to be sufficiently complex to warrant staged applications, although ultimately this is a matter for each local authority to decide with the operator. However, for some novel and complex installations, with long lead times and multiple design and construction phases, authorities may find it difficult to determine an application properly at the design stage. If either the operator or the local authority consider a staged application is the most appropriate procedure, both parties should understand and agree beforehand that:
- a) the application is to be treated this way;
 - b) the information will be submitted in stages, with each stage fully consulted on; and
 - c) the application will not be determined within the normal four-month period – the actual time taken will depend on the number of stages involved and their complexity.
- 4.15. If an authority and operator decide in principle to proceed with a staged application, they should agree a plan for the full application. This will be submitted in stages, as the operator progressively develops the design plans. The operator may submit the first stage either when they have selected the primary process or, perhaps more usually, when they have finished an outline of the process design. The operator will then give the local authority further stages of the application as they work up more detailed proposals. Each submission will also be placed on the public register and will be open to consultation in the usual way.
- 4.16. The authority will finally determine the entire application. The authority and public consultees must be provided with a complete, consolidated application rather than set of separate submissions from each stage.

The authority cannot predetermine the outcome, and must take account of any new information that emerges from the final consultation.

- 4.17. Using the staged procedure is no guarantee that the application will be granted. However, the chances of refusal at the end of a staged application process should be small, as much of the application will already have been subject to public consultation. Possible objections or technical problems are more likely to emerge at an early stage. The operator therefore runs significantly less risk of an unsuccessful application.
- 4.18. If an operator wants to set up a major new, innovative process for which there is no guidance or the existing guidance is inadequate, it is their responsibility to assemble expertise and information on available techniques. An authority should not be expected to provide free consultancy advice, or advice that might prejudice their determination of an application later on. When the operator has developed the idea sufficiently, he or she should submit an application to be considered under the normal or staged application procedure.

Pre-application discussions

- 4.19. An operator and a local authority may find it helpful, particularly for larger or more complex proposals, to hold pre-application discussions before the operator makes a formal application. Other parties may join these discussions, for example relevant planning officers or, particularly where direct discharges to water or direct abstraction of water are concerned, the Environment Agency. The operator and authority may use the discussions to clarify whether a permit is likely to be needed. The authority may also give the operator general advice on how to prepare the application or on what guidance is available. Pre-application discussions may go into more logistical matters, such as the interaction between an LA-IPPC application and an application for planning permission, or whether the staged application procedure would be appropriate. They must not imply any advance agreement as to the outcome of any application. As above, authorities should not be expected to provide free consultancy advice and paras 23.38-40 advise on the possibility of charging for pre-application for discussions.

Operators' responsibilities – new installations

- 4.20. LA-IPPC and LAPPC place the onus on an operator to assess the effects of their operations, to explore ways of improving them, and to make proposals for the local authority's consideration. This also applies to substantial changes. To obtain a permit, an operator should demonstrate how he/she would manage the installations in a way that will meet the requirements of the EP Regulations. This should cover the full range of activities that the operator wants the permit to cover.

4.21. The level of detail in an application should be proportionate to the size and scale of the installation. Where any application form specifies particular information to be provided, the amount of information needed should be decided on a 'fit for purpose' basis. A requirement to report, give details, or describe should not be taken to imply that substantial text or a sizeable supporting documentation must be submitted, if the necessary explanation and evidence can be provided in much shorter form. A report could comprise a paragraph or two if that was agreed to be sufficient for the purpose. Alternatively, lengthy documents may be needed in particular circumstances.

4.22. For LA-IPPC applications, further factors when deciding the level of detail should be:

- whether proposed abatement techniques or operational procedures differ from that specified within the BREF or sector guidance (SG) notes;
- whether the installation is located in or near any sensitive location, or where there is or could be an environmental quality standard breach.

4.23. For Part B applications, the second bullet in 4.22 applies (although only in relation to emissions into the air). A second factor should be whether there is any proposal to deviate from any process guidance (PG) note.

Content of applications

4.24. The information required by local authorities in order determine an application is set out in **Annex VI**. In deciding the extent of information to provide the operator is advised to read the relevant sector or process guidance note where available. Having regard to these note(s) and to paragraphs 4.21-23 above, authorities will need to know the precise nature of the installation they are being asked to permit and how the operator proposes to deal with the environmental effects of the installation. It is essential that the application is sufficiently detailed, and with sufficient supporting maps and diagrams, to allow an authority to examine all elements of the activities and installation for which a permit is being sought, covering everything from the receipt of raw material to the despatch of waste and finished products.

4.25. Overall, operators should bear in mind that regulators are required by Article 3 of the IPPC Directive (see a-f below) to take account in determining the conditions of an LA-IPPC permit the general principle that installations and mobile plant should be operated in a way that

- a) all the appropriate preventive measures are taken against pollution, in particular through application of the best available techniques;
- b) no significant pollution is caused;

- c) waste production is avoided in accordance with Council Directive 2006/12/EC¹ on waste; where waste is produced, it is recovered or, where that is technically and economically impossible, it is disposed of while avoiding or reducing any impact on the environment;
- d) energy is used efficiently;
- e) the necessary measures are taken to prevent accidents and limit their consequences;
- f) the necessary measures are taken upon definitive cessation of activities to avoid any pollution risk and return the site of operation to a satisfactory state.

Only paragraphs a) and b) of the above listed extracts from Article 3 apply in the case of LAPPC.

4.26. Where an installation is located near to a sensitive area the operator should specify what additional measures, if any, he or she proposes to take to ensure emissions do not cause harm. Where the installation is likely to cause a breach of an environmental quality standard (only air quality standards for LAPPC) the operator should assess the effects of any additional emissions (see paragraph 15.1 for further details).

Ensuring applications are complete and duly-made

4.27. Applications should give all the information a local authority needs to make a determination. If an operator fails to do this, the authority may have to request additional information, delaying the determination. It may also mean that the application is not 'duly-made' in accordance with paragraph 2 of Schedule 5 to the EP Regulations. This means that it cannot be accepted as valid. The determination period within which the application should be decided does not begin until the application has been duly-made. An application is not treated as duly-made when, for instance:

- it has not been submitted on a standard form (or all necessary parts of such a form have not been completed);
- it is for an installation that falls outside the remit of the LA-IPPC or LAPPC regimes;
- it has been sent to the wrong regulator;
- it has not addressed some key points, or there is substantial and obvious doubt over the basic adequacy of a key part of the application;
- the declarations have not been completed;

¹ references to 2006/12/EC must be construed as references to the [revised Waste Framework Directive](#) and read in accordance with the correlation table in Annex V of the 2008 Directive

- the operator is not a legal entity, or
- the necessary fee has not been paid.

4.28. When a local authority is of the opinion that an application is not duly-made, it should return it, along with any fee. As a matter of good practice, authorities should always tell the applicant why they consider an application was not duly-made. Authorities should use normal standards of reasonableness and common sense to assess whether applications are duly-made. For example, where non-critical information is missing it may be appropriate for the authority to hold the application in abeyance until the information is submitted, enabling the application to be treated as duly-made and the determination period to begin once the additional information is supplied.

4.29. A practice note on duly-made applications (special cases) was issued in AQ4(03). The cases it refers to related to the transfer from the 1990 Act regime to PPC, but the underlying principles are still relevant. AQ4(03) advised as follows:

An application may be duly-made and yet still not contain everything a local authority needs to determine the application. Authorities should apply a test of 'reasonableness' as to whether the information contained in the application complies with the 'duly made' requirements. In exercising this discretion, local authorities are encouraged in the following two particular cases to bear in mind that there may be good reason for an application not to contain everything needed for a determination yet still to constitute a duly-made application.

1. Where sector guidance notes have not been published by the time applications for existing LA-IPPC installations are due:

it may then be appropriate for applications for existing installations initially to be less comprehensive in particular areas that will be covered by the sector guidance notes and which are not covered by existing guidance; but the local authority needs to be satisfied that the operator has taken reasonable steps to meet the information requirements.

2. Where Defra has indicated a strong likelihood that the EP Regulations will be amended so as to transfer a particular category of installation from one Part of the Regulations to another:

it may then be appropriate for the application to be tailored to suit the amendment as proposed by Defra. In either of these cases, applications must still be submitted within the timescales specified in the Regulations, or else the installation will be operating without a permit and be liable to enforcement action. The application will subsequently need to be supplemented by information provided under a notice issued under paragraph 4 of Schedule 5 to the EP

Regulations, and the 4-month determination period will be extended by this procedure in the usual way.

Defra and WG will ensure that the annual statistical survey takes account of these cases, so that authorities are not penalised for delays in determining such applications.

Using existing data

- 4.30. Operators may draw upon or attach other sources of information in their applications, and indeed are encouraged to make use of existing information where it fits the purpose. However all information should be relevant to the type of application being made.
- 4.31. Such existing information might include documents relating to an installation's regulation under the Control of Major Accident Hazards (COMAH) Regulations (which will cover some, but not all of the requirements of LA-IPPC in respect of accidents); prior investigations for compliance with the Groundwater Regulations; copies of consignment and/or transfer notes; certified environmental management systems such as ISO 14001 or EMAS; or site reports prepared for planning purposes.
- 4.32. Operators may also attach information from previous regulatory regimes, unless there have been significant changes since these documents were produced.
- 4.33. They should make clear which parts of any attachments are relevant to their LA-IPPC applications and should demonstrate how they relate to the LA-IPPC requirements. Where applications are made on paper, authorities may be expected to ask for four copies of applications and associated documentation to facilitate consultation, and may on occasion request more if there are good reasons to do so.

Offence of making false or misleading statements

- 4.34. It is an offence under EP regulation 38(4)(b) for a person to make a statement that he/she knows to be false or misleading in a material particular, or recklessly to make a statement that is false or is misleading in a material particular where the statement is made:
- (i) in purported compliance with a requirement to furnish any information imposed by or under any provision of the EP Regulations; or
 - (ii) for the purposes of obtaining the grant of a permit to himself or any other person, or the variation, transfer or surrender of a permit.

The penalty for this offence upon summary conviction (in the Magistrates Court) is a fine not exceeding the statutory maximum (currently £5,000). On conviction on indictment, the maximum penalty is a fine (no limit specified) and /or imprisonment for up to two years.

Withdrawal of applications

- 4.35. Where an operator withdraws an application, the local authority may decide to retain the application fee in full with no refund, and especially if the application is withdrawn more than 56 calendar days after it has been duly-made. This guideline time period reflects the fact that authorities are likely, by then, to have begun public consultation and commenced a detailed assessment of the application.
- 4.36. Where an application is submitted for an installation which is subsequently deemed to be exempt from regulation by reason of amendment to the EP Regulations, authorities should, provided no permit has been issued, make a full refund of the application fee. Refunds of application fees will not normally be made after permits have been issued. Further information on fees and charges can be found in **Chapter 23** and in the charging scheme on the Defra website current at the relevant time.

EU Services Directive

- 4.37. The Services Directive requires that it must be possible to make applications electronically and with an electronic signature. This facility is being made available via the [Point of Single Contact \(PSC\)](#) .
- 4.38. The following should be borne in mind:
- if a local authority receives an application via the PSC it must deal with it as usual – and this does not preclude, for example, rejecting such an application as being not duly made because of inadequacy of information
 - authorities can still accept paper applications and applications made using forms provided on their website (see paragraph 4.6 above)
 - there is no specific obligation on local authorities to promote the PSC or to use it if the applicant has not done so
 - the PSC route does not override GGM advice on pre-application discussions (see paragraph 4.19 above), which are generally beneficial to all parties for any LAPC applications that are not straightforward
 - Local Government Regulation [now LGA] have issued specific [guidance for local authorities on pollution regulation and the Services Directive](#). All authorities ought also to have a Primary Liaison Point specifically to provide advice to staff on the Services Directive.

5. Planning and LA-IPPC/LAPPC applications

Guidance on co-ordinating LA-IPPC and LAPPC permit applications with applications for planning permission.

A2,B

- 5.1. If an LA-IPPC installation also needs planning permission, it is recommended that the operator make both applications in parallel whenever possible. This will allow the local authority to begin its formal consideration early on, thus allowing it to co-ordinate both the planning process and LA-IPPC application process (including in cases where different tiers of authority handle the different applications). It may also be beneficial to follow the same approach for LAPPC applications.
- 5.2. Guidance issued by the previous Government is contained in [Planning Policy Statement 23 \(PPS 23\)](#). As of April 2011, a review of planning policy was being undertaken by the Government, designed to consolidate policy statements, circulars and guidance documents into a single consolidated National Planning Policy Framework – see the Department for Communities and Local Government [website](#) for latest information. Planning guidance can also be found on the [Planning Portal](#). For reference only, paragraphs 8-12 of PPS23 are as follows:
 8. any consideration of the quality of land, air or water and potential impacts arising from development, possibly leading to an impact on health, is capable of being a material planning consideration, in so far as it arises or may arise from any land use.
 9. The Government's policy framework for planning was set out in the consultation draft of Planning Policy Statement 1: Creating Sustainable Communities. Planning should promote a sustainable pattern of land use that will contribute to meeting the country's economic, social and environmental needs, whilst recognising the precautionary principle. The planning system plays a key role in protecting and improving the natural environment, public health and safety, and amenity, for example by attaching mitigating conditions to allow developments which would otherwise not be environmentally acceptable to proceed, and preventing harmful development which cannot be made acceptable even through conditions. RSSs [Regional Spatial Strategies] and LDDs [Local Development Documents], which set the policy framework for the development of an area, can prevent harmful development and mitigate the impact of potentially polluting developments over the medium to long term.

Development control decisions on individual planning applications, particularly those for potentially polluting processes, can have an immediate impact on the local environment, human health and well-being. In considering proposals for development, LPAs [Local Planning Authorities] should take account of the risks of and from pollution and land contamination, and how these can be managed or reduced.

10. The planning and pollution control systems are separate but complementary. Pollution control is concerned with preventing pollution through the use of measures to prohibit or limit the release of substances to the environment from different sources to the lowest practicable level. It also ensures that ambient air and water quality meet standards that guard against impacts to the environment and human health. The planning system controls the development and use of land in the public interest. It plays an important role in determining the location of development which may give rise to pollution, either directly or from traffic generated, and in ensuring that other developments are, as far as possible, not affected by major existing, or potential sources of pollution. The planning system should focus on whether the development itself is an acceptable use of the land, and the impacts of those uses, rather than the control of processes or emissions themselves. Planning authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced. They should act to complement but not seek to duplicate it.
11. Close co-ordination between planning authorities, transport authorities and pollution control regulators is essential to meet the common objective that where development takes place, it is sustainable. It is important that:

Pollution issues should be taken into account as appropriate in planning decisions (having regard to development plan documents and all material considerations). Where, for example, new housing is proposed close to a source of potential pollution, the risk of pollution from the normal operation of the process or the potential impacts and the extent to which the proposals address such risks will influence whether or not development should proceed, as will the availability of sewerage and the drainage infrastructure. The generation of additional pollution from road traffic, the demand on natural resources and the discharges to the environment associated with any proposed development should also be considered.

Planning decisions can have a significant impact on the quality of air, water and land and therefore affect the environment. Examples might include proposals for a new riverside oil depot upstream of a drinking water intake or above a vulnerable aquifer, or for any development which gives rise to a significant increase in traffic and associated emissions eg an out-of-town shopping centre.

PPS23 Annex 1: Pollution Control, Air and Water Quality gives further guidance on the pollution control regimes that interact with the planning system together with good practice in considering these issues in development plans and when determining applications. LPAs and pollution control authorities should take account of the agreed working arrangements and protocols for technical co-operation between the Environment Agency and the Local Government Association outlined in Working Better Together.

12. The consideration of an Environmental Statement prepared as part of an Environmental Impact Assessment (EIA) is usually the most convenient way of ensuring the environmental impacts of a significant development proposal are comprehensively considered. Planning authorities should remain alert to the possibility of environmental impacts for proposals of any scale, regardless of whether a formal EIA is required.
- 5.3. [Planning Policy Wales](#) Chapter 13 provides similar guidance for operators and local authorities in Wales.
 - 5.4. Defra and the Department for Communities and Local Government published a [joint consultation paper](#) in September 2006 on options for improving the way planning and pollution control regimes work together in delivering new development.

6. Determining LA-IPPC (Part A2) applications

Guidance for local authorities on how to decide an application for an LA-IPPC permit, including flowchart.

A2

- 6.1. A flowchart showing the procedure for LA-IPPC applications is at the end of this chapter. It includes the stages necessary to comply with the Public Participation Directive 2003/35/EC.

Receiving an LA-IPPC application

- 6.2. On receipt of an application for an A2 installation, it is suggested that the local authority allocates the installation a reference number, which can be used in all correspondence. The local authority officer should check whether the operator has sent the form to the correct regulatory body, included the correct application fee and the required number of copies of forms, maps and plans. Authorities should aim to complete the assessment of whether an application is duly-made within 10 working days. Paragraphs 4.27 and 4.29 of the Manual advise on deciding whether an application is duly-made.

Duly-made applications

- 6.3. Once an authority has confirmed that everything is in place to determine an application, it is good practice to acknowledge to the operator that the application is duly-made and is being processed. Likewise, it is recommended that authorities provide the operator with details of the officer who will be dealing with the application. Duly-made applications should be placed on the public register, after taking into consideration any requests for commercial confidentiality (see **Chapter 8**) or national security (see paragraph 29.11). The application must be sent by the authority to relevant public consultees and be subject to appropriate consultation and public participation (see **Chapter 9**) within the timescales given in the flowchart in this chapter.

Returning applications not duly-made

- 6.4. If an authority considers that an application is not duly-made, it should be returned together with the application fee. The authority should explain why the application cannot be determined and what action the operator can take to make the application acceptable.

Determination by local authorities

- 6.5. The local authority should determine a duly-made application within 4 months of its submission (Schedule 5, paragraph 15 of the EP Regulations). Paragraph 16 of Schedule 5 explains how this period is calculated. In most cases the four months begins on the day the duly-made application is received by the local authority. This does NOT mean the day on which an application is assessed to have been duly-made. If, for example, an application is received on 2nd May and a decision is reached on 13th May that it has been duly-made, the four months begins on 2nd May. (If there is a case where consultation with another EU Member State is required and an authority is notified of this – see paragraph 10 of Schedule 5 – the clock stops when the authority receives the notification.)
- 6.6. This 4 months therefore does not include:
- a) any time between the date an operator is served with a notice under paragraph 4 of Schedule 5 requiring further specified information and the date that information is received; or
 - b) any time for public consultation on off-site conditions which does not overlap with the normal public consultation period; or
 - c) in relation to information affecting national security, any time between the date the Secretary of State/Welsh Ministers direct that a specified description of information must be referred to them to decide whether it should go on the public register, and their decision is made; or
 - d) in relation to commercially or industrially confidential information, any time between the date a local authority gives notice that information to be included on the public register may be commercially or industrially confidential; and
 - either
 - the date when the notified person replies that the information is not commercially or industrially confidential;
 - or
 - where there is no reply from the notified person, or the reply claims confidentiality, the date when the local authority determines whether or not the information is commercially or industrially confidential. If there is an appeal against a confidentiality determination, the period until the appeal decision is also excluded.

Further guidance on commercial confidentiality is in **Chapter 8**.

- 6.7. An authority and operator may agree a longer period than 4 months. If the operator does not agree to a longer period and the 4 months pass without a determination, the operator can serve a notice on the authority referring to paragraph 15(1) of Schedule 5. On the day such a notice is served, the application is deemed to have been refused, and the operator can appeal against this deemed refusal. If the operator

does not treat non-determination in four months as a deemed refusal, the determination period simply continues until the authority reaches a decision.

- 6.8. Authorities must either grant a permit with conditions or refuse it. Decision documents are required under the Public Participation Directive (see **Chapter 9**).

Determination by the Secretary of State or Welsh Ministers

- 6.9. The Secretary of State or Welsh Ministers can require any application to be sent to them for determination. This has not so far happened under the EPA 1990 Part I or PPC regimes. Although there is no determination timeframe, the Secretary of State/Welsh Ministers will try to deal with these cases promptly. The local authority must consult as normal, but should send any representations to the Defra/WG. The Secretary of State/Welsh Ministers may choose to arrange a hearing, and will at present do so in any case if the authority or the operator asks for one. The Secretary of State/Welsh Ministers may then direct the authority to grant a permit, specifying which conditions should be included. Alternatively, the Secretary of State/Welsh Ministers may direct the authority to refuse the permit.

Requests for more information

- 6.10. Local authorities must decide what information they consider they need to determine an application. Even when an authority concludes that an application is duly-made, it may still (having regard to paragraphs 4.20-23) require the operator to submit additional information.
- 6.11. To obtain more information, authorities can serve a further information notice (FIN) on the applicant under paragraph 4 of Schedule 5 of the EP Regulations. A specimen FIN is included in [Part D of the Manual](#) and can be downloaded as a Word document. The notice must specify what further information is required and when it must be provided. It should do so in sufficiently precise terms to avoid doubt about what is sought. Authorities should also consider whether any further information merits additional consultation.
- 6.12. Local authorities should not use this procedure to delay applications unnecessarily, or to obtain additional information that is peripheral to the main issues, or is not strictly needed for the purpose of determining the application. Requiring extra information will impose a cost on the operator. On the other hand, it is right that this power should be used where duly-made applications do not contain sufficient information to enable a decision to be properly made. There may also be cases where it is appropriate to accept that certain information cannot be provided until the application is approved, such as decisions on the precise location of sampling ports in chimneys, which might only be determined during construction of a new installation and are therefore

best dealt with by a condition requiring final details to be agreed prior to commissioning.

- 6.13. Pre-application discussions can reduce the likelihood of more information being needed.
- 6.14. It is also open to authorities to ask for information informally, bearing in mind that such requests will not delay the determination period or have formal legal status. This further information should be regarded as forming part of the formal application and consequently be included on the public register subject to any confidentiality and national security considerations.
- 6.15. Authorities should not determine an application until they are satisfied with all the information. If the further information required is still insufficient, authorities may serve more FINs. They should not repeatedly request information on the same topic, but make reasonable attempts to get information from the operator.
- 6.16. Paragraph 4 of Schedule 5 gives authorities the power to serve a notice that an application is deemed to have been withdrawn if the information required in a FIN has not been provided by the due date and the application fee is not refundable. In these cases, operators have a right of appeal within 15 working days of being notified of the deemed withdrawal (Schedule 6, paragraph 3(1)(b)). Authorities should inform operators of these procedures at the time of a request for additional information.

Determining a permit

- 6.17. Authorities must either grant a permit with conditions or refuse it. All determinations must include reasons for the decision (see paragraph 17(3) of Schedule 5 of the EP Regulations) and this ties in with the Public Participation Directive requirements for draft decisions (**Chapter 9** and **Annex V**).
- 6.18. Therefore, reasons must be given when issuing a permit with conditions, as well as when refusing a permit. The extent of the necessary reasoning will depend on the complexity of the issues and the likely degree of controversy. Authorities should take a proportionate approach. For straightforward matters it may be sufficient just to state, by way of reasons, that particular conditions have been inserted as representing the authority's judgement of what constitutes BAT, having regard to the statutory guidance issued by the Secretary of State/Welsh Ministers and to all site specific considerations.
- 6.19. As soon as practicable, authorities must inform the applicant of its decision, rights of appeal, and both how to make an appeal (as per paragraph 17(2) of Schedule 5 to the EP Regulations) and what the time limit is.
- 6.19A. Under s58 of the [Marine and Coastal Access Act 2009](#) authorities are now required to ensure that permitting and enforcement decisions that

affect or might affect the UK marine area are taken in accordance with the appropriate marine policy documents “unless relevant considerations indicate otherwise”. If such decisions are not in accordance with these documents authorities must state their reasons.

“Marine area” is defined in s42 of the 2009 Act and can loosely be described as the area from mean high water spring tides, including tidal rivers and channels, out to ~200 nautical miles

As at 1 April 2011 the only such document is the [Marine Policy Statement](#) (MPS). In due course, local marine plans will be produced, with the first being developed from April 2011 by the Marine Management Organisation covering the coast from Flamborough Head to Harwich. In Wales, the intention is to have a national marine plan for the inshore and a national marine plan for the offshore by 2012/13. In Wales, the intention is to have a national marine plan for the inshore and a national marine plan for the offshore by 2012/13

Each local authority will need to consider how to discharge its duties under s58 on a case-by-case basis. **It is likely that in most cases authorities’ determination of BAT in the normal way will ensure that s58 obligations are met in relation to permit decisions.** However, authorities will want to satisfy themselves that this is so and if necessary consult the [Marine Management Organisation](#).

Authorities may consider that they should keep a simple written note showing that they have discharged their s58 responsibilities: eg to say that the authority considers either that its decision accords with the Marine Policy Statement and, where appropriate, the named relevant local marine plan, or that, for specified reasons, relevant considerations indicate otherwise. The same applies in relation to decisions on enforcement.

The Defra “[MAGIC](#)” web-based interactive map, which is produced by Defra, Natural England, the Environment Agency and others, and includes a coastal and marine resource atlas that may be of use.

Granting a permit

6.20. Advice is given on drafting permit conditions in **Chapter 13** and **Annex XI** gives the detailed legal basis for conditions as well as offering generic specimen conditions.

6.20A. Some companies who operate at many different sites might find it helpful if local authorities were to include the company’s site identifier in each permit, and also in correspondence and invoices. This may help reduce the likelihood of mix-ups between sites.

Refusing a permit

6.21. In accordance with paragraph 13 of Schedule 5 to the EP Regulations, an application must be refused if the applicant

- will not be the operator of the installation, or
- will not operate the facility in accordance with the permit.

6.22. An example of where an authority might refuse an application is when an operator proposes locating a new installation close to an extremely sensitive environment, but with no known way to provide adequate control; or the information provided by the operator does not provide a reasonable basis to determine the permit conditions. This latter example should include consideration of the operator's responses to requests for additional information.

6.23. Authorities should not grant a permit if they think that the operator will not be able to comply with the conditions set within the permit. This may be where the authority has reason to believe that the operator lacks the management systems or competence to run the installation according to the application or any permit conditions, perhaps because conditions of a previous regime were persistently breached. (Guidance on operator competence is in **Chapter 11**.)

6.24. Paragraph 12.13 advises on authorities being in a position to justify their decisions.

6.25. Finally, in line with paragraph 6.19, authorities should refuse an application if they consider that the applicant would not be the person who would have control over the operation

Compensation in relation to off-site conditions

6.26. The EP Regulations (regulation 15(1) and Part 2 of Schedule 5) allow local authorities to impose conditions requiring operators of LA-IPPC installations to carry out work on land that does not form part of their installation. If the operator needs consent from anyone before starting this work, the person must grant it. The person granting consent may be entitled to compensation from the operator.

6.27. The rules for assessing the amount to be paid as compensation are set out in paragraphs 25-27 of Schedule 5 to the EP Regulations. Disputes over compensation claims are determined by the [Lands Tribunal](#) tel 020 7612 9710.

Health and safety issues

6.28. The EP Regulations are in place to effect environmental protection rather than worker protection. Full co-operation between the Health and Safety Executive and local authorities is important to ensure that both sets of controls are effective and compatible.

6.29. Requirements of a permit should not put at risk the health, safety or welfare of people at work; equally permits should not contain conditions whose only purpose is to secure the health of people at work. That is the job of the HSE or where appropriate local authority officers

enforcing Health and Safety legislation. However the EP Regulations include the general principle (by reference to Article 3(e) of the IPPC Directive - see **Annex XI** of the Manual) that the necessary measures are taken to prevent accidents and limit their consequences. **Chapter 20** deals with accidents and preventative measures.

- 6.30. Where environmental protection demands tighter standards of control than those required to safeguard persons at work, these tighter standards should apply provided that they have no adverse effects on worker protection.
- 6.31. Effective liaison is necessary between local authorities and HSE officials to ensure both are adequately informed on matters of mutual interest. This may include operational matters, enforcement, comments on planning issues, incidents, interpretation of technical standards and disclosure of information.
- 6.32. It is recommended that the HSE or local authority health and safety team are informed where it is proposed to take formal or informal enforcement action at premises where there is a joint interest.
- 6.33. The HSE have a major role in connection with emergencies, serious accidents and other incidents which may affect occupational and or public health or safety. Whenever a local authority learns of an incident where HSE may have an interest they should pass on the information as soon as practicable. This arrangement is without prejudice to any such emergency planning, civil defence or other such functions the authority may have.

Appeals

- 6.34. The applicant has the right to appeal to the Secretary of State/Welsh Ministers if an authority refuses a permit or if the applicant is dissatisfied with the conditions imposed. **Chapter 30** gives more information on appeals.
- 6.35. Paragraph 6.16 describes the right of appeal where an application is deemed to have been withdrawn because information has not been supplied.

Permit reviews

- 6.36. Permits should be reviewed periodically and must be reviewed where
- the pollution caused by the installation is of such significance that the existing emission limit values of the permit need to be revised or new such values need to be included in the permit;
 - substantial changes in the best available techniques make it possible to reduce emissions significantly without imposing excessive costs;

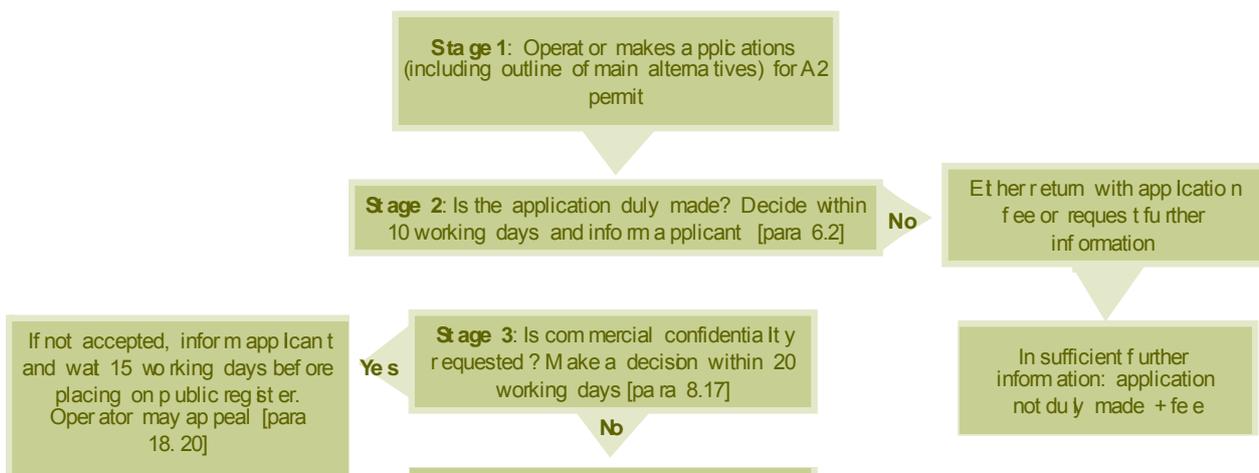
- the operational safety of the process or activity requires other techniques to be used; and
- new provisions of Community or national legislation so dictate.

These requirements stem from Article 13(2) of the IPPC Directive which is referenced by paragraph 7 of Schedule 7 of the EP Regulations.

6.37. Where any of the above circumstances do not apply, the periodic review frequency will depend on the particular circumstances of each case. However, in general terms, it is considered that a frequency of once every eight years ought normally to be sufficient. The sector guidance notes provide guidance for each sector.

A2 application procedures

The timescale can be up to 5 months and 3 weeks, excluding time given with a request for information notice, time taken to determine a request for commercial confidentiality (under an appeal, information must remain withheld until determination of the appeal), or time taken to consult on off site conditions. The “stages” in the boxes below align with those in **Annex V**. The paragraphs/chapters in square brackets refer to paragraphs or chapters in the Manual.



7. Determining LAPPC (Part B) applications

Guidance for local authorities on how to decide an application for an LAPPC permit, including flowchart.

B

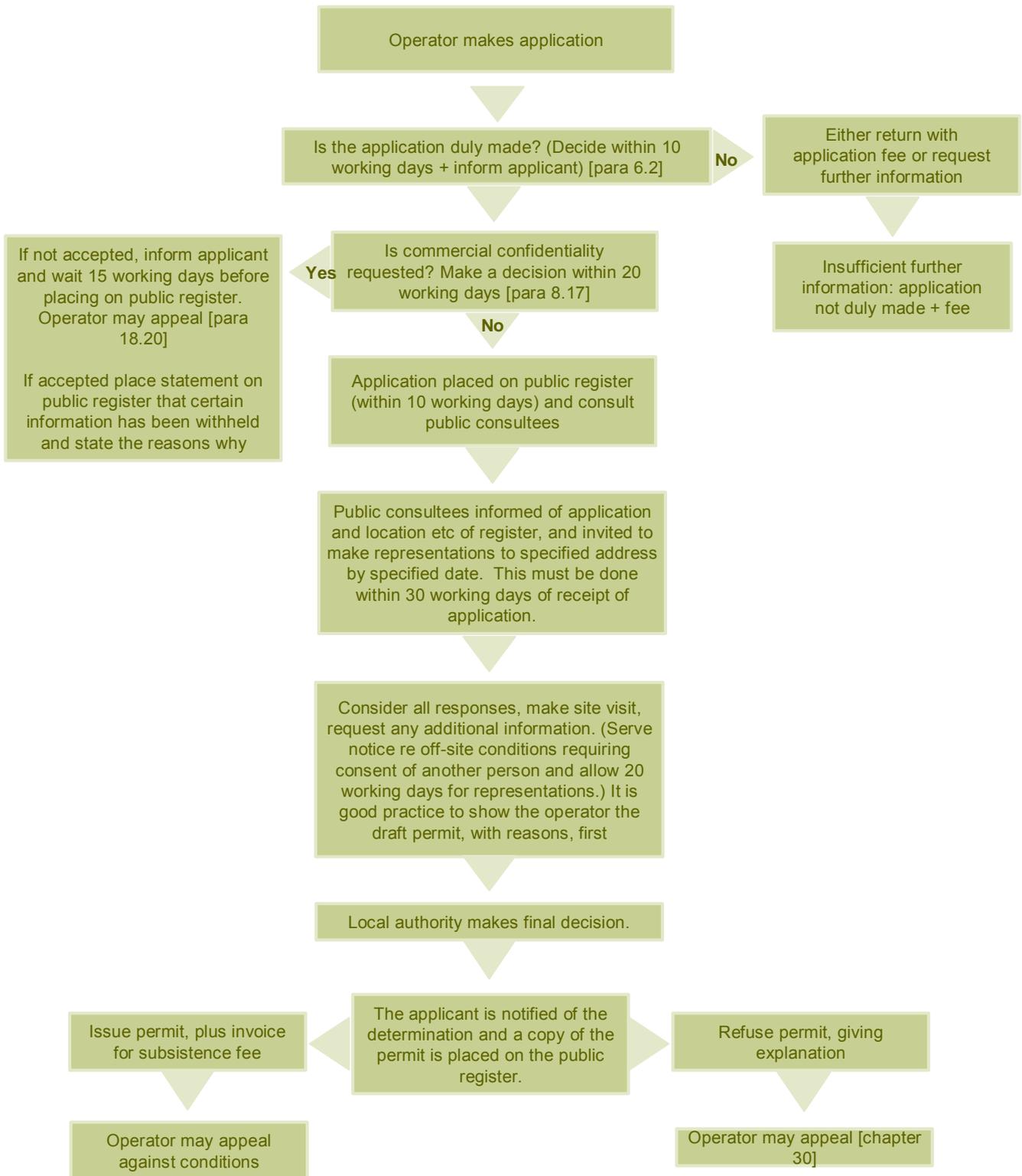
7.1. The procedures are the same as described in Chapter 6 for LA-IPPC except:

- the determination period for dry cleaners and small waste oil burners is 3 months (not 4);
- the Public Participation Directive does **not** apply to **LAPPC installations**;
- any references to **Chapter 9** where they relate to the Public Participation Directive do not apply;
- the advice in paragraph 6.18 on proportionality will be all the more relevant for LAPPC installations;
- the final two sentences of paragraph 6.29 do not apply;
- the relevant reference in paragraph 6.36 is to paragraph 6 of Schedule 8 of the EP Regulations.

A flowchart showing the Part B procedures is below.

Part B application procedures

7.2. The timescale can be up to four months, excluding time given with a request for information notice, time taken to determine a request for commercial confidentiality (under an appeal, information must remain withheld until determination of the appeal), or time taken to consult on off site conditions. The paragraphs/chapters in square brackets refer to paragraphs or chapters in the Manual.



8. Confidentiality and access to information

Guidance on dealing with confidentiality requests and information access under the Freedom of Information Act and the Environmental Information Regulations.

A2,B

- 8.1. An operator may request certain information in relation to a LA-IPPC or LAPPC permit to remain confidential, ie not be placed on the public register. The onus is on the operator to provide a clear justification for each item he or she wishes to be kept from the register. EP regulation 2(1) defines 'commercial information' as "information that is commercially or industrially confidential in relation to any person".
- 8.2. The Freedom of Information Act (FOIA) and the Environmental Information Regulations (EIR) are relevant to confidentiality decisions and also to issues relating to public registers (see **Chapter 29**).
- 8.3. Paragraphs 8.4-8.14 give general advice on the operation of the FOIA and the EIR. Paragraphs 8.15-8.24 deal confidentiality under LA-IPPC and LAPPC and address the inter-relationship with the EIR.

Freedom of Information Act and Environmental Information Regulations - general

- 8.4. [The Freedom of Information Act 2000](#) and [Environmental Information Regulations 2004 \(SI 3391\)](#) create a new system of fully enforceable rights of access to information held by public authorities. These rights apply to all information no matter how recent or how old, and to all information held by the authority. This includes information received from third parties. ([The Data Protection Act 1998](#) continues to provide access for individuals to their own personal data.)
- 8.5. More about access to information legislation can be found
 - on the [Defra website](#)
 - from the [Information Commissioner's Office](#)
 - from the [Ministry of Justice](#) and
 - in "[Hints for Practitioners Handling FOI/EIR Requests](#)" issued by the Information Commissioner's Office, Defra and others.

Readers of the Manual should bear in mind that interpretation of FOIA and EIR is a developing area, and it may be sensible to check these websites for the latest guidance and interpretation, particularly for potentially controversial cases.

- 8.6. There are a number of exemptions in FOIA and exceptions in the EIR which protect information from disclosure. The EIR **exceptions are more limited where information to be disclosed relates to information on emissions** (see paragraphs 8.8-8.10 below). Under the FOIA (which applies where the information requested is not environmental information) the exemptions are either absolute, in which case the information requested is exempt as a matter of course, or qualified, in which case the release of information has to be considered in the context of the wider public interest (the 'public interest test'). Under the EIR, in relation to environmental information, all exceptions are subject to the public interest test. The public interest test means that if the public interest in disclosure outweighs the public interest in withholding the information, it must be disclosed. The EIR stipulate that there should be a presumption in favour of disclosure. This means that where the public interests in withholding and disclosing information are evenly balanced, the information must be disclosed.
- 8.7. The decision about where the balance of public interest lies, and whether information should be released, rests with the public body that holds the information – not the supplier of the information. However, it is good practice, wherever practical, for local authorities to consult with the relevant third party before reaching a decision on disclosure of information which they have supplied. This will enable the third party to highlight any harm which might arise from disclosure, and the authority to take careful account of this in weighing the public interest. Authorities should have regard to the statutory Codes of Practice issued under both [FOIA and EIR](#) .
- 8.8. The exceptions to disclosure under the EIR are covered by EIR regulations 12(4) and (5) and can be summarised as follows **but** EIR regulation 12(9) says that to the extent that the environmental information to be disclosed relates to information on emissions, a public authority cannot use exceptions 12(5) (d)-(g) as grounds for refusing to disclose information:
- EIR regulation 12(4)
 - a. information not held
 - b. request is manifestly unreasonable
 - c. request is too general
 - d. request relates to unfinished data or documents
 - e. internal communications.
 - EIR regulation 12(5)

The release would have an adverse effect on:

- a. security
 - b. course of justice
 - c. intellectual property rights
 - d. confidentiality of public authority proceedings
 - e. commercial confidentiality
 - f. volunteered information
 - g. protection of the environment.
- 8.9. Emissions are not defined in either the EIR or in the Directive on Public access to environmental information from which they derive. The [Aarhus Implementation Guide](#) from which the Directive derives, takes its definition from the Integrated pollution and control (IPPC) Directive and defines emissions as a “direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in the installation into the air, water or land”.
- 8.10. The Defra guidance referred to in paragraph 1.5 above advises that EIR regulation 12(9) does not cover information on emissions that have not yet occurred: for example, information on plans to reduce the likelihood of emissions. In this case a local authority would still be able to consider refusing disclosure under exceptions 12(5)(d)-(g) subject to the public interest test. However, the fact that the information may include information relating to possible future emissions will be a factor that should be taken into account in assessing the public interest test.

Confidentiality under LA-IPPC/LAPPC + relationship with EIR

- 8.11. ‘Confidential information’ is defined in EP regulation 2(1) as information that is commercially or industrially confidential in relation to any person.
- 8.12. EP regulation 51(3) deals with cases where a local authority is required under EP regulation 50 to determine whether information must be included on the public register, or excluded from the register because it is confidential information. It provides: “to the extent that information relates to emissions the regulator must determine to include it on the public register”.
- 8.13. Defra and WG consider EP regulation 51(3) to have broadly the effect of bringing the EP test of confidentiality into alignment with that in the EIR where the information concerned relates to emissions; although the provisions are not identical. Since interpretation of FOIA and EIR is a developing area, it may be best for local authorities to obtain their own legal advice in specific cases. On the assumption that the EP and EIR regimes broadly complement each other, it is recommended that in any

given case a decision about what to place on a public register should have regard not only to the specific provisions in the EP Regulations, but also consider whether information would be released or withheld in response to an EIR information request. It should be remembered that even if information relating to emissions were not placed on the public register under the EP Regulations, that information would nonetheless be open to a request under the EIR (as would any other environmental information).

8.14. Exclusion of confidential information is also overridden if there is a direction from the Secretary of State or Welsh Ministers under EP regulation 56 requiring the information to be included in the public register.

Procedures for deciding whether to withhold confidential information under LA-IPPC and LAPPC

8.15. The possible exclusion of confidential information from the register can be triggered where:

- a local authority makes a determination that the information may be commercially or industrially confidential (EP regulation 51); or
- anyone objects (“the objector”) to the inclusion of information on the grounds of commercial or industrial confidentiality. This is called an “objection notice”. (The objector will invariably be the operator, but could be eg someone who supplies information to the operator. Whoever objects is referred to in Part 5 of the EP Regulations as “the information subject” , but for simplicity in the rest of this chapter it is assumed that it will be the operator.)

8.16. If an operator wants confidential information to be excluded from the register he or she should make a request at the time the information is submitted, whether as part of an application, as monitoring information, or for any other purpose. The operator should provide clear justification for each item he or she wishes to be kept from the register, having regard to the criteria described earlier in this chapter. It will not be sufficient to say, for example, that the raw material to be used in the activity is a trade secret and that consequently no details of the activity must be made publicly available. It may well be the case that documents may just need to have certain confidential information edited out or redacted before they are placed on the register.

8.17. The amount of information asked to be excluded from the register should be kept to the minimum necessary to safeguard the operator's commercial advantage (to the extent that this is permitted under the above criteria). It may assist a local authority if the information the operator wishes to be excluded is submitted in a way which will allow it to be easily removed should the claim be granted: for example on separate pages, marked ‘claimed confidential’.

8.18. The local authority must reach a decision on whether information must be withheld from the register within 20 working days (or such longer period as is agreed with the operator) of:

- the date when the operator requests information to be excluded under EP regulation 48(1)(b); or
- the date when the operator objects to information being included after a notification by an authority under EP regulation 49(1); or
- the date 15 working days onward from when the EP regulation 49(1) notice is given if, by then, no response has been received to the 49(1) notice.

The authority may only determine requests based on the information provided to them. If the information provided does not clearly demonstrate that information should be legitimately protected, the authority must determine that it is not confidential.

8.19. In reaching its decision, or 'determination', a local authority must apply the legal criteria and

- take account of any reasons given by the operator in any objection notice,
- apply a presumption in favour of putting the information on the register, and
- exclude only information that is commercial or industrial information; its confidentiality is provided by law to protect a legitimate economic interest; and taking account all circumstances, the public interest in maintaining the confidentiality of the information outweighs the public interest in including it on the register.

EP regulation 51(4) enables other information to be withheld if it cannot reasonably be separated for the purposes of inclusion on the register.

8.20. If an authority fails to notify the operator of its determination within the 20 working days (or agreed longer period) referred to above, the operator may write to the authority confirming that the request has not been determined. Such a notice automatically triggers a deemed decision to place the information on the register and the right of appeal against this decision. The operator may appeal within 15 working days of the date of the deemed decision (ie the notice).

8.21. Whether a local authority has actively determined that information is confidential, or there has been a deemed determination, the information must be kept from the register for a further 15 working days. This is the period within which an appeal may be made to the Secretary of State or Welsh Ministers (see **Chapter 30** for the address to send appeals to and EP regulation 53 for the appeals procedures). If no appeal has been made within that time, the information must be put on the register.

- 8.22. If an appeal is made to the Secretary of State or Welsh Ministers, the information in question must not be placed on the public register before the appeal is decided (EP regulations 51(4) and 52(2)).
- 8.23. If a determination is made regarding the confidentiality of monitoring information and the information is to be withheld from the public register, paragraph 4 of Schedule 24 to the EP Regulations requires a statement in the register indicating whether the operator has complied with permit conditions.
- 8.24. Paragraphs 29.15 and 16 of the Manual deal with the removal of information from the public register in cases where applications are withdrawn, installations are no longer regulated because of a change to the EP Regulations, or because the information is no longer required for public participation purposes.

Reconsideration of confidentiality after four (or fewer) years

- 8.25. EP regulation 55 says that an authority may only grant confidentiality for up to four years. An authority can specify a shorter period when they make the original decision.
- 8.26. An operator must re-apply for commercial confidentiality before the end of the four years (or shorter period). If the operator does not do so, authorities must place all previously commercially confidential information on the public register. As a matter of good practice, authorities should write and inform operators that the end of the time period is approaching, allowing sufficient time for re-application; but operators should not rely on authorities providing this service. Authorities should have systems in place to remind officers to add information for which the confidentiality protection has lapsed.

9. Consultation and public participation

Guidance about consulting on permit applications and applications for variations involving a substantial change.

A2,B

Consultation on permit applications

- 9.1. Consultation serves to inform the public (and other interested bodies) so that they can make better informed comments to the local authority allowing the regulator to make better decisions. Consultation can provide the authority with relevant facts and views that it might not otherwise have from the application, to help with its determination. This applies to applications for permits and for a substantial change to existing permits.
- 9.2. Local authorities must take into account any representations made by consultees during the allowed time periods.
- 9.3. Under EP there is no distinction between consulting the public and consulting what were known as ‘statutory consultees’ under PPC. The requirement is that all appropriate public consultees are informed of applications for permits and for substantial changes, other than those listed in paragraph 9.4. A ‘public consultee’ is defined in paragraph 1 of Schedule 5 to the EP Regulations as “a person who in the regulator’s opinion is affected by, is likely to be affected by, or has an interest in an application”.
- 9.4. ‘Substantial change’ for the purposes of the public participation provisions is defined in paragraph 5(5) of Part 1 to Schedule 5. It is different for LA-IPPC and LAPPC:
 - LA-IPPC:-

“a change in operation of an installation which in the regulator’s opinion may have significant negative effects on human beings or the environment and includes-

 - (a) in relation to a Part A installation, a change in operation which in itself meets the thresholds, if any, set out in Part 2 of Schedule 1; and

(b) in relation to an incineration plant or co-incineration plant for non-hazardous waste, a change in operation which would involve the incineration or co-incineration of hazardous waste.”

To give an example of (a), Section 2.2A(1) of Part 1 to Schedule 1 of the EP Regulations specifies a melting capacity of >4 tonnes for lead or cadmium; so if the change would increase the capacity of an existing installation by more than 4 tonnes, it falls within the meaning of paragraph (a).

- LAPPC:-

“a change in operation of an installation which in the regulator’s opinion may have significant negative effects on human beings or the environment”.

Paragraph 5(6) makes clear that only emissions to air should be considered in relation to 'significant effects' for Part B installations.

9.5. No form of public participation is required for

- mobile plant
- small waste oil burners (less than 0.4 megawatts)
- dry cleaners
- service stations.

However, it is open to authorities to undertake any such consultation they consider appropriate in relation to these sectors.

Procedures (Schedule 5, paragraphs 6 and 7)

9.6. The local authority must take the steps it considers appropriate to inform public consultees of the application within 30 working days of it having been duly-made, and where and when it can be inspected free of charge. This must include an invitation to make representations on the application, specifying the deadline for comments and where to send them.

9.7. The 30-day limit for informing public consultees is stopped if there is a national security or confidentiality determination. For the latter, the limit is replaced by

- a fresh 30 working days beginning when the operator withdraws his/her application for confidentiality; or
- 15 working days after the local authority makes its determination (to allow for an appeal); or
- when the appeal is decided or withdrawn.

While 30 working days is the formal limit, late comments should be taken into account if it is reasonable to do so.

9.8. There is nothing in the Regulations to specify what method should be used to inform public consultees aside from the requirement to place

applications on the public register. One or more of the following methods might be appropriate (subject to paragraphs 9.9 and 10 below):

- letters sent to local residents and interested people
- placing material on the authority's website
- site notices such as those used for planning applications
- the use of email notifications (including assembling databases of those wishing to be notified of future applications of different sorts)
- notices in public places such as libraries
- traditional advertisements in local or national newspapers.

9.9. It is only envisaged that newspaper advertisements will be required in the following circumstances:

- where the application is likely to give rise to local controversy; or
- where the activity subject to the application could have impacts wider than the immediate vicinity, and a newspaper advertisement will be the best way of alerting potentially interested people. (The impacts, in question, will be only in relation to air emissions for LAPPC installations.).

9.10. Authorities should consider whether other forms of publicity (such as those listed in paragraph 9.8 above) would be adequate in the particular circumstances of each case, and only if they have reasons for considering them to be inadequate should they opt for a newspaper advertisement.

9.11. No advertisements are required necessary for applications for small waste oil burners (below 0.4 megawatts net rated thermal input), petrol stations, or dry cleaners.

9.12. Where newspaper advertisements are not required, authorities should decide the appropriate form and extent of publicity on a case-by-case basis, having regard in particular to the significance of the potential environmental impacts, the degree of interest locally and beyond, and the need the authority perceives to obtain local and other [expert] opinion and to satisfy potential interests that their concerns can be fully aired.

9.13. The charging scheme provides for authorities to recoup the costs of newspaper advertisements from the relevant applicant/ operator. Since small waste oil burners, dry cleaners, petrol stations, and mobile plant are outside the public participation requirements, advertisements these cannot be charged to operators. The cost of any other form of publicity should be paid for by local authorities, and Defra/WG will take this into account in reviewing the level of application fees under the local authority charging schemes.

9.14. **Part D** of the Manual contains a specimen advertisement for use where authorities decide an application should be advertised, and a specimen letter to those public consultees it decides to consult.

National consultees

9.15. In line with paragraph 9.3 above, it is now for local authorities to decide which national consultees to inform of applications in individual cases. By way of guidelines, it is recommended that authorities consider consulting in accordance with paragraph 9.16 below.

9.16. **Part B and Part A(2)** (*but not small waste oil burners, dry cleaners or petrol stations*)

- the relevant Primary Care Trust (Public Health Board in Wales) – in line with published Health Protection Agency guidance, PCTs and PHBs are less likely to offer comments on Part Bs
- where the installation may affect a site of special scientific interest or a European site, if the site is in England, Natural England; if it is in Wales, the Countryside Council for Wales
- where waste operations are regulated as part of an A2 or Part B installation, the relevant local planning authority.

Part A(2)

- the Food Standards Agency
- where there may be a release into a sewer, the sewerage undertaker
- where the installation or mobile plant may be on a site requiring a nuclear site licence, the Health and Safety Executive
- where there may be a release into a harbour, the harbour authority
- where there may be releases into any territorial or coastal waters covered by a sea fisheries district, the local fisheries committee
- the Environment Agency (who must be consulted on all LA-IPPC applications because of their role in setting water discharge conditions (see paragraph 10.2 of the Manual)
- where there may be releases to canals, British Waterways
- where there may be releases to highways authority sewers, the highways authority.

Part B (*service stations only*)

- the petroleum licensing authority for the installation in question.

- 9.17. The website addresses of local offices of the above national consultees are given in **Annex IV**. Authorities may want to make contact with their local representatives of these consultees to see if there are any particular categories they would like to see or do not wish to see.
- 9.18. Local authorities should not provide information which is protected on grounds of national security or commercial confidentiality to some national consultees. However, if an application includes information about a release to a sewer, a site of special scientific interest, or a harbour managed by a harbour authority, then the relevant consultees for those interests should not be restricted from viewing such information. Where the question of whether information is protected on these grounds is being determined under the EP Regulations the authority should either wait until the outcome of the determination before consulting the national consultees, or should supply those consultees with only the parts of the application where protection is not at issue.
- 9.19. National consultees should provide authorities with any advice they think would help the authority either to determine whether or not to grant a permit or substantial variation, or to determine what conditions should be included. The authority must take account of national consultees' advice. Consultees may advise on, for example:
- the sensitivity of a particular part of the environment
 - other local issues, including previous experience of the applicant
 - requirements imposed by other regulatory regimes which may affect the LA-IPPC or LAPPC determination
 - specific effects of the proposal, such as the possible effects of releases on health
 - water consent issues
 - land contamination issues.

Health Protection Agency

- 9.20. The Health Protection Agency (HPA) published [guidance](#) in 2004 to help Primary Care Trusts in England and Local Health Boards in Wales fulfil their responsibilities, as statutory consultees, under the PPC Regulations. (Type "IPPC A Guide" into the site search engine).
- 9.21. It is worth noting, in particular, that the guidance includes some useful text on applications for PPC permits where a local authority is the regulator, and this applies equally under the EP regime. The following points summarise those key passages:

- a response should be proportionate to the risk of significant pollution from any given installation, with A1 installations being potentially more polluting than A2. The HPA guidance concentrates on installations covered by the IPPC Directive, A1 and A2 - see para 1.5.3 in vol 1.
- Part B installations present an even lower potential to pollute and a response to an application for a Part B installation (other than to provide factual information about any local health sensitivities or to inform that there are none) would only be required in exceptional circumstances - see para 1.7.4 in vol 1.
- for Part B installations, Primary Care Trusts are recommended to ask for the use of the Environment Agency's H1 screening tool only in exceptional circumstances - see para 3.3.13 in vol 2.

Relevant applications

9.22. The above guidance on informing public consultees about applications applies (subject to paragraph 9.11 above) to all applications for a permit; to all applications to vary an environmental permit if it involves a substantial change; and to any non-substantial change application if the local authority considers public consultees ought to be informed.

Considering consultation comments

9.23. Local authorities must take into consideration any representations made by consultees during the allowed time periods. However, the authority can still take account of representations after the formal deadline and as a matter of good practice they should do so whenever they reasonably can. Authorities may wish to respond to points raised within consultations.

Public Participation Directive (LA-IPPC installations only)

9.24. The Public Participation Directive 2003/35/EC (PPD) is one of three legislative instruments that introduce the provisions of the UN-ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (also known as the Aarhus Convention) into European Community Law. It can be found by searching at the [EUR – Lex home page](#). It is given legal effect by paragraph 6 of Schedule 7 to the EP Regulations, which refers to Article 15(1) of the IPPC Directive.

9.25. The **PPD does not apply to Part B installations** for which existing procedures remain unchanged.

9.26. In outline summary, the main changes brought in by PPD are:

- applications must include an assessment of alternatives
- draft decisions may be given further publicity

- where the public does comment on the draft decision, final decisions may also be given
- publicity.

Paragraph 16(3)(d) in Part 1 of Schedule 5 of the EP Regulations specifies a period of 20 working days for consultation on draft decisions.

9.27. **Annex V** to the Manual contains a detailed summary of the additional procedures and specimen advertisements. The LA-IPPC application procedure flow chart in **Chapter 6** of the Manual incorporates the stages introduced by the Public Participation Directive.

10. Dealing with water consent issues – LA-IPPC installations

Guidance cleared with the Environment Agency on dealing with LA-IPPC permit conditions concerning water pollution, including Environment Agency charges.

A2

Applying for a permit

- 10.1. The operator/applicant for an LA-IPPC installation should know how many discharges the installation has when applying for a permit. If in doubt he/she, should check with the relevant local authority or Environment Agency officer. If an authority is unsure, the Agency should be contacted before any application is accepted as duly made.
- 10.2. The Environment Agency must be consulted by the relevant local authority for all LA-IPPC applications (including applications for a substantial variation). This is so that the Agency can decide whether to exercise its functions under EP regulation 58. That regulation enables the Agency to specify to an authority the water emission limit values or conditions it considers appropriate. This can cover prevention or reduction of emissions directly to controlled waters and those made to public foul, combined or surface water sewers.
- 10.3. In response to such paragraph 10.2 consultation, the Environment Agency should be expected to supply the local authority with any information relating to water consent issues at the installation. Where served with a regulation 58(2) notice, an authority is required by the regulation 58(3) to ensure the LA-IPPC permit includes either the emission limit values or conditions specified in the notice, or such tighter values/conditions as the authority thinks fit.

Setting the conditions of a permit

- 10.4. The Environment Agency can be expected therefore to supply the local authority with a suitably-worded condition or conditions, which the authority can in turn import directly into the permit, giving reasons for the inclusion of the condition. For completeness the Agency should supply the authority with details of any previous breaches of discharge consents, prosecutions (successful or otherwise) and any relevant monitoring data.

10.5. The sector guidance notes address water discharge standards. If a local authority considers it to be BAT for the entire installation to set more onerous limits it then it must be able to show, to operators and any third party interests, documented justification to support the process for reaching this decision. Authorities may then find it necessary to issue a variation notice – see **Chapter 24**.

10.6. **Annex XI** contains a specimen EP regulation 58 Agency notice and a specimen response for an authority to send confirming the action it has taken. (The specimen notice is included for information. It has been adapted from the equivalent previous PPC notice used by the Agency, and therefore authorities should be aware that the Agency might adopt a slightly different version.)

The March 2009 Memorandum of Understanding between the Agency and Lacors [now LGA], reproduced at the end of **Annex X**, gives the telephone number for the Agency's single point of contact for technical water quality matters in paragraph 5. The relevant Agency email address is sheffieldnpt@environment-agency.gov.uk.

The Annex XI notice should be used in all correspondence between the Agency and local authorities. Specifically, it should be used by the Agency to advise authorities of permit conditions, and authorities to inform the Agency when a new A2 permit has been issued, and if that permit is varied, revoked, surrendered or transferred. The remainder of the Memorandum is redundant because the Agency no longer levies water charges.

10.7. The Agency monitors all watercourses. Analysis of the monitoring allows the Agency to make an assessment of the load (in terms of pollution) that a particular water course is able to withstand, ensuring the relevant Environmental Quality Standards (EQS) or Environmental Assessment Levels (EAL) are not exceeded. This is taken into account when assessing applications and setting permit conditions.

10.8. Paragraph 4.19 advises early involvement of the Environment Agency, especially where direct discharges to water or direct abstraction are concerned. It is particularly important that there is contact between an authority and the Agency in good time before the determination date if a condition is required for water consent issues.

10.9. It may be helpful, where possible, to hold one or more liaison meetings between Agency and local authority officers, in order to discuss a number of installations at once.

10.10. It is certainly good practice as well as beneficial to undertake at least one joint site visit, prior to a permit being issued. The Agency in supplying a suitably-worded condition should supply any additional information to the local authority relevant to the condition, for example, additional monitoring which may be required, standard monitoring practices, or deviation from such, and details of the frequency of monitoring.

- 10.11. On receipt of an application, involving a discharge to controlled waters or sewer, authorities should forward applications to the Agency so that the Agency can assess whether the level of information supplied is adequate. As under the PPC Regulations when the Agency was a statutory consultee, the Agency can be expected to aim to respond within 28 days from receiving the application, and sooner if possible; but authorities should also be prepared to show flexibility where this will not delay the overall decision on the application.
- 10.12. The local Agency officer will use information derived from their environmental monitoring of the watercourse to provide minimum standards for discharges of process waters from the installation (limit values or conditions) that an operator must achieve to protect receiving waters.
- 10.13. Environment Agency officers will not assess BAT for the installation in deriving standards for protection of the watercourse.
- 10.13A A Part A2 permit supersedes any Environment Agency discharge consent for a permitted installation. But consents remain in force unless and until they have been formally revoked. Operators are therefore advised to apply to the Environment Agency for revocation of any such consents, both to avoid paying the annual fees and to prevent any possibility of overlapping regulation and enforcement.

Discharges to sewers: trade effluent consents

- 10.14. It is illegal for operators to make a discharge of trade effluent to a public sewer without the consent of the sewerage undertaker. Operators must apply to the sewerage undertaker for a trade effluent consent, which will set the conditions for a discharge to sewer. This requirement applies to discharges from LA-IPPC installations. The conditions in the trade effluent consent will not necessarily be derived for the protection of the environment, but will be set for the protection of the sewer, the sewage treatment process, and compliance by the sewerage undertaker with its discharge consent.
- 10.15. The sewerage undertaker is required to consult the Environment Agency if a new or altered trade effluent discharge could alter the effect of the treated sewage discharge on its receiving water. The Agency will check whether the proposed discharge to foul sewer could have any significant adverse effect on the receiving water either a) after treatment at the sewage works, or b) by discharge from a combined sewer overflow before reaching the sewage works. If it believes that an adverse effect is likely, it will request the sewerage undertaker to include specific requirements in the trade effluent consent. The Agency will not usually be consulted on the trade effluent if the trade discharge was previously consented and is not altered.
- 10.16. Paragraph 9.16 of the Manual also lists the sewerage undertaker as a recommended national consultee on any LA-IPPC application where there may be a release into a sewer.

10.17. There is no mechanism for the Agency to recover costs it incurs while determining requirements for a discharge to sewer.

Discharges to sewers: EP permits

10.18. When determining emission limit values for discharges to sewer from a LA-IPPC installation, the reduction in pollution provided by the sewage treatment plant should be taken into account. This is so that:

a) an equivalent level of protection of the environment as a whole is guaranteed, and

b) taking such treatment into account does not lead to higher levels of pollution.

10.19. Where an operator discharges to a public sewer the local authority should send the sewerage undertaker a copy of the application (as per **Chapter 9**). The sewerage undertaker should notify the authority of the levels of pollutants that it believes are necessary to achieve its objectives. The authority should normally consider these in determining the EP permit requirements. In all cases the effluent discharged from the installation must not give rise to a potential breach of an EQS or EAL in the final receiving water, nor should it cause non-compliance by the sewerage undertaker of any discharge consent.

10.20. In many cases, the sewerage undertaker's trade effluent consent and the requirements needed to protect the ultimate receiving water are closely aligned. Where the requirements of the trade effluent consent are adequate and there is a simple discharge, it is sufficient for the local authority to rely on the trade effluent consent and not to replicate limits in EP permit conditions.

10.21. Where there is a complex effluent that requires additional control to protect the environment, the Environment Agency may, in its response to the consultation on the application, request the authority to include requirements on the trade effluent to sewer within the EP permit.

After the permit has been issued

10.22. Once a permit has been issued local authorities and the Environment Agency must continue to work in partnership to ensure effective protection of the aquatic environment. The Agency will try to respond to reasonable requests from authorities to help them enforce the conditions in the permit. Authorities should maintain contact with local Agency officers, who should be able to help with advice on checking compliance and interpreting monitoring data. Likewise local Agency officers will want to be able to contact local authority regulators easily if their monitoring of the quality of the watercourse indicates that further action is needed to control emissions.

- 10.23. [Deleted – Environment Agency has stopped levying water subsistence charges]
- 10.24. Under EP regulation 58(2), the Agency can serve notices at any time after a permit has been issued, to reflect, for example, changes in European requirements.
- 10.25. Local authorities are responsible for enforcing conditions relating to water discharge like any other permit condition, although the Environment Agency may provide some support. In the event of an appeal in relation to water discharge conditions, authorities should copy any relevant documents to the Agency so that representations can be made to the Secretary of State/Welsh Ministers.
- 10.26. For discharges to joint pipelines (ie discharges from an LA-IPPC installation that combine with other discharges that are not local authority-regulated), authorities should take responsibility for the conditions of the permit at the point that it discharges into the joint system. The Agency will have responsibility for the discharge at the point where it enters controlled waters (as defined by the Water Resources Act 1991), and will set conditions for the discharge that cover the whole of the discharge.
- 10.27. If the Agency detects a breach in the joint discharge, it may serve notice requiring samples to be taken on both the discharges regulated by the Agency and those regulated by the local authority in an effort to track down the source of the pollutant. The data will be made available to both organisations and the appropriate regulator can then consider enforcement action.
- 10.28. Where a breach is shown to be from an LA-IPPC installation and has also resulted in a breach at the point of discharge into controlled waters, the local authority should take the lead in any subsequent enforcement action. The Environment Agency, however, also retains its powers to enforce water quality legislation in relation to any incidents caused by an A2 installation.
- 10.29. Where the breach was detected from checking compliance with the discharge consent, with no evidence as to which installation caused it, the Agency would be expected to take the lead in any subsequent enforcement action. The relevant authority would be expected to assist the Agency in its investigations by providing any relevant evidence eg monitoring in relation to the operation of the LA-IPPC installation.
- 10.29A In following the advice in Chapter 28 of the Manual concerning enforcement, for water incidents caused by A2 installations local authorities may like to have regard to the tables in Annex XXI to help them decide the seriousness of an incident and what enforcement action may be appropriate. The tables are a shortened version of an Environment Agency scheme.

10.30. The table below summarises what authorities should expect from the Environment Agency when responding to the consultation and after the permit is issued:

Environment Agency will	Environment Agency will not
<ul style="list-style-type: none"> • provide minimum standards for protection of watercourse from process water discharges • provide revised standards subject to environmental monitoring of the watercourse • respond to reasonable requests to assist with enforcement 	<ul style="list-style-type: none"> • advise on water minimisation • advise on dealing with boreholes • advise on discharge to sewerage treatment works • advise on abstraction • advise in detail on monitoring of water conditions and will not carry out any monitoring at the installation • advise on discharges to groundwater – revised SG notes will identify measures to prevent or minimise groundwater contamination • assess BAT for controlling water discharges.

Fees and charges

10.31. [deleted – see 10.32]

10.32. From April 2012 the Environment Agency no longer charges for water aspects of applications, or for on-going regulation (subsistence, substantial variations, surrender charges). Paragraphs 10.33, 10.34, 10.35 and 10.37 have been deleted as a consequence.

10.33. [Deleted – see 10.32]

10.34. [Deleted – see 10.32]

10.35. [Deleted – see 10.32. The text not relevant to charging has been moved to paragraph 10.6]

- **charging scheme pre-April 2009**

10.36. [deleted]

- **charging method post-April 2009**

10.37. [deleted – see 10.32].

11. Operator competence, including management systems

Guidance on assessing the competence of operators, including environmental management systems, technical competence, the operator's compliance record, and financial competence.

A2,B

Operator competence

11.1. Operator competence supports the objectives of permitting by examining and maintaining the operator's ability to carry out the relevant activities and fulfil the obligations of an operator. **Chapter 4** advises on the meaning of 'operator'. **Chapter 27** describes the system of risk-based regulation which gives rewards (earned recognition) for good operator performance

11.2. Local authorities must consider operator competence when assessing:

- an application for a permit
- an application to transfer (or partially transfer) a permit.

Authorities can also consider operator competence when assessing, at any other time, the operator's ability to comply with the permit.

11.3. Authorities must not issue or transfer a permit if they consider that the operator will not operate the installation in accordance with the permit (EP Regulations, Schedule 5 paragraph 13). This applies to both LA-IPPC and LAPPC. In making this decision authorities should consider whether the operator cannot or is unlikely to operate the facility in accordance with the permit. Authorities might doubt whether the operator could or be likely to comply with the permit conditions if for example:

- the operator's management system is inadequate
- the operator's technical competence is inadequate
- the operator has a poor record of compliance with previous regulatory requirements
- the operator's financial competence is inadequate.

11.4. The following sections deal with each of these points in turn.

Management systems

- 11.5. In order to ensure a high level of environmental protection, operators should have effective management systems in place. The nature of the required management system depends upon the complexity of the regulated facility.
- 11.6. BAT covers both the plant in the installation and how it is used and is explained further in the following chapter. Operation of the installation includes:
- management
 - management systems
 - staff numbers
 - training
 - personnel competencies
 - working methods
 - maintenance
 - records
 - monitoring of any releases.
- 11.7. These issues should all be covered as necessary by the conditions within the permit (as per process and sector guidance notes). This means, for example, that an operator must have not only adequate technical controls on polluting releases but also ensure that operating staff are properly trained and adhere to procedures. Permits should require the operator to keep records of such training and procedures for inspection.
- 11.8. Defra and WG are seeking to encourage sector-specific or general industry training programmes which incorporate training on LAPPC and LA-IPPC issues. Where such training is available, for example for crematorium operators, authorities should generally-speaking give credit for attendance on relevant courses. This will also apply in relation to risk rating (**Chapter 27**) and consequently good practice could help to secure lower fees and charges for operators.

LA-IPPC

- 11.9. Under LA-IPPC and LAPPC, some operators will apply environmental management systems at their installations, certified to either the EC's Eco-Management and Audit Scheme (EMAS), the International Standards Organisation's standard ISO 14001, or the Institute of Environmental Management and Assessment's (IEMA) Acorn inspection scheme. Local authorities should encourage and take account of these standards.
- 11.10. Both EMAS and ISO14001 require that the management system include safeguards for legal compliance and a commitment to continuous improvement in environmental performance. The increased

transparency of external certification required by EMAS and ISO 14001, should therefore help to establish and maintain the operator's competence and the adequacy of the installation's management. EMAS additionally requires verified reporting of environmental performance and environmental regulators to be consulted before operators can be registered under the Scheme. Recognised quality assurance schemes may also be relevant, and local authorities may also take account of non-certified systems to the extent that these fulfil an equivalent role in safeguarding legal compliance and continuous improvement of environmental improvement.

11.11. Operators should maintain the standards of their management systems and competence throughout the installation's life. Local authorities may impose permit conditions to ensure this.

11.12. Additional information about environmental management systems can be found at obtained from [IEMA](#), or from [Envirowise/Wrap](#) , or using the environment and energy helpline freephone 0800 585794. The following is a selection of Envirowise sector-specific and case study guidance on EMS; these may provide indicative help, but users should take account that they were generally produced some years ago:

- GG338 – Environmental Management Systems for the Furniture Industry
- GG289 – Furniture essentials: environmental information for furniture manufacturers
- GG013 – Cost-effective Solvent Management
- GG118 – Environmental Management Systems Workbook for Metal Finishers
- GG043 – Environmental Management Systems in Foundries
- GG137 – How to set up Environmental Management Systems in the Textiles Industry
- ET189 – EMS in Printing: Assessing the Significance of Your Environmental Impacts
- GG344 – Setting up an environmental management system in the food and drink industry
- CS399 (Jul 03) – EMS drives down waste for plastics manufacturer
- CS498 (Apr 05) – Hazardous waste review steers automotive company towards cost savings.

[Envirowise/Wrap have advisors](#) who are able to provide free, confidential and independent advice on all aspects of resource efficiency and key environmental issues to businesses within the UK – 0808 100 2040 (9-5 Monday-Friday, and 9-12 Saturday).

11.13. Other sources of additional information are:

- [EU Eco-Management and Audit Scheme, \(EMAS\)](#) (UK Competent Body) and/or the [European Commission's website](#) or telephone the Institute of Environmental Management and Assessment - Tel: 01522 540069. There is an [EMAS toolkit](#) for small organisations.
- ISO 14001, the United Kingdom Accreditation Service (UKAS) provides a list of accredited third party Certification Bodies for ISO 14001 as well as EMAS. This can be obtained from their [website](#), or tel: 020 8917 8400, info@ukas.com .
- IEMA – Acorn scheme and BS 8555. This scheme provides accredited recognition for organisations who wish to improve their performance through the phased implementation of an EMS. Acorn participants implement the requirements set out in the different phases of the British Standard BS 8555 (BS 8555:2003: Environmental Management systems, Guide to the phased implementation of an EMS including the use of environmental performance indicators). Acorn can provide accredited recognition of legal compliance, company environmental policies, or help suppliers meet their environmental performance targets. Details of achieving accredited certification for the phased approach to adopting an EMS can be obtained from [IEMA](#) .
- the Welsh Government sponsors the [Green Dragon Standard](#) offers an environmental management system relevant to the specific needs of any company, large or small. The standard is also a phased approach and is made up of five steps that help organisations realise continual environmental improvement and gain a recognised accreditation for their environmental management system. Further information on the scheme: tel 01443 844866, enquiries@greendragonems.com .

LAPPC

11.14. All the current process guidance notes (PGs) contain the following advice on the desirability of operators having some form of structured environmental management approach.

“Effective management is central to environmental performance; It is an important component of BAT and of achieving compliance with permit conditions. It requires a commitment to establishing objectives, setting targets, measuring progress and revising the objectives according to results. This includes managing risks under normal operating conditions and in accidents and emergencies. It is therefore desirable that processes put in place some form of structured environmental management system (EMS), whether by adopting published standards (ISO 14001 or the EU Eco Management and Audit Scheme [EMAS]) or by setting up an EMS tailored to the nature and size of the particular process*. Process operators may also find that EMS will help identify business savings.

Regulators should use their discretion, in consultation with individual process operators, in agreeing the appropriate level of environmental management. Simple systems which ensure that LAPPC considerations are taken account of in the day-to-day running of a

process may well suffice, especially for small and medium-sized enterprises. While authorities may wish to encourage wider adoption of EMS, it is outside the legal scope of an LAPC authorisation/LAPPC permit to require an EMS for purposes other than LAPC/LAPPC compliance. For further information/advice on EMS refer to EMS Additional Information in Section 9.”

*For information, the British Standard for a phased approach to environmental management systems BS 8555 and the IEMA 's Acorn scheme of accredited recognition are examples of formalised tailored approaches. The PGs do not specify that BS8555 or Acorn must be used.

- 11.15. Local authorities are advised to give effect to this by consulting operators to agree an appropriate level of environmental management. Where no EMS is being used, Defra and WG suggest that authorities make use of the annual discussion on the [risk-based methodology](#), which in section 7 includes a score for an appropriate environmental management system being in place. Authorities can explain the principles underlying EMS, as outlined in the standard paragraphs in the process guidance (PG) notes, and ask the operator to consider what steps he/she is taking, or plans to take, which amount to an EMS tailored to the particular size and nature of the installation. Authorities can, if they see fit, reinforce this by using a variation notice to require EMS proposals to be submitted within a given timescale.
- 11.16. Once agreement has been reached on what is a proportionate EMS for the particular installation, it will normally be desirable to include key elements of it as a permit condition. (The PG notes all contain a standard line in the table headed 'compliance timetable': "all other provisions – to be complied with as soon as practicable, which in most cases should be within 12 months of the publication of this note".)
- 11.16A. An example framework for a basic EMS is given in **Part D** of the Manual, with thanks to the Norfolk Environmental Protection Group for their initial work on this.
- 11.17. In addition, the following guidance is included in all revised PG notes, which state that "Important elements for effective control of emissions include:
- proper management, supervision and training for operations;
 - proper use of equipment;
 - effective preventative maintenance on all plant and equipment concerned with the control of emissions to the air; and
 - it is good practice to ensure that spares and consumables are available at short notice in order to rectify breakdowns rapidly. This is important with respect to abatement plant and other necessary environmental controls. It is useful to have an audited list of essential items."
- 11.18. Local authorities and operators will wish to note that EMAS was revised in 2001. The Scheme now incorporates the environmental management system requirements of ISO 14001; extends participation to all economic sectors; requires the validated environmental statement

on performance to be produced annually; introduces flexibility so that the information provided in the environmental statement can be tailored so as to better meet the requirements of different stakeholders, such as the reporting/disclosure requirements of regulators”. Sources of further information/advice on EMS is given in paragraph 11.13 above.

- 11.19. Authorities and operators may also like to be aware that some High Street banks now offer preferential loan rates to organisations that can demonstrate they are committed to improving their environmental performance. At least one also produces a self-help guide for SMEs.

Petrol stations

- 11.20. The outline authorisation/permit in section 11 of PG1/14(06) does not include an EMS condition. This is because unloading and storage of petrol at service stations is a relatively narrow activity compared to most other LAPPC activities.
- 11.21. Defra and WG consider it unlikely that there will be any further air pollution control benefits to be secured by additionally adopting a structured environmental management approach for each individual service station. This is provided that appropriate conditions are included in permits dealing with vapour recovery and collection, preventative maintenance, prevention and handling of leaks, delivery, vapour loss during storage, instructions, operator competence etc, together with (if appropriate) a general BAT condition (see paragraphs 12.10 and 11 of the Manual). For information: it is also worth noting that the larger petrol companies are likely to have some form of environmental management system covering the retail activities they operate.

Technical competence

- 11.22. Operators should be technically competent to operate their installation. The test of competence should be related to what is necessary for the particular type and scale of installation. A risk-based approach should be taken, relating technical competence requirements to the likelihood and seriousness of environmental impacts that could occur from incidents arising out of inadequate competence. For LAPPC installations, the judgement should be based only on impacts from air emissions.
- 11.23. Environmental management systems may be the means of demonstrating and maintaining technical competence. The competence of individuals should form part of those management systems.
- 11.24. In assessing operator competence authorities may consider whether the operator or any other relevant person (see below) has been convicted of relevant offences. A relevant offence is any conviction for an offence relating to the environment or environmental regulation.

- 11.25. A “relevant person” in relation to a conviction for a relevant offence would include:
- the operator (see **Chapter 4**); and
 - a director, manager, secretary or other similar officer of an operator (when it is a corporate body) and a partner in a limited liability partnership (LLP), who has either been convicted of a relevant offence themselves, or who held a position in another corporate body or LLP when it was convicted of a relevant offence.
- 11.26. Authorities should not grant or transfer a permit to persons who have been convicted of a relevant offence if they believe that it would be undesirable for them to hold a permit. Refusal would normally be appropriate for offences that demonstrate a deliberate disregard for the environment or for environmental regulation: for example, where there are repeated convictions, or deliberately making false or misleading statements. It is recommended that authorities ask applicants to make a declaration in their application form stating whether any offences have been committed in the previous five years which are relevant to their competence to operate an installation in accordance with the EP Regulations. A form of words is included in the specimen application forms in Part C of the Manual – see also paragraph 11.32 below.
- 11.27. Authorities must take into account the terms of the Rehabilitation of Offenders Act 1974. The Act applies only where an individual has been convicted of an offence. However where the person convicted is a corporate body, the regulator should have regard to whether the conviction would have been spent if it had been committed by an individual and should normally treat the corporate body in the same way. Guidance on the 1974 Act can be found on the [Nacro website](#). The rehabilitation periods are:

Sentence	Rehabilitation period (from date of conviction)
Prison/youth custody more than 6 months + not exceeding 2½ years.	10 years
Prison/youth custody 6 months or less	7 years
Fine	5 years
Community Punishment Order	5 years
Community Rehabilitation Order	5 years
Conditional discharge	1 year/until order expires (whichever is longer)
Bind over	1 year/until order expires (whichever is longer)
Absolute discharge	6 months

- 11.28. Authorities are reminded of AQ7(06) which suggested that that both notices relating to significant cases and successful prosecutions are given more publicity. The reasons are that knowledge at national level of the extent and details of local authority enforcement action will serve

- a) as an important reminder to all operators of the potential pitfalls of non-compliance with the regulatory requirements, and
- b) as a means of authorities sharing with one another their enforcement experience.

Annex XII reproduces the annex to AQ7(06) which listed some relevant journals and their contact details.

11.29. An authority, if it thinks it right to do so, may still decide to grant or transfer a permit, or to allow a permit to continue in force, even though a relevant person has been convicted of an offence.

11.30. There may be cases where a waste activity comes under local authority regulation by virtue of the arrangements to support a 'one regulator per installation' approach. For those operations covered by Certificates of Technical Competence (CoTCs), a relevant CoTC remains an appropriate means of demonstrating technical competence. As at March 2010, approved schemes for operators of relevant waste operations that meet the criteria set out in paragraph 9.11 of the [Environmental Permitting Core Guidance](#) are:

- the scheme developed jointly by the Chartered Institution of Wastes Management (CIWM) and the Waste Management Industry Training and Advisory Board (WAMITAB))
- the scheme developed jointly by the [Environmental Services Association \(ESA\)](#) and the [Energy and Utility Sector Skills Council](#).

Record of compliance with previous regulatory requirements

11.31. **Annex XII** contains a table of offences recorded in the Defra/WG annual statistical report on LA-IPPC/LAPPC since 2003/4.

11.32. The specimen application forms in **Part C** of the Manual contain a declaration, requiring separate signature, of previous offences: either that

- no offences have been committed in the previous five years which are relevant to my/our competence to operate this installation in accordance with the EP Regulations;

or that

- the following offences have been committed in the previous five years which may be relevant to my/our competence to operating this installation in accordance with the regulations.

Financial competence

11.33. The operator of any regulated facility should be financially capable of complying with the requirements of the permit. Authorities should

normally only consider financial solvency explicitly in cases where the costs of complying with permit conditions (including purchase of equipment and costs of running and maintaining it) are high relative to the profitability of the activity, or if they have any other reason to doubt the financial viability of the operator.

11.34. Options for financial checks, where needed, include:

- a) credit reference check: with the authorisation of the operator, local authorities can carry out a credit check to assess whether the operator is of sufficient financial standing. Authorisation should be in writing – a specimen form can be found In Part D of the Manual.
- b) alternative evidence: if an operator does not wish to agree to a credit reference or has failed this check, he or she could be asked to provide recent evidence (normally not more than three months old) from a third party as to his/her financial standing. It must be credible evidence, stating that the operator is in a position to access adequate funds. This could include a statement of account addressed to the applicant from a financial institution, or a letter to the applicant from a financial institution showing that the applicant has sufficient overdraft or loan facilities.

Maintaining competence

11.35. Operators must maintain the standards of their management systems and competence throughout the installation's life. Regulators can impose permit conditions to ensure this.

11.36. If competences are not sufficiently maintained, local authorities may consider reassessing the competence of the operator. Authorities can reassess competence at any time and if not satisfied can revoke the permit.

Local authority competence

11.37. Although the focus of this chapter is on the requirements for operator competence, it is equally important that officers undertaking LAPPC and LA-IPPC regulation have the necessary capability to do so (see also paragraph 2.44 of the Manual). Guidance on this can be found in the 2004 edition of the [Chartered Institute of Environmental Health's Industrial Pollution Control Management Guide](#). In early 2007, the CIEH accredited a new one-week course specifically to train officers new to LAPPC/LA-IPPC or needing a refresher. At the end of 2009, the Institute of Air Quality Management accredited a second course. Local authority training costs are one of the considerations in the annual Defra/WG review of the level of LA-IPPC/LAPPC charges.

A competence that business in particular appreciates in local authority officers is that they are “business savvy” – an appreciation of what it is like for companies having to run a business whilst at the same time complying with regulations. Where officers do not have such understanding or might benefit from refreshing what they do have, it

would be good practice to ask a local business if it would be willing to provide suitable experience.

12. Best Available Techniques (BAT)

Guidance on the definition of BAT, assessing BAT, and its use in permitting.

A2,B

General

- 12.1. The LAPPC and LA-IPPC regimes are both concerned with including in permits all measures necessary to achieve a high level of protection of the environment. This is to be achieved by, among other things, taking all appropriate preventative measures against pollution, in particular through the application of best available techniques (see Articles 3 and 10 of the IPPC Directive as referred to in **Annex VIII** of the Manual). For LAPPC this relates only to the regulation of emissions into the air. Decisions on BAT should incorporate consideration of local circumstances, and together these provide the main basis for setting emission limit values (ELVs).
- 12.2. The BAT approach requires that the cost of applying techniques is not excessive in relation to the environmental protection they provide. It follows that the more environmental damage BAT can prevent, the more the local authority can justify requiring the operator to spend on it before the costs are considered excessive.
- 12.3. If emissions would cause serious harm even after applying BAT, the local authority may impose stricter permit conditions or refuse the permit altogether. This would be the case where, for example, an Environmental Quality Standard (EQS) made to implement European legislation would be breached and should be considered carefully where any other EQS is threatened. Stricter emission limit values are always required in this case (see **Chapter 15**). For LAPPC the only relevant EQS are those relating to air quality.

Sector and process guidance notes

- 12.4. Local authorities are obliged by EP regulation 64(2) to have regard to any guidance issued to them by the Secretary of State or Welsh Ministers when determining BAT. BAT for each installation should be assessed by reference to the appropriate technical guidance note. For LA-IPPC installations these are sector guidance (SG) notes. For LAPPC installations, these are process guidance (PG) notes. All notes are published on the [Defra website](#). Those extant notes previously published as statutory guidance under either section 7(11) of the

Environmental Protection Act 1990 or regulation 37 of the PPC Regulations shall be taken to be guidance under EP regulation 64.

12.5. These guidance notes should be regarded by local authorities as their primary reference document for determining BAT in drawing up permits and authorities should be able to justify any deviations from them. In general terms, what is BAT for one installation is likely to be BAT for a comparable installation. But in each case it is in practice for authorities (subject to appeal to the Secretary of State/Welsh Ministers) to decide what is BAT for the individual installation and the authority should take into account variable factors such as configuration, size and other individual characteristics of the installation in doing so.

Status of specific requirements in other legislation

12.6. Local authorities must take account of other legislation given effect through LA-IPPC or LAPPC activities, such as coating activities which are subject to the EU Solvent Emissions Directive. These requirements must be met through LA-IPPC/LAPPC permits irrespective of whether they reflect what is BAT. In most cases, the constraints imposed by other legislation are minimum obligations, without prejudice to any stricter conditions that may correspond to BAT or the other LA-IPPC and LAPPC requirements. The relevant sector and process guidance notes will identify and advise on any applicable EU Directives, unless they arise after publication where the normal procedures will be used to advise or direct operators and local authorities.

Meaning of “best available techniques”

12.7. **Annex VIII** contains the IPPC Directive definition of BAT, including separate definitions of the words ‘best’, ‘available’ and ‘techniques’. The definition applies to LAPPC as well as LA-IPPC. The related list of 12 BAT considerations in the Directive are also listed in Annex VIII). All the considerations apply to LA-IPPC; some do not apply to LAPPC, as indicated in the Annex.

12.8. The definition of BAT is “the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing in principle the basis for emission limit values designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole”.

12.9. Where there is a choice, the technique that is best overall will be BAT unless it is not an ‘available technique’. There are two key aspects to the availability test:

- a) what is the balance of costs and advantages? This means that a technique may be rejected as BAT if its costs would far outweigh its environmental benefits; and
- b) can the operator obtain the technique? This does not mean that the technique has to be in general use. It would only need to have

been developed or proven as a pilot, provided that the industry could then confidently introduce it. Nor does there need to be a competitive market for it. It does not matter whether the technique is from outside the UK or even the EU.

General conditions relating to BAT

- 12.10. Authorities may include in a permit general conditions requiring the operator to use BAT to prevent or reduce emissions that are not covered by more specific permit conditions. This is intended to cover the most detailed level of plant design and operation where the operator will usually be in the best position to understand what pollution control means for an installation in practice. This replaces the 'implied' BAT duty on the operator to use BAT in relation to matters not covered by specific permit conditions.
- 12.11. For PPC permits that transfer automatically into EP, the implied duty will continue automatically when it becomes an EP permit (EP regulation 106(1)). However, for any new EP permits, a local authority wishing to adopt a similar approach to that under PPC will need to insert a specific condition. Authorities may wish to consider the following wording: "The best available techniques shall be used to prevent or, where that is not practicable, reduce emissions from the [installation] [mobile plant] in relation to any aspect of the operation of the [installation] [mobile plant] which is not regulated by any other condition of this permit.". Whilst any subsequent variation to a PPC permit will not affect the implied duty, authorities may consider it more transparent and neater to insert the above condition at the same time as varying the permit for other purposes.

Basic principles for determining BAT

- 12.12. As stated above, determination of what is BAT must ultimately be made on a case-by-case basis and taking into account that individual circumstances may affect BAT judgements and what are the appropriate permit conditions. The following paragraphs describe the steps that would be necessary if starting such an exercise from scratch. However, where sector and process guidance notes are available, they will have taken account of options and it may be quite adequate to rely on those notes as a baseline for what is BAT (as well as, where appropriate, what is necessary to achieve the relevant objectives in the EU revised Waste Framework Directive), in a given situation. Any additional assessments and option identification should be undertaken as seems necessary having regard to the specific facts of the particular case, including the precise size and configuration of the installation and activities, the actual production process used, and the location of the installation.
- 12.13. It is envisaged that such assessments are likely to be more extensive for LA-IPPC installations, which will generally be more complex and are regulated in relation to a wider range of environmental impacts. For LAPPC installations, it is considered that, broadly-speaking, what is

BAT for one activity in a sector is likely to be BAT for a comparable activity. In all cases, local authorities, in determining applications, should take account of the relevant considerations mentioned in paragraph 12.7 above. They may in subsequent proceedings be required to demonstrate that they have done so and produce any written notes, decision document or report setting down the considerations relied on prior to taking their decision. Also, for the sake of transparency and accountability, they should be in a position to justify their decisions to the operator (see also paragraph 6.18 of the Manual). This advice on recording the reasons for decisions applies to all forms of decision under the EP Regulations.

- 12.14. The basic principles for determining BAT involve identifying options, assessing environmental effects and considering economics. The principles of precaution and prevention are also relevant factors for determinations. Determining BAT involves comparing the techniques that prevent or reduce emissions and identifying the best one in terms of the one which will have the lowest impact on the environment. Alternatives should be compared both in terms of the primary techniques used to run the installation and the abatement techniques used to reduce emissions further.

Environmental assessment

- 12.15. Once the options have been identified there should be an assessment of their environmental effects. It should focus particularly on the significant environmental effects – both direct and indirect. It should also look at the major advantages and disadvantages of techniques used to deal with them. Account should be taken, in particular, of the various considerations listed in **Annex VIII**. This should help to rank techniques according to their overall environmental effects.
- 12.16. The main focus of any environmental assessment will be the effects of releases. The assessment should identify and quantify possible releases of polluting substances into any media. It should also quantify their effects. Most attention should be paid to large-scale releases and releases of the more hazardous pollutants. These are likely to have the most significant effects. Conversely, any releases at levels so low that they are unlikely to have any serious effects need not be assessed. A list of the main polluting substances is in **Annex XI**, which reproduces Annex III of the IPPC Directive. However, as this is just indicative, consideration should be given to other substances capable of causing pollution in the same way.
- 12.17. LA-IPPC is also concerned with emissions of heat, vibrations and noise. As with substances, however, a detailed assessment is only needed if there is a known or anticipated problem. **Chapter 16** contains advice on noise and vibration.
- 12.18. The environmental assessment of options for LA-IPPC should also take account of the other considerations listed in **Annex VIII**

- a) **Consumption and nature of raw materials.** Consideration should be given to options that use fewer resources, or those that use materials that are less likely to produce hazards or pollution risks. For example, in relation to an LA-IPPC activity, the use of a purer raw material could lead to lower releases of contaminants. Water is also a raw material, and the assessment should consider how much each option needs where appropriate, and the environmental consequences of any abstraction.
- b) **Energy efficiency.** Consideration should be given to the effect different options would have on energy consumption and efficiency. Care should be taken that the pollution abatement systems do not use excessive energy compared with the emission reductions they achieve.
- c) **Installations in a Climate Change Agreement** will still have to meet basic energy consumption and efficiency requirements in their applications – see **Chapter 14**.
- d) **Waste issues.** The assessment of options should cover the amount of waste they produce and the possibility of preventing waste, recovering it or disposing of it safely. It may be preferable to permit a slightly higher level of releases if this greatly reduces the volume of waste, especially if the waste is particularly hazardous. However, this should not simply transfer pollution from one medium to another, which is precisely what LA-IPPC is meant to avoid. The main goal should be to identify techniques that minimise all types of waste and releases at source.
- e) **Accidents.** Consideration should be given to the environmental hazards posed by possible accidents and their associated risks. This should include the practicality of measures to reduce risks and hazards and to respond to any accidents. In comparing the effectiveness of techniques to prevent emissions, consideration should not be limited to looking at normal operations, but also at the possibility of unintentional releases.
- f) **Site restoration.** Consideration should be given to whether options risk polluting the site. This should include planning ahead for decommissioning and restoring the site upon closure. For example, siting pipelines and storage tanks above-ground rather than underground would make leaks easier to detect and removal of pollution risks more straightforward.

12.19. In some cases, where options have been based on environmental assessments, a judgement will need to be made about the relative significance of different environmental effects, sometimes in different media. In comparing these, certain basic parameters may help to reach a conclusion. For example, long-term, irreversible effects are worse than short-term reversible ones, if all other factors such as immediate severity are equal. However, these comparisons will often be an inexact science. In ranking options, therefore:

- a) all assumptions, calculations and conclusions must be open to examination;

- b) generally using simple numerical analyses to compare or aggregate different types of environmental effects should be avoided, except where there are recognised ways of doing this. Individual effects within options should be assessed quantitatively where possible. However, the overall assessment and comparison of options should normally include significant qualitative elements; and
- c) expert judgement should be used alongside the particular constraints of the appraisal system, so that common sense conclusions are reached.

Economic assessment

- 12.20. Once the options have been ranked, the best techniques will be BAT unless economic considerations mean that they are unavailable. The cost assessment should include operating costs as well as capital costs. This should include any cost savings. For example, using a purer raw material may be more expensive at first, but may save money overall by improving quality or producing less waste.
- 12.21. An objective approach needs to be taken to balancing costs and advantages when assessing what is BAT. The lack of profitability of a particular business should not affect their determination. For example, if it has been established that a particular technique constitutes BAT for certain types of installation, then authorities should normally impose the ELVs that correspond to the use of that technique in all permits. There may be some cases where local authorities should authorise different standards, for example because the balance of costs and benefits is different. However, it would not be right to authorise lower standards, or to delay the achievement of BAT-based standards, just because an operator argued for this on the basis of its own financial position. Conversely, authorities should not impose stricter standards than BAT just because an operator can afford to pay more.

Determining BAT, BREFs, and sector/process guidance notes

- 12.22. Article 16(2) of the IPPC Directive states that Member States should exchange information on BAT. The Commission publishes the results as the BAT Reference documents (BREFs). The BREF notes do not contain any binding requirements, but Member States are to take account of them in their own determinations of BAT and therefore they are to be reflected in the sector-specific guidance notes. Published BREFs and information about emerging guidance can be found on the [European IPPC Bureau website](#).
- 12.23. The operator may not agree with a local authority's decision. The authority should decide whether to accept any arguments the operator may have made for not following the indicative requirements. Authorities must be able to explain any cases where they have permitted any deviation so that the permitting process remains open and transparent.

- 12.24. Sector guidance notes will be updated from time to time, including whenever BREFs are amended. However, operators and authorities should take account of any new developments in techniques after a guidance note is published.
- 12.25. Where there is no domestic guidance available, operators and regulators should refer directly to the relevant BREFs. This is also the case if a BREF has been updated but the domestic guidance has not. Where the BREF contains clear performance standards, an operator should again justify any proposed deviation from them.
- 12.26. Of course, although indicative standards in BREFs or domestic guidance may often be expressed in terms of parameters such as ELVs, techniques for achieving those standards may vary. Operators are encouraged to find better ways of operating installations than relying solely on benchmark standards in guidance.
- 12.27. If neither a BREF nor domestic guidance has been published when an operator makes an application, operators and local authorities will have to assess BAT based on other sources of data, for example guidance from previous regulatory regimes.
- 12.28. Environmental plans, such as local air quality management plans, may also provide relevant information. Where there is concern or doubt about the sensitivity of the local environment, operators may want to contact the relevant local authorities, and possibly public consultees, to find out more about the location and nature of protected areas.

Determining BAT for new and existing installations

- 12.29. For a new installation, the best techniques will normally be BAT. However, site-specific factors may justify a different conclusion from the normal understanding of what techniques constitute BAT. For example, if a technique selected as BAT in normal circumstances were to require direct water abstraction, then it might not be right to apply it to an installation near a particularly sensitive river.
- 12.30. The principles for determining BAT will be the same for existing installations as for new ones. How far the new plant standards apply will depend on local and plant-specific circumstances. Thus the final standards may be different. In general terms, local authorities should be concerned with establishing timescales for upgrading existing installations to new standards, or as near to new standards as possible, having regard to the timescales and any other related guidance contained in the relevant sector guidance note. Thus permit conditions should be written in terms of complying with specified standards and requirements from a specified date onwards. (One instance where local circumstances may make full upgrading to new installation standards inappropriate is where an existing installation operates very close to that standard already, but is using different plant or processes than envisaged in the guidance. Replacing the old plant with the new techniques may produce only a small decrease in releases, but a

disproportionate increase in costs. Therefore the change would not be appropriate. However, if the operator was to carry out a major modification anyway (for example, a substantial change), the new plant standards might be applicable.)

Planned closure of existing installations

12.31. If an installation is scheduled for closure and its effects are not excessive in respect of other aspects of the EP Regulations, it might be appropriate for the local authority to impose only limited BAT controls. This is because releases from the installation over its remaining life might not justify significant expenditure on reductions. Authorities should assess this on a case-by-case basis. In such cases, however, it is important that the installation does in fact close down as scheduled, since this is part of the BAT determination. Therefore, to safeguard against the eventuality that the operator wants to continue operating beyond the agreed closure date, authorities are advised to include in the permit, to come into effect on the closure date, some or all of the conditions they would include for a new plant. Likewise, if the existing plant closed down and the operator sought to re-open it, it should then be treated as a new installation.

Thornby Farms Court of Appeal case

12.32. Local authorities and operators should be aware of a Court of Appeal judgment (R v Daventry Council, ex parte Thornby Farms Ltd, judgment given on 22 January 2002), which addressed the issue of whether tighter limits than those specified in statutory guidance should be imposed in cases where such limits have been achieved. The case related to guidance on animal carcass incinerators (PG5/3) issued by the Secretary of State/Welsh Ministers under the Environmental Protection Act 1990 Local Air Pollution Control system.

12.33. The judgment which can be found via [the HMCS website](#) includes the following passage:

“...There is no evidence that setting the levels actually achieved upon monitoring would increase costs and relying on a Government specified upper limit does not ensure that the best available technique is being used. Enquiry as to whether it was realistic to impose the levels found upon monitoring, or some other levels, does not involve ‘going through a BATNEEC exercise from scratch’. It may or may not have revealed the need for margins to cover less favourable operating conditions or other contingencies. The obligation is to use the incinerator effectively, in terms of reducing pollution, and the need for substantial margins cannot, in the absence of evidence, be assumed....”

12.34. The judgment makes a general point that tighter limits than in the guidance can represent BATNEEC. (Best Available Techniques Not Entailing Excessive Cost is a principle which was contained in the Environmental Protection Act 1990, Part I, and is akin to BAT.) This

raises a more detailed implication. The process and sector guidance notes typically allow less frequent monitoring to be undertaken where emissions are substantially below the specified limit value. However, if the authorisation or permit contains a condition with a much lower limit value, this may mean that the reduced monitoring allowance can no longer apply. One of the options open to authorities in these circumstances would be to include two conditions: one which imposes the tighter limit value, and the other which specifies that monitoring frequency should be judged against compliance with the less stringent limit in the guidance.

13. Drafting permit conditions

Guidance on how to write and interpret permit conditions.

A2,B

13.1. In accordance with EP regulation 14, a permit must

- specify every installation to which it relates;
- specify the person authorised to operate the installation (ie the individual, partnership, or company in whose name the permit application was made or to whom the permit has been transferred, and who has control over the operation of the installation);
- include a map, plan or other description of the site showing the geographical extent of the installation.

A permit can be in electronic form.

13.2. The legal basis for what conditions must cover and additional guidance on writing condition can be found in **Annex XI**.

13.3. As explained in Chapter 1, the EP Regulations do not include a variation notification procedure. For PPC permits transferring automatically to EP, the following condition is automatically included in the permit by virtue of EP 2007 regulation 69(6) as continued in effect by EP 2010 regulation 108(4). Where EP permits are issued on or after 6 April 2008, authorities are strongly advised to include this condition themselves and must do so for LA-IPPC installations in order to give effect to Article 12(1) of the IPPC Directive:

“If the operator proposes to make a change in operation of the installation, he must, at least 14 days before making the change, notify the regulator in writing. The notification must contain a description of the proposed change in operation. It is not necessary to make such a notification if an application to vary this permit has been made and the application contains a description of the proposed change. In this condition ‘change in operation’ means a change in the nature or functioning, or an extension, of the installation, which may have consequences for the environment.”

13.4. For PPC permits that transfer automatically into EP, the implied BAT duty will automatically continue when it becomes an EP permit (EP 2007 regulation 72(6), as continued in effect by EP 2010 regulation 106(1)). However, for any new EP permits, a local authority wishing to adopt a similar approach to that under PPC will need to insert a specific condition. Authorities may wish to consider the following wording:

"The best available techniques shall be used to prevent or, where that is not practicable, reduce emissions from the [installation] [mobile plant] in relation to any aspect of the operation of the [installation] [mobile plant] which is not regulated by any other condition of this permit."

13.5. Local authorities should ensure that permit conditions under both LA-IPPC and LAPPC are:

- enforceable
- clear for both industry and the public
- relevant
- workable.

Enforceable

13.6. Permits should include conditions that clearly and precisely state what is required of the operator and are therefore readily capable of enforcement, ultimately through the courts. It should generally be possible to measure objectively whether an operator has, or has not met the terms of the condition. For example, a condition would fail the test of enforceability if

- it required measurements to be taken periodically but gave no frequency, or
- it set an emission limit but specified no monitoring, or which did not make clear which discharge point a release limit applied to.

Clarity

13.7. It is important that the operator and industry as a whole knows exactly what the standards required of them are and the timescales within which further improvement must be achieved. A vague condition which did not, for example, specify a time limit for meeting a tighter emission limit, would not only fail the test of enforceability, but would create a climate of uncertainty for industry. Forward investment plans could be hampered by industry being subject to ambiguous requirements.

13.8. Permit conditions will appear on the public register, subject to the constraints of national security and commercial confidentiality. In order for this to be a genuine exercise in public accountability, the public need to be able to understand what the operator is being required to do and, importantly, whether he or she is meeting his/her obligations. This latter objective should normally be consistent with local authorities' own need to be supplied with monitoring, sampling and analytical data to verify compliance with conditions. Authorities are encouraged to make permit documents easily readable, by the use of titled sections and logically numbered conditions. Where a permit covers a number of activities, the permit should explain this.

Relevant

- 13.9. All permit conditions must relate only to the installation, including any directly associated activities. LA-IPPC conditions should cover all appropriate controls for emissions to air, water, land and all the other environmental impacts covered by IPPC. LAPPC, conditions can only relate to emissions to air.
- 13.10. Permit conditions must not be included if they are solely to deliver other regulatory functions, such as planning or health and safety.
- 13.11. LA-IPPC permits can include off-site conditions such as off-site monitoring, but only after consultation with the parties affected. Such conditions may be applicable in relation to water pollution and contaminated land issues.
- 13.12. The use of surrogate measurements to ensure conditions are met is acceptable where they directly relate to the activity. For example a specified frequency for changing bag filters might be an alternative to setting an emission limit.

Workable

- 13.13. All conditions must have a clearly defined purpose. For example, an audible or visual alarm might be required by conditions in a case where emissions are required to be continuously monitored, in order that the operator is alerted to any emissions higher than the specified level.
- 13.14. The basis of proportionate regulation should be adhered to. Local authorities should reflect the distinction between LA-IPPC and LAPPC installations, which arises from the latter being considered generally less polluting.
- 13.15. Permit conditions may, for example, require operators to look into specific issues and report detailed findings and proposals for improvement to the authority. Reporting conditions should have specific deadlines, reflecting the shortest reasonable period for the operator to provide the information.
- 13.16. **Annex XI** contains additional advice, with examples of what are suggested to be 'good' and 'bad' conditions.

Notification of accidents (LA-IPPC only)

- 13.17. Local authorities must ensure that there is a condition in all LA-IPPC permits requiring operators to notify the authority without delay of any incident or accident significantly affecting the environment. This is required by the second indent of article 14 of the IPPC Directive. The following wording might be used: "the authority must be notified without delay of any incident or accident significantly affecting the environment". It is a matter of judgement, based on the facts of each individual case, whether any incident or accident has a significant effect on the environment.

Time periods in permit conditions

- 13.18. A case has come to the attention of Defra and the Welsh Government where a local authority has specified that particular improvement work must be completed "forthwith". There are two reasons why this approach should be avoided:
- 13.19. First, the word "forthwith" is imprecise. While it may have been the intention of the local authority to mean "immediately", the word is open to a degree of interpretation. Thus, it could be held that it means "as soon as is reasonably practicable in all the circumstances and, in particular, without deliberate and unnecessary delay".
- 13.20. Second, authorities should normally seek to tie down operators to a deadline date for any improvements. Any lack of clarity is unhelpful to the operator, to the public, and for authorities when seeking to enforce. If there are uncertainties involved, one option is for authorities to specify interim deadlines, such as requiring a report by x date on the abatement options and that the report must include a date by which the preferred option can be installed, commissioned and operational. A variation notice can then be served to insert the operational date for the abatement. If the requirement is to take effect immediately, the condition could specify a date one or two days after the despatch of the permit or notice.

Mobile plant: conflicting conditions

- 13.21. EP regulation 16 deals with the case where there is a conflict of conditions between those included in a mobile plant permit, and those included in the permit of a fixed installation where the mobile plant happens to be operating. In such instances, the permit for the fixed installation prevails.

Monitoring update

- 13.22. Since publication of the current series of process guidance (PG) notes, there have been a number of changes to the monitoring standards referenced by the notes. The Source Testing Association, in conjunction with Defra and the Local Authority Unit, have added a page to their [website](#) and this describes each standard referred to in each PG note. Where a standard has been superseded, the replacement standard is identified and described.

14. Climate Change Levy, UK Emissions Trading Scheme, and A2 installations

Guidance on the determination of BAT for energy efficiency and the Climate Change Levy.

A2

Introduction

14.1. This chapter is intended to complement any such guidance previously issued by Defra concerning the Climate Change Levy (CCL) and Climate Change Agreements (CCAs). It is intended to provide a summary of the current position and to inform local authorities about the action required to enable effective permitting of installations which are covered by CCAs.

Background

14.2. The first volume of the Intergovernmental Panel on Climate Change 4th Assessment Report “Climate Change 2007: The Physical Basis” was published in February 2007. [See the IPCC web site](#). Key findings of the report were:

- warming of the climate system is unequivocal. The Earth has warmed by 0.74°C over the last century, 0.4°C of which has occurred since the 1970s;
- the role of human activities in the observed changes is now clearer than ever;
- future warming is strongly dependent on our emissions.

14.3. The previous Government published a [UK Low Carbon Transition Plan in 2009](#). For latest information, look at the Department for Energy and Climate Change [website](#). [The Carbon Trust](#) work with UK business and the public sector to cut carbon emissions and develop commercial, low-carbon technologies. It provides a range of tools to enable businesses to assess how they use energy and where changes could be made, including free advice on 0800 085 2005, on-line benchmarking tools, and free energy surveys if a firm’s energy bill is over £50,000 a year.

Climate change levy and the UK ETS

14.4. The legislative basis for the CCL is Schedule 6 to the Finance Act 2000.

The CCL is a charge imposed on use by the non-domestic sector of electricity from the grid (other than from renewables), natural gas, LPG, coal, and coal-like energy sources such as coke. Businesses operating eligible installations can enter into a CCA with the Government to be able to claim an 80% discount from the CCL on energy used in qualifying processes, in return for meeting challenging targets for energy efficiency or reduction of greenhouse gas emissions. The CCL and CCAs came into effect from 1st April 2001.

14.5. CCAs were originally restricted to sectors with processes regulated under IPPC, mostly heavy industry such as Glass, Steel and Ceramics, but also the food manufacturing sector, and intensive rearing of pigs and poultry. (In 2006 CCAs were introduced for energy intensive processes falling outside IPPC.) A business is eligible to join an appropriate CCA if it operates an activity listed under Part A1 or A2 headings in Part 2 of Schedule 1 to the EP Regulations, as amended (see **Annex XV**). For CCA purposes, numerical and other thresholds quoted in this schedule are disapplied, with the exception of those within section 1 which apply to large combustion plant.

14.6. The practical effect of disapplying these thresholds is that a number of smaller sites which are or will not be subject to IPPC or PPC controls can join the agreements. For example, all coating activities of a type listed in Part A2 of Section 6.4 of Schedule 1 to the EP Regulations, regardless of their size or scale, are eligible. This would include coating activities which use less than 200 tonnes of organic solvents per year. Also, for CCA purposes: (i) it is assumed that all sections of schedule 1 apply now; and (ii) that the PPC Regulations apply throughout the UK. Under the EP regime, local authorities have only a direct regulatory interest in CCAs in relation to LA-IPPC.

14.7. [Sector level agreements](#) (“umbrella agreements”) with business sectors which have negotiated CCAs. A list is included in **Annex XV**.

14.8. Allied to the Climate Change Agreements is the UK Emissions Trading Scheme (UK ETS), operational since 2002. The UK ETS ended in December 2006, with final reconciliation taking place in March 2007, but will continue to run for the benefit of CCA holders. Companies meeting targets set out in their negotiated agreements not only receive an 80 per cent discount from the CCL, but can also use the UK ETS either to buy allowances to meet their targets, or to sell any over-achievement of these targets. Anyone can open an account on the UK ETS registry to buy and sell allowances. The EU Emissions Trading Scheme works on a similar basis but is not available for helping CCA holders meet their CCA targets.

Basic energy requirements in LA-IPPC

14.9. LA-IPPC for A2 installations requires energy to be used efficiently in order for a permit to be issued. Installations which are under LA-IPPC and participants in a CCA should be required as part of their permit conditions to:

- meet baseline standards of energy efficiency – these are to have in place an energy management system. Schedule 3 to the underlying CCL agreements (company level agreements) is a series of “qualitative requirements” which must be met. It requires operators to have basic energy efficiency measures in place, e.g. an energy plan and a monitoring regime. These requirements are set out in **Annex XVI**.
- be meeting the quantitative energy target in the CCA or Trading Agreement. An operator could meet his quantitative targets by purchasing carbon allowances. This would be a valid option where it may take a number of years to introduce technology which would enable targets to be met through energy efficiency improvements.

However the regulator would have to be satisfied that there was evidence that such quantitative targets would be met at a defined point in the future.

14.10. Where no agreement is in place more defined permit conditions are required. These are the baseline standards referred to above and energy targets set by the local authority as part of the permitting process.

What information should an operator supply to their local authority about energy issues?

14.11. An operator with a facility which forms part of a CCA will be listed in a CCL Reduced Rate Certificate for the business sector in question. The operator needs to notify the energy supplier that the facility is entitled to an 80% discount from the CCL for the eligible processes and, after checking with the certificate, the energy supplier will then provide energy with Levy applied at the reduced rate. The operator should provide a copy of the certificate as evidence as a part of the application procedure. To verify that an operator is listed in a Reduced Rate Certificate, local authorities may check the [HM Revenue and Customs web-site](#).

14.12. CCL Reduced Rate Certificates are revised as facilities enter and leave agreements. Facility CCA target performance is assessed at two yearly intervals before “milestone” target review points (1st April 2003, 1st April 2005, etc). Facilities which pass their targets or trade sufficient carbon allowances will be recertified for the next two year cycle and will be placed on the reduced rate certificate. Facilities which have not met their milestone targets and have not retired sufficient carbon allowances to make up the shortfall will not be recertified by HM Revenue and Customs (not appearing on reduced rate certificate).

Instead, they will be decertified, that is they will be removed from the reduced rate certificate and be ineligible to claim the discount from CCL. However, they will retain their CCA and if they meet their targets at the following milestone, they will be re-certified.. If the site is regulated under LA-IPPC and has not met the relevant milestone target, then it will revert to the provisions of paragraph 14.10, above, until such time as it catches up with its milestone target performance and is reinstated on the Reduced Rate Certificate.

- 14.13. Where a company is not part of a CCA, it should provide at application stage its intentions regarding energy efficiency policy, management techniques, review procedures and future investment decisions. Consideration should be taken as to the requirements mentioned in 14.9 above.

The extent of an installation

- 14.14. The discount available to operators of eligible activities is applied to the proportion of a site's energy use covered by the CCA. This is in turn predicated upon the extent of an installation. For CCA purposes Defra and operators will have agreed the extent of the installation based on [Environment Agency IPPC Regulatory Guidance Series](#), Paper No 5. However the local authority will decide what constitutes an installation.
- 14.15. Installations are defined as the stationary technical unit (STU) plus directly associated activities which serve the STU. Some examples are given in **Annex III**. If a site already has CCL certification the local authority should not be influenced by any previous acceptance by Defra on the extent an installation as agreed with the operator. Where the local authority's definition of the installation does not match that previously agreed by Defra, the installation defined by the local authority can be reconsidered and the eligibility for a CCA and its targets will be reassessed. Where a local authority defines an installation on a narrower basis than previously, an operator will not be required to re-pay any underpaid CCL in a situation of good faith made on the basis of information available at the time.
- 14.16. Information about the CCL can be obtained from HM Revenue and Customs's National Advice Service, telephone 0845 010 9000. Measures to reduce carbon emissions in large non-energy intensive business and public sector organisations
- 14.17. The [CRC Energy Efficiency Scheme](#) is aimed at reducing carbon emissions in large non-energy intensive organisations by 1.2m tonnes of carbon a year by 2020 and designed to raise awareness in large organisations and encourage changes in behaviour and infrastructure. Additional guidance will be issued in relation to LA-IPPC as the need arises. The CRC Energy Efficiency Scheme is the UK's mandatory climate change and energy saving scheme, due to start in April 2010. More information is available on the [DECC website](#) and from the [Carbon Trust](#).

15. Environmental Quality Standards + Air Quality Management Areas

Guidance on the setting of permit conditions, having regard to environmental standards in other legislation and, for LAPPC, having regard to air quality standards.

A2,B

Environmental Quality Standards

- 15.1. The main basis for setting emission limit values under the EP Regulations will be the application of BAT (see **Chapter 12**). However, where an environmental quality standard (EQS) as set out in European Community (EC) legislation requires stricter conditions than those achievable by the use of BAT, additional measures must be required in the permit, without prejudice to other measures which might be taken to comply with environmental quality standards (see reference to Article 10 of the IPPC Directive, which is implemented through Schedule 7, paragraph 5 (for LA-IPPC), and Schedule 8, paragraph 5 (for LAPPC) of the EP Regulations).
- 15.2. The term 'environmental quality standard' includes several numerical standards that specify maximum concentrations of named pollutants for air and water. In addition to such numerical EQSs there are also qualitative EC EQSs which may require stricter emission limit values. A summary of EC laws and the pollutants concerned can be found in **Annex IX**. If an EC EQS changes or new ones are introduced, the local authority may need to vary the permit conditions (see **Chapter 24**).
- 15.3. In setting permit conditions, local authorities must first consider whether any EC EQS is being or may be breached. If so, authorities will have to set ELVs accordingly, based on how far the installation is or would be responsible for the breach and the likelihood of remedial action elsewhere.
- 15.4. A breach of an EQS could result from the combined effects of a number of installations. In such cases it may be appropriate to review several permits in the area to determine slightly stricter ELVs for each installation rather than simply imposing the entire burden of compliance on the one applicant. Local authorities and the Environment Agency are expected to co-operate so that they use their powers in the most effective way. They should aim to improve areas of poor environmental quality so that EC EQSs are met. However, they should try not to

impose a disproportionate burden on LA-IPPC or LAPPC installations compared to other pollution sources (see paragraph 15.9 below). Note the only EC EQS relevant to LAPPC are those relating to air quality.

New installations

- 15.5. For a new installation (or a substantial change to an existing installation, where the effect of the change bears significantly on an EC EQS), if environmental quality before the installation begins to operate meets the requirements of an EC EQS, then this must remain so after the installation comes into operation. Stricter measures beyond BAT may be necessary to achieve this. If these cannot secure compliance then the permit must be refused. However, there may be ways to reduce emissions from other sources in such a circumstance, making it possible to authorise the installation (with or without conditions beyond BAT). Where a new installation would only make a minor contribution to a breach of an EC EQS, rather than going beyond BAT or refusing the EP permit, it will normally be more desirable for local authorities and Environment Agency regulators to work together to control the other, main sources of pollution, thus ensuring the EC EQS is met.
- 15.6. If an EC EQS is already being breached in a particular area, then a permit should not be issued to any new installation that would cause anything beyond a negligible increase in the exceedence. Again, however, if it is clear that a combination of controls on the proposed installation and measures to reduce emissions from other sources will achieve compliance with the EC EQS, then the installation may be permitted.

Existing installations: Air Quality Management Areas

- 15.7. Local authorities are required to carry out a review and assessment of local air quality under Part IV of the Environment Act 1995. In areas where air quality standards or objectives are being breached or are in serious risk of breach and it is clear from the detailed review and assessment work under Local Air Quality Management that one or more LA-PPC/LA-IPPC installations are a significant contributor to the problem, it may be necessary to impose tighter emission limits. If the emission limit that is in danger of being exceeded is not an EC Directive requirement, then industry should not go beyond BAT to meet it. Decisions should be taken in the context of a local authority's Local Air Quality Action Plan. For example, where an installation is only responsible to a very small extent for an air quality problem, the authority should not unduly penalise the operator by requiring disproportionate emissions reductions. More guidance on this is provided in paragraph 3.07 of the [LAQM Policy Guidance LAQM.PG\(09\)](#).
- 15.8. Where an existing installation is the main or only cause of an EC EQS breach, local authorities must impose conditions beyond BAT on the installation to comply with the EC EQS. If this is not enough, the

authority should refuse the permit. If a permit has already been issued when the breach is detected (or arises if a new EC EQS is set) the authority should review or revoke the permit.

- 15.9. Where an existing installation is a significant contributor to an EQS breach, but other sources such as traffic also make major contributions, local authorities should explore all options for rectifying this type of breach. It may be right for releases from the other sources to be restricted rather than tighten the emission limits for the installation. How far an authority can do this will depend on its powers to control the other sources. Alternatively, the authority may take other action to rectify the breach, such as draw up an action plan for an air quality management area (AQMA) under Part IV of the Environment Act 1995. However, if the authority does not have powers to control the other sources, and does not believe that other means will bring about compliance with the EQS, it must impose stricter permit conditions. The combination of controls on all sources must ensure the EQS is met.
- 15.10. Where an existing installation makes only a minor contribution to an EQS breach caused by other, non LA-IPPC sources, it would not normally be appropriate for the local authority to impose stricter conditions beyond BAT. They would only have a minor effect on the problem anyway. It will be much more important for the local authority to seek to control the main sources of the breach in other ways.
- 15.11. A breach of an EQS could result from the combined effects of a number of installations. For example, this could occur in an industrial area with elevated concentrations of air pollutants like sulphur dioxide. In such cases it may be appropriate for all the regulators concerned to review permits in the area to determine slightly stricter ELVs for several installations rather than for the entire burden of compliance to be imposed on the last applicant. Regulators should also take care to ensure that all of the available headroom for compliance with EQSs is not taken up by the sectors that come into IPPC early in the transition timetable, causing difficulties for the later sectors.

National requirements

- 15.12. Many domestic EQSs are the same as EC EQSs, and should be treated in exactly the same way. However, some domestic standards are stricter than or additional to EC EQSs. Examples include the standards and objectives established in connection with the [Air Quality Strategy](#) under the Environment Act 1995. Domestic EQSs such as these do not have the same legal status as EC EQSs, since they are not explicitly referred to in the Regulations. Hence there is no absolute legal obligation under the Regulations to impose any stricter conditions beyond BAT where this would be required to comply with a domestic EQS.

Nevertheless, domestic standards should still be considered as a major factor in determining emission limits and BAT for an installation, following the basic principle of using EQSs as a reference level for

harm. Therefore, domestic EQSs should inform a judgement on whether the installation should be permitted, and if so, what control options should be selected based on the balance of costs and advantages. Any significant contribution to a breach of a domestic EQS should be considered on a case-by-case basis, taking account of the costs and advantages of measures to reduce or prevent the breach.

Regulators and operators will also need to bear in mind in relation to LA-IPPC installations, that, in any case, Article 13(2) of the IPPC Directive requires permits to be reviewed where the pollution caused by an installation is of such significance that the existing ELVs need to be revised, whether or not BAT have developed.

15.13. In relation to water, some national EQS should always be observed to adequately protect the aquatic environment and prevent a significant deterioration in water quality. These include:

- river quality objectives approved by Government;
- Environment Agency national standards to protect the quality of water and aquatic life; and
- Environment Agency local standards to control specific sources of substances that may harm water quality and aquatic life.

The Environment Agency should ensure that LA-IPPC permits contain conditions to safeguard these standards.

16. Noise and Vibration

Guidance on noise and vibration issues.

A2

- 16.1. Local authorities should, when assessing LA-IPPC applications, consider the likelihood of significant noise or vibration emanating from the installation. Where either or both are likely, permit conditions should reflect the standards of noise protection that would have been achieved under the statutory nuisance regime in [Part III of the Environmental Protection Act 1990](#).
- 16.2. Section 79(1) of EPA 1990 Part III lists as a statutory nuisance “noise emitted from premises so as to be prejudicial to health or a nuisance”. This is subject to a ‘best practicable means’ defence: best practicable means is defined in section 79(9) and should be treated for the purposes of this guidance as akin to the cost consideration which forms part of the BAT definition. As stated in **Chapter 12**, the principles for determining BAT will be the same for existing installations as for new ones, but the actual requirements may be tougher for new installations.
- 16.3. British Standard 4142: 1997 – “Method for rating industrial noise affecting mixed residential and industrial areas” – may provide a useful protocol for the prediction of the likelihood of complaints about noise from LA-IPPC installations. BSI standards are available [here](#).
- 16.4. Noise and vibration, are capable of being addressed by time-related conditions, which restrict the hours of operation of part or all of an activity. Such conditions can be an alternative or supplement to other forms of condition, such as measures to achieve reduced noise levels at source. Authorities should, however, remember that any such operational restrictions may themselves have cost implications for the operator and need to be weighed as part of the overall BAT assessment.
- 16.5. It is highly unlikely that vibration transmitted from an activity will be of sufficient magnitude to cause structural damage in nearby buildings or cause anxiety for residents. However some very sensitive (eg electronic) equipment may be sensitive to damage at levels that are below the limit of human perception. While available guidance covers only control of vibration from piling operations and not operational facilities (British Standard 5228: 1997 – Noise and vibration control on construction and open sites), this guidance may be useful in describing parameters to be considered in carrying out any vibration assessments, which may recommend that attempts are made to isolate the vibration by installing a vibration-resilient material between the source and the receiving structure.

16.6. Noise can also have impacts on wildlife, which may on occasion be sufficiently serious to warrant mitigation measures being considered – such as potential or actual significant disturbance to wildlife breeding habitats in a site of special scientific interest (SSSI). This should be considered, where appropriate, and Natural England or the Countryside Council for Wales, will be able to offer advice in their role as national consultees.

17. Odour control

Guidance on odour issues.

A2,B

17.1. As with PPC, there are controls in the EP Regulation over offence to any human senses (EP Regulation 2(1) – definition of “pollution”, other than in relation to a water discharge activity or groundwater activity).

17.2. In making an application, operators should always consider the potential for odour releases from the activity or installation. Where there is a possibility of such releases causing offence, the application should

a) contain an assessment of the so-called FIDOL factors for determining odour offensiveness –

Frequency

Intensity

Duration

Offensiveness

Location,

b) identify all the odour sources and what action is proposed to tackle and monitor both contained and fugitive emissions.

The possibility of releases includes potential for odour from abnormal operating conditions, although account should also be taken of the anticipated frequency, effectiveness and duration of such events.

17.3. The assessment should detail the measures already being taken to mitigate odour releases beyond the boundary of the installation (for existing activities), and should cover matters such as likely odour receptors, local meteorology (ie prevailing wind direction) and topography which may affect dispersion. It may be useful to make use of the technique of dynamic olfactory.

17.4. The CEN standard “Air Quality – Determination of Odour Concentration by Dynamic Olfactometry” is published by BSI as BS EN 13725: 2003. Dynamic olfactometry assists principally in determining appropriate stack heights and the efficiency required of proposed abatement equipment. It is not a technique that will normally be appropriate to investigate odour complaints from existing activities because, among other things, it does not measure the offensiveness of odours, nor is it

capable of being deployed in the field in real-time situations. BSI standards are available [here](#).

- 17.5. Where an operator assessment shows that there is no potential for releases which may cause offence, it will normally be sufficient for the assessment merely to state this with a very brief explanation of why he/she has reached this view.
- 17.6. Further guidance on producing odour assessments can be found in: ‘Odour Measurement and Control’ published by NETCEN/AEA Technology. IPPC guidance on odour ([H4 – Horizontal Guidance Note for Odour](#)) was published by the Environment Agency in 2002; a consultation on a proposed revision was issued in June 2009.
- 17.7. Individual process and sector guidance notes may contain advice on odour standards, controls and monitoring, including the appropriateness of including an odour boundary condition. Generally speaking, where permit conditions targeting odour are considered necessary, the overall aim should be – subject to the application of BAT in each case – that there is no offensive odour beyond the boundary of the installation. However, a condition expressed in terms of an aim would be unlikely to meet the tests in **Chapter 13**.
- 17.8. It is envisaged that in many cases it will sufficient for local authorities to impose process-related conditions aimed directly at the source of the potential odour without the additional need for an odour boundary condition. Process-related conditions might target the use of negative pressure, fitting of double doors, operation and maintenance of door alarms, checking at specified intervals the efficiency of arrestment plant, the required approach to materials storage, olfactory assessments, height of chimneys, measures to be taken in the event of an odour release, etc.
- 17.9. Where the potential odour is particularly offensive, an odour boundary condition might be warranted. In drafting any odour boundary conditions regulators should have regard to existing guidance on the subject and in particular the October 2004 [sector guidance note for the A2 rendering sector \(SG8\)](#). (**Chapter 6** of the Manual provides guidance on refusal of applications.) The predecessor to SG8 - PG6/1(00) - was the subject of legal challenge and those needing to investigate these issues should be aware of the Court of Appeal judgment of May 2002 upholding the guidance (the judgment can be found on the HM Courts Service [judgments webpages](#)).

18. Site assessment and restoration, and surrender of LA-IPPC permits

Guidance on land contamination issues and how to surrender an LA-IPPC permit. (Any contaminated land issues for LAPPC installations are dealt with by Part IIA of the Environmental Protection Act 1990.)

A2

18.1. EP regulation 25 enables an operator to surrender an LA-IPPC permit in whole or in part. (It does not apply to LA-IPPC incineration installations – see regulation 24(1).) This must be done by making an application in accordance with the procedures in Schedule 5 to the Regulations. Any application must be made on the form provided by the local authority. A specimen form is in Part C of the Manual.

18.2. Schedule 5, paragraph 14 of the EP Regulations requires authorities to accept the surrender of a permit if they are satisfied that the necessary measures have been taken:

- a) to avoid any pollution risk resulting from the operation of the installation, and
- b) to return the site of the regulated site to a satisfactory state, having regard to the state of the site before the installation was put into operation.

The 'state' referred to in paragraph (b) is the state when the PPC or EP permit was issued.

18.3. To give effect to this, the following steps should be taken:

- i. the operator should include in his/her permit application a site report describing in particular the condition of the site of the installation/mobile plant and identifying any substance, on or under the land which may constitute a pollution risk;
- ii. the local authority should include conditions in the permit setting out steps to be taken prior to and during the operation of the installation, and after definitive cessation;
- iii. the operator should include a site report with an application to surrender the permit. The surrender site report should describe the condition of the site. In particular it should identify changes since the installation commenced its operations. This should

include a description of the steps which have been taken to avoid any pollution risk resulting from the operation of the installation or to return it to a satisfactory state. In the case of partial surrender, there should also be a map or plan identifying the part of the site used for the operation of the surrender unit; and

- iv. the local authority must either accept the surrender, or refuse it. The surrender application should be refused if the authority is not satisfied that appropriate steps have been taken either to avoid any pollution risk resulting from the operation of the installation or return it to a satisfactory state.

Additional powers are available to authorities to specify steps that must be taken to restore the site in those cases where the local authority revokes a permit (EP regulation 23).

18.4. It is essential, however, that authorities do not consider these site restoration provisions in isolation from the other requirements of the EP Regulations. A restoration exercise at closure cannot justify letting the operator pollute the site by breaching a permit condition. Moreover, it will not always be desirable to wait until the installation closes before removing any pollution or remedying any harm at the site. The permit should therefore include conditions requiring the operator to inform the authority, without delay, of any incident or accident which may cause pollution. Periodic monitoring of key parameters may also be needed.

LA-IPPC application site reports

18.5. The site report should describe the condition of the site and, in particular, identify any substance in, on or under the land that may be a pollution risk. The site report therefore needs to set out the 'initial' condition of the site and should include any pollution incidents such as spillages that have occurred at the site and details of measures put in place to mitigate their effects.

18.6. The site report serves two main purposes:

- firstly, it will be a reference point, along with any operating records, for measuring any deterioration of the site under LA-IPPC. When the operator wants to surrender the permit upon closure, another site report must be prepared, identifying any changes to the condition of the site from that described in the original report and/or from any study of the site carried out pursuant to a permit condition;
- secondly, the original site report will give information on the physical attributes and vulnerability of the site, for example whether there is an aquifer close to the surface. (This will help the local authority decide whether the site is suitable.) It will also aid the process of setting appropriate permit conditions for protection of the environment by providing information relating to local environmental factors.

18.7. The site report may cover any issues required to be investigated in compliance with the Groundwater Regulations ([SI 1998 No. 2746](#) - see

paragraph 31.9) and therefore avoid two similar investigations being undertaken.

- 18.8. The site report required for a permit application under the EP Regulations should cover all of the land on which any of the activities of the installation may take place. This should include any land that is integral to the satisfactory operation of the installation: for example, areas needed for the movement of materials by vehicles or other means, and the area around any associated pipework. If the operator subsequently wishes to extend the installation once a permit has been issued, such that a wider area of land is required for satisfactory operation, he/she will have to apply for a variation to the permit conditions, which must include a site report for the additional land.
- 18.9. The operator should submit separately a map or plan of the site, including the location of the installation on it, as part of a permit application. This more general map or plan should typically show where the site lies in the surrounding area, where the installation is located on the site and how it is laid out, what else is on the site, and where any foreseeable emissions from the installation into or from the site are proposed or could arise.
- 18.10. The site report need not necessarily cover the site of a complete industrial complex if the LA-IPPC installation only relates to a small proportion of such a complex. For example, if a boiler plant on a non-EP manufacturing site is covered by LA-IPPC, but the rest of the plant is not, the site report may only need to cover the area around the boiler.

Scope of the site report

- 18.11. The majority of contaminated land guidance is based on a risk-assessment approach. The LA-IPPC regime does not focus on risk with respect to the ultimate standard of remediation, however it does draw upon principles for part of the permitting procedure.
- 18.12. The complexity of site reports will be dependent on the complexity of each type of installation and conditions of site location. It is not possible to specify precise requirements of site reports because all sites are different. As set out below, operators should as a first step undertake a desk study to produce the information necessary for the report. Only if that study suggests that there are matters which warrant more detailed investigation, should it be necessary to consider more detailed, targeted site surveying work. Local authorities should not require more by way of a report than is strictly necessary in the circumstances of each case.
- 18.13. Operators should bear in mind that there are advantages for them in ensuring that the report is adequate: it is important to know the baseline and it will be the responsibility of the operator to tackle any pollution added since the initial report so as to return the site to a satisfactory state. Operators and local authorities may also find helpful, in judging the adequacy of reports, the documents referred to in

paragraphs 18.21 and 18.23 which offer a profile of the sort of contamination to be expected in the generality of cases.

- 18.14. When the installation is new, the operator may combine the report with any which is required by planning legislation or environmental impact regulations: the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.
- 18.15. Site reports will not normally need to be as extensive as reports required under Part IIA of the Environmental Protection Act 1990, although it should be noted that the Part IIA reports are prepared for different circumstances.

Source, pathway, target

- 18.16. Site reports should begin by identifying:
- a) sources of contamination– substances that are already in, on or under the land and which have the potential to cause harm or pollution of controlled waters due to past activities, and substances that are anticipated (to the extent possible) will be used in or produced by the installation in the future. This will allow the establishment of baseline conditions which, in conjunction with properly maintained operating records, will provide a basis for assessing any future deterioration;
 - b) pathways for contamination– the means by which a substance may come into contact with or otherwise affect a receptor on, under or through the site.
 - c) receptors/targets of contamination– whatever is vulnerable to the adverse effects of the substances that will be used in or generated by the installation – for example, people, animals, ground and surface water, vegetation, building materials, services, etc.
- 18.17. The site report should always give information on the potential or actual presence of substances already at the site. It may also need to deal with possible substance pathways on or through the site. To find out enough about the site, a phased approach may be taken to investigation. The phased approach keeps the cost of investigation and analysis down by avoiding attempts to ‘prove a negative’ – and thus allowing the effective targeting of resources. If the first phase shows no cause for concern, then there is no need to investigate any further. If the local authority or operator suspects there are problems, investigations can be targeted more effectively.
- 18.18. Where the site report relates to pre-existing pollution it should at least give the results of a desk study and a site visit. In addition to examining the results of the desk study, the local authority may wish to carry out its own reconnaissance visit to satisfy itself that an application is accurate – it will be for the authority to judge whether this is necessary having regard to the confidence it has in the application and the severity of potential land contamination risks.

18.19. The application site report will give the local authority a point of reference for judging whether there has been any additional pollution during its future operation under an LA-IPPC permit. The authority should normally attribute any further pollution that was not in the original application to operation under LA-IPPC. This underlines the importance for operators of carrying out effective site investigations at the start to limit their potential liability. The authority should hold the operator responsible for any pollution on the site that was not reported in the original application, unless the authority is convinced that the operator cannot reasonably be held responsible for it, for example because new pollution has migrated to the site from elsewhere. By comparing pollutants identified in the site report with potential further pollutants from the installation, an appropriate monitoring scheme can be developed. This should ensure that pollution arising from the operation of the installation is identified at an early stage.

Factors to consider in the preparation of a desk study

18.20. Among the issues operators ought to address are:

- a) whether there is a logical zone or split to the site to ease data collection;
- b) whether there is historical information available about the site, such as
 - company records
 - planning records
 - geological/hydrological records
 - maintenance/accident records;
- c) what are the types and areas of potential pollution eg bulk chemical storage tanks;
- d) what are the site characteristics which may affect contamination;
- e) what are the characteristics of contaminants eg soluble/non-soluble.

It is also worth noting that the more extensive and complete the original site characterisation, the less need there is likely to be for further site investigations throughout the operational life of the site.

18.21. Full guidance on how produce a site report and on site assessment and restoration, is contained in [Environment Agency guidance](#). Information on how to undertake a desk study is also provided in the document CLR3 – Documentary Research of Industrial Sites (1994). Additionally guidance on the preliminary investigation of contaminated land is in CLR2 – Guidance on Preliminary Site Inspection of Contaminated Land. Industry profiles were published by the Department of Environment (DOE) in 1997. These and other documents are referenced on the Defra [contaminated land website](#).

Intrusive site investigation

18.22. Local authorities should only expect intrusive site investigation at application stage if a desk study suggests that there are matters which warrant more detailed investigations; and authorities should not require more by way of an investigation report than is strictly necessary in the circumstances of each case. In line with Environment Agency policy, where authorities consider that intrusive site investigation is nonetheless necessary (and in particular where such investigations would delay the submission of an application), they may wish to adopt the approach of having a desk-based site report at application stage coupled with including a condition in the permit requiring the sampling of soil and/or water to be carried out once the permit has been granted.

Other publications

18.23. CLR Published Research Reports: Defra, the Environment Agency and others publish an extensive range of technical advice and information about dealing with land contamination, including risk-assessment and remediation. CLR 11 - "[Model Procedures for the management of land contamination](#)", published by EA/Defra in 2004, provides an indispensable guide to the subject, and references all material then current. Any guidance cannot, however, address the specific circumstances of each site as every site is unique.

Prior to and during any investigative/intrusive sampling

18.24. If investigative sampling is undertaken, the following procedures may be useful:

- accurately recording the location of sampling points to enable repeat sampling at same location;
- accurately recording analytical/methodology including confidence limits, calibration and accreditation;
- ensuring all samples are representative of site conditions.

18.25. All of these points will assist in comparison of site conditions when the operator wishes to surrender the permit at definite cessation of activities. It is important to remember that any contamination found during operation or at surrender is likely to be attributed to the operation of the installation unless identified as resulting from another source.

18.26. Local authorities may use this information when carrying out its other duties under Part IIA of the Environmental Protection Act 1990.

Site assessment after permit is issued

18.27. This is to stress the important emphasis on the role of site assessment in pollution prevention after a permit has been granted. Authorities should ensure, in line with sector guidance (SG) notes, that conditions are included in permits aimed at protecting the site against pollution

during the life of the installation. Any such conditions should take into account the findings of the desk study and of any intrusive site investigation that is carried out at application stage or at any time after the permit has been granted.

Site protection and monitoring programme

18.28. Environment Agency guidance no longer promotes the approach of establishing a "site protection and monitoring programme" for A1 installations. In any event, previous editions of this Manual advised that local authorities might not find this precise approach necessary because sector guidance notes aim to provide sector-specific guidance on site protection measures, and these measures should be included as specific permit conditions as appropriate. In the absence of any relevant guidance in the SGs on the use of intrusive sampling to monitor potential contamination from an installation while operating under a permit, regard should be had to the following criteria contained in the Agency's policy statement.

"Intrusive sampling may form part of the permit subsistence monitoring programme and will always be required where there are:

- bulk storage facilities for liquid chemicals and other substances; and
- no preventative measures, eg lack of hard-standing or use of sub-surface pipework for transport of substances; or
- inadequate preventative measures, eg cracked or inappropriately maintained hard-standing or bunding, or where the delivery pipework or taps are located outside of such bunding; or
- a series of pollution incidents or spillages at the site; or
- no, or inadequate proposals to conduct integrity testing of preventative measures.

Such sampling would not normally be necessary during the permit subsistence stage where:

- adequate preventative measures are in place, eg above-ground pipework over an impermeable surface, or other equipment, leakage from which could lead to pollution, are bunded and surfaced in accordance with the standards set out in the [Agency's general sector guidance and, where available, sector-specific guidance] - NB substitute 'relevant SG' for the words in square brackets;
- integrity testing continues to demonstrate that the preventative measures are intact; and
- the site does not have a history of pollution incidents or spillages."

Environment Agency internal guidance "demonstrating land and groundwater are protected to assist the surrender of an environmental permit" ([EPR9](#)).

Restoring sites

- 18.29. Operations during the life of the permit should not lead to any deterioration of the site if the requirements of the permit and its associated conditions are adhered to. Where an operator breaches a permit condition, causing pollution, authorities may issue enforcement notices to make operators put things right while the installation is still in operation. These notices may specify what the operator must do to remedy the effects of the pollution (EP regulation 36(3)) and to make the installation comply with the conditions.
- 18.30. Local authorities should consider whether they need to set permit conditions obliging the operator to monitor and report on the site. This would help to reveal any polluting releases into and off the site at an early stage and thus allow prompt remedial action. Such monitoring requirements should be justified in each case and not be imposed simply as a matter of course. The sort of case where they may be particularly appropriate is for specific pollution risks, such as underground pipes.
- 18.31. In any event, it would be good practice for operators to record any such instances that may arise which have, or might have, impacted on the state of the site along with any further investigation or ameliorating work carried out. This will ensure that there is a coherent record of the state of the site throughout the period of the permit. This is as important for the protection of the operator as it is for the protection of the environment.
- 18.32. For new installations, care should be taken at the design stage to minimise risks during decommissioning. For existing installations, where potential problems are identified, a programme of improvements should be put in place to a timescale agreed with the authority. Designs should ensure, for example, that underground tanks and pipework are avoided where possible (unless protected by secondary containment or a suitable monitoring programme); insulation is provided that is readily dismantled without dust or hazard; materials used are recyclable (having regard for operational or other environmental objectives).
- 18.33. A site closure plan should be maintained to demonstrate that, in its current state, the installation can be decommissioned to avoid any pollution risk and return the site of operation to a satisfactory state. The plan should be kept updated as material changes occur. Common sense should be used in the level of detail, since the circumstances at closure will affect the final plans. However, even at an early stage, the closure plan should include:
- plans for all underground pipes, vessels and lagoons and, if necessary, the method and resource necessary for their clearance,
 - the removal of asbestos or other potentially harmful materials unless agreed that it is reasonable to leave such liabilities to future owners,

- methods of dismantling buildings and other structures,
- testing of the soil to ascertain the degree of any pollution caused by the activities and the need for any remediation to return the site to a satisfactory state.

Revocation of the permit

- 18.34. Where a revocation notice is served, authorities can use the notice to set any restoration requirements as new conditions of the permit (EP regulation 23). The permit then continues to have effect, but purely for the purpose of the operator taking the restorative steps until a certificate is issued stating that it is satisfied with the steps taken.
- 18.35. The procedures for revocation and surrender should not be confused. It is the view of Defra and WG that there is no need or requirement for a permit to be revoked once it has been surrendered. The only occasions where site restoration (but not surrender) and revocation will occur in relation to the same installation is in the case described in paragraph 18.33 above.

Closure

- 18.36. When an operator ceases or intends to cease operating an installation, he/she should apply to the local authority to surrender the permit. Once the authority has accepted a surrender application, the permit ceases to have effect. An operator may also apply for a 'partial surrender', where he/she stops operating part of the installation.
- 18.37. The procedures for applying for the surrender of an LA-IPPC permit are the same as for applying for a permit. The application for surrender must be on a form provided by the local authority and be accompanied by the relevant fee . It should include:
- a report describing the site conditions and identifying any changes in the condition of the site since the commencement of the operations; and
 - a description of any steps that have been taken to avoid any pollution risk on the site and return it to a satisfactory state.
- 18.38. Local authorities may supplement these closure requirements with permit conditions. For example, they could require an operator to give notice when the activity ceases operating, to take immediate steps on decommissioning, or submit proposals for assessing the site condition or taking remedial action for review by the authority. Even where authorities do not impose these extra conditions, operators may wish to consult them, in order to lessen the risk of carrying out restoration work that does not meet EP Regulations requirements. Operators may also wish to consult their local authority about completing surrender application forms.
- 18.39. Authorities must either accept a surrender application, if satisfied that there is no pollution risk and nothing more is needed to return the site to a satisfactory state, or refuse the application. Authorities must give their determination within 3 months of receiving the application, unless

a longer period is agreed with the operator. As with applications, this period excludes any time the operator takes responding to requests from the authority for further information. If the operator does not agree to a longer period and the 3 months pass without a determination, the operator can serve a notice on the authority referring to paragraph 15 of Schedule 5 to the EP Regulations. On the day such a notice is served, the application is deemed to have been refused, and the operator can appeal against this deemed refusal. If the operator does not treat non-determination in 3 months as a deemed refusal, the determination period simply continues until the authority reaches a decision.

- 18.40. The site report upon closure should follow the same general framework as the one that went with the original application. It should consider the nature and setting of the site, the installation, the industry sector and the original site condition. It should describe what has happened at the site over the period covered by the permit. Local authorities will need to judge each case separately, but the essential information to bring out is how the site has changed since the original application, for example, through the accumulation of any additional pollution, remediation of problems which exists at the time of application.
- 18.41. On closure, the local authority must ensure that appropriate steps have been taken to avoid any pollution risk resulting from the operation of the LA-IPPC installation and to return the site to a satisfactory state. This can only be achieved if operators aim to restore sites to the condition they were in before the installation was granted a permit and the pollution occurred. As the aim of LA-IPPC is to take preventive measures against pollution to ensure that there is no deterioration of the site during the operation of the plant, where an incident such as a spillage has occurred, where practicable the operator should take steps to address any pollution at the time of the incident. A record of the steps taken to return the site to a satisfactory state should be made available to the local authority as part of the closure site report. The operator should restore the site to a satisfactory state, as required by Article 3(f) of the IPPC Directive (see **Annex XI**).
- 18.42. This may be significantly stricter than the ‘suitable for use’ test of the contaminated land regime in [Part IIA of the Environmental Protection Act 1990](#) and similar controls on redevelopment. While ‘suitable for use’ is appropriate for pre-existing contamination, it is not the right test for the preventive LA-IPPC regime. Its use here would mean that the local authority accepts further significant degradation of soil, land and water. As a result, restoration under LA-IPPC is not constrained by the future use of the land.
- 18.43. There are potentially three main elements to restoring sites polluted under an LA-IPPC permit. These are:
- removing (as far as is practical), treating or immobilising any pollutants;
 - remedying any harm the pollutants may have caused; and
 - mitigating the effects of any harm.

- 18.44. For example, an installation could release pollutants into the ground, which could be removed, treated, or if that is not possible, contained. If left in the ground, the pollutants could leach into an aquifer used as a source of drinking water. Ideally, the pollutants would be totally removed, and the aquifer remediated. However, while it might be possible to remove pollutants from the soil, it might not be feasible to remediate the aquifer. This need not prevent monitoring of the plume, however, which would help make water abstraction safer. This would help to mitigate the harm. The permit would then remain in force, requiring the operator to monitor the pollution until the local authority was satisfied that it was no longer necessary.
- 18.45. The requirement to remove any pollution risk must be interpreted in a proportionate way. In practical terms, operators should tackle the risks of any pollution that could occur, unless they are so small that further action is not justified. This might mean removal of tanks containing pollutants, as they could rust or get damaged, so releasing the pollutants. Authorities may want to impose permit conditions on the removal of anticipated risks at closure, where they are not already covered in planning consents. This would be without prejudice to authorities' powers to request further action when a site closes, should they identify additional risks.

Restoration on revocation

- 18.46. Where a local authority revokes a permit, site restoration must still be dealt with under EP regulations 22 and 23. If the authority considers that there are things the operator must do to avoid any pollution risk on the site or to return it to a satisfactory state, the revocation notice must specify them (a specimen notice is included in **Part D** of this Manual and can be downloaded as a Word document. The permit will cease to authorise operation of the installation, but will still set any restoration requirements. This will continue until the authority issues a certificate stating that the operator has taken all necessary steps. Authorities may enforce the restoration requirements by issuing enforcement notices under EP regulation 36. If necessary they can use their powers under EP regulation 44 to remedy harm and recover costs (see **Chapter 23**).

Contaminated land regime

- 18.47. Local authorities ought always receive a copy of permit applications for their area either as the regulator or when consulted on A1 installations. The site report may convince authorities that the site could already meet the statutory definition of 'contaminated land' under Part IIA of the EPA 1990. Under this regime, only the authority in whose area the land is situated may designate it as 'contaminated land'. Equally, the authority can only require the operator to remediate pre-existing contamination under the provisions of Part IIA EPA 1990 or development controls, not under the EP Regulations. The authority may be able to grant an LA-IPPC permit in parallel.

- 18.48. A local authority should base a determination of 'contaminated land' on full use of all the relevant information in the LA-IPPC application together with any other relevant information it may hold. However, it may need to know more about, for example, the receptors and pathways for pre-existing pollution. If an operator believes that a site may meet the definition of 'contaminated land' under Part IIA EPA 1990, he or she may wish to discuss this with the authority prior to permit application.
- 18.49. If an authority finds that an LA-IPPC site is polluted after it has come under a permit, it may not seek remedial action under Part IIA EPA 1990 if enforcement action under the EP Regulations is possible.
- 18.50. After an LA-IPPC installation has closed and there is no further scope for restoration under the EP Regulations, an authority may consider further remediation under Part IIA EPA 1990. This should not normally be needed. The LA-IPPC regime's requirements for site restoration will usually be of a higher standard than that required under Part IIA EPA 1990. However, if the site is heavily polluted with material from pre-LA-IPPC operations, which for some reason was not remediated before LA-IPPC operation began, then it may still be remediated under the Part IIA regime after closure.
- 18.51. It is essential, however, that local authorities do not consider these site restoration provisions in isolation from the other requirements of the EP Regulations. A restoration exercise at closure cannot justify letting the operator pollute the site by breaching a permit condition. Moreover, it will not always be desirable to wait until the installation closes before removing any pollution or remedying any harm at the site. The permit should therefore include conditions requiring the operator to inform the authority, without delay, of any incident or accident which may cause pollution. Periodic monitoring of key parameters may also be needed.
- 18.52. The 'enforcing authority' for Part IIA EPA 1990 dealing with any land on which an IPPC installation is operated will be the same as the IPPC regulator for the installation. This will prevent different bodies regulating the same site for restoration under LA-IPPC and remediation under Part IIA EPA 1990 - ie for Part A1 installations or Specified Waste Management Activities, contaminated land issues will be dealt with by the Environment Agency.

19. Surrender of LAPPC permits

Guidance on how to surrender an LAPPC permit.

B

19.1. EP regulation 24 contains the statutory procedures for LAPPC installations, and also for LA-IPPC incineration installations.

19.2. Where the operator of an LAPPC installation or mobile plant wishes to surrender their Part B permit either in whole or in part, they must notify the relevant local authority. The operator must use the notification form provided by the authority, and these forms should ask for the following information. Authorities may wish to use the specimen form in **Part C** of the Manual.

- operator contact details
- details of the permit to be surrendered and, if partial surrender, which parts are to be surrendered (or, in the case of mobile plant, which plant are covered by the surrender)
- if a partial surrender, details of any conditions the operator considers may need varying as a result
- details of any information contained in the notification which the operator wishes to be kept from the public register on grounds of commercial confidentiality
- the date on which the surrender is to take effect, which must be no less than 20 working days from the date when the notification is given
- the operator's signature.

19.2A. Regulation 24(1)(a) specifies that the Part B notification procedure does not apply to the extent that any Part B permit relates to a waste operation. Such related waste operations have to go through the surrender application route.

19.3. There are three possible procedural options:

- if it is a full surrender, the permit ceases to have effect on the date notified by the operator
- if it is a partial surrender and the authority does not consider it necessary to vary any conditions as a result of the notification, the relevant part of the permit ceases to have effect on the date notified by the operator

- if it is a partial surrender and the authority considers it necessary to vary any conditions, the authority must serve a notice stating that such variations are considered necessary and what those variations are, and the date when the variation(s) takes effect. If the variation notice date is after the notification date, the partial surrender takes effect on the date of the variation notice.

Surrender and revocation – LA-IPPC and LAPPC

19.4. The procedures for revocation and surrender should not be confused. It is the view of Defra and WG that there is no need or requirement for a permit to be revoked once it has been surrendered.

19.5. The only occasions where site restoration (but not surrender) and revocation will occur in relation to the same installation is where an LA-IPPC permit is revoked because a) an operator is no longer considered to be a fit operator or has ceased to be the operator (other than having surrendered the permit), and b) EP regulation 23 is used to require the installation to be returned to satisfactory state once it is no longer in operation.

Note: refunds are not payable when permits are surrendered or revoked. They are only payable where an LAPPC activity ceases to be regulated under the EP Regulations; where an LAPPC activity is reclassified to fall under the Environment Agency control as a result of an amendment to the EP regulations; or where a direction is issued by the Secretary of State or Welsh Ministers under EP regulation 33(1)(a) transferring local authority regulatory functions to the Environment Agency.

20. Accidents and preventative measures

Guidance on preventing and dealing with accidents.

A2

20.1. Annex IV of the IPPC Directive includes the following as a consideration to be taken into account when determining BAT:

“the need to prevent accidents and to minimise the consequences for the environment”.

This is an obligation for all LA-IPPC installations. It is implemented by virtue of Schedule 7 to the EP Regulations, and is in addition to the surrender and restoration provisions explained in **Chapter 18**.

The Environment Agency’s [Pollution Prevention Guidance Notes](#) include useful information on prevention of accidents.

20.2. To meet these requirements, applications for a permit should identify:

- a) the main accident hazards and potential consequences
- b) the risk of these occurring (ie hazard x probability)
- c) the steps to be taken to reduce the risks, together with contingency plans to tackle accidents that do occur and their pollution consequences.

20.3. The Control of Major Accident Hazard (COMAH) Regulations SI 1999/743 came into force on 1 April 1999 and were amended in 2005. They aim to prevent major accidents involving dangerous substances and limit the consequence to people and the environment of any which do occur. COMAH applies to approximately 1200 establishments that have the potential to cause major accidents because they use, or store, significant quantities of dangerous substances, such as oil products, natural gas, chemicals or explosives. Further information on the COMAH Regulations can be found [here](#).

20.4. In practice, it is envisaged that relatively few LA-IPPC installations will be covered by COMAH (in which case those Regulations, together with any necessary consultation with the Health and Safety Executive and the Environment Agency, would provide a firm starting point for discharging this requirement – see paragraph 4.25). The majority will involve lesser risks and consequently it is anticipated that applications will normally not require such an extensive analysis of accident risks, consequences, and steps to be taken. However, local authorities will need to be satisfied that operators have carefully thought through these issues, and have set out in their applications the safety procedures, training, preventative maintenance, clear-up contingency plans and other relevant measures intended to put in place.

20.5. Local authorities should include such conditions in permits which require specific measures to be taken to prevent/reduce accidents and to mitigate the consequences of any accidents that might occur. This might, in some cases, take the form of a requirement for a plan or list of contingency measures or arrangements, covering some or all of the installation, to be submitted for the authority's approval, and to be reviewed and updated at a given frequency. The extent of such conditions will be dependent on the level and type of risks involved. Authorities should also include conditions, as appropriate, requiring that operators investigate and undertake remedial action immediately in the event of an abnormal incident or accident which may cause pollution, notify the authority without delay of such an incident or accident, and promptly record the events and actions taken.

20.6. Most of the sector guidance notes have been the subject of a first two-year review and contain guidance along the following lines (the remaining unamended notes will contain the same advice in due course):

- a paragraph explaining the three main components of accident management, namely
 - identification of the hazards to the environment posed by the installation/activity
 - assessment of the risks (hazard x probability) of accidents and their possible consequences
 - implementation of measures to reduce the risks of accidents, and contingency plans for any accidents that occur;
- guidance on particular areas to consider when identifying hazards for the sector in question;
- guidance on identifying the risks, which should address
 - how likely is the particular event to occur (source frequency)?
 - what substances are released and how much of each (risk evaluation of the event)?
 - where do the released substances end up (emission prediction - what are the pathways and receptors)?
 - what are the consequences (consequence assessment – what are the effects on the receptors)?
 - what is the overall risk (determination of overall risk and its significance to the environment)?
 - what can prevent or reduce the risk (risk management – measures to prevent accidents and/or reduce their environmental consequences)?
- sector-specific examples of risk reduction measures: both process management controls and preventative measures.

21. Waste minimisation – LA-IPPC installations

Guidance on minimising waste as a principle to be taken into account in determining LA-IPPC conditions. (A desirable principle for all industrial activities.)

A2

21.1. Paragraph 5(1)(a) of Schedule 7 to the EP Regulations requires operators to take into account the following principle when determining the conditions of an LA-IPPC permit: that the installation should be operated in such a way that

“waste production is avoided in accordance with Council Directive 2006/12/EC² of the European Parliament and of the Council of 5 April 2006 on waste; where waste is produced, it is recovered or, where that is technically and economically impossible, it is disposed of while avoiding or reducing any impact on the environment.” (IPPC Directive, Article 3(c)).

21.1A. Article 4.1 of the [Revised Waste Framework Directive](#) contains a revised waste hierarchy.

The following waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy:

- (a) prevention;
- (b) preparing for re-use;
- (c) recycling;
- (d) other recovery, e.g. energy recovery; and
- (e) disposal.

21.2. Waste minimisation is an important part of this. Waste minimisation also has the potential to bring business savings.

21.3. The sector guidance notes which have been revised as a result of the first two-year review, envisage generally permit conditions being included which require

- the operator to record materials usage and waste generation in order to establish internal benchmarks, with assessments being made against the internal benchmarks so as to maintain and improve resource efficiency;
- the operator to carry out a waste minimisation audit at least as frequently as the permit review period (see **Chapter 26**) so as to

² references to 2006/12/EC must be construed as references to the [revised Waste Framework Directive](#) and read in accordance with the correlation table in Annex V of the 2008 Directive

account for process changes, new technical understanding and appreciation of environmental risks, and other possible material changes. If an audit has not been carried out in the two years before an application is made, the operator should complete one within 18 months of the issue of the permit. The methodology used and an action plan for optimising the use of raw materials should be submitted within two months of completion of the audit;

- specific improvements resulting from the recommendations of audits to be carried out within a timescale approved by the local authority.

What is waste minimisation?

21.4. Waste minimisation can be defined simply as: “a systematic approach to the reduction of waste at source, by understanding and changing processes and activities to prevent and reduce waste”.

21.5. In the context of waste minimisation and this Manual, waste relates to the inefficient use of raw materials and other substances at an installation. A consequence of waste minimisation will be the reduction of gaseous, liquid and solid emissions.

21.6. Key operational features of waste minimisation will be:

- the ongoing identification and implementation of waste prevention opportunities
- the active participation and commitment of staff at all levels including, for example, staff suggestion schemes
- monitoring of materials usage and reporting against key performance measures.

21.7. A variety of techniques can be classified under the term waste minimisation, including basic housekeeping, statistical measurement, and application of clean technologies.

21.8. For the primary inputs to waste activities such as incineration, the requirements of BAT may have been met “upstream” of the installation. However, there may still be arisings that are relevant.

Practical advice on waste minimisation and waste management audits

21.9. Many companies considerably underestimate the cost of waste, viewing it simply in terms of disposal costs. When waste is considered in respect of the materials that are in the waste and the cost of treatment, energy and wasted effort, the true cost is often 5-20 times that of the disposal.

21.10. By auditing or mapping individual activities, companies can start to identify **where** waste is occurring, thus making it easier to find out **why** it is happening.

- 21.11. Operators are encouraged to make continuous movement towards more Sustainable patterns of Consumption and Production (SCP). Making processes more sustainable can improve businesses' bottom line by driving down costs, opening up new markets through innovation, and enhancing reputations and brand value. Businesses that don't use resources more efficiently will miss out on potential commercial opportunities and will lose out as prices for scarce commodities rise. More information on sustainable business and resource efficiency is on the [Defra website](#).
- 21.12. The Government-sponsored Wrap/Envirowise programme has produced a number of guides and case studies on waste minimisation. These free publications can be ordered from the [Envirowise website](#) or 0808 585794.
- 21.13. The National Industrial Symbiosis Programme (NISP) is an innovative business opportunity programme that brings together companies from all business sectors. The aim is to improve cross-industry resource efficiency through commercial trading of materials, energy and water, and sharing assets, logistics and expertise. Further information , including case studies, can be found on the [NISP website](#).

22. Working with the Environment Agency

Guidance on consulting the Environment Agency on LA-IPPC applications and advising the Agency on installations they regulate.

A2

22.1. It is general good practice for local authorities and the Environment Agency to co-operate over the regulation of IPPC and LAPPC installations. On becoming aware of an application or pending application, operational contact should be established in accordance with the protocol on “Arrangements to implement the requirements of the IPPC Directive”. This protocol is one of a series that links to the “Working Better Together” Memorandum of Understanding between the Environment Agency and the Local Government Association. The Memorandum sets out how the Agency and each authority can work better together to deliver specific environmental outcomes.

22.2. The protocols are available

- [on the Environment Agency website](#)
- in appendix of the [September 2004 edition of the Chartered Institute of Environmental Health's PPC Management Guide](#) .

22.3. In addition, the Agency has specific responsibilities under EP regulation 58 relating to the regulation of water discharges and the inclusion of water-related conditions in permits. The protocols include a template for an agreement between a local authority and a local Environment Agency office - see **Chapter 10**, paragraph 10.6.

22.4. The Environment Agency should be a public consultee for all LA-IPPC applications. The Environment Agency is expected to treat the local authority in whose area an installation or mobile plant will be operated as a public consultee for all A1 applications. The public consultee procedures are set out in **Chapter 9**.

Local authorities as consultees for A1 installations

22.5. Local authorities and the Environment Agency should work closely, within their respective responsibilities, to ensure effective regulation of A1 installations. To this end, for any existing installations being transferred to Agency A1 regulation, authorities should make the Agency aware of details of any previous notices served for statutory nuisance or PPC matters, the methods of compliance with such notices and any non-compliance, plus any relevant monitoring data, extant

planning condition and related enforcement histories or further legal action. If requested authorities should provide the Agency with copies of relevant documents to enable them to formulate permit conditions.

- 22.6. Local authorities may supply the Agency with suitably worded conditions. However, because the Agency now sets 'high level' conditions, it may be more appropriate for authorities to indicate the objective to be achieved rather than the precise wording of the condition. If suggested conditions are supplied, they can be taken into account by the Agency in issuing their permits. The Agency may ask for more explanation or justification for the proposed condition or objective before deciding how to take it forward. The Agency will inform authorities of its decision and authorities will be provided with a full copy of the permit when it is issued, or a web link to the permit.

Environment Agency as a consultee for LA-IPPC installations, and subsequent liaison

- 22.7. The Environment Agency should be a public consultee for all LA-IPPC permit applications. In addition, where LA-IPPC installations include waste management activities, the relevant local planning authority should also be a consultee. As with A1 installations, local authorities and the Environment Agency should work closely to ensure effective regulation of the LA-IPPC installation.
- 22.8. The Environment Agency has power under EP regulation 58 to give notice to a local authority specifying emission limit values or conditions which it considers necessary to prevent or reduce emissions into water from the LA-IPPC installation. The Agency must be informed of all LA-IPPC applications so that it can decide whether to exercise this power.
- 22.9. Where an LA-IPPC permit is issued, local authorities and the Environment Agency should continue to work in partnership to ensure effective protection of the aquatic environment. The Agency will try to respond to reasonable requests from authorities to help them enforce the conditions in the permit. Authorities should maintain contact with the local Environment Agency officers, particularly in the early years of LA-IPPC regulation, who should be able to help with advice on checking compliance and interpreting monitoring data. Likewise local Environment Agency officers will want to be able to contact authorities easily if their monitoring of the quality of the watercourse indicates that further action is needed to control emissions.
- 22.10. **Chapter 10** deals with LA-IPPC water consent issues in more detail.

Contacting the Environment Agency

- 22.11. To contact your local office you can telephone the General Enquiry Line on 08708 506 506 who will transfer calls to the appropriate office. General e-mails can be forwarded to enquiries@environment-agency.gov.uk. Further information can be found on the [Environment Agency website](#). The Agency's 24-hour incident hotline is 0800 807060.

22.12. The following is a list of Agency offices with whom local authorities may wish to make contact for a number of reasons including forwarding of cheques for water discharge conditions. The table was accurate at March 2009 and addresses contact details can also be found on the 'contact us' pages of the [Environment Agency website](#).

Head Office	Rio House, Waterside Drive, Aztec West, Almondsbury, Bristol, BS32 4UD Tel: 01454 624400. Fax: 01454 624409.
Anglian Region	Kingfisher House, Goldhay Way, Orton Goldhay, Peterborough, PE2 5ZR. Tel: 01733 371811. Fax: 01733 231840.
Midlands Region	Sapphire East, 550 Streetsbrook Road, Solihull, West Midlands, B91 1QT. Tel: 0121 711 2324 Fax: 0121 711 5824
North East Region	Rivers House, 21 Park Square South, Leeds, LS1 2QG. Tel: 0113 244 0191. Fax: 0113 246 1889.
North West Region	Richard Fairclough House, Knutsford Road, Latchford, Warrington, Cheshire, WA4 1HT. Tel: 01925 653999. Fax: 01925 415961
South West Region	Manley House, Kestrel Way, Exeter, Devon, EX2 7LQ. Tel: 01392 444000 Fax: 01392 444238
Southern Region	Guildbourne House, Chatsworth Road, Worthing, West Sussex, BN11 1LD. Tel: 01903 832000. Fax: 01903 821832
Thames Region	Kings Meadow House, Kings Meadow Road, Reading, RG1 8DQ. Tel: 0118 953 5000 Fax: 0118 950 0388
Environment Agency Wales	Ty Cambria, 29, Newport Road, Cardiff, CF24 0TP. Tel: 08708 506506

23. Fees and Charges

Guidance on fees and charges that must be paid. There is a fee for making an application. All permitted activities must pay an annual subsistence charge. There are also fees for transferring and surrendering permits.

A2,B

Charging and cost accounting

23.1. The Secretary of State and Welsh Ministers, in laying down the fees and charges to be levied by local authorities, must, as far as practicable, ensure (taking one year with another) that they are sufficient to cover:

a) local authorities' costs in carrying out their functions, b) Environment Agency Local Authority Unit costs in preparing LA-IPPC/LAPPC guidance (EP regulation 65).

23.2. The fees and charges are set down in what is known as the local authority charging schemes – one each for LA-IPPC and LAPPC. Relevant stakeholders are consulted in the annual review of the scheme. Each annual review takes into account evidence on local authority costs (including on-costs and overheads) and the potential for efficiency savings. The charging scheme follows the Government's charging policy of ensuring a fair allocation of costs, whilst also taking account of the 'polluter pays' principle and the need for cost recovery of the services that are provided to those being regulated.

23.3. The fees and charges collected must be used by each authority for the administration and enforcement of the LA-IPPC and LAPPC regimes. Financial shortfall cannot therefore be a justification for an authority failing to fully exercise its functions if it has failed to devote its charging income to funding this regulatory service. Authorities should keep separate accounts of income and expenditure – a system known as cost accounting. Authorities are required to include a copy of the accounts on the public register (Schedule 24, paragraph 1(2)(c) to the EP Regulations) – see **Chapter 29**.

Local authorities are under a duty to ensure Part B and A2 installations do not operate without a permit, to determine applications, and to assess compliance with permit conditions. Authorities must give effect to the Regulations so that those subject to regulation are able to carry on their activities in accordance with the law, the environment is protected from those activities, and the United Kingdom complies with its obligations under EU law. Indeed, as part of the state, local

authorities are under a duty to give effect to European legislation as a matter of EU law.

23.4. A copy of the most recent fees and charges schemes are available from the websites listed in paragraphs 23.13 and 15.

23.5. **Annex X** contains guidance on how to undertake cost accounting. In summary, the cost accounting methodology expects local authorities to:

- count the number of hours of work devoted to LA-IPPC and LAPPC by
 - a) members of the pollution control team including administrators, and
 - b) other council officers including legal advisers,

ensuring that it is clear how many hours relate to which staff pay bands. (The activities which relate to LA-IPPC/LAPPC are those listed in Section 2 of Annex X.)

- calculate the hourly rate for each of the pay bands involved in the LA-IPPC and LAPPC function

The hourly rate should include the calculation the Council normally uses to add on pension, accommodation, IT etc costs (known as “gross total cost”). So, if an officer’s wages are, say, £28,000 a year, it might be that the cost of funding the officer’s pension, his/her office space, stationery, human resources etc may add another perhaps £15,000 a year. The total of £43,000 can then be broken down as an hourly cost.

- add the standard figure the Council normally uses to reflect the overhead costs of
 - i) central policy making (eg Chief Executive’s Department) and elected Councillors [together known as “corporate and democratic core”],
 - ii) miscellaneous financial costs, such are the write-off value of unused IT equipment [known as “non-distributed costs”], and
 - iii) the interest charged on capital assets, such as mortgage costs [known as “capital financing charge”].

Each Council will usually have a figure to cover these extra ‘on-costs’. If not, it may be reasonable to assume, as an approximation for the purposes of this exercise, that the total of these is unlikely to add more than 5% to officer wages before the addition of pension, office space etc.

Risk

23.6. The risk-based charging scheme was introduced in 2006/7 for all standard activities (ie not dry cleaning, petrol stations, small waste oil burners, and vehicle refinishers, where simplified permits are used).

23.7. The risk-based method applies a low, medium or high risk rating to activities operating at an installation. The resulting subsistence fees are proportionate to the risk rating. This risk-assessment method uses a “point scoring” approach which combines the indicative environmental impact assessment (EIA) of the activity itself and the Operator Performance Assessment (OPA) covering the operational aspects of the installation. This is outlined in the [Risk-Based Inspection Methodology](#). (Annex X of the [Manual](#) contains a clarification of the meaning of component 5 in table A1.5 of the methodology.)

23.8. Key points arising from the risk based methodology to note are:-

- a) it applies only to activities once a permit has been issued;
- b) all activities carried out at an installation must be risk assessed;
- c) substantial changes are not risk assessed;
- d) [deleted]
- e) where two activities carried out at an installation come under the same section in Part 2 of Schedule 1 to the EP Regulations or fall under the category of “combined” activities in the charging scheme (and are thus treated as a single activity), the activity with the higher risk rating should apply to those activities;
- f) for new installations a “low” risk should be applied to each assessment in the OPA section of the risk method for what remains of the first financial year of operation, as there will be no record of the preceding year. The EIA in such cases can be low, medium or high as appropriate;
- g) risk scores should be reviewed at least once annually, but any change in the risk score as a result of an in-year inspection or review will not result in a change to charging levels for the remainder of that year. The subsistence charges will remain the same until the next April;
- h) [deleted].

New LA-IPPC installations – application fees

23.9. An operator must pay the relevant fee laid down in the LA-IPPC charging scheme when submitting any LA-IPPC application. Local authorities must receive this before the application can be considered to be duly-made. If an authority judges that an application is not duly-made, it must return the fee to the applicant along with the application paperwork.

23.10. *[paragraphs 23.10-23.12, and 23.14 deleted because no longer an Environment Agency water application fee for LA-IPPC installations - just an annual subsistence charge]*

23.11. -

23.12. -

23.13. The [LA-IPPC charging scheme](#) for Part A2 operators in England can be found on the Defra website The equivalent charging scheme for Wales can be found [here](#)

23.14. -

New LAPPC installations – application fees

23.15. An operator must pay the relevant fee laid down in the LAPPC charging scheme when submitting any LAPPC application for a new installation or substantial change. The local authority must receive this before the application can be considered duly-made. If the authority judges that an application is not duly-made, it will return the fee to the applicant.

23.16. The [LAPPC charging scheme](#) for England can also be found on the Defra website and for Wales on the [Welsh Government](#) one.

Transition to the EP regime

23.17. Applications are not required for existing installations to transfer into the EP regime (see paragraph 1.8 of the Manual). This happens automatically without charge. Applications for new permits or for substantial changes should be accompanied by the fee applying at the time of application. From 1 April 2008, subsistence charges should be paid in accordance with the local authority EP charging schemes made under EP regulation 65.

Refunds – application fees

23.18. Where an operator withdraws an application, the local authority may decide to retain the application charge in full with no refund, and especially if the application is withdrawn more than 56 calendar days after it has been duly-made. This guideline time period reflects the fact that authorities are likely, by then, to have begun public consultation and commenced a detailed assessment of the application.

Late applications

23.19. The charging scheme specifies a higher than normal fee for applications made where an operator has been operating a listed activity unlawfully without a permit. This includes cases where an activity is being carried on at an installation which has a permit for a separate activity. The higher fee is to reflect local authority costs in tracking down unpermitted installations and was the subject of consultation as part of the review of the charging scheme during 2006.

The authority may additionally consider whether a prosecution is warranted.

Annual subsistence charges

- 23.20. Operators must pay an annual subsistence charge to cover local authorities' continuing regulatory costs once a permit has been issued. It will cover such things as checking monitoring data or carrying out inspections – see **Annex X** for full list. The level of subsistence charge is contained in the relevant charging scheme and will become due normally on 1st April each year. The operator is liable for the full subsistence charge for the year of operation.
- 23.21. If the installation begins operation after 1st April the operator is liable for the remaining full months of that financial year.
- 23.22. In relation to LA-IPPC installations, the subsistence charges are contained in article 15 of the LA-IPPC charging scheme. There are four charge bands, as set out in paragraph 10.37.
- 23.23. The operator may decide to pay the subsistence fee in quarterly instalments. An administration charge is included in the charging scheme to cover the costs of additional invoicing.

Refunds – subsistence fees

- 23.24. In the following cases, a refund must be paid to the operator amounting to what was due for the remainder of the financial year after these amendments/directions are made. The cases are:
- as the result of an amendment to the EP Regulations, an activity either stops being regulated under the Regulations, or is reclassified as an A1 activity,
 - the Secretary of State or Welsh Ministers issue a direction under EP regulation 33(1)(a) transferring the exercise of local authority functions to the Environment Agency.

Where payments are made in instalments, only the relevant part of the latest instalment will need to be refunded.

If the installation ceases to operate during the calendar year the operator is not entitled to a *pro rata* refund of any subsistence fees

- 23.25. If the installation ceases to operate during the calendar year the operator is not entitled to a *pro rata* refund of any subsistence fees.

Reduced subsistence charges due to mothballing or reduced operating levels (England only)

23.25A. Amendments were made to the LAPPC and LA-IPPC charging schemes for England in June/July 2009 to allow operators to request reduced subsistence charges for up to 24 months (extended to 36 months in April 2011) if they have mothballed their installation, or are operating at reduced levels (below the level at which a permit is required), and still want to retain their permit. Guidance on the procedures which includes the qualifying criteria and was first published in June 2009, is contained in **Annex X**. The accompanying declaration proforma is at the end of **Part D** of the Manual.

Non-payment of subsistence charges

23.25B. In April 2011, an additional 'late payment' charge was introduced. This applies in cases where an authority has issued an invoice to an operator for the payment of the subsistence charge or instalment of the charge, and payment has not been received within 8 weeks beginning with the date of issue of the invoice.

23.26. If an operator fails to pay a subsistence charge, an authority may revoke the permit. It is envisaged that revocation in these circumstances will only be used as a last resort, when reasonable attempts have been made to recover the sum owing, since there is no right of appeal if a revocation notice has been served for non-payment of subsistence charges (EP regulation 31(3)).

23.26A. An amendment to EP Regulation 65(6) gives local authorities the power to serve a suspension notice for non-payment. In accordance with EP regulation 37(5) and (6), the notice must:

- specify the reason for the suspension
- state the sum payable by the operator and the period within which it is to be paid, and
- state that the permit ceases to have effect to the extent specified in the notice until the notice is withdrawn.

It is envisaged that authorities will want to take reasonable steps to secure payment of charges before serving such a notice. Written reminders to pay might, however, point out that suspension is one of the possible consequences of non-payment. A specimen suspension notice for use where subsistence charges have not been paid can be found in **Part D** of the Manual.

Applications to vary a permit

23.27. Fees are only payable for a variation that involves a substantial change (see paragraphs 24.7-9 for guidance on 'substantial change'). An application fee is payable to the local authority for processing the variation application, to cover their administration, inspection and other costs.

23.28. The fees for a substantial change are also dependant on the type of substantial change being applied for. The change may involve the increase in size of one of the activities currently operating or it may consist of the starting up of an entirely new activity (neither “combined” nor already being carried out at that installation). This will affect the variation fee that is payable. Variations are dealt with fully in **Chapter 24**.

Transferring permits

23.29. LA-IPPC and LAPPC installations may change hands through normal business transactions. The EP Regulations therefore allow for permit transfers, either for the whole installation or for one or more parts of it. Permit transfers are dealt with in **Chapter 25**.

23.30. When an operator wants to transfer all or part of a permit to someone else, they and the proposed transferee must make a joint application, signed by both parties, including the current permit document and the appropriate transfer fee which is set out in the relevant charging scheme. There are different levels of charges for full and partial transfers to reflect the more complex nature of a partial transfer and, as at January 2008, there was no fee for full transfers relating to ‘reduced fee’ activities. No fee is payable to the Environment Agency for either full or partial LA-IPPC transfers of the discharge consent permit.

Surrendering permits

23.31. Operators must pay a surrender fee when surrendering an LA-IPPC permit. The procedures for the surrender of an LA-IPPC permit are dealt with in **Chapter 18**. As with variations, a fee is payable to the Environment Agency for the surrender of a discharge consent permit. There is no fee for the surrender of an LAPPC permit.

Charges for two or more activities which fall under the same section of Schedule 1 to the EP Regulations

23.32. Where two activities which co-exist at an installation come under different sections of Part 2 of Schedule 1, they are treated as two separate activities (unless they are defined as “combined activities” – applicable to some LAPPC activities only - see below). But, where two activities co-existing at an installation come under the same section of Part 2 of Schedule 1 to the EP Regulations, they must be treated as one activity for charging purposes.

Combined activities: LAPPC only

23.33. Some industrial activities within an installation may fall into different sections of Part 2 of Schedule 1 to the EP Regulations and would normally attract a separate fee for each activity. However there are specific activities listed in the LAPPC charging scheme – referred to as “combined activities” (previously referred to as “paired activities”) - which have many technical similarities, despite them falling in different

sections in the Regulations. These are treated as a single activity for the purposes of the charging scheme. Examples are installations which have combined ferrous and non-ferrous activities, and cement/lime activities combined with other mineral activities.

Waste activities

23.34. **Chapter 2** advises on cases where there is an LAPPC activity and a waste activity on the same site and forming part of the same installation. If the LAPPC activity is the major one on the site, a direction can be issued so that there is a single permit covering both activities, regulated by the local authority. In these cases, there is a [supplementary application fee](#) and also a supplementary subsistence fee of different amounts according to whether the installation has a low, medium or high risk rating.

Reduced fee activities: LAPPC only

23.35. There are some industrial activities which fall under the EP Regulations which are seen as significantly less technically complex than other activities and which also pose a very low risk to the environment. As such, these activities do not come under the “standard activity” category and have their own “reduced fee” categorisation which requires the operators of these installations to pay reduced fees as set out in the LAPPC charging scheme. Currently, this category comprises small waste oil burners, dry cleaners, petrol stations, and most vehicle refinishing activities (as covered by process guidance note PG6/34b – re-numbered 6/34 in the 2011 revision).

Mobile plant

23.36. Before the fees and charges for mobile plant can be calculated it must be clear to all parties who the operator actually is. This is complicated by the various scenarios that can come into play in real life situations. For instance a hire company can hire out plant with personnel to operate that plant (in which case the hire company holds the permit); or the hire company can hire out plant to be operated by the person hiring the plant (in which case the person hiring the plant will need to have a permit); the mobile plant may be operating as part of a wider process and be incorporated within the permit for the installation (in which case it might not need a permit in its own right). Detailed examples are given in [Process Guidance Note 3/16\(04\) Mobile Crushing and Screening](#).

23.37. The calculation of the fees and charges for mobile plant is different to that applicable to installations. The more mobile plant permits which are held by an operator, the lower the application fee and subsistence charge per permit. The formula for calculating this is contained in the relevant charging scheme and explained in the covering letter issued with the schemes.

Charging + LAs' general power of competence

- 23.38. Section 1 of the [Localism Act](#) contains a general power of competence for local authorities in England. This includes a power to charge, subject to the limitations in section 3.
- 23.39. Exercise of this power is a matter for each individual authority. Defra's view is that it appears possible for authorities to exercise this power to cover the cost of LAPC pre-application discussions (see paragraph 4.9 of this Manual), in addition to the application fees and subsistence charges provided for under the EP regulation 65 charging scheme.
- 23.40. For information, the [Environment Agency's charging scheme](#) contains the following on pre-application charges:

“4.1.2 Pre-application advice

We recognise you may want advice from us on preparing an application and on the permitting process generally. While this is helpful to you and can be beneficial for us, as it results in a better quality of application, the extent and content of pre-application discussions need to be reasonably limited, particularly as there is a lot of advice available to help you prepare an application.

Where we charge for pre-application advice we allow:

Up to 1 hour spent in pre-application discussions for each standard permit application free of charge;

Up to 15 hours spent in pre-application discussions for each bespoke permit application free of charge;

Up to 1 hour spent in pre-notification discussion for a deployment notification under a mobile plant permit.

If, in any particular case, our input to a pre-application discussion exceeds this, we will normally be unable to provide additional advice without levying a charge, currently £125 per hour. We will therefore contact you to find out whether you wish us to provide further advice that you will have to pay for.

The recovery of such costs does not fall within the EP charging scheme but would be levied under our general powers in the Environment Act 1995 to charge for services provided.”

24. Variations to permits

Guidance on notifying changes to an installation; applying for a variation to a permit and deciding such applications; and on cases where the local authority decides to initiate a permit variation.

A2,B

Installation changes and permit variations

24.1. An operator may decide he or she wants to make changes to an installation which already has a permit. In such cases the operator can

- notify the local authority of the change
- apply for a variation to the permit
- make the change without notifying or applying to the authority.

Paragraphs 24.3-11 below explain these options.

24.2. A local authority may decide that the existing permit conditions require amendment without receiving any notification or application from the operator (EP regulation 20(1)). This is most likely to occur when the authority decides that the conditions need varying having conducted a periodic review in accordance with EP regulation 34, or in the light of revised guidance from Defra/WG, or because of the transfer of a permit to another operator. Other instances could be the revision of a relevant environmental quality standard, the declaration of an area as an air quality management area, or (in the case of LA-IPPC) a requirement from the Environment Agency to revise a water-related condition.

Changes proposed by the operator

24.3. The EP Regulations do not include a variation notification procedure. For PPC permits transferring automatically to EP, the following condition is automatically included in the permit by virtue of EP 2007 regulation 69(6) as saved by EP 2010 regulation 108(4). Where EP permits are issued on or after 6 April 2008, authorities are strongly advised to include this condition themselves and must do so for LA-IPPC installations to give effect to Article 12(1) of the IPPC Directive:

“If the operator proposes to make a change in operation of the installation, he must, at least 14 days before making the change, notify the regulator in writing. The notification must contain a description of the proposed change in operation. It is not necessary to make such a notification if an application to vary this permit has been made and the application contains a description of the proposed change. In this condition ‘change in operation’ means a

change in the nature or functioning, or an extension, of the installation, which may have consequences for the environment.”

- 24.4. In accordance with Schedules 7 and 8 of the EP Regulations, the IPPC Directive definition of ‘change in operation’ applies, namely: “a change in the nature or functioning, or an extension, of the installation which may have consequences for the environment”. A change in operation could entail either technical alterations or modifications in operational or management practices, including changes to raw materials or fuels used and to the installation throughput.
- 24.5. If there is no such condition included in their permit, operators should be aware that there are risks to them should they fail to notify the relevant local authority of a change. The risks are that the authority decides that the change means that the operator is either carrying on the activity beyond the extent authorised by the existing permit, or is doing so in contravention of an existing permit condition. Both are offences under EP regulation 38. On the positive side, some changes could result in a lowering (as well as, potentially, raising) of an installation’s risk rating. These could include alterations to management or training practices, or technical changes such as the use of less toxic chemicals.
- 24.6. Many changes will not have consequences for the environment and notification will be unnecessary; although there may be cases where it is nonetheless good practice for an operator to do so in order to keep the authority informed. It is also good practice to notify authorities of any administrative changes, such as the name or address of the operator (where the installation has not changed ownership), and authorities can simply amend the permit without going through any formal procedures.
- 24.7. The IPPC Directive definition of ‘substantial change’, which is incorporated by the EP Regulations, is “a change in operation which, in the opinion of the competent authority [the regulator], may have significant negative effects on human beings or the environment”. For installations subject to the Solvent Emissions Directive, further criteria may be relevant – see paragraph 34.10 of the Manual.
- 24.8. If an operator has any doubt over whether a particular change is substantial, he/she should ask the opinion of the relevant local authority.
- 24.9. More guidance on the meaning of substantial change can be found in **Annex III** to the Manual.
- 24.10. The procedures for applying for a variation are the same as for applying for a permit, with the following differences (see Part I of Schedule 5 to the EP Regulations):
- applications for variations which do not amount to a substantial change (‘non-substantial variations’) do NOT require either any consultation or publicity, or the payment of a fee, although there is nothing to preclude authorities undertaking consultation or publicity;

- applications for variations which entail a substantial change ('substantial variations') must be accompanied by the relevant fee and are subject to the same publicity and consultation arrangements as for permit applications, as set out in **Chapters 6 and 7** of the Manual. Substantial variation fee levels can be found [here](#) or by contacting the relevant local authority; unless the operator agrees a longer period, applications for substantial variations should be determined within 4 months, and non-substantial variations within 3 months. If applications are not decided within these timescales, the operator can issue a notice which triggers deemed refusal and the right of appeal;
- separate specimen application forms for LA-IPPC and LAPPC variations can be found in **Part C** of the Manual. For non-substantial applications, authorities should expect the form to be completed only to the extent necessary and proportionate to the change which is proposed to be made;
- for substantial variations, applications should contain any relevant information obtained or conclusion arrived at concerning the proposed change in relation to Articles 5-7 of the Environmental Impact Assessment Directive (Council Directive 85/337/EEC);
- for substantial variations to LA-IPPC installations, if the application involves additional land to that already covered by the permit, the operator must include a site report for the additional land (as per **Chapter 18**).

24.11. Local authorities must include their reasons when determining all variation applications (see paragraph 6.18 of the Manual). Determinations must also specify what, if any, variations are made and the date on which any variation takes effect. Authorities have the option of issuing a consolidated permit reflecting the changes and a notice specifying the changes included in the consolidated permit. If authorities opt for a consolidated permit, paragraph 19(3) of Schedule 5 of the EP Regulations states that the right of appeal only applies to the changes made, not to the entire consolidated permit. Variation notices and consolidated permits must be placed on the public register.

Changes initiated by the local authority

24.12. There may be occasions where an authority decides that the existing permit conditions warrant amendment (EP regulation 20(1)). The legal basis for what conditions must cover is in **Annex XI**.

Substantial variations

24.13. The procedures for substantial variations on the initiative of local authorities are contained in Part 1 of Schedule 5 to the EP Regulations.

24.14. As with operator-instigated variations, changes initiated by authorities can be either involve substantial or non-substantial variations. Where substantial, the publicity, consultation and fee provisions apply. They do not apply for non-substantial variations.

- 24.15. An authority proposing to vary a permit which entails a substantial change must first notify the operator
- that the authority is proposing to do so
 - that the authority considers the public participation provisions of paragraph 8 of Part 1 of Schedule 5 of the EP Regulations apply. Paragraphs 5(3) and (4) of Schedule 5 provide that:
 - paragraph 8 applies if the variation would entail a substantial change or if the local authority determines that paragraph 8 should apply, but
 - paragraph 8 does not apply in relation to <0.4MW waste oil burners, dry cleaners, or petrol stations
 - what the proposed variations are
 - what fee must be paid
 - that he/she can make representations
 - where and by when such representations must be made.
- 24.16. The authority should undertake consultation with public consultees exercising the same judgement as set out in **Chapter 9** of the Manual.
- 24.17. All representations made within the specified timescale must be considered.
- 24.18. Where, following completion of these stages, the authority decides to vary the permit, it must, in accordance with paragraph 17 of Schedule 5, notify the operator of the decision (including the reasons for it). This must include the date on which any variation takes effect, any rights of appeal, and both how to make an appeal and what the time limit is. A specimen notice can be found in **Part D** of the Manual. Authorities must also notify the Secretary of State or Welsh Ministers in the event that a proposed variation is likely to have a significant negative effect on the environment of another EU Member State.
- 24.19. All decisions on variations, including reasons, must be placed on the public register, subject to confidentiality or national security claims.
- 24.20. It is a matter of good practice that authorities give advance warning, where possible, that they propose to activate these procedures. At minimum it is recommended that authorities explain to the operator, preferably in writing, before serving the formal notice, what will be happening, what opportunities there will be for him/her to make representations, and the rights of appeal.

Non-substantial variations

- 24.21. There are no procedures in the EP Regulations for handling authority-initiated variations which do not entail a substantial change. Authorities should therefore at minimum:
- ensure that the operator is consulted over the proposed variation and any comments are considered

- give reasons for their decision
- inform the operator of his/her rights of appeal, which are the same as for substantial variations.

24.22. No fee is payable for non-substantial variations, which are intended to be covered by the income from the annual subsistence charge. It is for authorities to decide on a case-by-case basis whether any additional publicity or consultation should be given to these variations, or whether to publish decisions on their website. Non-substantial variations must be placed on the public register.

Extent of the regulated site

24.23. In accordance with EP regulation 20(2), no LA-IPPC variation can reduce the extent of any regulated site. Any such reduction would have to be achieved through the surrender procedures.

Consolidation of permits

24.24. EP regulation 18 allows authorities to consolidate a permit which has been varied into a single replacement document. Authorities can also replace individual permits with a single replacement permit where there is more than one installation on the same site operated by the same operator, or where the same operator operates more than one mobile plant. Neither sort of consolidation affects the amount payable per installation or per mobile plant under the charging scheme.

Notices

24.25. Specimen variation notices and notices to accompany a consolidated permit can be found in **Part D** of the Manual. As with all specimen applications and notices listed in Part C and D, Word versions are available on.

Public register

24.26. Applications for variations and variation determinations must be included on the public register, subject to commercial confidentiality and national security limitations.

25. Permit transfers

Guidance on applying for and making permit transfers for an entire installation or part of an installation.

A2,B

Applications for transfers

25.1. LA-IPPC and LAPPC installations may change hands (ie the operator's legal identity changes) through normal business transactions. EP regulation 21 therefore allows for permit transfers either for the whole installation, or for one or more parts of it through partial transfer arrangements. New operators should have the appropriate management systems and the competence to run installations properly in compliance with the conditions of the existing permits.

A change of legal identity includes where there is a change to the operator's unique identifier at Companies House.

25.2. When an operator wants to transfer all or part of a permit to someone else, he/she and the proposed transferee must make a joint application and also pay a fee (see **Chapter 23**). They must both sign the application form, subject to paragraphs 25.15-20 below. The joint application should contain their telephone numbers and addresses (if different) plus any additional correspondence address (if different). A suggested form is included in **Part C** at the end of this guidance. This form can be downloaded as a Word document. The application should be accompanied by the current permit document and must include the appropriate transfer fee.

Determining applications

25.3. Local authorities must determine whether to allow the transfer. Under EP regulation 21(1), authorities may transfer a permit in whole or in part. The key determinant of whether a transfer should be allowed is the test of operator competence described in **Chapter 11** of the Manual. It is envisaged that transfers will be allowed if the proposed transferee will be the operator of the installation and will operate the installation in accordance with the permit (see paragraph 13 of Schedule 5 to the EP Regulations).

25.4. Paragraph 15 of Schedule 5 to the EP Regulations specifies a two-month period for authorities to determine transfer applications. An authority and the applicants may agree a longer period. If an authority has neither effected the transfer nor rejected the application within the time limit, the applicants may serve notice on the authority referring to paragraph 15 of Schedule 5, and the application is automatically

deemed to have been refused on the day the notice is served. There is a right of appeal against such deemed refusals within 6 months of service of such a notice.

Whole installation transfers

25.5. Where authorities transfer the whole permit, they may either

- endorse the permit enclosed in the application for transfer, with the proposed transferee's details as the new operator, or
- issue a new permit document.

It is open to an authority to vary any of the existing permit conditions, or add new conditions, if it is considered necessary having regard to the competence of the transferee, its management structure or training arrangements, etc. The transfer can take effect from the date requested by the operator, or a date that may be agreed by the authority and the applicants.

Partial installation transfers

25.6. In the case of partial transfer, where the original operator retains part of the permit, the application must make clear who will have control over the various parts of the installation. The application must include a plan identifying which parts of the site and which activities the operator proposes transferring, outlining the responsibilities for the delineated site.

25.7. For partial permit transfers, authorities must issue a new permit to the transferee. This will cover the parts of the operation that have been transferred. It should contain the same conditions as the original permit, so far as they are relevant to the transferred section (see below). The Environment Agency will need to be consulted by authorities over water discharge conditions in relation to LA-IPPC transfers.

25.8. Authorities must return the old permit to the original operator, showing the extent of the transfer and thus which parts of the permit remain applicable.

25.9. Existing permit conditions may need to be varied as a result of a partial transfer. For example, emission limit values may need to be separated out, or further conditions may become necessary as a result of shared operation. It may be necessary to include conditions which ensure that the operators co-operate on control of the installation as a whole.

25.10. During the transfer period, authorities may request from either party further information regarding the proposed transfers. No account is taken of this time period within the two-month timescale for determining transfers.

Transfers and existing enforcement notices

25.11. If an enforcement notice is in force in relation to any part of the transferred permit, the new operator is automatically under a duty to comply with it to the extent that it relates to the part transferred (EP regulation 21(3)).

Failure to apply for a permit transfer

25.12. The EP regulation 21 transfer procedures requirements must be followed. If an operator fails to do so an authority can take enforcement action against that operator for operating without a permit.

25.13. Authorities have the option under EP regulation 60 to issue an Information Notice to an LA-IPPC or LAPPC operator requiring the parties to jointly complete a transfer application form under EP regulation 21. It is an offence under EP regulation 38(4)(a) to fail to comply with any requirement imposed by such a Notice without reasonable excuse. (In determining their enforcement policies, authorities are reminded of the Cabinet Office Enforcement Concordat and the statutory Regulators' Compliance Code which applies in England – see **Chapter 28**.)

25.14. The following is an example Notice:

I am writing to give you formal notice of your legal requirement (regulation 21 of the Environmental Permitting (England and Wales) Regulations 2010) to apply to this authority if at any time you intend to transfer your permit in whole or in part to another person. The application should be made jointly with the transferee.

This authority is obliged to action the transfer unless we consider that the proposed transferee will either

a) not be the person who will have control over the operation of the installation or mobile plant covered by the transfer after the transfer is effected, or

b) will not ensure compliance with the conditions of the transferred permit.

This notice is served pursuant to regulation 60(2) of the Environmental Permitting (England and Wales) Regulations 2010, a copy of which can be found on the reverse of/attached to this letter. The fee for making an application to transfer [the whole of/part of] your permit is reviewed each year, and is currently £.... [for authorities to fill in dependent upon the fee for that year].

If we discover that you have transferred your permit to another person without making such a joint application under the procedure laid down in regulation 21, we can take enforcement action against the original permit holder (Part 4 of the EP Regulations). It is also an offence under regulation 38(4)(a) to fail to comply with this Notice. Therefore

you should be aware of your legal responsibility to send us the necessary joint application before you attempt to pass on the whole or part of the activities carried on at [details of installation] to another.

Death of a sole operator

25.15. A new regulation 67A introduced by [SI 2012/630](#) provides that if individual who is the sole holder of an environmental permit dies, the permit automatically vests in his/her personal representatives for up to 6 months. If the permit has not been transferred by the personal representatives by the end of 6 months, it ceases to be valid. So if, for example, a dry cleaner who ran his/her own business died, the shop could continue to be operated under the permit for 6 months to allow time for someone to take it over.

Permit transfers when an operator cannot be located

25.16. EP regulation 21 was amended by SI 2012/630 to remove the absolute requirement to have the signature of the current operator as well as the proposed transferee.

25.17. A local authority can now accept an application from a proposed transferee alone where satisfied that the current permit holder (who must be a private individual) cannot be located.

25.18. To be satisfied, the authority should ask the transferee what reasonable steps have been taken to find the current permit holder. If needs be, the authority can ask for more steps to be taken or ultimately, if there is sufficient cause, reject the transfer application, in which case a new permit application would be needed.

25.19. For these transfers, the identity and competence of the proposed transferee should be assessed in the usual way.

25.20. Note: if there is more than one current permit holder, as many as can be found should sign the transfer application.

26. Permit reviews

Guidance on when and how permit conditions should be reviewed.

A2,B

- 26.1. EP regulation 34(1) requires local authorities to periodically review permits.
- 26.2. Permit reviews are to check whether permit conditions continue to reflect appropriate standards: effectively whether the permit is still 'fit for the purpose' and conditions continue to reflect BAT. Authorities should review permit conditions in the light of new information on environmental effects, available techniques or other relevant issues. The sector and process guidance notes will be kept under review and it is envisaged that changes to these notes will be the key consideration when reviewing permits and deciding on the need to amend, add or delete any conditions.
- 26.3. If a review shows that new or varied permit conditions are needed, authorities should use the variation procedures set out in **Chapter 24**.

Frequency of reviews

- 26.4. Periodic reviews are likely to be needed in any of the following circumstances:
- the pollution from the installation is of such significance that the existing emission limit values for the permit need to be revised or new emission limit values need to be included in the permit;
 - substantial changes in BAT make it possible to reduce emissions from the installation or mobile plant significantly without imposing excessive costs;
 - operational safety of the activities carried out in the installation or mobile plant requires other techniques to be used.
- 26.5. In addition, advice can be found in the sector and process guidance notes on a frequency for reviews where the above circumstances do not apply:
- LA-IPPC. Each of the sector guidance notes refers back to this chapter in the Manual. A frequency of once every eight years ought normally to be sufficient in most cases.
- LAPPC. There is advice at the end of section 2 of each of the process guidance notes. In most cases the advice is that a frequency of once

every eight years ought normally to be sufficient. The current review of all the notes will extend this frequency to eight years.

26.6. Defra and WG currently aim to review each of the process and sector guidance notes on a six-yearly cycle.

26.7. For efficiency, authorities should seek to combine periodic reviews with any other significant permit-related activity, such as determining a substantial change application. This should not be a reason for bringing forward or delaying a review by a significant amount of time. But reasonable adjustments in timing should be made, provided that authorities are content that environmental protection will be maintained and that any change of timing does not put an added burden on the operator. (Defra and WG collect statistical data on periodic permit reviews. This is intended to be indicative, and any assessment will take into account authorities sensibly varying the timescales.)

Nature of reviews

26.8. The purpose of reviews is to provide a double-check on the adequacy of the permit conditions. In effect, they amount to a periodic, more thorough assessment of what should be the obligations imposed on the operator so that the overall requirements of the EP Regulations are being met, including the duty on authorities to follow developments in BAT (see Schedules 7 and 8, paragraphs 8 and 7 respectively).

26.9. It is not considered that a permit review will involve the same amount of work as consideration and determination of an initial application for a permit. It should generally be regarded as an extension of the usual annual inspection, assessment and enforcement role of authorities. A permit review may involve:

- a full inspection of the installation, as part of the usual annual inspection process
- an examination of the permit conditions, considering whether the permit conditions reflect BAT, having regard to the relevant guidance
- written confirmation of the outcome of the review, detailing any proposed new or changed permit conditions
- a variation notice under EP regulation 20 if conditions require variation.

Links with other Regulations – LA-IPPC installations

26.10. Some LA-IPPC permits will contain conditions that fulfil the requirements in the Groundwater Regulations (see **Chapter 31**). The local authority must review those conditions every four years in conjunction with the Environment Agency. This need not be the full LA-IPPC permit review although authorities should take advantage of any opportunities to combine reviews in order to minimise workload and disruption for all concerned. The same applies for other regulatory

requirements: thus authorities are advised to keep in touch with the HSE to see if permit reviews and the review of safety reports under the COMAH Regulations can be coordinated.

27. Risk-based regulation of permitted installations - inspection, monitoring, and reporting

Guidance on permit compliance, including operator self-monitoring, reporting + record-keeping, local authority inspection + promotion of business benefits of sustainable practices, risk-based regulation.

A2,B

27.1. Once a permit has been issued, the operator must carry on the activity in accordance with the permit conditions. Any changes to the activity should be dealt with as appropriate under the variation notice procedure (see **Chapter 24**). The role of the local authority is to satisfy itself whether this is being done. The amount of regulatory input should be related to the risks associated with each individual installation, measured in terms of the environmental impact of the installation (which it may not be possible to change if, for example, certain hazardous chemicals are used or stored) and the demonstrated capability of the operator.

27.2. The charges set by Defra/WG and levied on operators are in most cases categorised according to the risk rating given to each installation.

Self-monitoring and reporting by the operator

27.3. It is expected that permit conditions will place a significant responsibility for monitoring of emissions and other regulatory parameters on operators. This should follow on from operators' applications, which ought to set out how they propose to monitor emissions/parameters.

27.4. Local authorities should normally include conditions for LA-IPPC and LAPPC installations:

- setting out suitable emission monitoring requirements,
- specifying the measurement methodology, frequency and evaluation procedure,
- ensuring that the operator supplies the data needed to check compliance, including emission monitoring results, and
- requiring the operator to inform the authority, without delay, of any incident or accident that is causing or may cause significant pollution.

27.5. Guidance on types and levels of monitoring appropriate for each sector is contained in the sector and process guidance notes. The conditions should generally require operators not just to provide basic data (for example, the actual results from monitoring equipment), but also to demonstrate whether they are meeting the conditions of the permit. This may include showing that they are not exceeding applicable emission limit values (ELVs), that they are monitoring using the required techniques, and that they have the necessary management systems in place.

27.6. A specimen condition might read :

“The operator shall monitor the emissions from the exhaust stacks listed in the table below:

Stack ref (as shown on map xyz)	Monitoring type	Monitoring frequency	Methodology	ELV
1A	Continuous	Daily		
1B	Continuous	Hourly		
2	Periodic	Six monthly		

All monitoring results shall be forwarded to the local authority within..... In the case of abnormal monitoring results, the local authority shall be informed immediately of the results and of the corrective action taken or intended to be taken to reduce emissions.“

27.7. Defra and WG are aware from the annual statistical returns that local authorities often do not spend a great deal of time looking at monitoring data that is sent to them. The data will frequently be an efficient way of ascertaining how well the installation is performing and assessing the need for inspection visits. There is, of course, no value asking businesses to provide data which is not being examined.

Defra and WG have also heard that one reason for LAs not looking at monitoring data is that operators don't send it in accordance with permit conditions. Taking formal enforcement action for such failures may often be considered too harsh, but non-compliance may trigger the addition of risk points – so operators can be warned that they risk higher charges (or won't benefit from lower charges) if they don't supply the information.

EU Inspection Recommendation

27.8. The EU adopted in 2001 a [Recommendation on minimum criteria for environmental inspections](#). This applies to all IPPC installations (ie including all LA-IPPC installations), as well as activities regulated under

the Solvent Emissions Directive and the Waste Incineration Directive. Much of what is contained in the Recommendation is already good practice which local authorities are expected to be following under LAPPC and LA-IPPC, and on which data is collected in the annual statistical survey.

- 27.9. Formally, the Recommendation is not required to be implemented in the UK. However, it is the Government's intention³ that it should be followed in relation to processes regulated under specified EU directives. Furthermore, it represents good practice and it would be difficult and unsatisfactory to adopt different practices for different sectors regulated under the EP Regulations. So, it is expected that local authorities will follow it for the regulation of all LA-IPPC and LAPPC installations. To that end, Defra/WG routinely ask in its annual statistical survey questions about the number of programmed inspections, inspections for general compliance monitoring or to check that upgrading had been carried out etc.
- 27.10. The key elements promoted in the Recommendation, in addition to the inspection actions which are expected to be undertaken under LA-IPPC and LAPPC, are
- a) **inspection plans.** Before the start of each financial year, local authorities should draw up a programme/plan setting out the type and frequency of visits intended for each installation, having regard to the Defra/WG guidance on inspection frequency (see paragraphs 27.13-24). Each subsequent year's plan should draw on the experience of the previous year. This sort of inspection planning is already done by some authorities and, irrespective of the Recommendation, is good management practice, along with cost accounting. It is recommended that inspection planning is undertaken in tandem with annual risk assessment (see below).
 - b) **inspection records.** A note should be made of the principal observations and findings from an inspection, including details of any breaches of the permit/authorisation and any other causes for concern. The note should also record any action the inspector has required to be taken and the timetable for its completion. Likewise, if an inspection is (in part) to check compliance with upgrading programmes, notices, or other previous requirements for improvements or the rectification of breaches, the note should record whether the necessary work has been completed or is appropriately on track.
 - c) **disseminating information about inspections.** The results of an inspection should be communicated orally to the operator during and at the end of each inspection, and should be supplemented by a written report (ie the above-mentioned note). The report should be provided at the end of the inspection or as soon as possible thereafter. It is important, where relevant company personnel are not present during the inspection, that they receive a copy of the report. The report should also be made available to the public on

³ the Coalition Government has yet to express its policy on this matter

request as soon as possible, and certainly within two months of the date of inspection.

- 27.11. The Recommendation also encourages the co-ordination of inspection visits and any other regulatory oversight activities, where it is practicable, with other regulators, such as The Health and Safety Executive or the Environment Agency. Defra and WG are aware that a significant number of local authorities already try to join up regulation by, for example, giving responsibility for the regulation of petrol stations to the Fire Service or County Trading Standards Department, or combining it with food inspections.

The Recommendation specifies that inspections should be carried out by appropriately trained and competent inspectors. Regulator competence is addressed in [the 2004 revision of the CIEH's Management Guide](#). This Guide also contains additional advice for practitioners on good inspection practice. The Chartered Institute of Environmental Health (CIEH) also accredited in 2007 a new one-week course in pollution prevention and control, aimed at providing a basic grounding to local authority officers new to this work area or needing to refresh their knowledge. Find [information about the course and syllabus](#). CIEH and consultants AEA (in the form of EMAQ) also run “[essentials of PPC](#)” seminars in conjunction with the Midlands Joint Advisory Council – the five stand-alone seminars are together an Institute of Air Quality Management accredited training programme.

Local authority training costs are one of the considerations in the annual Defra/WG review of the level of LA-IPPC/LAPPC charges.

Risk-based approach to regulation and inspection frequency

- 27.12. Inspections are carried out to ascertain compliance with conditions (this can include authorities undertaking their own compliance monitoring), to check process changes, and in response to complaints. Inspections can also provide an opportunity for authorities to provide advice on wider environmental issues, such as sustainable consumption and production, which can benefit both the environment and business, and to put operators in touch with eg the [Envirowise helpline](#) (or 0800 585794) or the [Carbon Trust](#) (0800 085 2005).
- 27.13 The benefits of physical inspection of premises are that it can reveal operational and practical compliance issues which monitoring data alone will not show. Local authorities will also normally want to undertake an inspection visit in response to a complaint, if they receive monitoring data showing a breach or near-breach of conditions, or if they receive a report from the operator of abnormal operation.
- 27.14 A risk-based inspection methodology was introduced for LAPC in 2003, LAPPC in 2004, and LA-IPPC in 2005. The 2003 and 2004 methods were replaced by a 2009 method, which incorporated the hitherto excluded 'reduced-fee' activity sectors (petrol stations, dry cleaners, small waste oil burners, and vehicle refinishing) as well as mobile

crushing plant. The methods can be found [here](#). They are references in the Local Better Regulation Office’s publication [Review of current components of risk assessment models that recognise central systems of businesses that operate across local authority boundaries](#), which gives international examples of “earned recognition” schemes and reviews current UK thinking.

27.15 The method involves assessing each installation against specified criteria. The criteria fall into two categories:

- **environmental impact appraisal:** the potential environmental impacts of a process according to its type, level of upgrading to meet regulatory requirements, and its location;
- **operator performance appraisal:** how well the operator manages the potential environmental impact of the installation.

NB only the second category applies to the six sectors added to the LAPPC method in 2009 (reduced to five sectors with the deregulation of gas odorisers).

Each of these aspects is evaluated by scoring the process against a number of different components, which are listed in the methodology. The methodology includes guidance on the criteria which comprise each component, and what scores amount to high, medium and low risk. (Note: additional advice on component 5 can be found at the end of **Annex X** of the Manual.)

27.16 The four main steps involved in the method are:

- **STEP 1 - desk-based scoring of processes**
All relevant installations should be scored using the risk assessment method, based on information held on file, together with officers’ knowledge of the processes concerned. The output will be a series of scores for different attributes and allocation of the process to a risk category, which is linked to the regulatory effort required by the process.
- **STEP 2 -use the score sheets during inspection visits**
Where scheduled visits to processes are undertaken, the scoring should be used as a basis for discussion with operators, and should incentivise performance improvements where needed by the link to the amount paid in subsistence charges. Where possible, a copy of the methodology and draft completed score sheet should be provided to the operator prior to the visit. The completed score sheet should be shown to the operator and the scores discussed with them, together with any action that could be taken to reduce their scores and risk category. It is envisaged that this should not add significantly to the length of an inspection visit but should provide a focus for discussion.
- **STEP 3 - use the scoring to determine regulatory effort and charges**

The methodology provides guidance on how the results of the risk assessment method should normally be used in determining the level of resources to be devoted to the subsistence activities of processes. All LA-IPPC charges and most LAPPC charges are based on risk rating.

- STEP 4 - review scores on a regular basis

Scores for each process should be reviewed on a regular basis, and at least annually. In particular, scores should be reviewed following visits, any changes to the permit, receipt of complaints, or when enforcement action is taken. A separate assessment should be carried out for every activity which attracts a separate subsistence charge. Where scores change during the course of a financial year, affecting the charging band, no change should be made to the charges until the next financial year.

27.17 Local authorities must use the risk-based method for all LA-IPPC and LAPPC activities. The LA-IPPC and LAPPC risk methods form part of the charging scheme, and the annual subsistence charge cannot be calculated without using the methods to calculate the risk rating (see **Chapter 23**).

27.18 Under the methods, each installation is rated as 'high', 'medium' or 'low' risk. This classification relates to the regulatory effort necessary to devote to each process according to their relative risks. "Regulatory effort" refers to the full range of activities needed to regulate the process: not just inspection, but time spent at the office preparing for inspections, writing reports and reviewing data supplied by operators. According to the report of the consultants who drew up the methodology, the average regulatory time spent per process each year is likely to vary from 18 – 30 hours for LAPPC (except for the six sectors added in 2009).

27.19 It is not intended that the application of the risk-based method should lead to a significant reduction in overall regulatory effort, rather effort should be prioritised towards those installations which pose the greatest risk of environmental pollution.

Inspection frequency: most sectors

27.20 The following are the minimum levels of inspection Defra/WG would expect for all except the six sectors added in 2009:

HIGH - two "full" inspections a year, during which the local authority officer must examine full compliance with all authorisation conditions and look at any process or other relevant (eg management) changes. In addition, there must be at least one "check" inspection to follow up any areas of concern or other matters arising from the full inspection. "Extra" inspections may be needed in response to complaints, adverse monitoring results etc. (LAPPC regulatory effort : 27-45 hours per year.)

MEDIUM - one "full" inspection, plus one "check" inspection, together with "extra" inspections as required. (LAPPC regulatory effort :18-30 hours per year.)

LOW - one "full" inspection, together with "extra" inspections as required. (LAPPC regulatory effort : 9-15 hours per year.)

Inspection frequency: 6 sectors added in 2009

27.20A The following are the minimum levels of inspection Defra/WG would expect for the six sectors added in April 2009 (from 6 April 2010, one of the six sectors - gas odorising - was taken out of regulation):

Petrol stations, dry cleaners, and small waste oil burners

HIGH - one full and one check inspection per year, together with extra inspections as required. (LAPPC regulatory effort: 4.6 hours per year, or 6.6 hours for petrol stations with PVRII [petrol vapour recovery stage II] fitted.)

MEDIUM - one full inspection per year, together with extra inspections as required. (LAPPC regulatory effort: 3.1 hours per year, or 4.4 hours for petrol stations with PVRII [petrol vapour recovery stage II] fitted.)

LOW - one full inspection every three years, together with "extra" inspections as required (LAPPC regulatory effort: 1.5 hours per year averaged over three years, or 2.2 hours for petrol stations with PVRII [petrol vapour recovery stage II] fitted.)

Vehicle refinishing

HIGH - one full and one check inspection per year, together with extra inspections as required. (LAPPC regulatory effort: 10.7 hours per year.)

MEDIUM - one full inspection per year, together with extra inspections as required. (LAPPC regulatory effort: 7.1 hours per year.)

LOW - one full inspection every two years, together with extra inspections as required. (LAPPC regulatory effort: 4.4 hours per year averaged over two years.)

Mobile plant

HIGH - one full and one check inspection per year, together with extra inspections as required. (LAPPC regulatory effort: 30 hours per permit held per year for the 1st and 2nd permits held.)⁴

MEDIUM - one full inspection per year, together with extra inspections as required. (LAPPC regulatory effort: 12.5 hours per permit held per year for the 1st and 2nd permits held.)⁵

⁴ For subsequent permits the regulatory effort reduces in line with the sliding scale of charges. For 3 to 7 permits this amounts to 18 hours per permit per year, for 8 or more permits, 9.3 hours per permit per year

⁵ For 3 to 7 permits this amounts to 12 hours per permit per year, for 8 or more permits, 6.2 hours per permit per year

LOW - one full inspection every two years, together with extra inspections as required (LAPPC regulatory effort: 12.5 hours per permit held per year averaged over two years for the 1st and 2nd permits held.)⁶

Defra and WG expect the authority where the mobile plant operator has his or her principal place of business to ensure that the periodic inspections are carried out, whether by themselves or by another authority.

27.21 In all three categories in both 27.21 and 27.20A:

- a) it is acceptable to combine an extra inspection with a full or check inspection;
- b) it is acceptable to combine a full inspection with an inspection associated with a formal periodic review;
- c) where appropriate, it may be best to carry out a full inspection when emissions monitoring (in line with permit conditions) is being undertaken by or on behalf of the operator.

27.22 Local authorities should be alert to opportunities for combining inspections, where they will serve to make more effective use of their own resources and minimise disruption to businesses.

27.23 The risk methodology can be found [here](#).

Inspection and promotion of sustainable business and resource efficiency

27.23A Regulatory inspection also affords an opportunity for local authority officers to encourage businesses towards sustainable practices, although there is an important balance, and no authority should be expected to provide what would amount to free consultancy advice.

Both business and the environment can benefit from adopting sustainable consumption and production practices. Estimates of potential business savings include

- £6.4 billion a year UK business savings from resource efficiency measures that cost little or nothing
- 2% of annual profit lost through inefficient management of energy, water and waste
- 4% of turnover is spent on waste.

When putting in place arrangements to comply with permit conditions, operators are strongly advised to use the opportunity to look into what

⁶ For 3 to 7 permits this amounts to 7.5 hours per permit per year, for 8 or more permits, 3.8 hours per permit per year

other steps they may be able to take. The sort of general issues that can be investigated are:

- how much electricity, gas, mains water, fuel oil, and vehicle fuel is used and what it is used for
- whether the process design can be changed so less waste is produced, or whether any waste currently generated can be re-used in the process or by someone else
- starting a staff suggestion scheme for environmental improvements
- the availability of enhanced capital allowances (available as of December 2009)
- putting in place an environmental management system (see chapter 11).

Action following inspection

27.24 This is to remind authorities of Recommendation 14 of the Atkins Performance Review (APR) undertaken in 2006 which was endorsed in the Defra, LGA, CIEH, NSCA (now Environmental Protection UK), and WG action plan in July 2006.

27.25 Atkins Performance Reviews of 2004 and 2006 both found considerable variability in the amount of action taken following an inspection. Defra and WG do not expect uniformity. But, on the other hand, if one authority is suggesting improvements or issuing notices much less or more frequently than many others, it might suggest that the approach needs to be looked at.

27.26 The following Atkins recommendation was endorsed by the LGA/LACORS, NSCA [now Environmental Protection UK] and CIEH:

“It is recommended that those authorities who took no action on a greater percentage of their inspections than the average of 49%, benchmark their inspection procedure against authorities with a low percentage (eg less than 25% of inspections resulting in no action).”

27.27 Both Atkins Reviews further stated that “benchmarking with another authority will ensure that inspection best practice is being followed” and “will also enable authorities to provide a robust response should any stakeholder claim that the incidence of inspections resulting in no action indicates poor practice”.

27.28 Defra and WG have discussed with the Industrial Pollution Liaison Committee how to ensure that authorities take this recommendation forward. The consensus was that it would be entirely wrong to expect there to be a standard relationship between the number of inspections and the amount of subsequent action. There will be many variables affecting this. However, a low ratio of actions to inspections might be

indicative, for example, of an inspection regime which is not sufficiently focused. It was agreed by IPLC, therefore, that it would be wise for all authorities in this position to undertake benchmarking as recommended by APR. Such benchmarking could be undertaken as part of a peer review exercise, or as a stand-alone exercise with one or more other authorities.

27.28A Defra understands that proforma inspection pads are commercially available at least some industry sectors.

MCerts

27.29 MCerts was established by the Environment Agency to deliver quality environmental measurements. The scheme provides for the product certification of instruments, the competency certification of personnel, and the accreditation of organisations based on international standards. More information can be found on the [Environment Agency website](#).

27.30 The following guidance was issued following a Defra/WG consultation exercise in 2003.

Continuous emissions monitors (CEMS)

27.31 Some of the process guidance (PG) notes for LAPPC activities and installations specify the use of continuous emissions monitors. CEMs (not to be confused with continuous indicative monitors) are normally either extractive stack emission monitoring instruments where a sample of the gas is drawn from the chimney stack or duct, generally through a sample condition line, into the measuring cell; or cross-stack or *in situ* emissions monitoring instruments, where measurements of the target species are made directly within the gaseous atmosphere of the stack or duct.

27.32 Defra and WG are concerned to ensure that CEMs that are used are 'fit for purpose' – that they can reliably show whether the particular emission limit value (ELV) is being breached or not.

27.33 Defra/WG recognise that instruments approved under MCerts can generally be expected to produce measurements with less uncertainty than CEMs which have not been approved. However:

- a) if the uncertainties/tolerances of a non-approved instrument are known/calibrated, the instrument is appropriate for the measurements in question, and the measurements show compliance with relevant ELVs taking account of those tolerances, and
- b) given that Part B processes and installations are generally characterised by having a lower pollution potential compared with Part A processes/installations, as well as there being a preponderance of SMEs,

it is the view of Defra/WG that if the use of MCerts instruments would incur additional expense in such cases, they would not normally represent BAT. There might though be cases where, because for example of the size or nature of a particular emission, an MCerts CEM is considered to represent BAT notwithstanding that the existing CEM meets the above criteria.

- 27.34 On the other hand, if in any case the difference in cost between a ‘fit for purpose’ unaccredited CEM and a MCERTS-accredited instrument was negligible, it would generally be reasonable to expect the operator to opt for the latter when installing a new CEM or replacing an existing one.
- 27.35 Where, taking account of the uncertainties/tolerances, the pattern of measurements using an existing CEM show that they are close to or could exceed an ELV, the operator should be offered the option of taking steps to further reduce emissions or install an instrument with narrower tolerances (which may well be an MCerts-certified instrument).
- 27.36 If there are cases where the uncertainties of existing CEMs are not known or have not been quantified, local authorities should require such quantification to be undertaken by the operator so as to be able to judge the instrument’s suitability. If this is not feasible or not carried out, it should be replaced with an instrument with known tolerances.

Stack emission monitoring

- 27.37 Manual stack emission monitoring is widely used for regulatory monitoring of LAPPC activities. It is used for providing spot checks on emissions for comparison with ELVs. It is also used for the calibration of CEMs. The MCerts scheme for manual stack emission monitoring has been developed in collaboration with the Source Testing Association and others.
- 27.38 The MCerts scheme has two elements: certification of personnel and accreditation of organisations.
- 27.39 Personnel are certified to the MCerts personnel competency standard.. There are two competency levels, preceded by a ‘trainee’ stage. Level 1 requires basic competence and understanding of manual stack emission monitoring, and personnel achieving this standard are competent to conduct stack testing as part of a team led by a Level 2 person. Level 2 requires more advanced competence, and a Level 2 person will be responsible for the overall quality of monitoring work carried out on site and for the quality and correctness of the monitoring report. Certificates of competence are valid for five years.
- 27.40 Accreditation of organisations is by UKAS to ISO 17025. The standard includes requirements for MCerts-certified personnel to be used, management structure to be independent, use of appropriate methods following international standards, planning of a monitoring campaign

including carrying out risk assessments, reporting of results, and participation in proficiency testing.

- 27.41 Good health and safety practices are essential when carrying out extractive testing, and Defra/WG recognise the important focus of the MCerts scheme on health and safety matters. Local authorities may like to be aware of a booklet produced by the Source Testing Association “Risk Assessment Guide: Industrial-emission monitoring” (also known as the Yellow Book), available free from the [STA](#). However, as stated in paragraph 6.29 of the Manual, permits should not contain conditions whose only purpose is to secure the health of people at work – that is the job of the Health and Safety Executive or, where appropriate, local authority officers enforcing health and safety legislation.
- 27.42 Defra/WG consider that accreditation of organisations for stack emission monitoring will normally be more extensive than is necessary for the regulation of LAPPC activities/installations. There may, however, be controversial or otherwise sensitive cases where employment of an organisation with the benefit of accreditation will be desirable. Also, if there is a choice between use of an accredited and non-accredited organisations, and all other matters are equal, the former should be preferred.
- 27.43 Defra/WG consider that use of MCerts-certified personnel is desirable, but that each case should be judged on its merits. Many external contractors will provide personnel with such certification and Defra/WG consider that local authorities and operators should generally favour such contractors. Those operators using in-house monitoring services should be encouraged to secure certification for their personnel, but it is not envisaged that this should be made a requirement unless there are good reasons in a particular case (eg in the sort of cases described above). (One of the issues relating to in-house monitoring services is that they can be undertaken by a single operative, which may have health and safety implications - although, for the reasons given above, this is ultimately not a matter for local authority regulators).

LA-IPPC installations

- 27.44 There is separate guidance on the use of MCerts for installations regulated under the local authority IPPC regime, which can be found in the paragraphs headed ‘monitoring’ in each of the sector guidance (SG) notes.

28 Enforcement

Guidance on local authority enforcement options and procedures, prosecutable offences, and the proportionality principles in the Regulators' Compliance Code.

A2,B

- 28.1 Regulation 23 of the PPC Regulations (which was defunct from 6 April 2008) placed a duty on local authorities to take actions necessary to ensure permit conditions were complied with. This requirement is effectively delivered by paragraphs 3 and 5 of Schedules 7 and 8 to the EP Regulations.
- 28.2 Enforcement action taken by local authorities should be proportionate to the risks posed to the environment and the seriousness of any breach of the law, and the guidance in this chapter should be read in that context. From April 2008 authorities in England must have regard to the statutory Regulators' Compliance Code in determining their enforcement policies. The Code is being issued under section 22(1) of the Legislative and Regulatory Reform Act 2006. It supersedes the Cabinet Office Enforcement Concordat. The following are links to:

- the [Regulators' Compliance Code and the Concordat](#)
- the [Code for Crown Prosecutors](#), which sets down principles for making fair and consistent decisions about taking prosecutions.

Local authorities may find of interest the 6-fold classification of operators put forward by the Scottish Environment Protection Agency:

- criminal
- chancer
- careless
- confused
- compliant
- champion

and also the compliance model included on page 34 of the 2011 [Macdonald Report on better regulation and farming](#), where 1 and 2 below are identified for intelligence-led enforcement, and 3 and 4 for lighter-touch monitoring:

1. 'criminals' - no intention of complying: *apply stiff penalties to stop the activity*
2. generally non-compliant: *re-educate, warn, help move towards compliance, penalise for major transgressions*

3. generally compliant: *advise, notify and discuss non-compliance; encourage towards excellence*
4. 'top performers' - go beyond compliance: *promote as a role model to others.*

28.2A. Under s58 of the [Marine and Coastal Access Act 2009](#) authorities are now required to ensure that enforcement decisions that affect or might affect the UK marine area are taken in accordance with the appropriate marine policy documents “unless relevant considerations indicate otherwise”. If such decisions are not in accordance with these documents authorities must state their reasons. See paragraph 6.19A for more information.

28.2B To improve transparency, LAs are encouraged to inform all businesses they regulate that the LA complies with the Code, and where a copy can be found. This may most easily be done by adding to the 'for info' or 'notes' section of permits or to the end of inspection reports something: “Our enforcement of your permit will be in accordance with the Regulators' Compliance Code. A copy is on the Business, Innovation and Skills Department website: <http://www.bis.gov.uk/files/file45019.pdf>.”

Enforcement Notices

28.3 EP regulation 36 allows an authority to serve an enforcement notice if it believes an operator has contravened, is contravening, or is likely to contravene any permit conditions. Enforcement notices may include steps to remedy the effects of any harm and to bring a regulated facility back into compliance.

28.4 Authorities should consider in each case the comparative advantages of serving an enforcement notice and of using warning letters with the prospect of court proceedings (taking into account the Regulator's Compliance Code).

Enforcement notice: Where an operator has contravened a permit condition and both the condition and contravention are clear, there may be little to be gained from issuing an enforcement notice if it would in effect be restating what is already required by the condition. A notice would have the effect of enabling the operator to appeal against a condition that was not appealed when inserted in the permit (or which has previously withstood an appeal), and the notice could itself only be enforced by prosecution. Notwithstanding that consideration, local authority officers may judge that an enforcement notice will have the requisite effect on an operator, and where an operator has an environmental management system (EMS), receipt of a notice may count as an EMS failure.

Warning letters/court proceedings: As a possible alternative to serving an enforcement notice where a permit condition is contravened, an authority could give sufficient verbal and written warnings to the operator to stop the contravention. Such warnings should make clear that continued breach of the condition could result in prosecution (and

the penalties that could be given by the court). Any such correspondence ought also, in line with an authority's normal practices, to state how the operator may complain through the authority's complaints procedure. Prosecution would then be an option if there was continued contravention despite the warnings.

- 28.5 An enforcement notice must:
- a) state that the local authority is of the opinion that the operator has contravened, is contravening or is likely to contravene any condition of his or her permit;
 - b) specify the matters constituting the contravention or making a contravention likely;
 - c) specify steps to be taken to remedy the contravention or remedy the matter likely to cause the contravention; and
 - d) specify the period within which the steps must be taken.
- 28.6 The details to be given at c) can include practical action to make the operation of an installation comply with the existing permit conditions, or to clean up of pollution which may have been caused. An authority may withdraw an enforcement notice at any time, for example if action is taken to remedy the breach. The operator has the right of appeal against an enforcement notice except where the notice is a result of a direction issued by the Secretary of State or Welsh Ministers. An appeal will not suspend the terms of the notice (see **Chapter 30**).
- 28.7 Failure to comply with the terms of a notice will make the operator liable
- on summary conviction (ie in the Magistrates court), to a maximum fine/imprisonment as set out in paragraph 28.26 below,
 - on conviction on indictment (ie in the Crown court), to an unlimited fine and/or up to five years imprisonment,
 - if an authority consider that prosecution would be an ineffectual remedy, to proceedings in the High Court.
- 28.8 **Chapter 13** advises on time periods in permit conditions. A related issue is whether an enforcement notice must always include a start and end date for compliance in order to satisfy EP regulation 36(2)(d) ("An enforcement notice must.....specify the period within which those steps must be taken"). In circumstances where the steps to be taken are of a continuous nature, it will be sufficient for the enforcement notice to specify the date or dates from which the operator must commence taking such steps and, if appropriate, the date or dates when successive additional steps may need to be adopted.
- 28.9 Chapter 13 also gives advice on drafting permit conditions, and stresses that all conditions should be enforceable, have clarity both for industry and the public, be relevant, and be workable. This applies equally in relation to notices served under the EP Regulations.

Suspension Notices

- 28.10 If, in the opinion of an authority, the operation of an installation involves a risk of serious pollution, the authority may serve a ‘suspension notice’ under EP regulation 37 unless the authority intends to take action under EP regulation 57 (see paragraphs 28.15 and 16). This power applies whether or not the operator has breached a permit condition. A specimen notice is included in **Part D** of this Manual and can be [downloaded](#) as a Word document.
- 28.11 When an authority serves a suspension notice, the permit ceases to authorise the operation of the entire regulated facility or, in the case of a partial suspension notice, those activities specified in the notice. If the operator continues to operate the regulated facility in question or the part thereof which has been suspended, the notice will be breached. When the operator has taken the remedial steps required by the notice, the authority must withdraw it. Authorities may withdraw a suspension notice at any time. The situation on appeals is the same as for enforcement notices.
- 28.12 A suspension notice must:
- a) state the regulator’s view that the operation of the installation involves a risk of serious pollution;
 - b) state the risk of serious pollution involved, the steps to be taken to remove the risk, and the period within which they must be taken;
 - c) state that the permit ceases to have effect to the extent specified in the notice until the notice is withdrawn; and
 - d) if some activities covered by the installation are being allowed to continue under the permit (ie a partial suspension notice), state any steps that must be taken in relation to that activity on top of those already required by the permit.
- 28.13 The penalties for contravention of a suspension notice are the same as for an enforcement notice.
- 28.14 The criterion for serving a suspension notice under the old PPC Regulations was “imminent risk of serious pollution”. Imminence of the risk is not a factor under the EP Regulations. The same applies to the following two paragraphs.

Power of local authorities to prevent or remedy pollution

- 28.15 Separate from the power of the High Court to order the cause of an offence to be remedied (see paragraph 28.29 below), authorities can organise the clean-up of pollution under EP regulation 57 in two scenarios:
- scenario 1 - as an alternative to a suspension notice, if, in the opinion of an authority, the operation of a regulated facility involves a risk of serious pollution, the authority may arrange for steps to be

taken at the operator's expense for the risk to be removed under EP regulation 57. This may take the form, for example, of removing or making safe chemicals or ensuring safety works are carried out.

scenario 2 - if an operator commits any of EP offences a), b) or c) summarised in the table in paragraph 28.26 below, which causes pollution, an authority may arrange for steps to be taken to remedy pollution at the operator's expense. In this case, the authority must give the operator at least 5 working days advance notice of the steps it is intended to take.

28.16 An authority's costs can be recovered from the operator, except

- in scenario 1, if the operator shows that the costs were incurred unnecessarily in removing the risk of serious pollution, or that there was no risk of serious pollution;
- in scenario 2, if the operator shows that the costs were incurred unnecessarily in remedying the effects of the pollution caused when committing one of the specified offences.

Revocation Notices

28.17 Under EP regulations 22 and 23 a local authority can revoke a permit by written notice at any time, in whole or in part, by serving a revocation notice. A specimen notice is included in **Part D** of this Manual and can be [downloaded](#) as a Word document. The permit then ceases to authorise the operation of the installation, or an activity within it (a partial revocation), depending upon what is specified in the notice. Any post-operation requirements for LA-IPPC installations or mobile plant, such as site restoration, may remain in force. For partial revocations, a notice can also vary the existing permit conditions to the extent the authority considers necessary so as to take account of the revocation.

28.18 Local authorities may use revocation whenever appropriate. Revocation may be appropriate where exhaustive use of other enforcement tools has failed to protect the environment properly. Unless surrendered, a permit continues in effect until it has been revoked, even if an installation is operating during only part of the year, or has ceased operation.

28.19 Revocation notices must specify:

- a) the reasons for the revocation;
- b) the extent to which a permit is being revoked;
- c) any variations being made to existing permit conditions (including, if desired, replacement of the existing permit with a consolidated permit); and
- d) the date on which the revocation will take effect, which cannot be less than 20 working days from the date the notice is served.

For LA-IPPC facilities, any post-operation requirements, such as site restoration, may remain in force (EP regulation 23); and authorities can enforce the restoration requirements by issuing enforcement notices and, if necessary, use their powers to remedy harm and recover costs.

- 28.20 Revocation notices may be withdrawn before they come into effect. An appeal may be made at any time before the notice takes effect (Schedule 6, paragraph 3(1)(a) of the EP Regulations). In accordance with EP regulation 31(9), a revocation notice does not take effect until any appeal has been determined or withdrawn. As with enforcement and suspension notices, there is no right of appeal where the notice is a result of a direction issued by the Secretary of State/Welsh Ministers. There is also no right of appeal if a revocation notice has been served for non-payment of subsistence fees (see EP regulation 31(3)).
- 28.21 There is no need or requirement for an LAPPC permit to be revoked once it has been surrendered because the permit ceases to have effect when the surrender is notified. For LA-IPPC installations where site restoration (but not surrender) and revocation occur together, the permit may continue to have effect under EP regulation 23 so as to require the installation to be returned to a satisfactory state once it is no longer in operation.

Service of notices

- 28.22 EP regulation 10(2) requires all notices to be served in writing. They may be served on, or given to, a person by
- leaving it at his/her proper address (which includes electronic address), or
 - sending it to him/her by post or by electronic means at that address.

In the case of a body corporate, the notice may be served on the secretary or clerk. In the case of a partnership, it may be served or given to a partner or person having control or management of the partnership business.

- 28.23 The proper address to serve a notice is the last known address except in the case of a body corporate or its secretary/clerk, when it is their registered or principal office, and in the case of partnership when it is the principal office of the partnership. If a company is registered outside the UK or a partnership carrying out business abroad, the principal office within the UK is the proper address. It is permissible to complete and submit a form through a website if a local authority has provided this facility. A person to be served with a notice can specify an alternative address for its service.

Offences

- 28.24 Offences under the EP Regulations are listed in EP regulation 38 which is reproduced in **Annex XII** to this guidance. In summary they are:

- operation of an installation without a permit;
- failure to comply with or contravene a permit condition;
- failure to comply with the requirements of an enforcement or suspension notice;
- failure to supply, without reasonable excuse, information sought under a regulation 60(2) information notice;
- making false or misleading statements;
- making false entries in any record;
- forgery and deception in relation to documents.

EP regulation 41 deals with taking prosecutions against a body corporate, and its members or officers. ‘Officer’ is defined as meaning a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

28.24A. EP regulation 38(6) enables a prosecution to be taken against someone other than the operator if one of the above-mentioned offences “is due to the act or default of some other person”. This could be done instead of, or as well as, prosecuting the operator. The decision whether to take this approach will depend on the facts of each case. By way of indication, the approach might be considered in cases such as the following:

- a) there is a design fault in abatement equipment bought and installed by an operator which, notwithstanding appropriate servicing and maintenance and complying with monitoring conditions, results in a substantial emission incident;
- b) a person operates a mobile crushing plant which he or she has hired for a short period. Faulty or inadequate servicing or maintenance of the plant by the hire company results in a substantial emission incident during the hire period. The operator has reasonable expectations that the plant will be in good working order and has operated it in accordance with the permit conditions and any instructions from the hire company.

28.25 Where a local authority and another enforcement body (eg the Environment Agency or Health and Safety Executive) both have the power to prosecute, they should liaise to avoid inconsistencies and make sure that any proceedings are the most appropriate for the offence.

Penalties

28.26 In accordance with EP regulation 38, the maximum penalties for offences are as follows:

offence	Crown court penalty	Magistrates court penalty
---------	---------------------	---------------------------

(1) operating without a permit (2) contravening a permit condition (3) contravening an enforcement notice or suspension notice	unlimited fine and/or up to 5 years imprisonment	maximum £50,000 fine* and/or up to 6 months imprisonment*
(4)(a) failing to comply with an information notice (4)(b) making false or misleading statements (4)(c) making false entries (4)(d) forging documents etc with intent to deceive	unlimited fine, and/or up to 2 years imprisonment	the statutory maximum fine (£5,000 as at April 2012)

* Note: section 88 of the [Climate Change Act 2008](#) increased the maximum fine from £20,000 to £50,000 from 26 January 2009.

28.27 Under EP regulation 40 there is a defence for anyone charged with offences a), b) and c) in the above table. This gives an operator the opportunity to prove that what was occurred was done in an emergency in order to avoid danger to human health. The operator must additionally show that they:

- took all steps that were reasonably practicable in the circumstances for minimising pollution, and
- gave the local authority details of all that occurred as soon as reasonably practicable after the incident happened.

28.28 Under EP regulation 42, if an authority takes the view that a prosecution for failing to comply with an enforcement or suspension notice would afford an ineffectual remedy, the authority can take proceedings in the High Court for the purpose of securing compliance with the notice.

28.29 Under EP regulation 44, if there has been a successful prosecution for offences a), b) and c) in the above table, either the Crown court or Magistrates court can issue an order requiring specified steps to be taken to remedy the matter within a specified timescale. This only applies if the court considers that there are steps which it is in the power of the operator to remedy. An order can be made in addition to, or instead of, one of the penalties listed in the above table. Where an order is made, further proceedings cannot be taken in relation to the matter covered by the order during the period specified for remedial action.

28.30 As regards exempt waste operations, the penalty for an offence in the Magistrates is level 2 on the standard scale (£500 as at January 2008) for failing to keep records in accordance with paragraphs 14(3) or (4) of Schedule 2 to the EP Regulations, or failing to give notice of disposal

or recovery of more waste than is notified in a waste exemption notification (EP regulation 38(5)).

Proceeds of Crime Act 2002

28.30A Where a defendant is convicted of an offence under the EP Regulations by a Magistrates' court, section 70 of the [Proceeds of Crime Act 2002 \(POCA\)](#) enables a local authority to ask that court to commit the defendant to the Crown Court to consider issuing a confiscation order under POCA section 6. Confiscation orders can also be made when defendants are convicted or sentenced by the Crown Court.

The Crown Court must, among other things, decide whether the defendant has a criminal lifestyle; if so, whether he or she has benefited from their general criminal conduct; and if not, whether he or she has benefited from their particular criminal conduct.

Rhondda Cynon Taf Council prosecuted a case where a crushing activity was undertaken without a permit. The Crown Court made a confiscation order for almost £10,000, which amounted to the sum the operator was paid to undertake the particular job.

Crown Prosecution Service guidance on POCA can be found [here](#)
Two 2008 cases were prosecuted by the Environment Agency under POCA.

Magistrates' Association guidance

28.31 The Magistrates' Association have produced a comprehensive information toolkit and sentencing guidance covering many environmental offences. Local authorities and their legal advisers are likely to find this helpful when taking any proceedings in Magistrates courts. The 2009 update of the toolkit, entitled "[Costing the Earth, Guidance for Sentencers](#)", is available on the Magistrates' Association web site. The toolkit includes an LAPPC odour case study for which the judicial opinion of the District Judges and Recorder who advised on the toolkit is:

"This should be treated as very serious – aggravating features as set out in 'Assessing seriousness'. Pledged not guilty and so no s152 early guilty plea credit. Fine £25,000–£35,000 plus prosecution costs of £4,250. Might even consider committal for sentence to enable greater fine to be imposed. The level of fine in this case will be strongly influenced by the cost of the preventative works which the company has avoided. It may even be appropriate to defer sentence for six months to see if those works are subsequently carried out."

It is important to read the full case study to understand the context.

Simple cautions

28.32 Under the Criminal Justice Act 2003, there are now two types of caution: simple and conditional. The latter are not available in relation to EP Regulations offences. Simple cautions, previously known as formal cautions, are explained in [Home Office Circular 016/2008](#).

Where a prosecution is not the most appropriate course of action, local authorities should consider issuing a simple caution and the need to increase the inspection frequencies. As with convictions, authorities must place details of any formal caution on the public register. Simple cautions must be removed from the register after 5 years.

Admissibility of evidence

28.33 Under EP regulation 43, where a condition requires a record to be kept, the fact that the record has not been kept will be admissible as evidence that a condition has not been complied with.

Application to the Crown

28.34 Under Schedule 4 of the EP Regulations, the Crown is bound by the Regulations. However, the Crown cannot be prosecuted for any of the regulation 38 offences, and an authority cannot take proceedings in the High Court under regulation 42. However, local authorities may apply to the High Court to declare a contravention of the EP Regulations by the Crown to be unlawful. These special provisions do not apply to people who work in the public service of the Crown.

28.35 Schedule 4 also addresses powers of entry to Crown premises and how to serve a notice on certain Crown operators.

Local authorities giving publicity for enforcement action

28.36 The Defra/WG annual statistical survey collects data on notices, prosecutions and cautions. It is suggested that local authorities give publicity to successful prosecutions and also to notices served relating to significant cases. Knowledge at national level of the extent and details of local authority enforcement action will serve

- as an important reminder to all operators of the potential pitfalls of non-compliance with the regulatory requirements, and
- as a means of authorities sharing with one another their enforcement experience.

Enforcement where there are no complaints

28.37 AQ1(02) said that Defra and WG had become aware that some local authority officers were judging the significance of LAPPC processes for

regulatory purposes on the basis of whether or not they gave rise to complaints and/or caused a nuisance.

- 28.38 Authorities are reminded that LAPPC was set up to go beyond the statutory nuisance regime in relation to prescribed processes. LAPPC should certainly address nuisance via BAT. But, beyond this, the regime is intended as a mechanism for minimising air emissions which may not cause a local nuisance and, indeed, may not have any potential impacts locally.
- 28.39 To give two examples, NO_x emissions from LAPPC processes may not be noticeable by those living or working in the surrounding area, but nonetheless require control because of their potential health and ecological impacts and because NO_x is a transboundary pollutant. The main impact of toxic forms of mercury is via the food chain: the mercury is emitted from an LAPPC process, deposited in water courses or the sea, taken up by fish, and then consumed.
- 28.40 Therefore (except where odour is the only pollutant being controlled), the absence of perceptible emissions or of complaints from a process should not be taken to mean that the process in question is necessarily operating satisfactorily or in accordance with its authorisation. Nor is such absence, of itself, an indicator that less regulatory effort is required.

Enforcement in cases of severe winter weather

- 28.41 In cases of severe winter weather, such as during December 2010, extremely low temperatures will affect, for example, the operation of plant and equipment, monitoring arrangements and can disrupt supplies, access to land and the availability of key personnel.

Local authorities should bear in mind that in some circumstances this may lead to potential non-compliance with the requirements of the environmental permit, or may cause some unforeseen environmental impact. In these cases, it is suggested that authorities encourage vulnerable or affected operators to contact them to explore the options available to minimise and manage any possible or actual significant impacts. Section 8 of the [Regulators' Compliance Code](#), to which authorities must have regard, contains guidelines on proportionate response to regulatory breaches.

This should not detract from operators' own responsibility for having appropriate contingency arrangements to cover realistic risks of a permit contravention.

29 Public registers and information

Guidance on what the public and others can find out about regulated activities and their emissions, subject to confidentiality and national security limitations. Also requirements and options for local authorities managing their public register.

A2,B

Information

- 29.1 Under EP regulation 60, local authorities can serve a notice on anyone requiring the information specified in the notice to be provided, as long as it is for the purpose of discharging their EP functions. A specimen notice is included in **Part D** of this Manual and can be [downloaded](#) as a Word document. The notice can also specify the form the information should be supplied in and the deadline for it being submitted. Such information can include information on emissions which is not in the possession of the person served with the notice or would not otherwise come into their possession, if the requirement is reasonable.
- 29.2 Regulation 60 notices must be placed on the register, together with any monitoring or other information supplied in accordance with the notice, subject to the commercial confidentiality and national security exclusions described in **Chapter 8** and later in this chapter.

Public registers

- 29.3 Local authorities are required by EP regulation 46 to maintain a public register containing information on all the LA-IPPC and LAPPC installations and mobile plant they are responsible for. A register can be held in any form, which includes electronically.

Authorities' registers must also hold information on facilities in their area regulated by the Environment Agency (other than mobile plant or stand-alone water discharge or groundwater activities). The Environment Agency must provide this information to the relevant authority in accordance with EP regulation 46(6). The Agency is moving towards doing this simply by providing authorities with a web link which they can use or can pass on to any enquirers. (Under these new arrangements, authorities will not be obliged to search or explain Agency register entries, but can refer enquirers to the relevant Agency office.) Information about accessing the Environment Agency's own registers can be found [here](#).

- 29.3A. For completeness, paragraph 3 of Schedule 2 to the EP Regulations requires local authorities to maintain a register of any exempt waste operations they register. The information required is the name of the establishment or undertaking carrying on the exempt waste operation, details of the waste operation, and the place where the waste operation is carried on. It is Defra/WG's view that strictly-speaking these requirements cannot be fulfilled by including the information on an authority's LAPC register, but a separate register is required because the Schedule 2 registers are not 'public registers' under EP regulation 46 and are subject to slightly different rules.
- 29.4 The registers must be available at all reasonable times (ie normally, during normal office hours), for inspection by the public free of charge. Members of the public do not have to give a reason for viewing the register.
- 29.5 There is no obligation to publicise the existence of the register in connection with applications, but authorities are encouraged to advertise the existence of the public register eg on their website, including details of how and when it may be seen. It is recommended that the public register can be accessed at an enquiry counter associated with the enforcing staff. Where it is not directly available from the enquiry counter, reception staff at such a location should know where it is and whether it is in paper or electronic form. Reception staff should also be made aware that it is a requirement for the register to be freely available to the public, and which Council officers are responsible for maintaining it and can answer queries about it.
- 29.6 Facilities should ideally be available for members of the public to study the register in reasonable privacy, peace and quiet and to be able to make notes. Members of the public must be able to obtain a copy of any entry on a register on payment of a reasonable charge. (There is no central guidance on what is reasonable – this is for each authority to decide.) It is advisable therefore to have copying and cash collection facilities close to hand. It is good practice for a qualified member of staff to be available to answer questions on the detail of the documentation, or at least able to contact the public later on. A well-managed register will have a clear index and highlight, for example, the non-technical summaries of applications.

Form and content of registers

- 29.7 Many authorities hold a separate working file and public register file. This was recommended previously in guidance issued before the Freedom of Information Act (FOI) and Environmental Information Regulations (EIR) came into force. Defra and WG have considered whether authorities could now adopt a more efficient approach which does not result in holding duplicates of the same documents on two separate files. The following options take into account that, because of the limited nature of the exemptions from disclosure, it is envisaged that most (if not all) information held on a public register or on a local

authority file will have to be released if requested under FOI or EIR (see **Chapter 8**).

29.8 Defra/WG suggest that there are three possible options which authorities can consider:

1. one file is kept which includes all the public register information required to be included by Schedule 24 to the EP Regulations. The file pages are marked to identify either the information that is, or is not, Schedule 24 information. This is likely to be more workable where files are kept in electronic format, and the different categories of information can readily be identified or separated if inspection of the register is requested in accordance with EP regulation 46(8).
2. one file is kept which includes all the Schedule 24 information, and a separate detachable folder containing non-register information is inserted in it. (This would avoid the necessity to hold duplicate papers on two separate files.)
3. subject to each authority's own assessment of risk, have one file containing all information other than a) any public register information that is required by the EP Regulations to be withheld for reasons of commercial confidentiality or national security, and b) any non-register information that it is considered by the authority likely to be refused a request for disclosure under either FOI or EIR. (The risk relates to whether an authority might open itself up to a challenge for disclosing non-register information that could possibly have benefited from a valid exemption from disclosure under FOI or EIR.)

29.9 The public register can be in any form that allows proper public access. Authorities may choose, for example, to maintain computerised registers. If they do, they should make sure that they provide help for members of the public who are unfamiliar with the technology and provide the facilities to obtain paper copies of the documents.

- The following authorities include full or partial register information on their website:

[Hillingdon Borough Council](#) *

[Central Bedfordshire District Council](#)

[Fareham Borough Council](#) *

[Chelmsford Borough Council](#) *

[Bristol City Council](#)*

- Several other authorities have a list of names and addresses of Part B and A2 installations on their web pages, eg the following as at August 2009 with relatively recently-updated lists, for example:

[King's Lynn and West Norfolk](#)

[Sheffield City Council](#)

[Brent London Borough Council](#) *

[Neath Port Talbot Council](#)

[West Berkshire Council](#)

[Leicester City Council](#)

[Teignbridge District Council](#)

[Vale of White Horse District Council](#)

[Worthing Borough Council](#)

[East Devon District Council](#)

[Cornwall Council](#)

[Ipswich Borough Council](#)

[Aylesbury Vale District Council](#)

*including map

Other authorities may like to follow their lead. (In referring to these examples, Defra and WG are not commenting on the appropriateness of the precise approach adopted.)

29.10 Subject to exclusions of commercially confidential information and information affecting national security, registers must contain the information set out in paragraph 1 of Schedule 24 to the EP Regulations (reproduced at **Annex XIII**). In summary this includes:

- applications for a permit and decisions
- notices asking for information and responses to such
- representations in response to public consultation on applications (unless the person responding asks for their response to be withheld, in which case a statement must be included to the effect that a representation was made but has been omitted from the register on request. The statement must not identify the person making the representation)
- permits
- notifications of changes in the operation of installations
- applications for variations, transfers or surrenders of permits and decisions
- variations, transfers and surrenders granted
- enforcement, suspension notices and revocation notices
- notices withdrawing enforcement, suspension or revocation notices

- notice of an appeal including the grounds of the appeal, relevant correspondence between the appellant and the regulator, and the decision/notice which is the subject of the appeal
- representations in response to appeal (unless the person responding asks for their response to be withheld, in which case a statement must be included to the effect that a representation was made but has been omitted from the register on request. The statement must not identify the person making the representation)
- the appeal decision and any accompanying report
- convictions, formal cautions; to include the name of the person, date of conviction/caution, and (where appropriate) penalty and name of court. This requirement does not override the Rehabilitation of Offenders Act 1974 regarding spent conditions, and authorities must take care to remove relevant entries at the appropriate time (see paragraph 29.17 below). Paragraph 3 of Schedule 24 to the EP Regulations requires that details of formal cautions must be removed 5 years after the caution was given
- monitoring data obtained by the authority from its own monitoring, or sent to the authority on accordance with a permit condition or an EP regulation 60 information notice
- if any monitoring information is omitted because it is commercially or industrially confidential, the authority must put a statement on the register indicating whether relevant permit conditions containing emission limits are being complied with, based on the withheld information
- any other information supplied by the operator in compliance with a condition, or an information, variation, enforcement or suspension notice
- any report published by the local authority relating to assessment of environmental consequences of the operation of an installation
- any directions given by the Secretary of State or Welsh Ministers other than a national security direction under EP regulation 47
- cost accounts for the LA-IPPC/LAPPC function (see **Chapter 23**).

All papers should be placed on the register as soon as possible following receipt by a local authority, except where either commercial confidentiality is applied for or there is an extant appeal against refusal of commercial confidentiality – in these cases the authority should wait until the outcome of the determination. Authorities should ensure that applications for permits and substantial changes are freely available for public consultation from the date public consultees are first informed. Where an authority has more than one office and operates a paper-based system, it should consider holding either copies of the full application or the non-technical summary in each office or arranging for the appropriate file to be taken to a satellite office for a specific appointment.

National security

29.11 EP regulation 47 allows for information to be kept from public registers for reasons of national security. For this to happen, the Secretary of State/Welsh Ministers must determine that placing the information on the register would be contrary to the interests of national security. An operator who believes any information meets this test may apply to the Secretary of State/Welsh Ministers. The operator must notify the local authority that he or she has asked for this determination, but must not exclude the information from any submission to the authority, such as a permit application. The Secretary of State/Welsh Ministers may direct the authority on what information, if any, to exclude from the register.

29.12 Any such applications must be made to either:

Secretary of State for Environment, Food and Rural Affairs
Nobel House
17 Smith Square
LONDON
SW1P 3JR

or

The Welsh Ministers
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

and should preferably be marked “application under the Environmental Permitting Regulations”.

Confidentiality

29.13 Advice on the interpretation of ‘confidentiality’ and the main procedures can be found in **Chapter 8**. If the local authority accepts that information is confidential it should not be placed on the public register unless either the Secretary of State or Welsh Ministers issue a direction under EP regulation 61 requiring information to go on the register in the public interest. If an authority withholds monitoring data, Schedule 24 also requires a statement in the register indicating whether the operator has complied with permit conditions.

29.14 An authority may grant confidentiality claims for up to four years (EP regulation 55) and operators can re-apply before the period expires to extend the period of confidentiality for a further four years (see paragraph 8.25 of the Manual). Information losing its confidentiality must be put on the public register – paragraph 8.25 also advises on good practice warnings for operators.

Removal of information

- 29.15 If an operator withdraws his/her application for a permit or variation before it is determined, the local authority should take all references to it off the register between two and three months after the withdrawal. The authority should include no further information about the application in the register. Similarly, if an installation ceases to fall under the EP Regulations, authorities should remove the information from the register between two and three months after the amendment is made.
- 29.16 Paragraph 2 of Schedule 24 to the EP Regulations says that no information has to be kept on the register if it is no longer required for public participation purposes.

Removal of such information may make the register easier to consult. Although, this will in part depend on whether the register is held on paper or electronically.

Making the register easy to handle should not, however, result in any information being removed which prevents the public and any other interested parties from being able to readily access all key information applicable to the current operation of an installation, and such background information that is relevant. It is unlikely to be appropriate to remove any permit or variation while an installation is still operating or, in the case of LA-IPPC if they may still be relevant during the surrender period. Other information, such as previous representations, notices and monitoring data may, however, lose their relevance over time, and authorities may want to introduce a system of periodic scrutiny to remove older items.

In deciding what approach to adopt in practice, authorities are reminded that information that is removed from the register may still need to be available through an authority's publication scheme or in response to information requests under the Freedom of Information Act or Environmental Information Regulations.

- 29.16A. Removing A1 information from local authority registers. Local authorities are required by EP regulation 46(4) to keep a duplicate of Environment Agency register entries for Part A1 installations. Paragraph 2 of Schedule 24 to the Regulations states "A regulator is not required to keep in its public register information which is no longer relevant for the purposes of public participation required under these Regulations". Decisions on removing information are for authorities to make in each case. However, Defra and WG (having consulted the Agency) suggest that it is reasonable for authorities to take into account the fact that the Agency, as regulator for these installations, will separately be holding the information on their register for as long as they consider it necessary under Schedule 24, paragraph 2. Therefore an authority might conclude that the 'relevance' test for their duplicate register entry can, for some material, reasonably be a relatively short period - perhaps 1-2 years for monitoring data in many cases.

- 29.17 Formal cautions must be removed from the register after 5 years has lapsed. Spent convictions must be removed from the register in line with the Rehabilitation of Offenders Act 1974 and the time periods given under that Act. It is important that authorities have the systems in place to ensure that this is done. (Details of the time periods under the Rehabilitation of Offenders Act are on the [Nacro website](#).)
- 29.18 Port Health Authorities are not required to keep details of Environment Agency permitted installations within their areas. Each local authority whose area adjoins that of a port health authority, must include in its register information concerning Environment Agency permitted installations within the area of the port health authority (see EP regulation 46(5)).

30 Appeals

Guidance on how to appeal against various local authority decisions and how appeals will be dealt with.

A2,B

- 30.1 Operators of LA-IPPC and LA-PPC installations and LAPPC may appeal to the Secretary of State or Welsh Ministers under EP regulation 31 against certain decisions made by the local authority. Schedule 6 of the Regulations sets out the detailed procedures.
- 30.2 It is to be hoped, however that by paying close attention to the relevant sector and process guidance note(s) and by good communication at all stages between local authorities and operators, the number of time-consuming and potentially costly appeals can be kept to a minimum. Before making an appeal prospective appellants are encouraged to try to resolve any difficulties or disagreements with the authority – but bearing in mind the deadline for making an appeal.

The appeal body

- 30.3 The Secretary of State and Welsh Ministers are referred to in the EP Regulations as the “appropriate authority”. In accordance with paragraph 5 of Schedule 6 to the EP Regulations, appeal decisions can be delegated to persons appointed by the Secretary of State/Welsh Ministers for that purpose. Paragraph 30.27 below sets out the criteria on which the Secretary of State/Welsh Ministers will decide whether to decide individual appeals themselves – known as ‘recovery’ of an appeal. (Recovery involves appointing a person to hear the appeal and then make a report in writing to the Secretary of State/Welsh Ministers with their conclusions and recommendations. The Secretary of State/Welsh Ministers then make the final decision based on that recommendation report.) The Planning Inspectorate are producing separate guidance on appeals procedures under the EP Regulations, to be found on the [Planning Inspectorate website](#).

Types of appeal

- 30.4 Under EP regulation 31 operators have the right of appeal against the enforcing authority in the following circumstances:
- 1 refusal or deemed refusal to grant a permit;
 - 2 refusal of an application to vary a permit;

- 3 if the operator disagrees with the conditions imposed by the authority as a result of a permit application or an application for a variation notice;
- 4 refusal of an application to transfer a permit, or if the operator disagrees with the conditions imposed by the authority to take account of such a transfer;
- 5 refusal of an application to surrender a permit, or if the operator disagrees with the conditions imposed by the authority to take account of the surrender;
- 6 the service of a variation notice (not following an application by the operator), a revocation notice, an enforcement notice, or a suspension notice on the operator;
- 7 the deemed withdrawal by a local authority of a duly-made application because the operator has not provided further information (paragraph 4 of Schedule 5 to the EP Regulations).

Under EP regulation 53(1) operators have the right of appeal against a decision that information will not be withheld from the public register for reasons of commercial confidentiality.

- 30.5 The rights to appeal listed in 1-6 above do not apply where the decision or notice implements a direction given by the Secretary of State or Welsh Ministers. There is also no right of appeal if a revocation notice has been served for non-payment of subsistence fees (EP regulation 31(5)).
- 30.6 Appeals under 3-6 above do not stop the conditions coming into effect. Appeals against variation, enforcement and suspension notices do not stop the notices coming into effect. However, appeals against revocation notices suspend the operation of the notices coming into effect until the appeal is decided or withdrawn.

Timing of appeals

- 30.7 Notice of appeal must be given within the time-scales detailed below. The Secretary of State/Welsh Ministers have the power to extend some of the limits but would only do so in the most exceptional circumstances.
- appeals listed in 1-5 above must be received by the Planning Inspectorate within six months of the date of the decision or deemed decision which is the subject matter of the appeal;
 - revocation notice appeals must be received by the Planning Inspectorate before the date on which the revocation takes effect;
 - appeals against a variation notice (not requested by the operator), an enforcement notice, or a suspension notice, must be received by the Planning Inspectorate within two months of the date of the notice which is the subject of the appeal;

- appeals in relation to confidentiality must be received by the Planning Inspectorate within 15 working days after the local authority has given its determination;
- appeals in relation to deemed withdrawal of duly made applications must be received by the Planning Inspectorate not later than 15 working days from the date the notice of deemed withdrawal is served.

How to appeal

- 30.8 There are no charges for appealing and there is no statutory requirement to submit an appeal form. However, an appeal form has been prepared and is available for use on the [Planning Inspectorate website](#). For an appeal to be valid, appellants (the person/operator making the appeal) are legally required to provide all of the following (see EP Regulations Schedule 6, paragraph 2(2)):
- written notice of the appeal
 - a statement of the grounds of appeal
 - a statement indicating whether the appellant wishes the appeal to be dealt with by written representations procedure or at a hearing - a hearing must be held if either the appellant or local authority requests this, or an appointed person or the Secretary of State/Welsh Ministers decide to hold one
(appellants must copy the above three items to the local authority when the appeal is made)
 - a copy of any relevant application
 - a copy of any relevant permit
 - a copy of any relevant correspondence between the appellant and the regulator
 - a copy of any decision or notice, which is the subject matter of the appeal.
- 30.9 Appellants should state whether any of the information enclosed with the appeal has been the subject of a successful application for commercial confidentiality under EP regulation 49 and provide relevant details. Unless such information is provided all documents submitted will be open to inspection.

Where to send your appeal documents

- 30.10 Appeals should be despatched on the day they are dated, and addressed to:

The Planning Inspectorate
 Environment Team, Major & Specialist Casework
 Room 4/04 Kite Wing
 Temple Quay House

2 The Square
Temple Quay
Bristol BS1 6PN

tel: 0117 372 8726
fax: 0117 372 8139

or for appeals in Wales:

The Planning Inspectorate
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

tel: 029 2082 5155
fax: 029 2082 5150

- 30.11 On receipt of an appeal and during the appeal process both main parties will be informed by the Inspectorate about the next steps, which will explain the procedures and submission timetable for representations.
- 30.12 To withdraw an appeal – which may be done at any time - the appellant must notify the Planning Inspectorate in writing and copy the notification to the local authority who must in turn notify anyone who has expressed an interest in the appeal.

Local authority responsibilities

- 30.13 Within 10 working days of receipt of the notice of appeal the local authority should inform:
- relevant national consultees (generally those consulted at the application stage, in accordance with the guidance in **Chapter 9**);
 - any person who has made representations to the authority with respect to the subject matter of the appeal; and
 - any person who appears to the authority to have a particular interest in the subject matter of the appeal.
- 30.14 The authority should inform the above parties that an appeal has been made and by whom; describe the application or permit to which the appeal relates, and state that representations can be made in writing to the Planning Inspectorate within 15 working days of the date of the notice (paragraph 4(2)(b) of Schedule 6). The note should also explain that any representations made will be copied to the appellant and the authority, and will be entered in a public register unless that person requests otherwise (paragraph 1(1)(g) and (3) of Schedule 24). It is also good practice to remind the parties of the Freedom of Information Act and the Environmental Information Regulations (see **Chapter 8**).

- 30.15 Within 10 working days of sending such a notice the local authority should inform the Planning Inspectorate to whom and on what date this notice was sent. If the appeal is withdrawn the authority should inform all the people who received the original notice.

Written representations

- 30.16 Where the appeal is to be dealt with by written representations the authority will be given 28 days (from first receiving notice of the appeal) in which to submit written representations to the Planning Inspectorate. The operator then will be given 17 days (starting from the date of the authority's representations) to make further representations. Any representations made by the operator or the local authority must bear the date on which they were submitted to the Planning Inspectorate, and must be copied to the other party. In addition the Planning Inspectorate will send both parties copies of any representations made by third parties and will allow them at least 14 days in which to make representations on them.

Site visits

- 30.17 When the exchange of written representations is completed an Inspector will usually make an accompanied site visit. Following this, he or she will issue a decision letter, or if the case is to be recovered for decision, make a report to the Secretary of State/Welsh Ministers. The Inspector will usually make an accompanied site visit in connection with an appeal dealt with by hearing.

Hearings

- 30.18 If a hearing is to be held the two main parties will be asked to submit, well in advance, details of the case they wish to make at the hearing, and to copy this 'statement of case' to the other party. A date is fixed for the hearing after consultation with both parties, and an Inspector is appointed either as a delegate of the Minister under section 114 of the Environment Act 1995 or as an appointed person under paragraph 5 of Schedule 6 to the EP Regulations. The two main parties will be formally notified of the hearing arrangements at least 28 days in advance (or earlier if agreed by both parties).
- 30.19 At least 21 days in advance of a public hearing, the Planning Inspectorate may place a notice about the hearing in a local newspaper and inform relevant national consultees, and those parties who have made representations on the appeal. If the Planning Inspectorate have to change the date of the hearing, they would have to follow the same notification procedure. They may also vary the time and place of the hearing as long as they give reasonable notification.
- 30.20 Anyone may attend the hearing and can speak at the Inspector's discretion. The Inspector has powers to hold part or all of the hearing in

30.21 Hearings are usually relatively small and informal, but may be more formal if necessary. In very exceptional cases an inquiry may be held. For example, where particularly complex technical evidence is involved and cross-examination may be needed, or where there are a large number of submissions. Hearings and inquiries include a site inspection. Afterwards the Inspector will either a) issue a decision letter or b) if the case is to be recovered for decision, make a report to the Secretary of State/Welsh Ministers which will be issued with their decision.

Assessors

30.22 In some cases an assessor may be appointed by the Planning Inspectorate to advise on specific technical matters. The assessor will sit alongside the Inspector and consider the representations made. The assessor will normally write a report to the Inspector, the contents of which will be made public (unless issues of confidentiality are involved) when the decision is issued. Where an assessor is appointed, everyone entitled to appear at the inquiry will be notified of the assessor's name and the matters on which he or she is to advise the Inspector.

Determination and notification of appeals

30.23 When determining appeals, the Inspector or the Secretary of State/Welsh Ministers will take into account all relevant information, giving the two main parties the opportunity to comment on new relevant evidence that he/she proposes to take into consideration, before issuing a decision letter.

30.24 On determination the Inspector or Secretary of State/Welsh Ministers can affirm or quash decisions, conditions and notices and can direct the local authority to grant and vary conditions of a permit. The Secretary of State/Welsh Ministers can give directions as to the conditions to be attached to the permit. The Inspector can give directions on the Secretary of State's/Welsh Ministers' behalf.

30.25 The decision will be copied to interested parties and must be placed in the public register held by the relevant local authority. Where the Secretary of State/Welsh Ministers determine an appeal, the Inspector's (and if one was appointed, the assessor's) report(s) must also be copied to the two main parties and placed on the public register.

30.26 Copies of decision letters can be obtained at a small charge from The Planning Inspectorate, Decision Letter Library, Room G/06 at the above address. Email requests can be made to DL.Library@pins.gsi.gov.uk.

Recovery by the Secretary of State/Welsh Ministers

30.27 The Secretary of State/Welsh Ministers have the power to recover individual appeal cases to determine him/herself. In these cases the appointee will make a report to the Secretary of State/Welsh Ministers rather than issuing a decision. The criteria for identifying these recovered cases are:

- cases involving processes or sites of major importance;
- cases giving rise to significant public controversy;
- cases which raise significant legal difficulties;
- cases which can only be decided in conjunction with other cases over which the Planning Inspectorate has no jurisdiction;
- cases which raise major or novel issues of industrial pollution control which could set a policy precedent, for example case involving the use of new techniques; and
- other cases which, exceptionally, merit recovery because of particular circumstances.

Complaints about the decision

30.28 The decision can be challenged in the Administrative Court on a point of law by way of Judicial review within a strict timescale (as soon as possible, and no later than three months maximum). If the appeal is quashed in proceedings before any court the main parties will be notified and asked to provide any further representations within 20 working days (paragraph 7 of Schedule 6). The Secretary of State/Welsh Ministers may then ask for a hearing/inquiry to be held or re-opened and the appeal will be re-determined.

Complaints against the Planning Inspectorate

30.29 The letters acknowledging receipt of the appeal will give the name of the Case Officer dealing with the appeal. The Case Officer should be the first person contacted with any enquires or complaints about the handling of the appeal. If this is not satisfactory the Complaints Officer can be contacted at The Planning Inspectorate, Quality Assurance Unit, Room 4/11 Eagle Wing, Temple Quay House etc (as above).

Costs

30.30 The operator and local authority will normally be expected to pay their own expenses during an appeal. Where an appeal is dealt with by hearing, inquiry or written representations, by virtue of paragraph 5(6) of Schedule 6, either the appellant or the authority can apply for costs. Applications for costs are normally heard towards the end of the proceedings and will only be considered if the party claiming them can show that the other side behaved unreasonably and put them to

unnecessary expense. There is no provision for costs to be awarded where appeals are dealt with by written representations.

- 30.31 Following an application for costs, the Inspector or the Secretary of State/Welsh Ministers will act in the spirit of [Department for Communities and Local Government Circular 03/2009 – Costs Awards in Appeals and Other Planning Proceedings](#). Schedule 6, paragraph 5(6) of the EP Regulations applies section 250 (as modified) of the Local Government Act 1972 to hearings and inquiries. Under section 250, persons may be summonsed to appear to give evidence, the appointed person may seek recovery of his or her certified costs from either party and may make a costs order so that one party pays part of the other side's costs.

Referring applications to the Secretary of State or Welsh Ministers

- 30.32 These referrals are known as “calling-in” and application. The Secretary of State or Welsh Ministers can direct that a permit or variation application, or category of applications, must be referred to them for decision. While each such case will be determined on its individual merits, as a matter of policy it is envisaged that only in very exceptional circumstances would the function of local authorities to determine applications (subject to appeal) be taken from them by exercising this power. The relevant procedures are contained in EP regulation 62. The Secretary of State/Welsh Ministers can decide to call a hearing, and must do so if the applicant or authority requests it.

31 Connections with other legislation

Guidance on other legislation which may overlap or link with LA-IPPC and LAPPC requirements.

A2,B

Environmental Protection Act 1990 – Part I

31.1 *[deleted]*

Environmental Protection Act 1990 – Part III

31.2 Part III of the [EPA 1990](#), as amended, contains the ‘statutory nuisance’ regime for which local authorities are also the regulators. The regime allows authorities to tackle various specified types of pollution which are considered prejudicial to health or a nuisance. In order to avoid overlap with LAPPC and LA-IPPC, the statutory nuisance system is largely disapplied for installations regulated under these regimes. Unless the Secretary of State/Welsh Ministers have granted consent under section 79(10), an authority may not begin proceedings against specified nuisances where proceedings can be brought under LAPPC or LA-IPPC. This is to avoid ‘double jeopardy’: the possibility of enforcement under two separate provisions. However, activities that are not covered by LAPPC or LA-IPPC, even though they are on the sites of LAPPC/LA-IPPC installations, may be regulated under the statutory nuisance provisions. The consent requirements do not apply to certain nuisances, such as noise nuisance at LAPPC installations. Members of the public are not prevented from bringing private prosecutions under section 82 of the EPA 1990. The Defra guidance referred to in paragraph 32.10A covers the section 79(10) consent arrangements in more detail.

Clean Air Act 1993

31.3 Any exemptions under the [Clean Air Act 1993](#) for small-scale incinerators or combustion plant burning waste materials do not apply if the activity comes under LAPPC or LA-IPPC. **Annex XVIII** provides more detail.

Radioactive substances activity regulation

- 31.4 An activity may be controlled by both IPPC and the environmental permitting requirements relating to radioactive substances activities. Regulators should ensure that the two regimes do not impose conflicting obligations on the same matter.

Health and Safety at Work etc Act 1974

- 31.5 Local authorities should ensure that the two regimes do not impose conflicting obligations on the same matter and should liaise with the HSE over serious potential conflicts (see also paragraphs 6.28-33 of the Manual). A revised version of the 1974 Act can be found [here](#).

Water discharge activity regulation

- 31.6 The Environment Agency is responsible for granting consents for discharges of pollutants into 'controlled waters'. It is an offence to make certain discharges without this consent. Discharges to water which are permitted under LA-IPPC cannot be an offence under water discharge legislation. Once an installation comes within LA-IPPC, operators no longer have to apply for a separate water discharge permit. However, there may still be cases where operators need a discharge permit for an activity not covered by LA-IPPC on the site of an LA-IPPC installation. A permit might also be required on a site covered by LAPPC.

Water Framework Directive

- 31.7 This Directive is mentioned in **Annex IX**. Under article 11 of the EU Water Framework Directive (76/464/EEC) a programme of measures, which includes controls on point source and diffuse pollution, needs to be operational by 2012. These measures will have implications for local authorities in regulating LA-IPPC installations and any impact such installations may have on achieving the environmental objectives of the Directive within each River Basin Management Plan.
- 31.8 Under article 16 of the Water Framework Directive a list of priority substances (33 substances or groups of substances) was adopted (and now forms Annex X of the Directive). A European Commission proposal for a directive to regulate priority list substances was published in July 2006. In granting permits under LA-IPPC, local authorities will have to take account of any water quality standards set by this Directive when it comes into force. Defra and WG will issue further guidance on this in due course.

Groundwater activity regulation

- 31.9 The EP Regulations provisions relating to groundwater activities implement the EU Groundwater Directive (80/68/EEC). An LA-IPPC permit must include any conditions required by these Regulations to

stop or limit the discharge of certain listed substances. No application to make such a discharge may be granted without prior investigation. This must include examination of:

- the hydrogeological conditions of the area concerned;
- the possible purifying powers of the soil and subsoil; and
- the risk of pollution and alteration of the quality of the groundwater from the discharge.

31.10 The investigation must also establish whether the discharge of substances into groundwater is a satisfactory solution from the point of view of the environment. In terms of assessing the impact of discharges a permit may only be granted if the regulator has checked that the groundwater (and in particular its quality) will undergo the required surveillance. The Environment Agency may provide advice on this as part of their input on LA-IPPC applications. The Agency will need to review conditions relating to groundwater regulation at least every four years (see paragraph 26.10 of this Manual). Technical guidance on groundwater issues can be found in each of the LA-IPPC sector guidance notes.

31.11 The schedule of listed substances for the Groundwater Regulations is included in **Annex IX**.

EC Directives and emission limit values (ELVs)

31.12 Article 19(2) of the IPPC Directive says that the relevant ELVs in certain other Directives are to be applied as minimum ELVs for IPPC and LA-IPPC. This means that they set the maximum emission levels of particular substances from particular installations allowed under LA-IPPC. This is without prejudice to the possibility of stricter requirements, for example in order to be consistent with BAT or an EQS.

31.13 [The Air Quality Standards Regulations 2007, SI 2007/64](#) consolidate earlier regulations which transpose the Air Quality Framework Directive (96/62/EC) and subsequent daughter directives (1999/3330/EC, 2000/69/EC, 2002/3/EC, and 2004/107/EC). They specify obligations for benzene, carbon monoxide, lead, nitrogen dioxide and oxides of nitrogen, ozone, particles (as PM₁₀ – sub-10 micron particulate matter), sulphur dioxide, arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air. See **Chapter 15** of the Manual for guidance on the role of environmental quality standards within LAPPC and LA-IPPC.

Water quality objectives

31.14 The following provisions set out water quality objectives applicable to discharges to water under these Directives:

- [The Surface Waters \(Dangerous Substances\) \(Classification\) Regulations \(SI 1998/389\)](#)

- [Trade Effluents \(Prescribed Processes and Substances\) Regulations \(SI 1992/339\)](#)
- directions by the Secretary of State to the Environment Agency in January 1990 and February 1993.

Control of Pollution (Oil Storage) (England) Regulations 2001

- 31.15 Defra published the “[Guidance note for the Control of Pollution \(Oil Storage\) \(England\) Regulations 2001](#)” in October 2001 . This contains the Regulations and Best Practice Guidance. Oil-related water pollution incidents in England accounted for 17% of all water pollution in 1999, mainly due to leaks from unbunded oil storage tanks. The Regulations aim to reduce the number of such oil-related incidents in England by about a half, to be achieved by setting design standards for all above ground oil stores and requiring that secondary containment, such as a “bund” (a surrounding wall) or “drip tray” is in place to prevent oil escaping into controlled waters.
- 31.16 New oil storage facilities had to comply with immediate effect. Existing facilities (not at significant risk) had to comply within 4 years of the introduction of the proposals - ie by 1 September 2005. (The exception to this is for those facilities which are at significant risk, where early compliance was required by 1 September 2003.)

Waste Incineration Directive

- 31.17 The Waste Incineration Directive (‘WID’ – 2000/76/EC) was agreed by the European Parliament and the Council of the European Union on 4 December 2000 and the final text was published in the Official Journal of the European Communities on 28 December 2000 (OJ L 332/91, 28 December 2000). WID is given effect now by Schedule 13 of the EP Regulations.
- 31.18 The aim of the Directive is to prevent or limit, as far as practicable, negative effects on the environment, in particular pollution by emissions into air, soil, surface and groundwater, and the resulting risks to human health, from the incineration and co-incineration of waste. The Directive seeks to achieve this high level of environmental and human health protection by requiring the setting and maintaining of stringent operational conditions, technical requirements and emission limit values for plants incinerating and co-incinerating waste throughout the European Community.
- 31.19 The requirements of the WID apply to virtually all waste incineration and co-incineration plants, going beyond the requirements of the 1989 Municipal Waste Incineration (MWI) Directives (89/429/EEC and 89/369/EEC). To increase legal clarity and enforceability, the WID also incorporates the Hazardous Waste Incineration Directive (94/67/EC) forming a single text on waste incineration. These earlier Directives were therefore repealed by the WID from 28 December 2005. The WID requirements have been developed to reflect the ability of modern

incineration plants to achieve high standards of emission control more cost effectively

- 31.20 The Waste Incineration Directive requirements applied to all new waste incineration installations from 28 December 2002 and to all existing installations from 28 December 2005. For those installations which are also subject to the IPPC Directive (96/61/EC), compliance with the WID is not necessarily sufficient to meet IPPC requirements since the latter are more broadly based and involve more stringent emission limit values and conditions.
- 31.21 [Guidance on WID](#) is available as one of the set of explanatory guidance notes on the directives implemented through the Environmental Permitting Regulations.
- 31.22 In issuing a permit for any new process or activity covered by the WID or any substantial change, the emission limits and any other requirements in the Directive must be included within the permit conditions.

Revised Waste Framework Directive

- 31.23 Local authorities may have responsibility for regulated facilities which carry out the recovery or disposal of waste. This could be because the waste activity is part of an A2 installation, or because it is transferred by a direction referred to in paragraph 2.16 of this Manual, or because it is a 'Schedule 3' case described in paragraph 1.15 of the Manual. In such cases, the permit conditions must achieve compliance with the revised Waste Framework Directive (rWFD) [2008/98/EC](#)).
- 31.24 The [Waste \(England and Wales\) Regulations 2011, SI 988](#) transpose the rWFD and Schedule 3 made various amendments to the EP Regulations. The Defra website includes [guidance on the rWFD](#).
- 31.25 Environment Agency guidance on waste regulation can be found [here](#) and [here](#). For LA-IPPC installations which comprise waste activities, in practice the application of BAT (having regard to the relevant sector guidance notes) should generally be sufficient also to comply with Article 13 of the rWFD. However, local authorities must consider also the general guidance on the rWFD referred to in paragraph 31.24 above in relation to the particular installation and must include additional or different conditions where appropriate. Permit must also contain conditions in accordance with Article 23 of the rWFD, and local authorities should note that Article 34 of the rWFD requires regulators to carry out “appropriate periodic inspections” of waste disposal and recovery operations.
- 31.26 There could be cases where waste activities are directed to be regulated by local authorities and the installation in question is regulated by means of standard rules permits (SRP) which are provided for in EP regulations 26-30. It is envisaged that, if operators so request, authorities will continue to use SRP for the purpose of

regulating that activity, and will follow relevant guidance on the operation of SRPs, and any changes to individual SRPs, as is available on the Environment Agency website.

31.27 It should be noted that there are certain differences within the EP Regulations between LA-IPPC/LAPPC regulation and the regulation of waste activities. These include:

- other Directives may be applicable, such as the Landfill Directive or the Waste Electrical and Electronic Equipment Directive. The [Government guidance on relevant Directives](#) must be followed;
- the potential availability of Certificates of Technical Competence (see paragraph 11.30) as evidence of technical competence; and
- the applicability of Schedule 9 of the EP Regulations (requirement for prior planning permission) to waste operations.

Solvent Emissions Directive and the Paints Directive

31.28 The Solvent Emissions Directive (1999/13/EC) is intended to reduce emissions of volatile organic compounds from certain industrial sectors. It does this by applying emission limit values, or setting reduction schemes for individual installations.

31.29 The so-called 'paints directive' (2004/42/EC) came into force on January 1st 2007 and specifies the VOC (volatile organic compound) content of different paints, varnishes and refinishing products.

31.30 Guidance on both Directives and their implementation is in **Chapter 34**, which incorporates the previously-published introductory guidance and subsequent AQ additional guidance notes.

Conservation issues: The Conservation (Habitats & Species) Regulations 2010; Wildlife and Countryside Act 1981

31.31 The Conservation (Habitats & Species) Regulations 2010 and the Wildlife and Countryside (WC) Act (as amended and substituted by the Rights of Way [CROW] Act 2000) place obligations on regulators of the EP Regulations as to the way pollution impacts are assessed on statutory conservation sites, designated under European Community legislation (European Sites comprising the Natura 2000 network) and also Sites of Special Scientific Interest (SSSIs). The nature conservation agencies (Natural England, the Countryside Council for Wales (CCW) and Scottish National Heritage) may be consulted on LA-IPPC and LAPPC applications (see **Chapter 9** of the Manual). The Conservation (Habitats and Species) Regulations require that a local authority, in assessing LA-IPPC and LAPPC plans which are likely to have a significant effect on a European site (either alone or in combination with other plans or projects), should make an appropriate assessment of the implications for the site in view of that site's conservation objective. These Regulations set out a clear process for assessing impacts and for securing site protection.

- 31.32 The WC Act places a general duty on public bodies. All public bodies must, in exercising their functions, take reasonable steps, consistent with the proper exercise of those functions, to further the conservation and enhancement of the flora, fauna or geological or physiological features by reason of which the site is of special interest. In addition, the WC Act places new duties on local authorities in relation to granting a permit capable of damaging a SSSI and the authority must in such cases submit formal notice to the conservation agency.
- 31.33 **Annex XVII** contains guidance on applying the requirements of the Habitats Regulations and the WC Act to applications for EP permits.

32 Local authority good practice

Examples of good practice from various sources for local authorities undertaking the LA-IPPC and LAPPC function.

A2,B

- 32.1 Other chapters have suggested a number of examples of what would be local authority good practice in regulating LA-IPPC and LAPPC. These include the importance of maintaining proper accounts of income from fees and charges and expenditure on the regulatory functions, and the desirability of talking to operators before serving a formal variation notice under EP regulation 20(1). (Indeed, since the 2003 version of this Manual was published, it is now a legal requirement for authorities to place cost accounts on the public register.)
- 32.2 **Annex VII** contains a more comprehensive list of good practice to assist local authorities; although it is considered that the sharing of good practice is more a matter for authorities themselves and their representative organisations, than for central Government. Other sources of good practice advice include
- the Chartered Institute for Environmental Health (CIEH) second, 2004 edition of their [Industrial Pollution Control Management Guide](#). This offers practical advice on such matters as inspection planning and reporting, resource management, officer competence, inspection frequencies, public register handling, enforcement policies, and service levels. the however, seeks to highlight in greater detail some other examples of good practice.
 - the joint action plan following the second review of local authority and Defra performance in 2006. The plan was produced by Defra, WG, the National Society for Clean Air [now Environmental Protection UK], LACORS [now LGA], the CIEH, and the Association of Port Health Authorities. This is reproduced in **Annex VII** of the Manual. It contains a number of brief case studies on subjects such as peer reviews, planning of inspections, communications, partnership working and outsourcing
 - good practice examples previously published in AQ8(04) and 11(04) and reproduced in **Annex VII** of the Manual
 - some of the regional pollution groups produce their own material, such as the [Midland Joint Advisory Council](#)
 - [guidance](#) issued in 2008 by LACORS [now LGA] and CIEH about partnership working

- guidance issued by the [Local Better Regulation Office](#), which was given statutory basis by the Regulatory and Enforcement Sanctions Act 2008.
- 32.3 The remainder of this chapter re-visits the additional guidance already published on good practice, including previously published advice on
- the significance of emissions even if they don't give rise to a nuisance,
 - checking for unregulated installations, and
 - sources of advice for local authorities and businesses from organisations such as Envirowise/Wrap and the Carbon Trust.

Statutory nuisance and LA-IPPC/LAPPC

- 32.4 Feedback indicates that some local authority officers may be judging the significance of LA-IPPC/LAPPC processes for regulatory purposes on the basis of whether or not they give rise to complaints and/or cause a nuisance.
- 32.5 These regimes were set up to go beyond the statutory nuisance regime in relation to listed activities. LAPPC and LA-IPPC should certainly address nuisance via BAT. But, beyond this, it is also intended to minimise air emissions, or in the case of LA-IPPC other releases as well, which may not cause a local nuisance or be noticeable and, indeed, may not have any potential impacts locally.
- 32.6 To give two examples, NO_x emissions from installations may not be noticeable by those living or working in the surrounding area, but nonetheless require control because of their potential health and ecological impacts and because NO_x is a transboundary pollutant. The main impact of toxic forms of mercury is via the food chain: the mercury is emitted from an LAPPC sector, deposited in water courses or the sea, taken up by fish, and then consumed.
- 32.7 Therefore (except where odour is the only pollutant being controlled), the absence of perceptible emissions/releases or of complaints from about an installation should not be taken to mean that the installation in question is necessarily operating satisfactorily or in accordance with its permit. Nor is such absence, of itself, an indicator that less regulatory effort is required.
- 32.10A. [Guidance](#) has been published by Defra on the interface between statutory nuisance and environmental permitting, including on the arrangements for obtaining the consent of the Secretary of State or Welsh Ministers to take proceedings in relation to statutory nuisances arising from PPC installations and waste operations, and on the meaning of "proceedings".

Checking for unregulated installations

- 32.8 One of the recommendations of the Atkins Performance Review 2004 was that Defra should discuss with local authorities the methods used to check for unregulated processes. This was to include an investigation to determine which information sources were best and which organisations were willing to assist authorities in this task.
- 32.9 A six-week consultation of pollution groups followed in late 2004. The recommended information sources were:
- local knowledge
 - tours around the district/borough
 - use of students
 - use of planning authorities and planning applications
 - environmental business forums
 - liaison with health and safety / trading standards colleagues
 - Yellow Pages or equivalent
 - previously revoked authorised processes
 - targeted visits to all industrial estates
 - adverts placed in local trade press by local authorities to highlight new legislation
 - internet searches
 - trade /specialist trade directories (eg Kompass, Applegate, AllBusiness)
 - local newspapers and job adverts for local companies
 - business rates information
 - Environment Agency
 - other government departments (eg Department for Transport's Vehicle and Operator Services Agency for unregulated small waste oil burners (SWOBs)).
 - use of [Companies' House](#) database.
- 32.10 Some local authorities and pollution groups regularly discuss this issue at meetings and forums. The practice of checking for unregulated processes should remain an integral aspect of the regulatory function of local authority officers.
- 32.11 Whilst this list is not definitive, it provides many ideas as to the sources of information available which were useful to the authorities who contributed to this good practice advice.
- 32.12 If authorities become aware of an unregulated installation in a particular sector and believe that there may be others in that sector, they can contact Defra/WG who will be able to investigate and issue guidance to all authorities if appropriate.

32.13 The charging scheme has been amended to increase the application fees for those applying late, with the aim of funding authorities' work of checking for unregulated installations.

Advice services from Envirowise/Wrap, Carbon Trust, NISP, Brew, Business Links etc

32.14 The following are various sources of advice for local authorities and businesses. Authorities will doubtless already recognise the benefits of alerting businesses to these advisory services at the same time as undertaking their regulatory functions.

Wrap

From April 2010 WRAP became the lead organisation for advice and support to business, consumers and the public sector on resource efficiency. The organisations covered by the streamlining are:

- The National Industrial Symbiosis Programme (NISP)
- Envirowise/Wrap
- [The Centre for Remanufacturing and Reuse](#)
- [Construction Resources and Waste Platform](#)
- [Action Sustainability](#) .

The Waste & Resources Action Programme (WRAP) works in partnership to enable businesses and consumers to be more efficient in their use of materials and recycle things more often. Wrap offers support services and publications. Contact 01295 819900 or visit the [WRAP web site](#)

Envirowise/Wrap

Envirowise provides advice to regulated and non-regulated businesses about good environmental practices, and in particular those that can save businesses money. See their [website](#) and free advice line at 0808 100 2040.

Carbon Trust

The Carbon Trust works with UK businesses and the public sector to identify cut carbon emissions and develop commercial, low-carbon technologies. It provides a wide range tailored support to businesses of all sizes, including an interest-free loan scheme for small- to medium-sized enterprises to fund approved energy efficient investments, free energy site surveys for businesses with energy bills of over £50,000 a year and a free telephone helpline (0800 085 2005). It also administers the Government's Enhanced Capital Allowance scheme for energy-saving investments and provides a variety of

support to business seeking to develop and commercialise new low-carbon technologies. More information is available at [the Trust's website](#) .

NISP/Wrap

National Industrial Symbiosis Programme (NISP) is an innovative business opportunity programme that brings together companies from all business sectors with the aim of improving cross industry resource efficiency through the commercial trading of materials, energy and water and sharing assets, logistics and expertise. Contact 0121 433 2650 or visit [the NISP website](#).

NetRegs

[NetRegs](#), on the Environment Agency website, is targeted at giving guidance to small businesses on compliance with the full range of environmental legislation.

Guidance on measuring greenhouse gas emissions for small businesses

Defra and the Department for Energy and Climate Change have published a [small business user guidance on how to measure greenhouse gas emissions](#).

Business Links

The [Business Links website](#) has a range of advice: For example, it has issued [guidance on companies marketing their own environmental credentials](#), which comments among other matters: “By demonstrating that your business considers environmental issues to be a priority you may attract new customers. Equally important, you may attract and retain employees and impress investors and other stakeholders.”

Manufacturing Advisory Service (advice to business only)

The [Manufacturing Advisory Service](#) (MAS) provides companies, whatever their size, with practical support on all aspects of manufacturing and offers direct access to manufacturing experts. Subsidised consultancy assistance is available where it is needed. It provides 5 main levels of service:

- free helpdesk and research service
- manufacturing reviews – free to SMEs
- training and networking events
- subsidised consultancy service for SMEs

- signposting and referral for environmental and other issues, working closely with a range of other organisations.

Contact: 0845 658 9600 advice@mymas.org .

Ecolabels

32.15 Some LA-IPPC and LAPPC sectors may produce goods which have the potential for obtaining an ecolabel. The UK does not have a national ecolabel but operates the European Ecolabel scheme which currently covers 25 product categories, including indoor paints and varnishes and hard floor-coverings. An ecolabel for wooden furniture is in prospect. This is Europe's official logo for greener products. It is Europe-wide, so offers good visibility to companies wanting to promote their green credentials and may coincide with LA-IPPC/LAPPC objectives. More information can be found [here](#) and at [Directgov](#).

Local Government Regulation benchmarking toolbox

32.16 LGReg [now LGA] produced a toolbox in response to feedback from Councils that it would be useful to bring together into one place the existing available environmental protection benchmarking tools. This resource is designed to be flexible so that Councils can pick and choose the elements they feel are the most helpful and appropriate for them. It is available on the [LG Regulation website](#).

Working with employees of regulated businesses

32.17 Getting buy-in from the staff of regulated installations, not just the management, can pay dividends. **Part D** of the Manual contains a draft leaflet which is a resource for local authorities to use - although there is no reason why businesses cannot adapt it themselves. It can be found in the Word version of the annexes, so authorities can insert their own Council's logo and local photograph, and can fill in the references to their own Council (see gray-shaded square brackets). It is envisaged that authorities will obtain clearance from the management of each company to circulate the leaflets. The leaflet was produced in consultation with a number of authorities, and the draft was discussed at the LAPC Industry Forum who supported the initiative.

33 Defra relationship with local authorities and business

Guidance on the relationship between Defra and local authorities, between Defra and business, and between Defra and the environmental industry sector. Plus, how sector and process guidance notes are produced.

A2,B

Relationship with local authorities

- 33.1 Recommendation 24 of the 2004 Atkins performance review stated that:

“Defra should produce a clear statement detailing its exact relationship with authorities and what is able to provide within the current legal framework”

A copy of the 2004 and 2006 performance review reports is [here](#).

- 33.2 The following is the statement which was issued in 2004 in response to that recommendation. The statement was contained in AQ13(04).

Defra statement on relationships with local authorities

- 33.3 Defra’s role is to manage the whole regime, liaising as appropriate with other government departments, but not to undertake local delivery.
- 33.4 Defra is concerned to ensure that the regime is achieving its policy objectives – the overall one being to reduce polluting releases from regulated installations as part of a wider sustainability and environmental protection agenda – and is therefore interested to monitor and evaluate delivery. It is for this reason that Defra collects and publishes statistical returns, and introduces new approaches such as risk management and cost accounting.
- 33.5 This monitoring and evaluation includes providing proactive and reactive assistance in a variety of forms, notably technical and procedural guidance and some helpline support; but, in line with the freedoms and flexibilities agenda, Defra’s role is neither to micro-manage the regime, nor to take on a close advisory role. While Defra or the Environment Agency’s Local Authority Unit will endeavour to answer queries that are raised, the prime support mechanism is the publication of guidance and other proactive support. (Defra cannot

provide a definitive interpretation of legislation – that ultimately is for the courts, and Defra cannot offer advice on individual cases that would prejudice the Secretary of State’s decision should the matter come before him or her on appeal.)

- 33.6 Defra has additionally provided training to assist local authorities with major new initiatives, such as the new solvent emissions directive, but Defra is not a mainstream training provider, nor does it have a function in day-to-day continuous professional development.
- 33.7 Defra believes in undertaking its role in partnership with all stakeholders, and actively seeks feedback and insights so as to help with policy development and changes to legislation and guidance. Defra does not have a monopoly of wisdom on these industrial pollution control regimes. Views of individual authorities and pollution groups (as well as industry and other stakeholders) are therefore valued, and expressly sought in many cases.
- 33.8 Defra is also required to set the level of fees and charges, and undertakes this by means of an annual review during which attempts are made to collect evidence of local authorities’ full actual costs. However, setting the fees and charges is not a simple matter of fixing them to reflect what those costs are: it is also incumbent on Defra to ensure that the fees and charges reflect what an efficient, effective and economical authority should be achieving. It is for this reason that Defra often stresses Best Value principles.
- 33.9 Specific Defra activities can be listed as:
- issuing procedural, policy and legal guidance, after consulting stakeholders where appropriate;
 - issuing, based on Local Authority Unit drafts and after detailed consultation with stakeholders, process (PG) and sector (SG) guidance on BAT; and, with the LAU, providing an ‘after sales service’ for regulators and business, whereby queries are answered and Defra/LAU benefit from the feedback which may trigger further/amended guidance. The Secretary of State will have regard to this guidance in the event of an appeal;
 - issuing additional guidance rapidly when the need arises: such as where, as a result of feedback, flaws have been found, or additional advice is desirable;
 - ensuring that local authority resources and interests are taken into account when considering regulatory changes;
 - setting the national level of cost-recovery fees and charges;
 - where resources permit, issuing specimen standard forms and letters for local authority use;
 - undertaking and publishing an annual statistical survey showing performance in deciding applications, inspecting installations etc;
 - holding an Industry Forum with industry representatives twice a year;

- holding a local authority forum (IPLC) with local authority representatives twice a year;
- maintaining regular contact with all key stakeholders aside from this;
- undertaking annual evaluation activities, such as independent local authority performance reviews, sounding boards with sharp-end environmental health staff, and ad hoc surveys;
- helping to maintain the 'link authority' network whereby individual local authorities provide a focal point for other authorities regulating installations in a given sector: a means of promoting coordination, consistency, and sharing of good practice between regulators [although LGReg, now LGA, may in future play a part in this];
- with CIEH and LGReg, promoting best value efficiency, effectiveness and economy among local authorities, including looking at the scope for joint working and out-sourcing;
- with CIEH and LGReg [now LGA], promoting peer review by local authorities;
- working with CIEH, [now LGA], and NSCA [now Environmental Protection UK] to ensure sufficiently high levels of training for staff undertaking this function;
- working with the Envirowise/Wrap programme to promote environmental improvements which have business benefits;
- looking for synergies with the Environment Agency's parallel regulatory regime;
- working, as appropriate, with pollution groupings set up by groups of local authorities covering most of the country, and using them as a sounding board for proposed initiatives or draft guidance;
- handling broad implementation and policy issues;
- assisting where possible on occasional individual cases, where it does not prejudice the Secretary of State's [or Welsh Ministers'] appeal function.

Extract from the Atkins 2004 Report

33.10 "Parliament has given authorities the responsibility to be the legal regulator of the pollution control function. Government is concerned that this function is undertaken effectively. Defra/Welsh Assembly Government provide support and guidance to help this happen.

The support and guidance comes in three distinct forms:

- statutory guidance eg SG and PG notes which authorities must follow
- good practice guidance eg AQ notes, which authorities are recommended to follow due to the benefits that result

- support services such as technical support provided by Defra and local authority link groups.

Defra's role

Defra has a formal role of setting the fees and charges and satisfying themselves that money raised has been spent as intended. Defra also has strategic oversight to ensure that other stakeholders' views are met and that the pollution control function is meeting its environmental objectives. It can ensure this using its legal powers of intervention, but it has not proved necessary, with regard to pollution control to date.

With regards to EU standards/directives Defra is the UK Government department that is called to explain/defend the UK record.

Authorities' role

Authorities have a legal role of the regulator of the function. Authorities discharge the function using the finance raised from fees and charges. Because process operators pay these fees, for a service, authorities are duty bound to deliver that service. Determining BAT for all installations, inspections and enforcement. Ensure all key installations are permitted.

Chartered Institute of Environmental Health (CIEH)

The CIEH, to which most EHOs belong, plays an important supporting role, overseeing their initial professional education, supervising the continuing professional development of its members, providing technical training and good practice guidance (for example, through its 'EMAQ' partnership with AEA Technology and its IPC Management Guide) as well as functioning routinely as a conduit for information and views between the government sector and the environmental health community. [Note: Defra is aware that 'EHO' has been replaced with 'EHP' – Environmental Health Practitioners.]

Local Government Association (LGA)

The LGA acts as a representative body for authorities and as such can gather views and experiences to enable sharing of best and innovative practice, that may assist in the delivery of the function.

Environmental Industries Commission (EIC) and industry bodies

Those representing industry provide feedback from regulated businesses as to their opinions on the implementation of the function. They also provide advice as to how implementation may be improved.”

Relationship with business

- 33.11 The primary relationship is between the regulators (local authorities) and the individual regulated businesses. This is because decisions on pollution standards must ultimately be made individually for each particular site, having regard to the circumstances relating to that case.

However, without prejudice to this, Defra and WG have a range of relationships with business.

- 33.12 Defra/WG are concerned to ensure that the regulation of LA-IPPC and LAPPC is effective but, in being so, that it minimises the burdens on business. Equally important is maximising consistency. Consistency does not mean uniformity, because each case must be judged on its merits, and even within the least complex of industry sectors, different installations will vary according to age, type of equipment, location, etc. By 'consistency' is meant equivalence of standard where circumstances are the same.
- 33.13 Defra/WG meet twice a year with a group of trade associations representing the main categories of sector regulated by LA-IPPC and LAPPC. This is known as the Industry Forum. [Minutes and papers for the Forum](#) are published on the Defra website.
- 33.14 Defra/WG hold bilateral discussions with individual trade bodies where specific issues arise in relation to their sector. This may relate to guidance in PG or SG notes, an on-going practical problem in the sector, interpretation of the legislation, or other matters. Where appropriate, Defra/WG will publish guidance to local authorities following such discussions.
- 33.15 Defra/WG are sometimes asked to intervene in individual cases. For the reasons set out in paragraphs 33.5 and 33.11 above, Defra/WG will not comment on individual cases. However, within these limitations, it may be possible for Defra/WG to facilitate discussions between local authorities and businesses, and this service will be provided where practicable, and subject to not infringing on local authorities' decision-making responsibility nor compromising the Secretary of State's [or Welsh Ministers'] appellate role.

How sector and process guidance notes are produced

- 33.16 The PG and SG notes are the major plank in maximising consistency of local authority decision-making. Each guidance note is drawn up using the following approach:
- Defra/WG set the broad policy parameters;
 - for each guidance note, the Environment Agency's [Local Authority Unit \(LAU\)](#) identify key trade bodies (including those representing the environmental industry sector) and find local authorities who regulate installations in that sector. These are then treated as the Technical Working Group (TWG) for the guidance note;
 - the LAU will engage TWG members in the drafting or revision of the note – typically by means of at least one meeting, and by circulation of drafts of the note. The LAU will visit example installations where they consider it beneficial;
 - the LAU will consult Defra/WG during the course of this work as they consider necessary;

- the TWG stage will conclude when the LAU considers it has examined fully all the views of members and has produced a draft with which the LAU is satisfied even if some TWG members continue to disagree;
- Defra/WG will then consider the draft and conduct a final written consultation with TWG members and wider interests (including industry representative bodies such as the CBI and Federation of Small Businesses, with environmental groups, and with local authority representative organisations);
- Ministers will approve the final text for publication having considered all responses to this final written consultation and appropriate amendments having been made;
- the guidance will be kept under continual review – primarily through the feedback from the LAU and Defra/WG helpline functions. Amendments can be made at any time, and this is normally achieved by means of the additional guidance (AQ) notes which are published on the Defra web site, although it is intended to have updateable on-line versions when the notes are next revised. Local authorities and relevant sector trade bodies are consulted where appropriate on such amendments and informed when they are published.

Networking for multi-site industries

33.17 In 2006 Defra/WG issued the following guidance on networking for multi-site industries:

“Defra and the Welsh Government are aware that sometimes companies with many sites contact local authorities individually over issues which affect all the company’s sites. This has happened most recently in the minerals and service station sectors.

This note is to suggest that authorities advise such companies of the potential benefits of speaking to Defra/WG in these cases about any strategic issues. Alternatively, or additionally, authorities may like to tell Defra/WG if such cases arise.

It is ultimately for each authority to deal with each application/permit in their area. However, it will often be beneficial all round if Defra or WG are aware of issues which impact on significant numbers of authorities.

We may be able to offer advice to the company on how to work with all relevant authorities. This may be more efficient for them and help to maximise consistency of approach across the country.

We may be able to alert all authorities to what is happening in the sector concerned. This could improve networking among authorities; enable sharing of knowledge, expertise and approaches; and lead to resource savings. It could point up a need for a link authority group to be established.

Defra/WG therefore suggest that where authorities receive approaches from multi-site industries, they ensure that the company is aware of the coordinating role of Defra and WAG. If not, they can be pointed to our [contact details](#)].”

The environmental industry sector

33.18 In addition to the above, Defra/WG maintain contact with the environmental industry sector. In particular, it is of interest to Defra/WG and the LAU to be kept in touch with new and emerging technologies which might be cost-effective in achieving improved environmental standards or more cost-effective in achieving existing standards. Defra/WG also discuss with the environmental industry sector the adequacy of LA-IPPC and LAPPC regulation and enforcement.

34 Solvent Emissions Directive and the Paints Directive

Guidance on the Solvent Emissions Directive 1999/13/EC (the “SED”) and the Paint Products Directive 2004/42/EC (the “PPD”)

A2,B

34.1 The Solvent Emissions (England and Wales) Regulations 2004, SI 2004/107 came into force on 20 January 2004. These Regulations were repealed by the EP Regulations, Schedule 14 of which now gives 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”. A consolidated version taking account of a number of corrections is [here](#) at.

34.1A. Amendments to the Solvent Emissions Directive (SED) were made by Directive 2008/112/EC on classification, labelling and packaging of substances and mixtures (the CLP Directive). The amendments change the terminology not the requirements and are to align with the [Globally Harmonized System of Classification and Labelling of Chemicals](#). They substitute "preparation" for "mixture" throughout the text, and amend Article 5.6 in two stages to align:

- from 1 December 2010, Article 5.6 is amended to read:

"6. Substances or mixtures which, because of their content of VOCs classified as carcinogens, mutagens or toxic to reproduction under Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures are assigned or need to carry the hazard statements H340, H350, H350i, H360D or H360F or the risk phrases R45, R46, R49, R60 or R61 shall be replaced, as far as possible and by taking into account the guidance referred to in Article 7(1), by less harmful substances or mixtures within the shortest possible time."

- from 1 June 2015 Article 5.6 is again amended to read:

"6. Substances or mixtures which, because of their content of VOCs classified as carcinogens, mutagens or toxic to reproduction under Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures are assigned or need to

carry the hazard statements H340, H350, H350i, H360D or H360F shall be replaced, as far as possible and by taking into account the guidance as mentioned in Article 7(1), by less harmful substances or mixtures within the shortest possible time."

The amendments are made by a footnote to the definition of "the Solvent Emissions Directive" in Schedule 14 to the EP Regulations. A document comparing the two classification criteria is [here](#) .

- 34.2 The SED applies to specified activities carried out at an installation ("SED activities"). These are the activities listed in Section 7 of Schedule 1 to the EP Regulations. This chapter is an introduction to the detailed requirements and is therefore not a substitute for reading the SED. Nor does it contain guidance on technical issues which is contained in the relevant [process or sector guidance notes](#) and listed at **Annex II** to this Manual.

Outline of the Directive requirements

- 34.3 SED activities listed in Annex I of the Directive must be regulated by permit. The permit must deliver certain requirements.
- 34.4 There are two main compliance options:
- meeting a volatile organic compound (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), or
 - 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).
- A spreadsheet for determining compliance with the reduction scheme can be found in AQ note AQ30(04) [on the Defra website](#).
- 34.5 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)
- 34.6 A solvent management plan (guidance in SED Annex III) must also be produced.
- 34.7 All new activities must now comply with the SED requirements before starting operation.
- 34.8 All existing activities must have complied with the requirements by 31 October 2007, except
- an operator must have notified 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 have been 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)
- 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.

34.9 The 2004 Regulations included the following deadlines for various actions, and these deadlines remain in force notwithstanding that the 2004 Regulations have been superseded:

- operators had to apply for a variation notice by 20 May 2004 where they were 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.)
- if an operator of an existing SED installation made an application for a permit, variation or a supplementary application* and notified he/she wished to use the reduction scheme, he/she was required use it from 31 October 2005

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

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

34.10 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. A substantial change is defined in the SED. Where a SED installation is also subject to the IPPC Directive, the definition in that directive applies. Otherwise, the SED definition overrides the definition used for other EP Regulation purposes. Article 2 of SED reads:

“substantial change

- for an installation falling within the scope of Directive 96/61/EC, shall have the definition specified in that Directive,

- for a small installation, shall mean a change of the nominal capacity leading to an increase of emissions of volatile organic compounds of more than 25%. Any change that may have, in the opinion of the competent authority, significant negative effects on human health or the environment is also a substantial change,

- for all other installations, shall mean a change of the nominal capacity leading to an increase of emissions of volatile organic compounds of more than 10%. Any change that may have, in the opinion of the competent authority, significant negative effects on human health or the environment is also a substantial change.”

34.11 Article 2 of SED also defines words such as VOC, organic compound, installation, existing installation, preparation, substance, coating, and consumption, and these definitions must be applied in relation to SED installations.

Derogations from the SED

34.12 This repeats the advice in additional guidance note AQ3(07).

As stated in all the relevant process and sector guidance notes, no derogations can be made except those specifically allowed by the SED. This guidance sets out Defra/WG's understanding of what those specific derogations are. It also clarifies (and replaces) the paragraph in all solvent PGs (normally para 1.18) which begins “The SED gives limited discretion....”.

NB: all relevant extracts from the SED can be found in the appendices to the relevant PG notes.

The process guidance notes make it clear at paragraph 1.10 that the contents of each of the "SED boxes" contain mandatory requirements and conditions must be included in permits to deliver these requirements EXCEPT there is very limited scope for regulator discretion in Articles 5.3(a) and (b) of the SED.

Article 5.2 of SED says that all installations must comply with either the requirements of Annex IIA (limit values etc) or Annex IIB (reduction scheme). Annex IIB contains a reduction scheme but allows operators to “use any reduction scheme, specially designed for his installation, provided that in the end an equivalent emission reduction is achieved”.

- fugitive emissions

Article 5(3)(a) of SED requires the fugitive emission limits in Annex IIA of the Directive to be complied with unless it is demonstrated to the satisfaction of the regulator that:

- a) it is not technically feasible for the installation to comply with the fugitive emission limit, or it is not economically feasible to do so, AND
- b) allowing non-compliance is not expected to give rise to significant risks to human health or the environment.

Where these tests are judged to be met, the regulator still has to require the use of BAT, which might involve imposing alternative conditions such as less stringent fugitive limits, or alternative control mechanisms, and, in particular, local authorities may require operators periodically to justify continuation of the derogation.

- where emissions cannot be contained

Article 5(3)(b) allows a derogation for the following activities: certain metal, plastic, textile, fabric, film and paper coating activities listed in Annex IIA, where the activity cannot be applied under contained conditions (for example shipbuilding and aircraft painting). This derogation is subject to it being demonstrated to the satisfaction of the regulator that:

- it is not technically feasible for the installation to comply with the reduction scheme in Annex IIB, or it is not economically feasible to do so.

Where the technical/economic feasibility tests are judged to be met, the regulator still has to require the use of BAT, which might involve imposing alternative conditions such as less stringent fugitive limits, or alternative control mechanisms, and, in particular, local authorities may require operators periodically to justify continuation of the derogation.

In short:

- a) can the metal, plastic etc coating activities comply with the contained conditions? If so, they must do so
- b) if not, can these activities comply with the reduction scheme? If so, they must do so

c) if not, the regulator must be satisfied that BAT is being used.

- risk phrase substances or preparations

The derogations explained above are NOT available where R40, R45, R46, R49, R60 or R61 VOCs are emitted. Articles 5(6) and 5(7) specify an ELV for such emissions where mass flows are above a specified figure. The only discretion allowed here is to be found in the second paragraph of Article 5(8) which, in the view of Defra and WG, should be interpreted as requiring all these VOCs to be emitted as contained (rather than fugitive) emissions as far as technically and economically feasible to safeguard public health and the environment. These ELVs apply only pending the substances or preparations being replaced by less harmful substances or preparations in the shortest possible time in accordance with Articles 5(6) and 5(9).

- deciding derogations and notifying Defra/WAG

Decisions on whether or not a derogation should be allowed under Articles 5(3)(a) or (b) are a matter for individual local authorities. However, because such decisions are likely to involve issues such as consistency as regards practice elsewhere in the UK and the EU, local authorities may wish to seek guidance from Defra/WG listed on the Defra website. Defra/WG envisage that all such decisions will need to include consideration of the following:

1. are there any technical barriers to compliance, and what evidence is there that other firms in a similar position in the UK and EU have opted for the same derogation route?
2. what are the cost barriers and do they apply to the sector as a whole rather than the particular financial situation of the company in question?
3. what are the risks to human health or the environment, not just local impacts but taking into account regional and transboundary effects?
4. how does the evidence under 1-3 balance in terms of BAT?

Each relevant process and sector guidance note has been written not just to give effect to the SED but also to reflect what is BAT for the sector as a whole, and it is envisaged generally that there will be few cases where different measures will need to be adopted for reasons of technical and economic feasibility.

Local authorities giving any derogation will need to be able to provide supporting evidence in order that the UK Government can respond to any queries from the European Commission. The annual statistical survey will continue to ask for numbers of Article 5(3) derogations given.

- replacing paragraph 1.18 of the process guidance notes

The above explanation replaces paragraph 1.18 of the Process Guidance (PG) notes and should be treated as statutory guidance under EP regulation 64.

Process and sector guidance notes

34.13 The following is an update of guidance issued in 2004 (AQ6(04)) which advised on how to use the process and sector guidance notes which had been revised to cover the SED.

How to use the new guidance notes

- determine whether the process is an SED installation. If so, it has to meet the additional SED requirements;
- to be classed as an SED installation the following two criteria must both be met:
 - a) it must carry out an activity that is listed in the new Section 7 of Part 1 to Schedule 1 of the EP Regulations AND
 - b) the solvent consumption of the activity must be greater than the solvent consumption thresholds in the new Section 7 mentioned above (the same list is in the appended SED Annex IIA at the end of each note);
- if no SED activities are being carried out, the SED parts of the guidance notes do not apply;
- determine whether more than one SED activity is carried out within the installation. If there is, the guidance notes in most cases contains a specific calculation method to combine the emission limit requirements. If there is an SED activity and a non-SED activity at an installation, different parts of the notes will apply to each activity;
- determine whether the SED installation is
 - a) existing (put into operation before 1 April 2001)
 - b) new (put into operation on or after 1 April 2001)
 - c) substantially changed (see 'substantial change' SED box in section 2 of each note).
- in the light of the answer to these three questions, begin by looking at:
 - a) for SED activities only, the table (normally table 1) which lists the paragraphs of the guidance note which apply. (In a few notes table 1 may also be relevant to non-SED activities.);
 - b) for all activities, the table (normally table 2) containing the compliance timetable.

SED activities

- for SED installations, the mandatory requirements of the SED are contained in boxes headed “SED Box”. The main provisions to be aware of are:
 - a) replace, and control and limit emissions of, designated risk phrase materials (see guidance in SED Box 6, or sometimes SED Box 7, in each note);
 - b) control and limit emissions of halogenated VOC with a risk phrase R40 (see guidance in SED Box 6, or sometimes SED Box 7, in each note);
 - c) requirements on new VOC abatement plant installed after 1 April 2001 (see guidance normally in SED Box 1 in each note);
 - d) comply with one of the following options for VOC:
 - emission and fugitive emission limits
 - reduction scheme
 - total emission limit values.

(There are normally two options available, however, in some cases one or three options.)

Non-SED activities

- the BAT provisions in the solvent notes published in 2004 are not much different to the BATNEEC guidance in the previous series of notes. The main additional provisions are listed in the table (normally table 2) containing the compliance timetable. **None** of the SED boxes apply to non-SED.

Timescales

- **SED installations:** the compliance dates for SED installations are set out in the table (normally table 2) containing the compliance timetable in each note.

In outline:

- a) for new installations, for substantial changes* and for existing activities fitted with new abatement plant after 1 April 2001, compliance should be
 - by 19 May 2004 if the new or substantially changed activity or the installation of the new abatement plant was carried out prior to 20 January 2004
 - by the time the new, or substantially changed, or new VOC abatement equipment is put into operation in all other cases

* substantially changed activities should be treated as existing activities where the total mass of VOC from the existing activity + the substantially changed part of the activity is \leq to the total mass emission which would have resulted from the installation had the substantially changed part of the activity been treated as a new activity.

b) for existing installations, there are various compliance dates:

- compliance with the use of SED reduction scheme: *from 31 October 2005*
- compliance with SED emission and fugitive limits: *from 31 October 2007*
- substitution of designated risk phrase materials R45, R46, R49, R60, R61 : *shortest possible time - a substitution plan must be submitted to the local authority by 19 May 2004. See below for guidance on "shortest possible time"*
- controls and limits on releases of designated risk phrase materials R45, R46, R49, R60, R61 and R40 halogenated VOC: *from 31 October 2007*

(note substances which become designated risk phrase materials R45, R46, R49, R60, R61 or R40 halogenated VOC after 29 March 1999 must comply with the controls and emission limits *within the shortest possible time.*)

- **all installations:** the BAT compliance dates for both SED and non-SED installations are set out in the table (normally table 2) containing the compliance timetable in each note.

List of statutory relevant process and sector guidance notes:

- SG6 surface treatment sector using organic solvents.
- 6/3(11) chemical treatment of timber and wood-based products.
- 6/7(11) printing and coating of metal packaging.
- 6/8(11) textile and fabric coating and finishing.
- 6/13(04) coil coating processes.
- 6/14(11) film coating processes.
- 6/15(11) coating in drum manufacturing and reconditioning.
- 6/16(11) printworks.
- 6/17(11) printing of flexible packaging.
- 6/18(11) paper coating processes.
- 6/20(11) paint application in vehicle manufacturing.
- 6/22(04) leather finishing processes.
- 6/23(11) coating of metal and plastic.
- 6/25(11) vegetable oil extraction and fat and oil refining.
- 6/28(11) rubber processes.
- 6/32(11) adhesive coating processes.
- 6/33(11) wood coating processes.
- 6/34(11) respraying of road vehicles
- 6/35(96) metal and other thermal spraying processes
- 6/40(11) coating and recoating of aircraft and aircraft components.
- 6/41(11) coating and recoating of rail vehicles.
- 6/43(11) finishing of pharmaceutical products.

- 6/44(11) manufacture of coating materials (formerly 6/10 + 6/11).
- 6/45(11) surface cleaning
- 6/46(11) dry cleaning - spreadsheets for the calculation of solvent consumption at dry cleaners can be found in AQ note AQ16(05) in the [Defra website](#)
- 6/47(11) original coating of road vehicles and trailers

Meaning of “shortest possible time”

34.14 The following is a repeat of the advice given in additional guidance note AQ9(04), updated to reflect the EP Regulations.

The term "shortest possible time" is used in connection with the substitution of certain VOCs and/or compliance with emission limit values applicable to these VOCs in the Solvent Emissions Directive.

(These VOCs are what are referred to in the PG notes as "designated risk phrase materials" and comprise:

a halogenated VOC which is assigned or needs to carry the risk phrases R40 a substance which is a VOC and which is assigned or needs to carry one or more of the risk phrases R45, R46, R49, R60 or R61, and a preparation which, because of its content of substances which are VOCs, is assigned or needs to carry one or more of the risk phrases R45, R46, R49, R60 or R61.)

A preparation which contains substances assigned the risk phrases, but which itself is not assigned or does not carry the risk phrases, is not a designated risk phrase material.

Substitution of Article 5(6) Solvents in Shortest Possible Time

Local authority regulators will need to reach a view on what constitutes the shortest possible time with regard to the Article 5(6) obligation on operators to substitute substances or preparations, which because of their VOC content are assigned or need to carry the risk phrases R45, 46, 49, 60 or 61. Decisions should be taken on the facts of each individual case, taking account of the following:

- a) the views of operators contained in submitted substitution plans, and
- b) all of the factors as set out in Article 7 of the SED, namely
 - fitness for use
 - potential effects on human health and occupational exposure
 - potential effects on the environment
 - the economic consequences, in particular, the costs and benefits of the options available,in relation to both the existing substances/preparations and their potential substitutes, and
- c) any guidance published by the European Commission under Article 7.

Without prejudice to the above, while recognising that there may be justifiable cases in applying the above criteria why substitution may not be feasible or must be a medium/long-term objective, as a general principle Defra/WG consider that substitution should normally be no later than the following dates (and may often be appropriate before these dates):

- in the case of substances/preparations assigned these risk phrases before 29 March 1999: 31 October 2007
- in the case of substances/preparations assigned these risk phrases after 29 March 1999: 6 years from the date of assignment / reclassification.

It is considered that in most cases when designing a new installation, avoiding the substances or preparations referred to in Article 5(6) will be less costly and more technically feasible than for replacement at an existing installation, and therefore these substances or preparations can reasonably be excluded from use. Any operator proposing to use these substances or preparations at a new installation for the first time should be expected to provide a strong justification against the criteria in paragraph b) above. The same applies to operators of existing installations who propose to start using any of these substances or preparations for the first time.

“Shortest possible time” and compliance with emission limit values, and containment

Local authority regulators will need to reach a view on what constitutes the shortest possible time with regard to the obligation on operators to meet the emission limit values described in Articles 5(7) and 5(8) of the SED if they use substances or preparations which are assigned or need to carry the risk phrase categories described below and exceed specified mass flow thresholds:

- a) substances or preparations which because of their VOC content are assigned or need to carry one or more of the risk phrases R45, R46, R49, R60 or R61 and the mass flow is greater than or equal to 10g/hour;
- b) halogenated VOCs which are assigned the risk phrase R40 and the mass flow is greater than or equal to 100g/hour.

Although decisions on shortest possible time should be taken on the facts of each individual case as a general principle DEFRA/WG consider that where mass flow thresholds are exceeded emission limit value compliance should normally be no later than the 31/12/07 or 6-years dates set out above (but without taking account of the criteria in paragraphs a)-c) above – ie the paragraphs following the words “taking account of the following”).

The above applies to containment also, except for the reference to mass flow which should be disregarded.

Substitution and emission limits

Operators will be subject to shortest possible time compliance obligations for both substitution and emission limit values if substances

or preparations are used which because of their VOC content are assigned or need to carry one or more of the risk phrases R45, R46, R49, R60 or R61.

In such cases, although the criteria for determining shortest possible time for compliance with emission limit values and for substitution are different, and it is possible that the period could be substantially shorter in the former case, Defra/WG consider it likely that in the great majority of cases the timescales will be the same - not least because the additional cost of meeting emission limit values for only an interim period prior to substitution is likely to outweigh the public health and environmental benefits. One instance where the timescale for compliance with emission limit values could be shorter than that for substitution is where there is justifiable doubt about the prospects of substitution being achieved within the specified period.

Table: summary of guidance on the compliance requirements of SED Articles 5(6) - 5(9)

Requirement	Compliance deadline		
	Existing Installation: risk phrase assigned before 29 March 1999	Existing Installation: risk phrase assigned on or after 29 March 1999	New Installation: risk phrase assigned at any date
ELV Compliance Article 5(6) VOCs where mass flow exceeds 10g/hour + Article 5(8) VOCs where mass flow exceeds 100g/hour	31 October 2007	SPT No later than 6 years from classification	Immediate
Containment for Article 5(6) and 5(8) VOCs	31 October 2007	SPT No later than 6 years from classification	Immediate
Substitution for Article 5(6) VOCs only	31 October 2007	SPT No later than 6 years from classification	SPT (1) + (2)

footnotes to table:

SPT = Shortest Possible Time

(1) see paragraph above relating to designing new installations

(2) in circumstances where a justification is accepted for the continued use of Article 5(6) VOCs, a condition would be placed in the authorisation / permit requiring annual reappraisal of the feasibility of substitution

(3) the date when a substance or preparation is considered to have been assigned an Article 5(6) or 5(8) risk phrase category is the date when the substance appears on the Approved Supply List in which the substance is listed with one or more of the relevant R phrases. (The Approved Supply List provides information approved for the classification and labelling of substances and preparations dangerous for supply in accordance with the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002 [the CHIP Regulations.]

Vehicle refinishing and the Paints Directive

34.15 The following guidance advises what local authorities and vehicle refinish operators should do to comply with [EU Directive 2004/42/EC– the ‘paints’ directive](#). This guidance was originally published as AQ21(05), with amendments in November 2005 and subsequent necessary updating to reflect the date of publication of this Manual.

The directive was published on 21 April 2004 and is entitled “on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain paints and varnishes and vehicle refinishing products and amending Directive 1999/13/EC”..

The directive was put into national law by the [VOCs in Paints, Varnishes and Vehicle Refinishing Products Regulations 2005](#), SI 2005/2773. The new requirements did not affect existing installations until 1 January 2007, but affected new installations from 30 October 2005 onwards. Minor amendments were made to the Regulations in [2010](#) to reflect the Classification Labelling and Packaging Regulations.

The Paints Directive specifies the VOC content of different paints, varnishes and refinishing products. It includes provisions enabling the Government to exclude vehicle refinishing installations from the SED, provided that the coatings specified in the paints directive are used. This approach was adopted with the result that the threshold for the purposes of the EP Regulations has reverted to 1 tonne per annum (tpa) consumption.

This guidance applies to vehicle refinishing as defined in paragraph (a) of the directive definition, namely:

" any industrial or commercial coating activity and associated degreasing activities performing –

(a) the coating of road vehicles as defined in [Directive 70/156/EEC](#), or part of them, carried out as part of vehicle repair, conservation or decoration outside of manufacturing installations”

It does not apply to the original coating of vehicles using refinish materials, or the coating of trailers or semi-trailers.

Under the 2005 Regulations (as amended) it is an offence to market vehicle refinish paints, varnishes and refinishing products which do not comply with the VOC content standards specified in annex IIB of the directive unless for use in an installation regulated the EP Regulations and which meets SED standards.

A revised version of PG6/34 was published in 2006 comprising PG6/34A covering residual SED refinishing activities, and PG6/34B covering those refinishing activities with a solvent consumption over 1 tonne a year complying with the Paints Directive.

Procedures for installations under 1 tpa

Proposed new installation. It was unlawful for anyone to sell non-compliant paint for vehicle refinishing on or after 1 January 2007 or 2008 (depending on whether the vehicle refinishing product was manufactured before or after 1 January 2007 – see a) and b) below) to any new vehicle refinish installation which is likely to involve the use of less than 1 tonne of organic solvents in any 12-month period. The statutory nuisance controls under Part III of the Environmental Protection Act 1990 remain available for local authority enforcement.

Existing installation, permit given. For any vehicle refinishing installation which is likely to involve the use of less than 1 tonne of organic solvents in any 12-month period and which had a permit on 30 October 2005, the permit ceased to have effect on 30 October. From 1 January 2007 the operator must comply with the new requirements so that it will now be unlawful for anyone to sell non-compliant paint for vehicle refinishing:

- a) from 1/1/2008, if the vehicle refinishing product was manufactured before 1 January 2007
- b) from 1/1/2007, if the vehicle refinishing product was manufactured after 1 January 2007.

Although there is no time period in which an operator is obliged to use up stocks of non-compliant products, presence of such non-compliant products on their site may lead to investigation.

The statutory nuisance controls remain in force throughout.

Procedures for installations 1tpa or more

Proposed new installation, permit not applied for. Any new vehicle refinishing installation which is likely to involve the use of 1 tonne or more of organic solvents in any 12-month period should use the

simplified application form contained in PG6/34B(06) and be charged the lower application fee in the [prescribed charging scheme](#).

Existing installation up to 1 January 2007. For all such existing installations with a permit at the time the 2005 Regulations came into force, the SED reduction scheme no longer applies. Where such requirements were already included in a permit, they should normally have been removed – exceptionally they could be retained because they were considered necessary to comply with BAT in a particular case, although Defra/WG cannot at the time of writing conceive of such a case. The SED reduction scheme should not be inserted in any permits in the future unless for BAT reasons.

Existing installation from 1 January 2007. From 1 January 2007 PG6/34B(06) has been in place. Condition 11 in the specimen permit in Appendix 3 to that guidance requires the use only of compliant paint. By 1/1/07 local authorities should have replaced current permits with simplified versions. This is an administrative action and does NOT require any fresh application.

New installation from 1 January 2007. Local authorities should use the specimen application forms contained in PG6/34B(06) referred to above, and the lower application fees apply.

Risk phrase substances and the SED

- 34.16 The following addresses issues raised on the status of n-propyl bromide (nPB) in relation to the SED.

Ultimately, any interpretation of the law is a matter for the courts. What follows is the position, with reference to nPB, taken by HSE (which Defra has consulted on 'CHIP' aspects) and Defra/WG. The same text was published in the July 2007 edition of one of the main journals produced for the surface cleaning sectors "Surface World".

Guidance on the risk phrase status of nPB

The classification and label for nPB were agreed at European level and adopted as part of the 29th Adaptation to Technical Progress in April 2004 (Commission Directive 2004/73/EC). It was implemented in British law by an amendment to The Chemicals (Hazard Information and Packaging for Supply) Regulations 2002 (CHIP). The amending regulations are The Chemicals (Hazard Information and Packaging for Supply) (Amendment) Regulations 2005 (SI 2005 2571), which came into force on 31 October 2005.

The entry for nPB is on page 373 of the Approved Supply List (8th edition), ISBN 0 7176 6138 5* The classification for nPB is:

F; R11	Highly flammable
Repr Cat 2; R60	May impair fertility

Repr Cat 3; R63 Xn; R48/20	Possible risk of harm to the unborn child Harmful: danger of serious damage to health by prolonged exposure through inhalation
Xi; R36/37/38	Irritating to eyes, respiratory system and skin
R67	Vapours may cause drowsiness and dizziness

This leads to the label:

F, T ; R60 - 11 - 36/37/38 - 48/20 - 63 - 67
S53 - 45

So the label has the flammable and toxic symbols, the risk phrases as above and the safety phrases 'Avoid exposure - Obtain special instructions before use' and 'In case of accident or if you feel unwell seek medical advice immediately (show the label where possible)'.

There are no specific concentration limits in the entry for nPB so the default concentration limits apply when classifying preparations for health effects. So, for example, a preparation containing nPB should be classified as Repr Cat 2, R60 where the concentration of nPB in the preparation is greater than or equal to 0.5% by mass.

Attempts by the brominated solvents industry at EU level to reverse the classification of nPB (particularly Repr Cat 2, R60) have so far been unsuccessful.

Therefore the legal position at present is that the classification of nPB - identified above – must apply at EU level as set out in Commission Directive 2004/73/EC, and as transposed in EU Member State national legislation implementing this Directive. In Great Britain this is CHIP Regulations 2002 as amended in 2005.

Guidance on risk phrase substances and the SED

As regards the Solvent Emissions Directive, Article 5 of the SED contains the following provisions relating to substances or preparations which, because of their content of volatile organic compounds are classified as carcinogens, mutagens, or toxic to reproduction under Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, are assigned or need to carry the risk phrases R45, R46, R49, R60 and R61.

Article 5.6 provides that **these substances or preparations shall be replaced**, as far as possible and by taking into account any guidance issued by the European Commission under Article 7.1, by less harmful substances or preparations **within the shortest possible time**.

The guidance on 'shortest possible time' – see paragraph 34.14 above (first published as AQ9(04) - provides that a preparation which contains substances assigned the risk phrases, but which itself is not assigned or does not carry the risk phrases, is not a designated risk phrase material. As regards substitution within the shortest possible time, the guidance advises that local authority regulators will need to reach a view on what constitutes the shortest possible time with regard to the SED Article 5(6) obligation. The guidance note includes paragraphs headed "substitution of Article 5(6) solvents in shortest possible time.

The date when a substance or preparation is considered to have been assigned an Article 5(6) risk phrase category is the date when the substance appears on the Approved Supply List in which the substance is listed with one or more of the relevant R phrases. In the case of nPB this is 31 October 2005. (The Approved Supply List provides information approved for the classification and labelling of substances and preparations dangerous for supply in accordance with CHIP.)

Defra and WG's view of the position regarding substituting a substance or preparation which was assigned or needed to carry risk phrase R45 or R60 before 29 March 1999 ('pre-1999') by an R60 substance or preparation assigned after that date ('post-1999') is as follows. Defra/WG consider that where an installation regulated under the SED is already using a post-1999 substance or preparation at the time of its new assignment, the shortest possible time should be regarded as normally no more than 6 years from the date of that assignment. But where an installation is using a pre-1999 R45/60 substance or preparation, it is not within the interpretation of 'shortest possible time' to substitute it for another substance, such as nPB, which at the time of substitution has been assigned or needs to carry R60.

To give an example, substance X is assigned R45 before 29 March 1999. Substance Y is newly assigned R60 on (say) 1 January 2002. It would be within the terms of the Defra/WG guidance for a business to continue using substance Y as a substitute for X for normally up to 6 years, if the substitution occurred before 1 January 2002. Any substitution of Y for X after that date would be a replacement of one listed risk-phrase substance or preparation with another and therefore not start the clock again –therefore it would not extend the 'shortest possible time' by up to an additional 6 years – and, as stated above, we would expect in most cases that newly assigned substances could be excluded from use.

Enforcing compliance with the Solvent Emissions Directive

34.17 The following guidance, first issued in November 2007, deals with the subject of enforcement of SED.

Local authorities will know that all installations covered by the Solvent Emissions Directive should, by 31 October 2007, not only

- a) have a PPC permit, but
- b) be fully compliant with the requirements of the Directive.

The only exception to b) is where an authority has specifically approved a derogation under the terms of Article 5(3) of the Directive, as explained in paragraph 34.12 above, and notified Defra or WG of the terms of the derogation. Defra and WAG are aware of only a small handful of derogations being considered or given.

Where operators have failed to comply, authorities will need to consider what steps to take.

Defra/WG neither can nor wish to dictate to local authorities what enforcement action they should take in individual cases. Authorities doubtless want to be able to exercise their own discretion in such matters according to the specific facts of each case. Bearing these things in mind, this guidance is aimed at providing a framework for local authority decision-making and does not seek or intend to specify what decisions should be in individual circumstances.

It is advised that authorities should bear in mind the following:

- the UK is legally obliged to comply with the Directive. So-called 'infraction' proceedings for the UK's insufficient enforcement of the Directive could be taken against the UK. The EU Commission could do this in relation to any installation which is not complying, if reported to them. Those proceedings could result in Court action against the UK in the European Court of Justice. If we were unsuccessful in defending such an action and continued to be in **breach of the Directive**, then the UK could ultimately be fined substantial sums.
- the Cabinet Office Enforcement Concordat advised on a proportionate approach to enforcement. This was superseded from April 2008 by the statutory [Regulators' Compliance Code](#).
- it will not be even-handed for businesses competing in the same marketplace if some are able to avoid expenditure on regulatory requirements and others not. (This too could result in a complaint to the EU Commission, triggering infraction proceedings.)

More specifically, authorities may wish to be aware of the following:

- some dry cleaners with older machines may find themselves unable to comply with SED without replacing their machines. For example, they may not be able to meet the 20g solvent emitted per kg product cleaned, required by SED. This is a mandatory requirement which can be achieved by good, well maintained, modern machines operating with full loads.

- where there is doubt whether or not a dry cleaner will be able to comply with the 20g/kg figure, authorities should bear in mind that this figure relates to 12 months' data.
- Defra and WG have taken steps to alert degreasing/surface cleaning companies to the SED requirements and we are aware that there has been considerable publicity for SED in the trade press. This may be relevant where any such companies only apply for a permit or are tracked down after 31 October 2007.

Question and answer briefing

34.18 **Annex XX** contains some questions and answers from a series of seminars held by Defra in 2004 previously published in AQ28(04), with minor updating.

Coatings with a short lifespan

34.19 A question has been asked about the regulatory position regarding the application of coatings with a short lifespan. An example is the use of refined animal, vegetable or synthetic oils blended with organic solvents to provide resistance to oxidation of bare metal surfaces immediately after manufacture or cutting, and which last 3-9 months.

Defra and WG consider that the short lifespan of the coating should be disregarded in reaching a decision. Therefore, if the coating operation is a listed activity under Schedule 1 of the EP Regulations and solvent consumption exceeds the relevant threshold, it requires regulation.

35 Petrol vapour recovery directives

Guidance on the Stage I and Stage II Petrol Vapour Directives: 94/63/EC (unloading and storage of petrol) and 2009/126/EC (refuelling).

B

PVRI

- 35.1 EU Directive 94/63/EC on the control of volatile organic compound emissions resulting from the storage of petrol and its distribution from terminals to service stations, was implemented through The Petrol Vapour Recovery (Stage 1) (Local Enforcing Authorities) Direction And Notice 1996. This is now superseded by Schedule 18 of the EP Regulations, which has the same legal effect. [The 2003 consolidated version of the Directive can be found here.](#)
- 35.2 The Directive covers:
- a) the unloading of petrol at service stations with a likely 12-monthly throughput of 500m³ of petrol. (This is so-called “Stage 1” of the petrol vapour recovery. “Stage 2”, which relates to the filling of vehicles at petrol stations, has been introduced for larger service stations, but is not a Directive requirement.)
 - b) the storage of petrol in stationary storage tanks at a terminal, or the loading or unloading at a terminal of petrol into or from tankers, rail tankers or inland waterway vessels. (Where this is undertaken at an Environment Agency-regulated refinery, the Agency is the regulator.)
- 35.3 There are no LA-IPPC petrol vapour recovery activities. LAPPC petrol vapour recovery activities are defined in Section 1.2 of Part 2 of Schedule 1 to the EP Regulations.
- 35.4 [Guidance on the procedures and standards needed to comply with the directive and with BAT](#) can be found in two process guidance notes:
- *Secretary of State’s Guidance for Unloading of Petrol into Storage at Petrol Stations, PG1/14(06)*
 - *Secretary of State’s Guidance on Storage, Unloading and Loading Petrol at Terminals, PG1/13(04).*

PVRII

35.5 [The PVRII Directive](#) came into force on 1 January 2012. The Directive "on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations" covers the fitting of equipment to recover petrol vapour when refuelling motor vehicles .

35.6 The salient points in the Directive are set out below. The Directive does not affect the requirements to install PVRII, as specified in the Environmental Permitting Regulations and PG1/14(06). The Directive requirements which go beyond the EP Regulations will be transposed into domestic legislation by the end of 2011.

- PVRII to be fitted to all service stations with a petrol throughput of >3000m³ by end-2018
- new service stations with an actual or intended annual throughput of >500m³ to be equipped with PVRII from January 2012
- existing service stations with a actual or intended annual throughput of >500m³ to be equipped with PVRII if they undergo "major refurbishment" from January 2012. (Guidance will be issued on the meaning of "major refurbishment" at the time the Directive is transposed, but in broad terms this applies to substantial works to the petrol refuelling systems not, for example, changes to the shopping facilities.)
- substitute >100m³ for 500m³ in the above bullets where the service station is situated under permanent living quarters or working areas
- the above bullets do not apply to service stations exclusively used in association with the construction and delivery of new motor vehicles
- petrol vapour capture efficiency to be 85% or more as certified by the manufacturer in accordance with relevant European technical standards or type approval procedures or, if there are no such standards or procedures, with any relevant national standard
- where the recovered petrol vapour is transferred to a storage tank at the service station, the vapour/petrol ratio must be equal to or greater than 0,95 but less than or equal to 1,05.

PVRII Directive – practical implications

- local authorities

35.7 The standards contained in the Directive are the same as those specified in PG1/14(06) for existing Stage II.

35.8 There has been minimal change for new service stations. All new stations with an actual or intended annual throughput of $>500\text{m}^3$ must be equipped with PVRII. The difference is that from 1 January 2012 the threshold is $>100\text{m}^3$ for a service station situated under permanent living quarters or working areas.

There could be cases where a new $100\text{-}500\text{m}^3$ service station was on the drawingboard or under development on 1 January 2012. In these cases, it should be regarded as new if it is built or receives an individual planning permission, construction licence or operating licence on or after 1 January 2012.

35.9 The big changes were for existing service stations:

- all existing service stations with an annual petrol throughput of $>3000\text{m}^3$ must have fitted Stage II by 31 December 2018;
- existing service stations with an actual or intended annual petrol throughput of $>500\text{m}^3$ (or $>100\text{m}^3$ under permanent living quarters or working areas) which undergo a major refurbishment, must fit Stage II at the time of this major refurbishment.

35.10 It is Defra's view that the exclusion of service stations exclusively used in association with the construction and delivery of new motor vehicles means that the following are outside the scope of the Directive:

- dispensing petrol to new vehicles during their manufacture, i.e. the first filling of a new vehicle at a manufacturing installation, and
- supplying petrol to engines under test at a vehicle manufacturing installation, where the fuel is not dispensed through a nozzle, but is supplied by continuous direct fuel feed to an engine on a dynamometer test bed.

35.11 Some vehicle manufacturing installations may also have a facility to dispense petrol to, for example, vehicles operated on the site - referred to here as an on-site petrol station. If the throughput of these on-site petrol stations exceeds any of the relevant thresholds, it should be treated as falling within the Directive. There could be instances where these on-site petrol stations share petrol storage with the new vehicle/engine testing activities. In these cases, the new vehicle/engine testing activities should not be regulated as directly associated activities because they are expressly excluded from regulation because PVRII cannot, for technical reasons, be readily fitted. Operators will be able to provide evidence which separately identifies the throughput of the on-site petrol stations.

35.12 Paragraphs 35.18-20 below contain guidance on the meaning of "major refurbishment".

35.13 It is envisaged that local authorities will use their discretion in enforcing the Article 5.3 "sticker" provision, and what constitutes "in the vicinity of petrol dispenser".

- **businesses**

35.14 From 1 January 2012 businesses should apply for a Stage II permit for any new service station with an actual or intended annual petrol throughput of $>500\text{m}^3$, or where the throughput is $100\text{--}500\text{m}^3$ and the service station is situated under permanent living quarters or working areas.

35.15 If an operator intends to undertake a major refurbishment of an existing service station from 1 January 2012 onwards, and the service station has a throughput of $>500\text{m}^3$ (or $>100\text{m}^3$ if situated under permanent living quarters or working areas), PVRII must be fitted at the same time.

Guidance what is meant by “major refurbishment” is in paragraphs 35.18-20 below. If in doubt, it is best to ask the relevant local authority regulator whether works amount to a major refurbishment, whether a service station should be taken to be under permanent living quarters or working areas, or whether a service station should be treated as new or existing.

35.16 All existing service stations with an annual petrol throughput of $>3000\text{m}^3$ must have fitted Stage II by 31 December 2018.

35.17 Any service station with PVRII II fitted must have a sign or sticker on, or in the vicinity of, the petrol dispenser, saying the PVRII is installed.

- **definitions**

35.18 The following guidance on the meaning of “major refurbishment” has been produced in consultation with key stakeholders and local authorities and is issued under EP regulation 64.

35.19 The Directive does not contain a definition of what constitutes a “major refurbishment” which must trigger the installation of PVRII in existing petrol stations with a throughput above 500m^3 , or above 100m^3 where petrol stations are located under permanent living quarters or working areas.

35.20 It is for regulators to decide, based on the facts of each individual case, whether particular works fall within this term. In doing so, they should have regard to the following:

a) in the Government’s view, a major refurbishment will be one which, because of the scale of the works involved, will provide a cost-effective opportunity for installing PVRII equipment at the same time, such as when a forecourt is excavated in order to install replacement pipework and dispensers (typically necessitating temporary closure of the petrol station);

b) the Government can see no reason why rebuilding or refurbishment of a shop which is located on the petrol station site should constitute a major refurbishment if no works are being carried out on the petroleum pipework or petrol dispensers;

c) subject to e), the following are unlikely to constitute a major refurbishment:

- (i) repair of petroleum pipes, without replacing an entire pipe
- (ii) replacement of one or more of the petrol dispensers without any other works
- (iii) replacement of all the dispensers on a small petrol station with secondhand dispensers which do not have a PVRII capability
- (iv) replacement of part of the petroleum pipework on a site without any other works;

d) the Government is not aware of any circumstances where changing all the petroleum pipework and replacing all the dispensers with new ones would not constitute a major refurbishment;

e) consideration should be given to the cumulative effect of smaller-scale refurbishments. For example, where a petrol station has undertaken works which were judged not to constitute a major refurbishment and within the next three or so years carries out further significant works, the two (or more) sets of works should be considered together when deciding whether this is a major refurbishment. If the regulator decides that the combined works are, in effect, a staged major refurbishment, PVRII requirements should be installed as part of the second or subsequent set of works. But this should not be used to treat, for example, periodic small-scale repair of pipework or replacement of individual items of failing equipment as cumulatively amounting to major refurbishment;

f) in accordance with a), all decisions by regulators should be proportionate to the circumstances, having regard to what is said in recital 9 of the Directive. It is worth noting in relation to costs for small petrol stations that there can be a very substantial price differential between that of a second-hand dispenser and a new dispenser with PVR2 capability.

Recital 9. Existing service stations may need to adapt existing infrastructure and it is preferable to install vapour recovery equipment when they undergo major refurbishment of the fuelling system (that is to say, significant alteration or renewal of the station infrastructure, particularly tanks and pipes), since this significantly reduces the cost of the necessary adaptations. However, larger existing stations are better able to adapt and should install petrol vapour recovery earlier, given that they make a greater contribution to emissions. New service stations can integrate petrol vapour recovery equipment during the design and construction of the service station and can therefore install such equipment immediately.”

35.21 It is expected that local authorities will use their sensible discretion when determining whether a service station is “under permanent living quarters or working areas”. This is the same term used in the PVRI Directive, so these judgements will have already been made in relation to existing service stations.

36 Asbestos directive

Guidance on the Asbestos Directive, 87/217/EEC, to the extent implemented through LAPPC.

B

- 36.1 EU Directive 87/217/EEC on the prevention and reduction of environmental pollution by asbestos, was amended by Directive 91/692/EEC and by Council Regulation 807/2003. The Directive was implemented through the Control of Asbestos in the Air Regulations, SI 1990/556. Insofar as these Regulations relate to LAPPC regulation of asbestos installations, they are now superseded by Schedule 16 of the EP Regulations. The 2003 consolidated version of the Directive can be found [here](#).
- 36.2 There are no LA-IPPC asbestos activities. LAPPC asbestos activities are defined in Section 3.2 of Part 2 of Schedule 1 to the EP Regulations. Asbestos is defined as including any of the following fibrous silicates: actinolite, amosite, anthophyllite, chrysotile, crocidolite and tremolite.
- 36.3 According to latest Defra/WG data, there are 6 installation in England and Wales to which this Directive applies.
- 36.4 Guidance on the standards needed to comply with the Directive and with BAT can be found in Secretary of State's Guidance for asbestos processes, PG3/13(95), as amended by additional guidance note AQ15(04). Both of these are available on the [Defra website](#).

37 European Pollutant Release and Transfer Register

Guidance on the European Pollutant Release and Transfer Register, EC Regulation 166/2006.

A2,B

- 37.1 Since 2001, the European Commission has collected data on mass emissions from all IPPC Directive installations, and published a collation and analysis of the data in the form of the European Pollutant Emission Register (EPER). The purpose was to provide information to the public and regulators, and to have data for assessing compliance with international obligations.
- 37.2 Under this old EPER system, Defra/WG have previously been able to provide the European Commission with data from LA-IPPC installations by collecting basic production information from local authorities and then applying emission factors ourselves.
- 37.3 The EPER has been replaced by the European Pollutant Release and Transfer Register (E-PRTR) – EC Regulation 166/2006. This came into effect for the first calendar reporting year in 2007. Under the new EC legal obligation, all relevant operators that carry on activities within the thresholds listed in Annex I to the EU Regulation must now produce the specified information for their activities.

The legal requirements of the E-PRTR

- 37.4 The E-PRTR is a directly-applicable European legal requirement binding on the operator of each relevant installation. It is therefore very important that every operator is aware of his or her obligations under [EU Regulation 166/2006](#) and should look at the actual legislation.
- 37.5 Operators will be under an obligation to supply the necessary data in response to an Information Notice requirement issued under EP regulation 60. It is expected that all local authorities will issue such a Notice. It is an offence to fail to comply with an Information Notice.
- 37.6 Each Member State, such as the UK, has to provide an electronic report to the European Commission every year covering, for each E-PRTR facility, the amounts of:

- a) releases to air, water and land of the pollutants listed in section 1 of **Annex XIX** to the Manual (NB whilst data on all releases is required by Defra, only that which is over the E-PRTR thresholds will be published. This applies to paragraphs b) and c) as well.);
- b) waste sent for recovery or disposal off-site if:
 - i. for hazardous waste, more than 2 tonnes is sent for recovery or disposal in a year; or
 - ii. for non-hazardous waste, more than 2000 tonnes is sent for recovery or disposal in a year.

The report must indicate using "R" or "D" whether the waste in question is being sent for recovery or disposal. Where hazardous waste is being transported outside of the UK, the report must also include the name and address of the recoverer or the disposer of the waste and the actual recovery or the disposal site;
- c) the amount of any pollutant listed in section 1 that is sent to a waste water treatment plant.

- 37.7 There is a requirement on all operators to report whether the submitted data has been measured, calculated or estimated.
- 37.8 Section 2 of **Annex XIX** contains a copy of Annex III of the E-PRTR Regulation which sets out the format in which the UK will have to submit the data to the European Commission, and consequently, the categories on which E-PRTR operators will be required to submit information to local authorities.
- 37.9 The E-PRTR Regulation applies to IPPC and some other installations. The Environment Agency will collect the relevant data for A(1) installations and any others not covered by LA-IPPC or LAPPC. In accordance with EP regulation 60(5), it is an LA-IPPC/LAPPC function to collect data for the E-PRTR.

Procedures

- 37.10 The first reporting year for which data was required was 2007. Defra/WG advised local authorities and operators of the requirements of the E-PRTR in additional guidance note AQ9(07).
- 37.11 Each year local authorities will be sent by Defra or WG, as appropriate, an electronic form on which to collect the data. Defra emailed English authorities the form for collecting 2007 data and supporting guidance on 21 December 2007, with a copy sent to relevant trade associations. The package included a direction which:
- a) designated each authority as a 'competent authority' for the purposes of Article 5 of the EU Regulation, and

- b) required each authority to issue an Information Notice, in the form provided, to operators of all LA-IPPC installations and the small number of relevant LAPPC installations*, and send the collected information (after checking) to Defra.

37.12 In outline, the responsibility of local authorities will be:

- stage 1 to forward an Information Notice and the electronic form to all LA-IPPC operators and to the handful of LAPPC operators covered by E-PRTR*. If an authority has no such installations in its area, they will be asked to confirm this in a 'nil response' to Defra/WG;
- stage 2 to ensure that the operator completes the form in sufficient time for stage 3 to be completed by Defra's/WG's deadline;
- stage 3 to check whether the operator has provided all the required data; to check the competeness, consistency and credibility of the submitted data and to request changes where these are not achieved; and to submit the completed form by email to Defra/WG.

* the LAPPC installations are coal rolling mills (coal crushers), industrial plants for the preservation of wood and wood products with chemicals, and installations for the building/painting of ships or removal of paint from ships, where not A1 or A2 installations.

37.13 In outline, the legal obligation on operators will be:

- 1 to complete the form accurately in accordance with the guidance/instructions (Article 5 of the E-PRTR places an requirement on operators to assure the quality of the data they submit);
- 2 to return the form to the local authority by the date specified by the local authority (in their Information Notice) and to make any changes reasonably requested by the authority.

37.14 On receipt of the data, Defra and WG will process it so that it can be submitted to the European Commission in the form they require, and published on the internet so that it is accessible to the public.

37.15 Because the UK is legally obliged to provide the data to the European Commission, compliance by both local authorities and operators is mandatory. Operators that fail to send local authorities the data in response to an Information Notice will be committing an offence, details of which are in **Chapter 28**. (The Notice required to be issued to collect the 2007 data is issued under regulation 28 of the PPC Regulations, under which there is the same offence of failing to comply with an information notice, and the same maximum penalties.)

Further guidance

37.16 The European Commission has a [website](#) on the E-PRTR.

38 Mobile plant

Guidance on when LAPPC mobile plant might warrant a ‘triviality’ exemption; use of fixed-term transfers for mobile plant hired out on a temporary basis (England only); and recording serial numbers

A2,B

- 38.1. Recent developments in the crushing field include production of smaller throughput units (“mini”/“micro” crushers) and “bucket crushers” (used primarily on demolition sites as attachments to excavators). These different sorts of crusher can also be hired out without an operator. This chapter advises on
- a) factors that should be taken into account when deciding whether a Part B permit is not required on “triviality” grounds, and
 - b) use of fixed-term transfers where plant is hired.

Triviality

- 38.2. Part 2 of Schedule 1 (Section 3.5) of the EP Regulations lists the following as among the activities requiring a permit:
- “the crushing, grinding or other size reduction, with machinery designed for that purpose, of bricks, tiles or concrete.”
- Paragraph 2.34 in Chapter 2 of the Manual refers to the legal basis for the triviality exemption..
- 38.3. In the view of Defra and WG it is not possible to determine triviality solely on the basis of the size of particular crushing or screening plant. The likelihood of impact will depend also on the location of the plant, the amount of time it is operating in that location, and whether effective dust suppression equipment is fitted and used. There will therefore be different decisions in different cases, according to circumstances.
- *related waste issues*
- 38.4. The LAPPC regime does not address noise; however, in undertaking the triviality assessment, noise matters are likely to be implicitly considered by virtue of the assessment of location and duration of operation, as well as operator competence. (To the extent that noise suppressing equipment may or may not form part of a crusher, this may

also be a relevant consideration for the purposes of registering a waste exemption if one is established in accordance with paragraph 38.6 below, as well as for considering noise issues under local authorities' statutory nuisance responsibilities).

- 38.5. The revised Waste Framework Directive, referred to in paragraph 31.23, requires waste management activities to be carried out under a permit unless an exemption from the need for a permit is set out. The waste permitting requirements for crushers are currently satisfied through the Part B permit with an exemption for storage of waste prior to crushing, which is dependent on a Part B permit being in place.
- 38.6. Where a crushing activity is considered too trivial for a Part B permit to be required, there is still a requirement for a waste permit or exemption to regulate the activity. The 2010 exemptions from environmental permitting include one that covers 'trivial' crushers. As a result, local authorities need to register crushers as operating under this when they meet the triviality test. The WFD requires the exemptions to include registration of waste types and quantities and the name, address and place of operation of the operator.
- *triviality checklist*
- 38.7. In line with the above, the following is a suggested framework for authorities to use in reaching their decision whether a particular mobile plant warrants exclusion on triviality grounds:

① The plant has a crusher drive of <15bhp* or, in the case of a bucket crusher, has a crushing capacity of <2m³*. Provided that the plant is fitted with dust suppression, it is most likely that it will justify a triviality exclusion.

Cases where triviality might not be appropriate are:

- *where the plant will be operating in a single location for an extended period (such as being used in effect as a static plant at a builders yard), or*
- *where the plant will be operating short-term in a particularly sensitive location (such as immediately next to or within an SSSI which could be significantly affected by even short-term dust emissions), or*
- *where an operator's competence (see chapter 11 of the Manual) leads to doubts whether the dust suppression will be properly maintained and operated.*

② The plant has a crusher drive of $\geq 15\text{bhp}^*$ but $< 50\text{bhp}^*$ or, in the case of a bucket crusher, has a crushing capacity of $\geq 2\text{m}^3$. It is likely in most cases that a triviality exclusion will not be justified in these cases.

Cases where triviality might be appropriate are:

- *where the plant will be operating in a single location for just one or two days, and*
- *the operating location is away from dwellings and other sensitive locations.*

③ *The plant has a crusher drive of $\geq 50\text{bhp}^*$. It is unlikely that a triviality exclusion can be justified in any of these cases.*

* on sites where more than one crusher is being used at the same time, the figure relates to the aggregate of all the crushers present on the site.

- *plant meeting triviality criteria only some of the time*

38.8. There could be cases where the same item of mobile plant met the triviality criteria sometimes but not at other times. In those cases the operator has the choice whether to either:

- a) apply for a permit and comply with it at all times, or
- b) if the operator has more than one mobile plant, designate some plant for use in sensitive locations or for long stays and obtain a permit for them. The others will be able to benefit from the triviality exclusion.

- *where an operator is uncertain whether triviality applies*

38.9. If an operator of a $< 15\text{bhp}$ mini/micro crusher or of a bucket crusher $< 2\text{m}^3$ is unsure whether triviality does apply in a given case, he or she is strongly advised to consult their local authority before beginning to operate the plant. An operator risks enforcement action (with the penalties set out in Chapter 28) if he or she does not check and it is subsequently decided by the authority that a permit is needed because the triviality exemption does not apply. Consultation with the authority is particularly advised if there is uncertainty whether

- appropriate dust suppression is fitted and the plant will only be operated when the suppression is turned on and working effectively, or
- the cases described in italics in box 1 may apply.

The authority consulted should be the one in whose area the hire company has its principal place of business or where the plant is to be operated.

- 38.10. Since the strict criteria for relying on the "triviality" exemption is not very often likely to apply in cases involving a 15-50bhp mobile plant or a bucket crusher $\geq 2\text{m}^3$, operators risk enforcement action if they do not contact their relevant local authority in all cases before starting operating the plant, to determine whether triviality applies and, if not, to obtain a permit prior to operation. If triviality has been agreed but operating circumstances change, the operator ought to check if it continues to apply. The authority should explain their position with regard to the limits of any triviality exclusion.
- 38.11. An operator of a $\geq 50\text{bhp}$ mobile plant should always contact the relevant authority before starting operating and if operating circumstances change.

Fixed-term transfers (England only)

- 38.12. Where a plant is hired out, the hire company will be the permit holder if the plant is hired with a person to operate it who has responsibility for the way in which it is operated. In all other cases, the permit holder will be the person who hires and operates it. Appendix 2 of PG3/16(04) [Secretary of State's Guidance for Mobile Crushing and Screening] provides more guidance, including on cases where an operator may have several 'sets' of plant which are used in different configurations for different jobs. PG3/16(04) can be found [here](#).
- 38.13. It is the Government's view that, where a mobile plant is regularly hired out to different customers, and the customer operates the plant, it is possible to establish a flexible arrangement by using fixed-term permit transfers under EP regulation 21.
- 38.14. Under regulation 21, it would be open to a hire company to temporarily transfer the permit for the duration of the hire. Short-term users would not need to obtain their own permit in advance or pay for such a full permit and the associated subsistence charge. Instead, the customer intending to use the hired plant would take over the permit via a fixed-term transfer application, and then be responsible as the operator for a short fixed period for complying with the conditions of the transferred permit: such as ensuring the plant only operates when the water suppression is functioning effectively, and that any other specified steps are taken in relation to potential dust nuisance. The authority could take enforcement action against the temporary user for any breach of the conditions for the period the permit was registered in their name.

- 38.15. A simplified transfer application form can be found in Part C of the Manual. It is envisaged that the necessary joint application would be made to cover both the transfer to the user and the subsequent transfer back to the hire company at the end of the hire period after the expiry of that fixed period. A fixed-term authorisation notice is in Part D of the Manual, which authorities can use to endorse the transfer.
- 38.16. The LAPPC charging scheme has been amended to specify fixed-term transfer application fees specifically for these mobile plant transfers. The fees in July 2008 were:
- a) for the first transfer between a hire company and a user - £50
 - b) for repeat transfer applications between the same two parties (which includes cases where there has been a change of company name but the companies remain under the same management) - £10
 - c) for repeat transfer applications where the user has in the previous 12 months been the subject of either formal enforcement action or written warnings about failure to comply with conditions relating to the operation of any mobile plant, or operating without the plant being subject to a relevant permit - £50.
- The fees include transferring permits back to the hire company at the end of the hire period.
- 38.17. It is envisaged that for joint applications where a full fee applies, authorities should determine applications within 10 working days from receipt.
- 38.18. Repeat applications at the lower rate are likely to require little scrutiny, and it is envisaged that they should be processed within 5 working days or less. Customers who hire mobile plant should aim to plan their requirements ahead. There may be cases where this is difficult, although builders etc hiring plant ought at least to be able to give advance warning that an application can be expected even if they cannot predict on which particular day. Hire companies may want to hold a stock of transfer forms (completed with their details) for use when needed. Where possible, authorities should aim to have procedures in place to enable repeat applications which are accompanied by the relevant fee to be determined the same day – this will require sufficient members of staff to be aware of the procedures to cover for absences. (NB the national environment Agencies have procedures for the rapid turnaround of waste consignment notes.)
- 38.19. Provision will be made, as soon as an opportunity arises, to amend the EP Regulations, to deal with cases where the hire company and the customer company have their principal place of business in different local authority areas. It is intended to specify that the hire company's local authority will be responsible for handling the transfer procedures,

although it will be open to authorities in the usual way to make arrangements under [section 101 of the Local Government Act 1972 \(as amended\)](#). For example, if it seems desirable to undertake a site inspection after issuing a first fixed-term, this could be done by the customer company's local authority.

Recording serial numbers of mobile plant

38.20. Appendix 2 of PG3/16 contains the following:

"Example: hire company H has 10 crushing plant, 20 screens and 35 pieces of ancillary equipment. Each of the 30 crushers and screens is, from time to time, hired out on contract work on a price per tonne basis under the owner's control, in which case company H is operating the plant. However, company H does not expect to be operating more than 7 individual plant or sets of plant at any one time. The remainder of the plant will either be idle or be operated by the hirer. Therefore, company H could apply for 7 authorisations. If company H subsequently expects to operate 9 plant (or sets of plant) at the same time, it will need to apply for two more authorisations*.

It is envisaged, under these arrangements, that each authorisation would allow for the operation of any combination of crushers, screens and ancillary equipment to be used. It may, therefore, be necessary to include conditions such as "If crusher type-A is used, conditions a, b, c and d apply; if crusher type-B is used, conditions c, d, e, f and g apply". **It is also recommended that each authorisation* is given a separate number and that it is a condition of each authorisation* that the local enforcing authority which has granted the authorisation is notified when the authorisation is "activated" and what crushers, screens and other equipment are to be used for the particular job** (see also paragraph 29 of General Guidance Note 2**)."

* now 'permit' ** now General Guidance Manual

It is Defra and WG's view that recording serial numbers is the best way of identifying the 'activated' crushers etc. Many authorities already do this, but because mobile plant obviously travel between authority areas, it would be advisable if all did so.

There are three suggested approaches to this:

- a) a permit could state in the process description that the permit can be deployed for use with any of the following items of equipment

Description of plant/equipment (make, model, etc)	Serial number

- b) a permit could contain a condition specifying that it only authorises the operation of the following specified items of equipment, either operated singly or in combination [followed again by the table]
- c) where an operator changes his equipment on a regular basis and so as to avoid the complication of having to vary the permit each time, the other option would be to include a condition requiring him/her to submit a list of plant with serial numbers and to notify the authority in writing with a revised list before any different equipment is used. If the serial numbers are already included in the application, the permit could specify that it authorises the operation of those items of equipment listed in the application, coupled with a condition requiring notification of any changes. It would result in a more robust, auditable system if authorities were to specify that revised lists are submitted for approval (rather than notified), and authorities send a written reply.

When any permit is 'activated' the serial numbers of the equipment being used should be specified.

39. Environmental Damage Regulations

Guidance on the role of local authorities under the Environmental Damage Regulations.

A2,B

Introduction

39.1 The Environmental Damage (Prevention and Remediation) Regulations 2009 [EDR] introduce certain responsibilities for those operating A2 and Part B installations. The Regulations and accompanying guidance are [here](#). Paragraphs 39.5-15 explain these.

Authorities also have responsibility and powers in relation to land damage from installations not regulated under environmental permits, as set out in the EDR guidance.

Background

39.2 The EDR require action in response to the most significant cases of damage to the environment involving certain types of:

- damage to species and habitats
- damage to water, and
- risk to human health from contamination of land.

These are defined in the EDR and referred to as 'environmental damage'. The EDR apply to both imminent threats of environmental damage and actual environmental damage. The EDR do not cover any other types of damage. Chapter 2 and Annex 1 of the EDR guidance contain more detailed guidance on the meaning of environmental damage.

39.3 The EDR seek to ensure action is taken to put damage right rather than to penalise those responsible. The EDR are based on the 'polluter pays principle' requiring those responsible to meet the cost of preventive and remedial measures. For the damage to species and habitats and to water covered by the EDR, they introduce a new approach to remediating damage. They require that in addition to any measures taken to return the environment to or towards the condition it was in before the damage occurred, measures should also be taken to make amends for where the damaged environment does not completely recover and for the loss of environmental resources and environmental services pending recovery.

- 39.4 The onus is on the responsible party to take action in the first place and to report relevant details to the enforcing authority. Enforcing authorities are responsible for overseeing the effective operation of the EDR and have powers under the Regulations to take action and recover their costs.

LA-IPPC and LAPPC

- 39.5 Both LA-IPPC and LAPPC installations could potentially cause environmental damage through intended or unintended emissions. LA-IPPC also addresses restoration, as set out in Chapter 18. None of these functions is affected by the EDR.

- 39.6 Those responsible for damage will not be expected to take the same measures under two separate regulatory regimes. Therefore if the EDR secure the outcomes required by other regimes those other regimes need not be applied; or if the outcomes required by the EDR have already been achieved, the EDR need not be applied.

- 39.7 The following is a summary of the main elements of the EDR which are relevant in relation to the regulation of LA-IPPC and LAPPC.

- prevention and notification

- 39.8 The onus is on the operator - which includes those operating LA-IPPC or LAPPC installations - when there is an imminent threat of environmental damage or actual environmental damage, to take immediate steps to prevent damage or further damage and to notify the local authority.

- 39.9 For LA-IPPC and LAPPC installations, local authorities are responsible for enforcing the requirements on operators to prevent damage or further damage (EDR Part 2). This is likely to involve the exercise of EP Regulations powers. EDR also enables authorities to serve a notice on the operator describing the threat, specifying the measures required to prevent the damage, and requiring that these measures (or measures at least equivalent to them) are taken within the period specified in the notice.

- 39.10 Local authorities have the full EDR responsibilities at LAPPC installations as well as for LA-IPPC. The main focus of the prevention role at LAPPC installations is likely to be in relation to air emissions, although consideration may need to be given to eg damage caused by fuel tank leaks.

- remediation

- 39.11 Responsibility for enforcing the remediation requirements for damage (EDR Part 3) from LAPPC installations depends on the type of damage caused. Local authorities, in view of their contaminated land responsibilities, are the enforcing authority for remediation of any

environmental damage caused to land. The Environment Agency enforces in relation to damage to water and Natural England in relation to damage to natural habitats or protected species. However, in practice, there may be cases where it is more sensible eg for a local authority to enforce remediation of water damage. EDR regulation 12 allows an enforcing authority to appoint another enforcing authority to act on its behalf. Thus, where water discharges have caused environmental damage within the site of an LA-IPPC installation, it may be appropriate for the Environment Agency to appoint the relevant local authority to address this.

39.12 Where there is reason to believe that there is, or may be environmental damage, after the preventive measures referred to at paragraphs 39.8-10 have been taken, the enforcing authority must establish whether there is environmental damage, identify the operator and notify the operator that there is environmental damage and that the operator must submit proposals for remediation.

39.13 Among other matters, the EDR guidance sets out the process for how proposals for remediation should be put forward by operators and considered and decided by enforcing authorities (Chapter 6); advises on how measures should be identified - operators are responsible for carrying out remedial measures (Annex 2); and covers issues relating to the implementation of those measures (Chapter 7).

- summary

39.14 Therefore, the main expectation in relation to LA-IPPC and LAPPC is that local authorities

- are aware of the potential for environmental damage where anything goes wrong with an installation
- are aware of the EDR's main provisions and how they fit in with other relevant legislation
- follow the main EDR guidance in the event of such damage incidents.

Local authorities may wish to remind operators of the EDR requirements to notify when inspecting installations for EPR purposes.

39.15 It is assumed that good regulation of LA-IPPC and LAPPC installations will mean that there are few cases where action under the EDR will need to be taken.

39.16 [LG Regulation has produced a series of template notices for use by local authorities](#) if they have access the the LGA website .

Incident data return

39.17 The Environmental Liability Directive requires member states to report to the European Commission on the experience gained in the application of the Directive by 30th April 2013. The Government has proposed to use this opportunity to review the application of the regulations to establish whether they are working effectively and to see whether any amendments are appropriate. Authorities therefore need to report details of all qualifying incidents to the Government. The incident data return is available at:
<http://www.defra.gov.uk/environment/policy/liability/index.htm>

40. Waste issues

Guidance on the role of local authorities in regulating specified waste operations, and on the transfer of on-farm mushroom composting installations from waste regulation to LAPPC.

B

Part B activities and directly-associated waste operations

40.1 There are two situations where a local authority may have responsibility for regulating a waste operation:

- the waste operation is listed in Schedule 3 to the EP Regulations 2010 but is not exempt because it is a directly-associated activity (DAA) of a Part B installation (see EP regulation 5(1)(a)(1)). These are described as 'Schedule 3' cases below.

This applies as a consequence of the [Environmental Permitting \(England\)\(Transitional - Exercise of Agency Functions at Part B Installations\) Direction 2010](#) . A parallel direction was issued for Wales. The directions give local authorities waste regulatory responsibility for waste operations that are listed in Schedule 3 to the EP Regulations 2010 but are not exempt because they are a directly-associated activity of a Part B installation (see also the EP regulation 5(1) definition of “exempt waste operation”, paragraph (a)(i)).

- the non-exempt waste operation is directly associated with a Part B installation and would be separately regulated by the Environment Agency if it were not for a direction under EP regulation 33 to achieve a single regulator for the installation.

The grounds and procedures for seeking a regulation 33 direction are set out in paragraphs 2.20-2.32 of the Manual.

The boxed summary and paragraphs 40.2-10 below deal with the 'Schedule 3' cases, which were newly brought about by the 2010 EP Regulations.

Summary of action required for 'Schedule 3' cases:

- ▶ In essence, all local authorities need to do where they regulate Part B installations with a DAA Schedule 3 waste operation is to include conditions in permits along the lines set out in 40.10 below.
- ▶ These DAAs were previously simply regulated as registered waste exemptions. The change of procedure is just to avoid dual regulation at an installation, and is not because of any recognised added risk from these operations. Any enforcement action for operating without the relevant conditions referred to below should be proportionate, in line with the Regulators' Compliance Code, and take account that the procedural change indicates no perceived increase in risk from when these operations were just registered. Likewise, proportionate steps only (eg brief enquiry of the local office of the Environment Agency) are recommended to try to discover whether an existing DAA Schedule 3 waste operation holds or held a registration as at 5 April 2010.
- ▶ Key dates:
 - from 6 April 2010, the operators of Part B installations with a DAA Schedule 3 waste operation which existed before 6 April 2010 will be liable for enforcement action by local authorities if neither of the following has been done:
 - a) the Schedule 3 exemption has not already been registered with the Environment Agency or local authority, as appropriate, and
 - b) the Part B permit has not been varied to add relevant conditions to comply with Article 13 of the revised Waste Framework Directive (see paragraph 40.10);
 - from 6 April 2010, local authorities must include relevant Article 4 conditions in a permit for any new or changed Part B installation which involves a directly-associated Schedule 3 operation;
 - from 1 October 2013, the operators of Part B installations with a DAA Schedule 3 waste operation which was registered as an exemption before 6 April 2010 will be liable for enforcement action by authorities if the Part B permit has not been varied to add relevant conditions to comply with Article 13 of the revised Waste Framework Directive.

When conditions are included in a Part B permit to cover a previously exempt waste operation, authorities should advise the local office of the Environment Agency so that they can note that the registration will cease, subject to any appeal.

- ▶ No action is required if a DAA Schedule 3 waste operation has a Part B permit which already includes the above-mentioned relevant conditions.

40.2 Under the 2010 Regulations, the arrangements set out in paragraph 40.5 apply in any case where

- a) a waste operation is listed in Part 1 of Schedule 3 to the 2010 Regulations and
- b) that operation is a directly-associated activity (DAA) of a Part B activity.

The main types of Schedule 3 waste operations likely to be directly associated with a Part B activity are listed in **Annex XXIII**.

40.3 A summary of actions needed to be taken by local authorities either by 6 April 2010 or thereafter is in paragraph 40.5.

40.4 Annex III of the GGM advises on what is a DAA under the heading "installation". In brief, it is any activity on the same site as the Part B technical unit, which has a technical connection with that unit (such as storage and treatment of inputs or during the course of the Part B activity, or treatment of waste), and is capable of having an effect on pollution.

40.5 The cases described in paragraph 40.2 must be handled as follows:

- (a) the Part B permit must be varied to include conditions relating to any paragraph 40.2 case, in accordance with the timetable in the following sub-paragraphs.

if a waste operation is registered as exempt as at 5/4/2010

- (b) any waste operation registered as exempt as at 5 April 2010 remains valid until whichever is the sooner of
 - 1 October 2013*, or
 - a variation is made in accordance with sub-paragraph (c).
- (c) local authorities can vary permits at any time between 6 April 2010 and 1 October 2013*. Guidance on writing conditions relating to Schedule 3 operations in these cases is at paragraph 40.10 below. Such conditions must be written having regard to securing the objectives in Article 13 of the revised Waste Framework Directive (see paragraphs 31.23-27 of the GGM and the [EP guidance on the waste framework directive](#)).
- (d) until a variation notice has been issued, the existing registration relating to the waste operation remains in force. The registration must be enforced by the issuing regulator (normally the Environment Agency);
- (e) when a Part B permit is varied to contain conditions which adequately address the revised Waste Framework Directive

objectives, the existing registration lapses automatically on the date the variation notice comes into effect. From that date the local authority takes on full regulatory responsibility for the waste operation under the Part B permit;

- (f) if no such variation has been made by 1 October 2013*, the existing registration automatically lapses on that date and it would be an offence to continue to carry on the waste operation unless and until an adequate permit variation is made.

* unless an alternative date is specified in the table in EP regulation 103(3)

if a waste operation is NOT registered as exempt as at 5/4/2010

- (g) if a waste operation was
- being carried out before 6 April 2010 as part of a Part B installation, but
 - not registered as an exempt waste operation on or before 5 April 2010,

and appropriate waste conditions have not been included by variation of the Part B permit by 6 April 2010, the operator would be liable for enforcement action by local authorities for the offence of carrying on the waste operation without such a variation;

- (h) from 6 April 2010, if a case described in paragraph 40.2 involves a waste operation that is either proposed to be added to an existing Part B installation or incorporated as part of a new Part B installation, appropriate waste conditions must be included in the Part B permit before the waste operation is carried on.

Charges

40.6 An application for a variation only need be accompanied by a fee if the variation constitutes a substantial change. Advice on 'substantial change' can be found in paragraph 24.7 of the Manual, with further guidance in Annex III. Defra and WG are of the view, generally, that the inclusion within a permit of an existing operation that previously was exempted from waste regulation, is unlikely to give rise to "significant negative effects on human beings or the environment".

Waste operations not needing a permit or registered exemption

40.7 Authorities should be aware that some waste operations do not require a permit, nor are they listed as registerable exemptions in EPR Schedule 3. These waste operations are described in EP regulation 68(2) and Part 3 of Schedule 25. In these cases, if they are a directly associated activity of a Part B installation, no additional conditions beyond those necessary under LAPC should be included.

Mobile plant

40.8 If a Part B mobile plant incorporates a directly associated Schedule 3 operation, and then the operation is continued at the location after the Part B activity has left, the operation reverts to requiring a registration. Therefore, while a mobile Part B crushing plant is operating at a particular location, and the following waste operation is being carried on in direct association, the waste operation should be regulated through the permit conditions. But if the storage continues after the mobile plant has left, it would have to be the subject of a registration. There is no need to vary the permit each time a mobile plant moves to a site where it incorporates a directly associated exempt waste activity: just prefix the waste-related conditions with "Where the mobile plant incorporates directly associated waste activity listed in Part 1 of Schedule 3 to the Environmental Permitting Regulations 2010:".

storage of construction and demolition waste capable of being used in its existing state (non-hazardous) only which is being stored in a quantity of no more than 100 tonnes in a secure place for the purposes of its recovery elsewhere (category S2 in the list in Schedule 3).

Enforcement

40.9 Any enforcement action for operating without the relevant conditions referred to below should be proportionate, in line with the Regulators' Compliance Code, and take account that in establishing these new procedures there has been no perceived increase in risk from when these operations were simply registered. Defra and WG anticipate that it would require exceptional circumstances to warrant considering formal enforcement action if none of the conditions that would have been included has been breached. Defra and WG also note that the guidance on these 'Schedule 3' cases was not published in the General Guidance Manual until March 2010.

Conditions

40.10 It is the view of Defra and the Welsh Government that the following conditions ought normally to suffice where it is necessary to vary a Part B permit to cover a directly associated Schedule 3 activities. It is important to bear in mind that the activity would previously have simply been registered. An example is given in **Annex XXIII**.

general advice on conditions to include

- (i) amend the Part B activity description to describe the directly-associated Schedule 3 operation, normally using the same words as in the Schedule 3 description plus any site-specific amplification considered necessary;
- (ii) where any Schedule 3 description includes "specific conditions", those conditions should be inserted;
- (iii) insert any appropriate air emissions conditions (eg dust, dust or odour nuisance) as for BAT for a Part B installation with equivalent emissions potential.

suggested conditions

The following three conditions are a suggested simple means of addressing the full range of potential emissions from the waste operation:

- (iv) fugitive emissions of substances (excluding odour, noise and vibration) shall not cause pollution (NB "pollution" other than in relation to a waste discharge activity of groundwater activity is defined in EP regulation 2.);
- (v) all liquids, whose emission to water or land could cause pollution, shall be provided with secondary containment, unless the operator has used other appropriate measures to prevent, or where that is not practicable, to minimise leakage and spillage from the primary container;
- (vi) emissions from the operations shall be free from noise and vibration at levels likely to cause pollution outside the site, as perceived by an authorised officer of the local authority⁷, unless the operator has used appropriate measures, to prevent or where that is not practicable, to minimise, the noise and vibration.

It is intended to review this guidance on conditions, in consultation with operators and local authorities, in the light of experience of its use.

Production of compost for growing mushrooms

40.11 Under the 2010 EP Regulations, the production of compost for growing mushrooms has been brought under LAPC irrespective of whether the activity is carried on on a farm or for sale.

40.12 By 1 October 2011, operators of such mushroom compost activities that are not already regulated under LAPC must apply to their relevant local authority for a Part B permit. Failure to do so would mean that they would be liable for prosecution for operating without a permit. If an application is

⁷ either the officer of the local authority in whose area the activity/mobile plant is carried on or (if different) of the authority which issued the permit.

made in time, the existing waste exemption continues in force until the application is approved, or, if refused, until either six months has elapsed (the expiry date for making an appeal) or, if there is an appeal, the date the appeal is decided.

40.13 Statutory guidance has been published by the Secretary of State and Welsh Ministers on [Part B pollution standards for mushroom compost facilities](#) (reference PG6/30(06)). A review of the guidance is scheduled to begin in February 2012.