



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

Review of Local Authority Environmental Regulation Fees and Charges

Call for evidence

September 2016

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1 Introduction

1.1 Issue

The Government is conducting a review of Local Authority (LA) environmental permitting fees and charges for regulation of industrial plant in England. LAs regulate certain industrial facilities providing permits which set conditions to control, minimise or avoid local pollution and which set emission limits for certain activities. There are charges for granting or in certain cases for varying a permit and annual substance fees levied by LAs on permitted operators. The fees and charges levied reflect the cost of regulating activity required for the facility.

The aim of the review is to see if:

- the level of fees and charges are set at the correct level
- there are ways to reduce burdens for LA regulators and/or for industry
- there are ways to streamline administrative processes within Government to reduce the burden on the tax payer.

As a first step, Defra is seeking evidence on a number of aspects of the LA environmental regulation which impact on the level of regulatory activity required of LAs and whether the current level of fees and charges allow LAs to recover their costs. Some LAs tell us that they are not recovering the full cost of regulating industrial facilities from fees and charges levied. We are therefore interested to understand, with supporting evidence, what changes could be considered.

In particular we are looking at:

- the level of fees and charges and whether these enable LAs to fully recover regulatory costs
- the mechanism for setting fees and charges for LA environmental permits;
- whether the Risk Methodology used by LAs to determine the fees and charges applicable to a specific regulated facility can be improved;
- inspection rates for low risk facilities (such as dry cleaners and petrol stations)
- charges for derogation applications under the Industrial Emissions Directive

This call for evidence will be of primary interest to LA environmental regulators and operators of regulated facilities.

1.2 Enquiries

If you have an enquiry about this call for evidence you can contact the industrial pollution team at control.pollution@defra.gsi.gov.uk

2 Scope of the call for evidence

2.1 Fees and charges

2.1.1 LA environmental permitting fees and charges were last revised in 2010. Since that revision, the fees and charges which LAs may collect from permitted sites has remained at the same level. This reflects Government policy to ensure that efficiency savings to LA pollution prevention and control activities were fully implemented. Inflation and public sector wage increases have been maintained at modest levels since 2010. Nonetheless there has been pressure of gradual increase in costs to LAs which has not been reflected in increased fees and charges. There may be a risk that LAs are not able to fully recover the costs of the work they undertake from the current level of fees and charges.

2.1.2 The Regulations¹ require that the fees and charges should be sufficient to cover the costs for LAs to carry out their functions with respect to environmental permitting; this includes processing permit applications, writing and varying permits, inspection visits, and relevant associated activity. Previously an annual review process, including a public consultation was undertaken to confirm whether an increase in fees and charges was needed to take account of inflationary pressures and increases to the wage bill. On a biennial basis, a cost accounting survey was undertaken with a small random selection of LAs. Both of these approaches were burdensome and time consuming to both central government and LAs. In addition, this approach provided little certainty to LAs and affected businesses over costs in coming years.

2.1.3 We intend to ensure that LAs fully recover regulatory costs whilst ensuring that fees and charges do not provide a source of income over and above that which is required to fulfil their industrial pollution control functions, and which retains the efficiencies LAs have embedded into local industrial pollution control. We would also like to explore whether LAs would benefit from security of income, and whether businesses would benefit from a degree of assurance if fees and charges were set for a longer period of time, perhaps including an automatic increase related to inflation.

2.1.4 Northern Ireland has recently adopted a scheme whereby fees are annually updated to a set formula without the need for annual review and consultation. Fees and charges are higher in Northern Ireland, Wales and in Scotland than they are currently in England.

¹ Environmental Permitting (England and Wales) Regulations 2010 Part 6 65

2.1.5 Standard simplified permits are in place for some smaller activities such as dry cleaners and these attract reduced fees. A number of factors affect the charge applied to an individual site, its activity, risk etc. We are interested to understand whether the fees for reduced fee activities cover the costs of LA regulation, and whether this approach could be extended to other activities.

The current fees and charges can be seen at:

<https://www.gov.uk/government/collections/environmental-permitting-resources-for-local-authorities>

The detailed charging scheme can be viewed here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/342188/Part-B-january-revision.pdf

2.2 Current evidence

2.2.1 Public sector wage costs since 2010 have been restrained but have increased annually by around 1.5%. Inflation (CPI) has also been low and is currently at or near zero but had increased in the low percentages for most years since 2010.

2.2.2 A sample based cost accounting survey conducted by Defra in 2014 found that, from a random sample of 21 LAs, 15 were not able to fully recover their costs whereas 6 LAs did not spend the full charging income. The evidence of the survey and informal discussions with LA stakeholders suggests that, for the majority of LAs, the current charging scheme does not allow LAs to recover the costs incurred in undertaking their pollution control functions. The evidence from the cost accounting survey also suggested that there is little scope for further savings across the majority of LAs within the pollution prevention and control function.

2.2.3 Some LAs have told us that certain types of activity, for example those with reduced fees, specifically dry cleaners, and also rendering plants, make a disproportionate call on resources compared to income from those facilities. We compared the income data from the sample LAs with these types of activities. Those that did not recover their costs tended to have more reduced fee activities.

2.2.4 Of the 6 LAs who did not spend their full charging income all but one authority had an excess income below £10,000. Of the 15 LAs that were not recovering full costs 7 reported a shortfall of more than £10,000. The reported range of charging income varied from an excess of just over £16,000 to a shortfall of more than £78,000. We are interested to understand why there is such a big difference in the reported shortfall/excess reported between the sampled LAs.

2.3 Fees and charges – evidence sought

2.3.1 We are asking Local Authority pollution control officers to consider whether the current level of fees and charges is sufficient to fully recover regulatory costs. We also want respondents to consider if there is a better way of aligning increases in fees and charges to inflationary pressures, and whether a body other than Defra could recommend any increases, or whether Local Authorities should be able to levy their own fees and charges to take into account their specific local regulatory costs. We have included open questions and specific cost recovery questions aimed at LA regulators.

Q1. Local Authority Pollution Control Officers – Can you please provide evidence for whether your LA is able to recover its full costs?

Q2. Do you have any views as to why there may be a difference between LAs in reported cost recovery – income v regulatory cost?

Please refer to Section 3 for the complete set of questions.

2.4 Derogation applications under the Industrial Emissions Directive (IED)

2.4.1 LAs regulate several types of activity known as Part A2 which under the IED are required to use Best Available Techniques (BAT) as set out within sector specific BAT Reference Documents (BREFs). The BREFs contain BAT conclusions and Best Available Technique – Associated Emission Limits (BAT-AELs) which must be reflected in the permit conditions of the facility within 4 years of the BREF being published.

2.4.2 The IED allows for derogations from the BAT conclusions if certain conditions can be demonstrated. In order to benefit from such a derogation, operators must apply to the regulator and demonstrate that the BAT would lead to disproportionately higher costs compared to the environmental benefits due to the geographical location or the local environmental conditions of the installation concerned or the technical characteristics of the installation concerned. Any derogation requires public consultation, and the rationale for denial must be robust in case of any appeal. This places a burden on regulators and associated costs cannot currently be recovered via charges to operators. The Environment Agency Charging Scheme treats this work in respect of facilities regulated by them as the equivalent of a substantial variation for the purposes of charging.

2.4.3 We are asking for evidence on the amount of activity required by LAs to consider an IED derogation application;

Q3 LA pollution control officers – do you consider IED derogation work to be similar to that required for a substantial variation to a permit?

Please refer to Section 3 for the complete set of questions.

2.5 Risk methodology

2.5.1 The risk methodology tool provides for a single simple risk rating assessment for all Part B installations. This allows, for example, larger highly compliant installations to

achieve low risk rating outcomes, but also allows higher outcomes for persistent non-compliant installations.

2.5.2 The risk methodology tool assigns facilities a low risk, medium risk or high risk category dependent upon the regulatory effort required in relation to a facility. Fees and charges are set according to the risk category.

2.5.3 Low and medium risk facilities can potentially increase the associated risk assessment category if the operator fails to comply with permitting requirements. Increased risk requires increased inspections and incurs increased costs. Risk assessments are completed after the first inspection of the financial year.

2.5.4 LAs environmental permit charges are linked to an assessment of risk associated with a facility. Defra published guidance in 2013 on assessing risk and various tools have been developed and shared by regulators. An LA regulator led group has developed a revised risk methodology in consultation with other LAs and Defra. Defra are grateful for the work this group has done in considering and developing an improved risk method. The new version provides a single risk method which aims to provide greater clarity to business and better consistency in regulation.

The current published Risk Method can be viewed here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/342176/A2-Risk-method-July-2013-revision-Final_1_.pdf

2.5.5 The proposed new revised risk methodology is an improved version. Among the more significant proposed changes is to apply consideration of distance from receptor so that a risk rating can increase if the facility is near e.g. housing. The proposed new version is at Annex C and D.

We are asking you to consider:

Q4. Do you think the proposed revised standardised Risk Methodology tool is an improvement on the existing available tools?

Q5. Do you consider there are other improvements that could be made to help ensure that costs are aligned with the pollution risk and therefore the regulatory costs associated with a facility?

Q6. Is the tool too complex or is it easy to apply?

Please refer to Section 3 for the complete set of questions.

2.6 Inspection rates

2.6.1 LA regulators are required to carry out site visits of permitted facilities to:

- monitor achievement of environmental quality standards,
- consider environmental audit reports and statements,

- consider and verify any self-monitoring carried out by or on behalf of operators of controlled installations,
- assess the activities and operations carried out at the controlled installation,
- check the premises and the relevant equipment (including the adequacy with which it is maintained) and the adequacy of the environmental management at the site,
- check the relevant records kept by the operators of controlled installations.

2.6.2 The minimum frequencies of inspections are set out in the Defra Guidance Manual and are dependent on the risk assessment:

Inspection Frequency	Risk Rating		
	Low	Medium (annual)	High (annual)
Dry Cleaners, Petrol Stations:	1 per 3 years	1 full	1 full 1 check
Other Simplified Permits:	1 per 2 years	1 full	1 full 1 check
Full Part B Permit:	1 per year	1 full 1 check	2 full 1 check
Mobile Plant	1 per 2 years	1 full	1 full 1 check

2.6.3 The inspection rates set out in the above table vary between processes dependant on the likely risk and then within processes allows for an assessment of Low, Medium or High risk using the risk methodology outlined above. For those activities covered by the reduced fee simplified permitting arrangements and for mobile plant there are lower inspections requirements. The lower the inspection rate the lower the cost to LAs and so lower fees apply. In all cases "Extra" inspections may be needed in response to complaints, adverse monitoring results etc.

2.6.4 A "full" inspection examines full compliance with all authorisation conditions and looks at any process or other relevant (e.g. 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.

2.6.5 Some LAs have reported that certain facilities, for example those with reduced fees, make a disproportionate call on resources compared to income from those facilities. Currently every LA will have to visit every e.g. petrol station and every dry cleaner at least once every three years. We wish to gather evidence on whether this inspection rate is necessary for low risk facilities; or whether a reduction to the minimum inspection rate could be made, which would make up for increased regulatory effort for some facilities which will not always result in a higher risk rating attracting higher fees.

2.6.6 We are asking you to consider:

- Q7. Is there scope for reduction in inspection activity for low risk facilities and if so could this reduce regulatory costs to LAs thus mitigating (whether wholly or partially) the requirement to increase fees?

Please refer to questions at Section 3.

2.7 Simplified permits

2.7.1 Certain low risk facilities are permitted under a simplified permitting process using bespoke permits and requiring a lower inspection regime. These include certain mobile plant, petrol stations, dry cleaners, and vehicle refinishing activities. Accordingly the fees and charges associated with simplified permits are lower. Including more low risk processes within the simplified permitting regime could reduce regulatory activity for LAs and costs for operators. The permitting and inspection regime must be proportionate and comply with the requirement to prevent and control pollution.

2.7.2 We are asking you to consider:

Q8. Are there any additional activities which could be effectively controlled using simplified permits and reduced fees?

Please refer Section 3 for the complete set of questions.

3. Call for evidence questions

We would specifically welcome responses providing evidence related to the following questions:

3.1 Fees and charges -

Q1. Local Authority Pollution Control Officers – Can you please provide evidence for whether your LA is able to recover its full costs?

Q2. Do you have any views as to why there may be a difference between LAs in reported cost recovery – income v regulatory cost?

Please also consider whether the level of fees and charges is sufficient for each category of facility including reduced fees. We ask LA regulators to complete the table at Annex A and please refer to the advice on calculating costs at Annex B

Q3 LA pollution control officers – do you consider IED derogation work to be similar to that required for a substantial variation to a permit.

Q4. Do you think the proposed revised standardised Risk Methodology tool is an improvement on the existing available tools?

Q5. Do you consider there are other improvements that could be made to help ensure that costs are aligned with the pollution risk and therefore the regulatory costs associated with a facility?

Q6. Is the tool too complex or is it easy to apply?

3.2 Inspection Rates –

Q7. Is there scope for reduction in inspection activity for low risk facilities and if so could this reduce regulatory costs to LAs thus mitigating (whether wholly or partially) the requirement to increase fees?

Q8. Are there any additional activities which could be effectively controlled using simplified permits and reduced fees?

3.3 Any other suggestions

Q9. Do you have any other suggestions on how we can improve our Local Authority industrial pollution control governance?

4 Having Your Say

If you wish to respond, please submit your comments by **3 November**

You can respond in one of three ways:

1. Online, by completing a questionnaire at:

<https://consult.defra.gov.uk/industrial-pollution-control/la-epr-fees-charges>

2. Email, by sending comments to:

control.pollution@defra.gsi.gov.uk

3. Post, by sending comments to:

Industrial Pollution Team

Department for Environment, Food and Rural Affairs

Area 2C

Nobel House, 17 Smith Square

London

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Our preferred method is online because it is the fastest and most cost-effective way for us to collate and analyse responses.

Please note that, unless you specifically request your response to be treated confidentially, your response may be made publically available. If you request confidentiality we will take this into account if someone asks for this information under freedom of information legislation, but, because of the law, we cannot promise that we will always be able to keep those details confidential.