



Department  
for Environment  
Food & Rural Affairs

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# **Consultation of Full Bi-ennial Review of Local Authority Environmental Regulation of Industrial Plant: 2013/14 Fees and Charges**

**23 November 2012**

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# 1. Consultation Scope

Topic of consultation:	Local Authority Environmental Regulation Of Industrial Plant - Partial Bi-ennial Review of Charging Levels For The Financial Year 2013/14
Geographical scope:	England.
To:	This is a public consultation, and is open to anyone to respond. We would particularly welcome responses from local authority Environmental Health departments and LAPPC and LA-IPPC regulated businesses
Duration:	8 weeks from publication. Closing 18 January 2013
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After the consultation:	A summary of responses to the consultation will be published on the Department's website alongside an announcement of the Government's decision on the way forward.

## 2. Proposal

1. To revise the prescribed fees and charging schemes in England which specifies the fees and charges to be levied by local authorities (LAs) to recover their full costs of undertaking their functions under regulation 65 of the Environmental Permitting (England and Wales) Regulations 2010 (EPR).

## 3. Policy objectives and intended effect

### Objective

2. The legislation states that an appropriate authority may make, and from time to time revise, a scheme prescribing fees payable in respect of applications for the granting of an environmental permit, to vary an environmental permit, to transfer an environmental permit in whole or in part and to surrender an environmental permit in whole or in part as well as charges payable in respect of the subsistence of an environmental permit. Furthermore in making or revising a scheme, so far as practicable the appropriate authority must ensure that the fees and charges payable are sufficient to cover expenditure by LAs in exercising their functions under the EPR.

### Background

3. Up until 2008/9 the level of fees and charges was reviewed each year taking into account such evidence that is available of costs incurred by LAs and outsourced providers in undertaking the function, information on costs from Local Government (LG) Regulation, data collected on costs and of LA delivery performance by Defra through the annual statistical survey and other performance reviews, and assessment of the average amount of time needed to discharge the function efficiently, effectively and economically.
4. From 2008/9 we have undertaken the full review bi-ennially with a partial review in the intervening years as proposed in the October 2008 consultation. This consultation is part of a full review which has considered a percentage increase to reflect inflation minus potential cash-releasing efficiencies and the results of a bi-ennial cost accounting survey of LAs.

### Why is Government intervention necessary?

5. The Secretary of State would not be following the legislation requirement or Government charging policy if we did not set the level of fees and charges so as to recover LAs' costs as set out in paragraph 2 above. Insufficient cost recovery would lead to the costs of regulation falling upon the taxpayer. Defra's charging policy is that those who directly benefit from a regulatory service should bear the cost of providing that service. The polluter or risk owner should bear the costs of any measures to prevent harm that they might otherwise cause by their actions (often referred to as the "polluter pays" principle) thus increasing the incentives for industry to reduce pollution.

## Consultation

6. The following consultations have taken place:
7. within government: HM Treasury, the Department for Communities and Local Government, and the Department for Business, Innovation and Skills,
8. external consultation: trade association members of the Defra Industry Forum, LA representative organisations on the Industrial Pollution Liaison Committee and the Environment Agency's Local Authority Unit.
9. This review assessment is now subject to a separate 8 week consultation exercise.

## 4. Proposals Summary

### Freeze in Charging levels

10. Taking into account the evidence obtained from the consultations under paragraph 6 above, we propose a zero increase in charging levels across the board for the next financial year

### Revision of Risk rating Thresholds

11. All LAPPC/LA-IPPC charges are subject to risk rating in keeping with the Regulators' Compliance Code principle of only performing inspections following a risk assessment, so resources are focused on those least likely to comply. The [LAPPC Risk Method](#) for Part B activities and [LA-IPPC Risk Method](#) for A2 activities were last revised in 2009. Local authority regulators have complained that it is too easy for problem operators to avoid the higher risk categories. This means that although certain sites may require more input and site visits from LA regulators compared with equivalent operations, they remain stubbornly in the medium or low risk categories.
12. We propose therefore that in Table A1.5: Scoring for Component 5 - Compliance Assessment the penalty points for non compliance should be raised from 5 to 10 at line B, "Incident leading to a justified complaint", and from in Table A1.6 Scoring for Component 6 - Assessment of Monitoring Maintenance and Records the penalty points for non compliance should be raised from 5 to 10 at lines C, D AND F "(C) Process operation modified where any problems indicated by monitoring, (D) Fully documented and adhered to maintenance programme, in line with authorisation and (F) All relevant documents forwarded to the authority by date required". These proposals, and table references, apply to both methodologies. The effect would be either to increase LAs' income in such cases so that it is in line with regulatory effort or an improvement in operator performance leading to incomes remaining the same but with reduced regulatory input

### Mobile Plant

13. In common with 9 other mineral activities mobile plant will shortly be subject to simplified permits and reduced fees, as set out in last year's consultation. There is

some concern that the existing sliding scale of charges for mobile plant applications and annual subsistence do not reflect the true cost of regulation. It has been suggested that there should be no sliding scale at all, or that the higher charge for the first mobile plant should remain but the charges for second and subsequent permits should be the same with no higher fee for the second permit and no tail off for 8th and subsequent permits. We ask for your views on this.

## Late Payment Fee & Direct Debits

14. Some LA regulators have told us that the biggest administrative cost arises from operators having to be invoiced each year. They suggest that instead of invoicing operators in April and charging a late payment fee of £50 fee if it isn't paid by a certain date, that, all LAPPC payments should be made by direct debit in April and that any operators not using direct debit should pay an extra £50. We will ask for views on the feasibility or fairness of this idea, including any information on the degree to which LAs encourage or push for use of direct debit now.
15. The complete listing of all the proposed charges is therefore unchanged from the [2012/13 list](#).

## 5. Review of Charging Levels

### Background

16. Each of the options below relates to the fees for the two different pollution control regimes:
  - Part B: Local Air Pollution Prevention and Control
  - Part A(2): Local Authority Integrated Pollution Prevention and Control.
17. The legislation requires that the fees are set at the level which recovers LA costs of discharging their pollution control functions. LAs are expected to seek continuous efficiency improvements and one of Defra's activities is to promote more efficient effective and economic practices.
18. An assessment has been undertaken of the costs of local authorities in undertaking their functions, drawing on the evidence obtained from the research and consultation set out in **Appendix 1** to this assessment. Guidance on calculating indirect costs is provided in paragraph 23.5 and Annex X of the General Guidance Manual on Policy and Procedures for A2 and B Installations which contains a list of indirect costs to be considered. <http://www.defra.gov.uk/industrial-emissions/las-regulations/guidance/>
19. Defra asked 40 LAs to submit their cost accounts for 2011/12 and compared the information with the performance data from the annual statistical return. We have tabulated the cost accounting data obtained from the 23 local authorities that responded against certain performance indicators (see summary of research at **Appendix 1** and spreadsheet at **Annex 1**). As in previous years, it was not possible to draw any firm conclusions on the adequacy or otherwise of the charges from the wide range of figures submitted for income and expenditure in proportion

to the number of facilities regulated and regulatory effort. We urge authorities to undertake benchmarking exercises periodically with neighbouring authorities in order share good practice and help identify why such disparities persist.

## 6. Evidence of local authority costs

### Inflation, pay and grading, pensions, and efficiency

20. The proposed zero increase in all charges has been arrived at using the calculations set out below.
21. As for previous reviews, following discussion with LA stakeholders, we have taken the view that a 25/75 goods/labour costs was representative of the costs involved in the specific PPC function, where the majority of expenditure is likely to be in terms of staff time. This split aligns with that used by the Environment Agency in relation to their PPC functions. We have no reason to believe that this is not still the case.
22. **Wages:** According to the ONS Labour Market Statistical Bulletin of June 2012, in the three months to April, average pay in the public sector, excluding financial services, rose by 0.8% on a year earlier, and we need to factor this increase into our calculation. <http://www.ons.gov.uk/ons/publications/re-reference-tables.html?edition=tcm%3A77-222497>
23. **Non-wage component:** Consumer Price Index (CPI) is the measure adopted by the Government for its UK inflation target. CPI annual inflation stood at 2.6% in July 2012. <http://www.statistics.gov.uk/cci/nugget.asp?ID=19>
24. Using the 25/75 split we get the following figures:  $(0.25 \times 2.6) + (0.75 \times 0.8) = (0.65) + (0.6) = 1.25\%$ . Without further consideration, this might support a small increase in charges. However, we have to consider the potential for **efficiency savings**. It is important that all LA functions seek to improve efficiency, whether resulting in cashable or non-cashable savings. There are various considerations to be taken into account as regards LAPPC and LA-IPPC costs. There are no longer any local authority-wide efficiency savings targets set by the Government. The Secretary of State for Communities and Local Government wrote to leaders of Local Authorities in England in October 2010 informing them of an average loss of grant of 7.25%, in real terms, in each of the four following years accompanied by new financial freedoms and flexibility to help maximise efficiency and productivity.
25. It is intended that the 7.25% year on year cut in funding will drive efficiencies which will be spread across the totality of LA services. Defra recognises that it is unrealistic to expect the same level of efficiency savings to be achieved individually by each small sub-service. It is too early to say how these will manifest themselves in specific functions such as LAPPC. It is expected that there will be efficiencies in central/corporate services, across the board efficiencies including partnerships with other LAs and outsourcing. Whilst we consider that these efficiencies should offset the 1.25% increase suggested by our analysis of wage and non-wage costs, we have no evidence that they will in addition be sufficient to justify a reduction in charges. Hence we propose that current charges should remain unchanged.

## 7. Other costs

### Local Authority Unit

26. The Local Authority Unit (LAU) continues to provide technical support to Defra and a helpline service to regulators and operators. The Unit has 2.5 full time equivalent (FTE) staff dedicated to supporting Defra, the Welsh Government and recently Northern Ireland, on technical issues relevant to the Part A2 and B Pollution Prevention and Control regimes, plus management support. The 0.5 FTE is an officer in SEPA providing half of his working time. Defra contributed £161,122 towards funding the LAU for 2012/13. A further £5199 was contributed by Northern Ireland. We propose that Defra's contribution be frozen at the same level for 2013/14.

## 8. Other Considerations

### Policy Options

27. Defra has considered the option of raising the current level of charges to reflect the percentage increase in public sector pay in the previous financial year as set out in paragraph 20. This option would not reflect all the matters considered above, and would result in a failure of the scheme to meet the statutory requirement only to recover the reasonable costs incurred by LAs in undertaking their pollution control functions for Part A(2)s and Bs.

28. The [6-year review](#) of all the process guidance notes is continuing. The review is looking for opportunities for up to 20 Part B sectors moving to simplified permitting, which consequent benefit to operators that they will be classified as 'reduced fee' activities.

### Sectors and groups affected

29. Those affected are all sectors regulated by the LAPPC and LA-IPPC regimes. These include foundries, glass manufacturers, vehicle manufacturers, larger timber processes, larger metal and plastic coating processes, crematoria, mineral processes, larger aircraft painting facilities, and pet food manufacturers. Many are SMEs.

### Benefits

30. Because all facilities pay a subsistence fee based on their [risk rating](#) assessment and risk rating is partly dependent on operator performance, all businesses have the scope to work toward improving their rating, which will result in lower annual charges and benefits to the environment.

## **Costs overall to LAs and operators**

31. Under the risk rating system those businesses with a high risk rating pay higher fees than medium and low risk rated facilities. The higher costs are proportionate to the increased workload required of the regulator.

## **Competition assessment**

32. These proposed changes are not substantial enough to have any significant positive or negative effect on the competitiveness of the sectors covered.

## **Small Firms Impact Test**

33. In line with the statutory requirements set out in paragraph 5 above, fees and charges must be maintained at a level which recovers LAs' reasonable costs. Many installations regulated under LAPPC, and some regulated under LA-IPPC, will be small firms. The freeze in fees and charges levels will be welcome to such firms. Of those installations regulated under LAPPC, most of those operating dry cleaners, small waste oil burners and vehicle refinish processes, which are subject to significantly lower fees and charges, will be small firms. Introduction of risk based regulation to these sectors in 2008 was a further opportunity to lighten the regulatory touch and to reduce fees for well run operations.

## **Sustainable Development**

34. The proposals in this review comply with the principles of sustainable development.

## **Health Impact Assessment**

35. Well run facilities have a lower environmental impact and pose a lower risk to employees and the population as a whole

## **Race Equality**

36. These proposals will have no effect on race equality.

## **Disability Equality**

37. These proposals will have no effect on disability equality.

## **Gender Equality**

38. These proposals will have no effect on gender equality.

## **Human Rights**

39. These proposals will have no adverse effect on human rights.

## **Rural Proofing**

40. The proposals are not likely to have any different impact in rural as opposed to urban environments.

## **Enforcement, sanctions and monitoring**

41. The payment of all charges is mandatory. LAs can enforce bad debts in the usual way and can, under legislation, suspend or revoke permits for non payment of fees and charges without scope for appeal. These fees and charges schemes are reviewed annually.

# Appendix 1: Research into Local Authority Costs and Performance

Defra asked 40 LAs to submit their cost accounts for 2011/12 and compared the information with the performance data from the annual statistical return. 22 of the authorities responded. As in previous years, there was no clear pattern either in terms of whether or not full costs are recovered (getting on for half made of those surveyed did not spend the full charging income or broke even, and half under-recovered their costs) or whether there was a relationship between the good/poor performance of those authorities with adequate/inadequate funding.

The analysis of the cost accounting returns showed a levelling off at around 72% in the number of LAs that had put into place some of the recommendations made in the 2004 Atkins Report which were intended to improve performance and make efficiency savings. This is down from 80% in 2009 and 2010 following an improvement on the previous year's figures, and on the findings of Atkins Consultants in their report published in April 2004 and again in the follow up Review in April 2006.

Defra's view is that the differences in recovery levels should be looked at in terms of whether it reflects different efficiencies in different local authorities. There appear to be different practices in calculating on-costs. We continue to urge authorities to undertake benchmarking exercises periodically with neighbouring authorities – the table included in this consultation document may provide a starting point. The findings from private sector providers suggest that the level of fees and charges are broadly satisfactory from their perspective.

Defra current guidance on accounting for indirect costs can be found in paragraph 23.5 and Annex X of the [General Guidance Manual](#) on Policy and Procedures for A2 and B Installations.

## 2004 Atkins Performance Review and 2006 Follow Up Atkins Review

The 2006 Atkins follow-up review has re-iterated recommendations made in the 2004 review. These include recommendations about the advantages of benchmarking procedures with other LAs and the potential for efficiency savings through sharing the expertise with other less capable LAs or outsourcing. These recommendations still stand.

## Research into costs of private sector providers of regulatory services

### Part B installations

There were no particular issues raised by private sector providers during this charging round and no suggestion that, overall, the fees and charges were either inadequate or excessive.