



Department
for Environment
Food & Rural Affairs

Consultation on the review of England Local Authority Environmental Regulation of Industrial Plant

2017 to 2018 fees and charges

March 2017



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Any enquiries regarding this document

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1. Consultation scope and proposal

| | |
|------------------------|---|
| Topic of consultation: | Review of Local Authority Environmental Regulation of Industrial Plant: 2017 to 2018 fees and charges |
| Geographical scope: | England |
| To: | <p>This is a public consultation, and is open to anyone to respond.</p> <p>We would particularly welcome responses from local authority Local Air Pollution Prevention and Control (LAPPC) and Local Authority Industrial Pollution Prevention and Control (LA-IPPC) regulators and from regulated businesses</p> |
| Duration: | 4 weeks from publication. 13 April 2017 |
| Enquiries: | Keith Crane, 02080263478 control.pollution@defra.gsi.gov.uk |
| How to respond: | <p>To submit your consultation response please complete the consultation questionnaire provided through Citizen Space (Citizen Space is an on-line consultation tool).</p> <p>By email to: Control.pollution@defra.gsi.gov.uk</p> <p>Or in writing to: Air Quality Industrial Pollution Control Defra Zone 2C Nobel House 17 Smith Square London SW1P 3JR</p> |

| | |
|--------------------------------|---|
| | <p>Responses should be received by 13 April 2017.</p> |
| <p>After the consultation:</p> | <p>When this consultation ends, we will keep copies securely. Members of the public may ask for a copy of responses under freedom of information legislation.</p> <p>If you do not want your response - including your name, contact details and any other personal information – to be publicly available, please say so clearly in writing when you send your response to the consultation. Please note, if your computer automatically includes a confidentiality disclaimer, that won't count as a confidentiality request.</p> <p>Please explain why you need to keep details confidential. We will take your reasons 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.</p> <p>We will summarise all responses and place this summary on our website at www.gov.uk/defra. This summary will include a list of names of organisations that responded but not people's personal names, addresses or other contact details.</p> <p>Please give us 24 hours' notice if you wish to see consultation responses and summaries. There is a charge for photocopying and postage.</p> <p>If you have any comments or complaints about the consultation process, please address them to:</p> <p>Defra Consultation Co-ordinator, Area 8 A Nobel House 17 Smith Square London SW1P 3JR</p> <p>or email consultation.coordinator@defra.gsi.gov.uk.</p> |

1. This consultation sets out the Government's proposal to revise the prescribed Local Authority fees and charging schemes in England under the Environmental Permitting (England and Wales) Regulations 2016 ([EPR](#)). These schemes specify the fees and charges to be levied by local authorities (LAs) to recover the costs of undertaking their regulatory functions set out in the EPR.

2. Policy objectives and intended effect

Objective

1. The Government aims to improve the UK's air quality, reducing health impacts and to deliver on its goal to be the first generation to leave the natural environment of England in a better state than that in which we found it.
2. Air quality is improving; for example, between 2010 and 2014 emissions of nitrogen oxides (NO_x) fell by 17 per cent. However, there is more to do. Emissions from industrial processes contribute to pollution; in 2014 19% of NO_x, 42% of sulphur dioxide (SO₂) and 21% of particulate matter (PM_{2.5}) UK emissions. The prevention and control of these emissions plays an important part in contributing to efforts to improve air quality.
3. Local authorities are key to achieving improvements in air quality. As the UK improves air quality, air quality hotspots are likely to become even more localised and the importance of local action will increase.
4. The Environmental Permitting Regulations (England and Wales) 2016 (EPR) provides an effective mechanism to prevent or minimise pollution to air, water and soil by requiring certain sites to meet pollutant emissions limits, environmental performance standards and using Best Available Techniques.
5. Under EPR certain industrial installations must apply for and comply with an environmental permit to operate. These permits set out conditions which must be met – for example, limits on levels of allowable emissions of pollutants, and requirements to prevent dust during operation. In England, the regulation of these sites is split between the Environment Agency and Local Authorities depending on the activity undertaken.
6. The installations which are regulated by Local Authorities are split into 2 schemes:
 - those which are subject to the requirements of the Industrial Emissions Directive with requirements to limit their emissions to air, water and land are regulated under the Local Authority – Integrated Pollution Prevention and Control (LA-IPPC) (known as 'Part A2' activities), these include the more potentially polluting and complex activities e.g. foundries and renderers, and
 - those which are required to limit emissions to air only are regulated under the Local Air Pollution Prevention and Control (LAPPC) scheme (known as 'Part B' activities) e.g. dry cleaners, mobile concrete crushers, vehicle refinishers, petrol stations.

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

Background

9. The LA-IPPC (Part A2) and LAPPC (Part B) fees and charges have not been increased since 2010. This has ensured that burdens on business, particularly small businesses have been minimised during the recent economic situation. Local authorities have been encouraged to make efficiencies in their local pollution control activities in line with wider efficiencies local authorities have been making across their organisations. However, it is important that the delivery of local pollution control is not compromised and that LAs are able to fulfil their statutory duties effectively. A review of the current fees and charges scheme has therefore been undertaken. Our assessment of the cost and income data received from local authorities, and our analysis of responses to a recent [Call for Evidence](#) aimed at local authorities and regulated businesses, has led us to conclude that a small increase to fees and charges is necessary to ensure local authorities recover sufficient costs to enable them to continue to undertake their statutory regulatory functions effectively.
10. The current fees and charges can be seen at:
 - a. Part A(2): Local Authority Integrated Pollution Prevention and Control
<http://www.defra.gov.uk/industrial-emissions/files/A2-january-revision.pdf>
 - b. Part B: Local Air Pollution Prevention and Control
<http://www.defra.gov.uk/industrial-emissions/files/Part-B-january-revision.pdf>

Why government intervention is necessary

11. The regulations set out that the fees and charges should, as far as reasonably practicable, be sufficient to cover the costs for Local Authorities in carrying out their functions with respect to environmental permitting. Therefore, it is necessary for the level at which these fees and charges are set to be reviewed periodically to ensure that this requirement is fulfilled.

12. Insufficient cost recovery would lead to the costs of regulation falling on the taxpayer. Defra's policy is that those who are directly regulated should, in the first instance, bear the cost of the regulatory 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.

3. Proposals summary

13. Following a review of available data, and taking into account the evidence obtained from the Call for Evidence, we propose;

- a) a 4.5% increase in charging levels for all fees and charges for the 2017/18 financial year
- b) that derogation applications under the Industrial Emissions Directive (IED) should be treated as equivalent of substantial change of the permit for charging purposes
- c) that an amendment is made to Article 4 of the Part B Scheme to allow wood processes to burn their offcuts without needing to obtain a second permit – an administrative simplification
- d) the adoption of the revised user friendly Risk Methodology Tool, and
- e) that aggregation of small combustion plant brought into permitting by amendment to Environmental Permitting Regulations in 2015 to transpose the Energy Efficiency Directive should be subject to reduced fees and charges

14. Details of these proposals are set out below.

4. Review of 2017 to 2018 fees and charges

Proposal A – a 4.5% increase in charging levels for all fees and charges for the 2017/18 financial year

Evidence of local authority costs

15. The proposed 4.5% increase in all charges has been arrived at taking into account the considerations, evidence and calculations set out below. This follows a period where the charging levels for the LA-IPPC and LAPPC functions have not increased since 2010.

16. Cost accounting data received from LAs has demonstrated that by 2014/15 (the latest year for which we have accessible data) most LAs were not able to recover their full costs. Fees and charges were not increased in the period following 2010 in order to encourage LAs to embed efficiencies in their LA-IPPC and LAPCC functions. There is evidence that inflationary pressures (including wage costs) were mitigated somewhat by these efficiency measures but that by 2014/15 the scope for

further efficiencies was limited. There is more detail of the background data we have considered from paragraph 19.

17. We concluded that 4.5% is the increase required to allow efficient LAs to properly fund LA-IPPC/LAPCC regulation while maintaining pressure on LAs to make further efficiencies where possible. We were also mindful of financial pressures on business in the current climate and we wanted to minimise the burden of any increase as far as possible.

Inflation, pay and efficiency

18. Following discussion with LA stakeholders, and following the approach taken in previous reviews, we have taken the view that a 25% goods:75% labour split is representative of the costs involved in the LA-IPPC and LAPCC functions, and reflects that 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 pollution prevention and control functions.

- a. **Wages:** Using Labour Market Statistics¹ for public sector wage inflation year on year we estimate that since 2014/15 public sector wage costs have increased by a little over 4.5%
- b. **Non-wage component:** Consumer Price Index (CPI) is the measure adopted by the Government for its UK inflation target. CPI grew by 2.14% between 2015/16 and 2016/17² and by 5.14% in the years from and including 2014/15 to include projections for 2017/18.

| CPI and wage cost increases | |
|---|-------------|
| CPI increase in 14/15, 15/16, 16/17, & 17/18 | 5.14 |
| Wage increase in 14/15, 15/16, 16/17, & 17/18 | 4.67 |
| Total: 25% of CPI and 75% of Wage as % | 4.79 |

19. Therefore, considering these 2 aspects and using the 25:75 split set out above, we arrive at 4.5% (rounded down) to assess increase in costs in and since 2014/15. LA cost accounting data has provided evidence of a shortfall in costs v recovery in the 14/15 accounting year. Inflationary pressures and wage costs will have increased this deficit although both have been reasonably low in recent years. CPI and public sector pay are both expected to remain at low levels over the coming year.

¹

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/averageweeklyearnings01/current>

² <https://www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-december-2016-quarterly-national-accounts>

Cost accounting data and Call for Evidence responses

20. LAs provide cost accounting data annually as part of our local authority industrial pollution control statistical survey. We have considered returns from 2011/2012 until 2014/15 (the most recent year data was currently available). The data showed variation across LAs with some reporting a deficit of costs v income and others a surplus. That is why we had considered that there was room for some local authorities to improve their processes and to make further efficiencies. However, the more recent trend has been for an increase in the numbers of LAs reporting a deficit and in the extent of deficit reported, while the numbers reporting surplus income has reduced and the amounts have been relatively small.
21. For the 2014/15 accounting year, of the 239 England LAs for which we have data **149** reported a deficit whereas **90** reported either breaking even or reported a surplus. The greatest deficit reported was over £85,000. **9** LAs reported a deficit of greater than £50,000. The biggest surplus reported was £30,694. A total of **4** LAs reported surpluses of over £20,000.
22. More detail of the 2014/15 cost accounting data can be seen in the spending/income spreadsheet at **Annex 1**.
23. Our Call for Evidence, conducted in November 2016, sought evidence to allow us to better understand why there remains a significant variation between LAs with some reporting significant deficits and some surpluses. LAs provided a number of potential explanations including the variations in type of facility regulated, the location and spread of facilities, the extent to which a facility is well managed or requires support and advice from the regulator as well as variations in wage bands. This would explain an expected variation but not necessarily the more extreme surplus and deficits reported at either end of the scale. There was some evidence however, that a number of LAs are under-reporting their costs by including only direct wage costs for regulatory time in their returns.
24. There appear to be different practices by different LAs in calculating costs. We continue to urge authorities to undertake benchmarking exercises periodically with neighbouring authorities. Defra's current guidance on accounting for indirect costs can be found in paragraph 23.5 and Annex X of the General Guidance Manual³ on Policy and Procedures for A2 and B Installations
25. Evidence from the annual statistical survey, the Call for Evidence and a cost accounting survey undertaken in 2014 suggests that there is little scope for further savings across the majority of LAs within the pollution prevention and control function. Responses to our CfE suggested that even where LAs have outsourced the industrial pollution control function, and have pooled resources across neighbouring LAs, they were still not able to undertake their statutory regulatory duties within the funding limits provided by permitting income.
26. Defra has considered the option of not increasing the level of charges to encourage further efficiencies. This option would not reflect all the matters considered above,

³ www.defra.gov.uk/industrial-emissions/las-regulations/guidance/

and would result in a failure of the scheme to meet the statutory requirement to recover the reasonable costs incurred by LAs in undertaking their pollution control functions for Part A2s and Bs.

27. Therefore, we are proposing an increase of 4.5% to ameliorate potential financial pressures on LAs and ensure the costs are borne by those who directly benefit from a regulatory service. The table below shows the increases which would therefore be applied for the financial year 2017/18.

Example Tables showing increases

Part B

| Option | Standard Process Application Charge (£) | Reduced fee application (for simple very low risk activities e.g Dry cleaners) (£) | Standard Process Subsistence fee (Low/Medium/High) (£) | Reduced fee subsistence fee (e.g. Dry Cleaners) (Low/Medium/High) (£) |
|--|---|--|--|---|
| Current fees & charges | 1579 | 148 | 739/1111/1672 | 76/151/227 |
| 4.5% increase (note: rounded to nearest £) | 71 | 7 | 33/50/75 | 3/7/10 |

Part A2

| Option | Application charge (£) | subsistence fee Low/Medium/High (£) |
|--|------------------------|-------------------------------------|
| Current fees & charges | 3218 | 1384/1541/2233 |
| 4.5% increase (note: rounded to nearest £) | 145 | 62/69/100 |

Question 1: Do you agree with the proposed 4.5% increase?

Proposal B - Derogation applications under the IED

28. Under the LA-IPPC scheme, LAs regulate several types of activity which fall under the IED regime (known as Part A2), and therefore these facilities will be subject to the requirements within IED to use Best Available Techniques (BAT). These are described within sector-specific BAT Reference Documents (BREFs) which are developed at an EU level. 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.
29. The IED allows for derogations from the BAT conclusions under Article 15(4) of the IED. In order to benefit from such a derogation, operators must apply to the regulator and demonstrate that the best available techniques 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, the rationale for granting the derogation must be attached to the permit and made publicly available and the rationale for denial must be robust in case of any appeal.
30. LAs as the regulator for A2 facilities will therefore need to consider these applications. Currently there is no mechanism within the charging scheme for LAs to recover the costs associated with this process from the operator seeking the derogation.
31. A majority of LAs responding to this question in our CfE agreed that derogation work should be seen as either equivalent in work time to a substantial variation or as requiring more time than a substantial variation. Several local authorities have experience in assessing derogations from IED requirements in the Glass manufacturing sector. A survey of these LAs in 2014 revealed an estimate of 50 to 70 hours work for these assessments. The Environment Agency Charging Scheme treats this work as the equivalent of a substantial variation for the purposes of charging. We therefore propose to allow LAs to charge **£1368** to A2 facilities applying for derogation under the IED to allow LAs to recover their costs in assessing these applications.

Question 2: Do you agree that IED derogations should be treated as equivalents of substantial change for charging purposes?

Proposal C - an amendment to Article 4 of the Part B Scheme to allow wood processes to burn their offcuts without needing to obtain a second permit

32. The Part B Charging Scheme (at Article 4) allows for certain related LAPPC activities carried out at a single site and by the same operator to be treated as a single activity for the purposes of the Scheme. This means that operators do not have to apply for a permit for each process where these can be regulated as a single activity.
33. Prior to the implementation of the IED, operators of wood processes were able to burn their offcuts without needing to obtain a second permit. Amendments to the EPR to transpose IED removed this provision. However, this was an unintended consequence. We therefore propose to amend the scheme to allow the burning of wood cuttings to be a “related activity” under EPR. (To do this we will delete the obsolete reference to section “1.1” of EPR in the final line of Table 1 of Article 4 of the Scheme and to replace it to read section “5.1”). No amendment to the EPR is required.
34. This proposal is an administrative simplification – it will not be likely to result in more wood being burned, nor will it reduce the regulatory controls in place. It will reduce costs for relevant businesses.

Question 3: Do you agree with the amendment to Article 4?

Proposal D - Revised risk methodology tool

35. All LAPPC and LA-IPPC permits charges are based on a risk assessment of the activity and permit holder. Risk assessments help to align charging with regulatory effort (and therefore cost to the LA) as well as incentivising good environmental practice by business. Well managed facilities will attract a lower risk assessment and therefore a lower annual subsistence charge. Risk assessments are carried out using Defra guidance and various electronic tools have been developed by and shared by regulators. A tool is currently available on Defra’s Charges and Risk Pages online.⁴ This can be used to risk assess each permit type using the existing risk methodology.
36. The LA regulator-led group Midlands Joint Advisory Council (MJAC) has developed a revised risk methodology in consultation with other LAs and Defra to assist local authorities in carrying out LAPPC risk assessments for Part B installations (see Tool attached at **Annex 2** and the Instructions at **Annex 3**). The existing tool has around 8 risk assessment sheets for full Part B activities as well as various reduced versions. The new version harmonises the 8 or so variants into 1 risk method giving greater clarity to business and better consistency in regulation.

⁴ <http://www.defra.gov.uk/industrial-emissions/las-regulations/charges-risk/>

37. To facilitate this harmonisation the scorings have been changed, although the new scores and risk bands correlate with the existing methodology. The main change to the methodology is the inclusion of a score related to distance from sensitive receptors, such as schools, hospitals and environmentally sensitive areas, for reduced fee activities which puts them in line with other non-reduced fee Part B activities. This has been included in this consultation to determine whether LAs and the businesses affected consider this to be an improvement to the existing tools.

38. Our CfE showed that a majority of LAs who responded agreed that the revised risk methodology was easy to use and was an improvement on the current version. Please note that reference to use of the EA risk assessment methodology for A2 facilities, included in the CfE version, and which would result in an additional increase in costs to A2 regulated businesses has been removed as, following the CfE, we considered this change to be disproportionate.

Question 4: Do you agree with the adoption of the revised Risk Methodology Tool?

Proposal E – Energy Efficiency Directive Permitting fees and charges

39. In 2015 an amendment to EPR applied aggregation to small combustion plant in order to comply with the requirements of the Energy Efficiency Directive (EED). The amendment applies aggregation for combustion plants between 20MW and 50 MW. However, the overall effect is to limit the impact on those sites which now need an environmental permit because of the aggregation rule (and which did not need one before) to complying with the requirements of Schedule 24 on energy efficiency. This means that there is no requirement to apply Best Available techniques, Emission Limit Values and so on.

40. Schedule 24, in applying the provisions of the Energy Efficiency Directive requires a Cost Benefit Analysis (CBA) to be carried out for new or substantially altered plant. However, the requirement for a cost benefit analysis where plant operates under 1,500 operating hours per year as a rolling average over a period (Short Term Operating Reserve). Where this is the case the Part B Permit or variation will restrict the use of such plant to the 1,500 hour threshold. Currently such a Permit would attract a full charge and subsistence fee which seems disproportionate.

Question 5: Do you agree that small combustion plant brought into permitting as a result of aggregation applied in order to comply with the requirements of the Energy Efficiency Directive, and where a Cost Benefits Analysis is not required, should be subject to reduced fees and charges?

6. Other information

Sectors and groups affected

41. 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.
42. Because all facilities pay a subsistence fee based on their [risk rating](#) assessment and the 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 increased benefits to the environment.

Competition assessment

43. 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

44. In line with the statutory requirements set out in paragraph 7 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. Of those installations regulated under LAPPC, most of those operating dry cleaners 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 provided for lightening the regulatory touch and reduced fees for well-run operations.

Enforcement, sanctions and monitoring

45. 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 bi-annually.

Question 6: Do you have any other comments on the proposals within this document?