

**Better Environmental  
Regulation Programme**

# **Consultation on Proposals for an Integrated Authorisation Framework**

**January 2017**

## **Part 5 – Pollution Prevention and Control (PPC)**

## 5. Part 5 - Pollution Prevention and Control (PPC)

### 5.1 Background

5.1.1 In 2012 the Pollution Prevention and Control (PPC) regime was consolidated into a single statutory instrument, the Pollution Prevention and Control (Scotland) Regulations 2012 (“the PPC regulations”). Whilst the PPC regulations benefit from being recently consolidated, they are procedurally complex, and provide limited flexibility to allow regulation to reflect the risk of a specific activity.

5.1.2 It is proposed that these regulations will be repealed completely, and their provisions will be modernised and incorporated into the integrated authorisation framework. As the existing regulations transpose a wide range of European legislation, the integrated authorisation framework will need to re-transpose some or parts of the legislation detailed in Figure 4, below:

**Figure 4 – List of relevant EU legislation**

<b>Legislative instrument</b>
Directive 2010/75/EU on industrial emissions (IED).
Directive 2012/27/EU on energy efficiency (EED) – Articles 14(5) to 14(8).
Directive 94/63/EC on the control of volatile organic compound (VOC) emissions resulting in the storage of petrol and its distribution from terminals to service stations.
Directive 2009/126/EC on stage II petrol vapour recovery during the refuelling of motor vehicles at service stations.
Regulation EC 1272/2008 on classification, labelling and packaging of substances and mixtures.
Directive 2008/98/EC the Waste Framework Directive.
Directive 2006/66/EC the Batteries Directive.

5.1.3 In addition, the integrated authorisation framework will seek to transpose the European requirements in such a way that prescriptive Directive requirements are applied only where necessary, thereby enhancing flexibility within the PPC regime. This will enable the integrated authorisation framework to deliver effective risk-based regulation.

### 5.2 Proposed new legislative regime

#### ***Proposed PPC regulated activities***

5.2.1 We propose that the following are included as regulated activities in the integrated authorisation framework:

- **“Operating an Annex I to IED installation”** – This activity would cover the operation of an Annex I to IED installation, which means operating, on a specific site, any activities described in Annex I to the IED, and any activities on that site that are directly associated with such activities (known

as directly associated activities (DAAs)). Annex I activities include the majority of existing PPC Part A activities. These activities (including any DAAs whether or not they fall under another regulated activity description) will continue to be subject to the full technical and procedural requirements of IED. It should be noted that where there are other activities operated within the site which are not DAAs, and therefore not part of the installation, they can still be included within a single integrated permit.

Annex I to the IED includes the activity: *waste incineration and co-incineration plants which treat non-hazardous waste with a capacity of more than 3 tonnes per hour or which treat hazardous waste with a capacity of more than 10 tonnes per day*. IED also requires that all waste incineration and co-incineration plants, regardless of capacity, are subject to the technical requirements of Chapter IV of the IED. In Scotland, incineration and co-incineration plants with less than the Annex I capacities have been subject to the full requirements of the IED, not just the technical requirements in Chapter IV. Under the integrated authorisation framework we intend to take a more risk based approach to regulation of smaller incineration and co-incineration plant, although in practice few sites are affected, and operators are likely to see little change.

- **“Operating a solvents installation”** – This activity would cover the operation of a solvents installation, which means any activity described in Part 1 of Annex VII to the IED. These activities would be subject to the technical provisions contained within Chapter V of and Annex VII to the IED. Activities that are currently regulated as solvent emissions activities under PPC will be regulated under this activity, unless they are also part of an IED installation.
- **“Carrying out other industrial pollution risk activities”** – This activity would include the current PPC Part B activities and a small number of non-IED PPC Part A activities such as crude oil handling and storage, making solid fuel from waste (sewage sludge drying), and recovery by distillation of oil (drilling mud treatment). We do not intend to include waste activities, including incineration and co-incineration plant, with a capacity below the Annex I threshold under this activity description because they are described by and included within the waste activity. All current Part B combustion activities will be covered by the description “operating a MCPD activity” (see below).
- **“Operating an EED installation”** – This activity would cover installations and relevant district heating and cooling networks described in articles 14(5) to (8) of the EED. This activity will apply to combustion and incineration installations with an aggregate thermal input capacity of greater than 20 megawatts, as well as relevant district heating and cooling networks.
- **“Operating a medium combustion plant”** – This activity will cover combustion of fuel in plant with a total thermal input of between 1 and 50MW as described in the Medium Combustion Plant Directive (MCPD).

The MCPD introduces a requirement on Member States to register and regulate combustion plant between 1 and 50 MW, with the objective of improving air quality. The MCPD must be transposed into domestic legislation by 19 December 2017. Scottish Government is currently consulting on proposals for transposition of the [Medium Combustion Plant Directive in Scotland](#). The Scottish Government proposes that the requirements of the MCPD will ultimately be covered by the integrated authorisation framework.

### ***Where PPC regulated activities will fit in the tiers of authorisation***

- 5.2.2 Under the current PPC regime there is only one tier of authorisation: “permits”. This is further sub-divided into different types of permit, with differing statutory obligations dependent upon whether the regulated activity relates to a Part A installation, a Part B installation, any mobile plant or a solvents installation.
- 5.2.3 The integrated authorisation framework will provide for four tiers of authorisation. As well as potential environmental impact, various other factors will influence the tier of authorisation that may be required.
- 5.2.4 Our ability to place Annex I to IED activities within the four tiers of authorisation based on risk is constrained by the requirements of the IED. It is important to understand these limitations:
- A key requirement of the IED is that installations must apply Best Available Techniques (BAT) to prevent or reduce emissions. BAT applies to an individual site which means that a permit for an IED installation must be capable of having bespoke permit conditions. This is only possible in the permit tier.
  - Article 24 of the IED requires Member States to ensure that the public concerned are given effective opportunities to participate in the granting of an authorisation for an installation. This requirement to consult means that “Operating an IED installation” can be regulated only under the permit tier; and
  - Article 4 of the IED does allow some flexibility for solvents installations. The IED specifies that for these activities Member States may set out a procedure for the registration of these installations which must include at least a notification to the competent authority of the intention to operate an installation. This means that solvents installations can be regulated under the permit, notification or registration tiers in the integrated authorisation framework.
- 5.2.5 Whilst the EED does not limit the type of authorisation an “Operating an EED installation” activity may be authorised under, in practice the conditions required are likely to be site specific because they arise from a site specific cost benefit analysis so the level of authorisation is likely to be at the permit tier.

5.2.6 For MCPD activities Article 5 provides flexibility in the type of authorisation these activities can be regulated under. This means that MCPD activities could be regulated under either the notification, registration or permit tier.

5.2.7 For other industrial pollution risk activities, which are regulated activities as a matter of domestic policy, there are no restrictions on which of the four authorisation tiers that can be used.

5.2.8 Taking account of the directive restrictions described above and the other factors listed in paragraph 3.3.14 we propose the following:

- General Binding Rules – GBRs authorise an activity automatically without any prior contact with, or agreement from, SEPA. They have been shown in other areas to work well for common, low risk activities which, provided the authorised person follows the rules, are unlikely to result in environmental harm. No PPC activities are proposed to be regulated solely under GBRs in future because of the level of potential risk to the environment and the need for a site specific assessment.
- Notifications – Notifications are used for low risk activities where SEPA does not need to make a ‘determination’ as to whether to grant or refuse the authorisation. SEPA proposes to make limited use of the notification tier for PPC activities (e.g. for dry cleaners and petrol vapour recovery). It should be noted that some activities in the notification tier will also have GBRs that apply. In these cases the activity is not authorised until the activity has been notified.
- Registrations – A key feature of the registration tier is the ability for SEPA to undertake a streamlined screening of both the authorised person and the proposals before making a determination as to whether it is appropriate for SEPA to authorise the activity. We are considering this tier for most existing PPC Part B activities, and for all solvent emissions activities other than dry cleaners.
- Permits – Permits are the highest level of authorisation being proposed in the integrated authorisation framework. They will operate in a very similar manner to existing PPC Permits. They are intended for higher risk or non-standard activities that require a detailed level of assessment, bespoke conditions and/or require a public consultation process. A permit is required for all IED installations, and we are considering this tier for all other Part A activities and some Part B activities taking account of the factors listed in paragraph 3.3.14.

5.2.9 Where PPC activities are proposed to fit in the tiers of authorisation is provided in Figure 5 at the end of this part. We intend to consult separately on the detail of which activities are proposed to be regulated under each tier.

### **5.3 Overview and comparison of arrangements**

5.3.1 This section describes any differences between the existing and proposed administrative arrangements for PPC activities.

#### ***Determination and grant of authorisations***

5.3.2 PPC currently specifies a four month determination period, which is consistent with the proposed standard determination period under the integrated authorisation framework. Some applications to operate an IED installation can take significantly longer than four months to determine due to the complex nature of the assessment required. This extended determination period is currently achieved by a mutually agreed extension between SEPA and the applicant.

5.3.3 The flexibility to extend the determination period in circumstances where the proposals are particularly complex, controversial or innovative is retained in the integrated authorisation framework. However, it is intended that SEPA will agree a realistic determination period with the applicant at an early stage in the process. This will ensure applicants know the date by which their application will be determined and, if not determined in time, when they may deem it refused. This is described in more detail in paragraph 3.6.5.

#### ***Authorised persons***

5.3.4 PPC currently uses the term “operator”, which was transposed directly from IED. “Operator” means the person who has control over the operation of the installation or plant. We consider that the proposed approach for authorised person in the integrated authorisation framework is consistent and that operator and authorised person have the same meaning in practice. The “authorised person” is described in more detail in paragraphs 3.5.5 to 3.5.11.

#### ***Universal Outcomes and BAT***

5.3.5 Currently PPC regulation 22(1) specifies that it is a condition of a permit for PPC Part A and PPC Part B activities, and mobile plant that they must use the best available techniques for preventing, or where that is not practicable, reducing emissions.

5.3.6 Best Available Techniques (BAT) in PPC means 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 the basis of emission limit values and other conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole. It is a requirement of the IED that installations must be operated in accordance with BAT. This directive requirement does not extend to existing PPC Part B activities and those Part A activities which are not Annex I to IED installations, unless they are directly associated activities on an Annex I to IED installation.

- 5.3.7 Regulation 22 applies BAT to all PPC activities, including Annex I to IED installations, domestic Part As, as well as Part Bs. The IED requires that for Annex I to IED installations where BAT conclusions documents are published, reference must be made to those. However for any activities where these are not available BAT must be established by considering the requirements laid out in schedule 3 of the PPC regulations. Schedule 3 of the PPC regulations also applies to domestic activities. We believe this is confusing.
- 5.3.8 We are considering that the integrated authorisation framework will retain BAT, as defined in the IED for Annex I to IED installations but would replace BAT for domestic activities with the universal outcomes. We consider that the universal outcomes (described in more detail in paragraphs 3.2.1 to 3.2.5) are consistent with the general principles set out in Article 11 (and currently implemented in regulation 21 of the PPC regulations). We also believe that the universal outcomes set out an equivalent standard for “other industrial pollution risk activities” as “domestic” BAT under PPC.

**Question 37 – Do you consider that the provisions of the universal outcomes contain equivalent protection as BAT in relation to domestic activities?**

### ***Fit and Proper Person (FPP)***

- 5.3.9 While the concept of FPP (described in more detail in paragraphs 3.5.14 to 3.5.26) initially appears to be a new requirement for some PPC activities, PPC regulation 13(2) already applies some of the principles. In PPC SEPA must refuse to grant a permit if it considers that the applicant will not ensure that the installation is operated in compliance with the conditions included in the permit. We are proposing that the new FPP test under the integrated authorisation framework will replace this requirement.
- 5.3.10 PPC already includes a fuller FPP test similar test to that described in paragraphs 3.5.14 to 3.5.26 but only for waste activities. The new wider FPP test will apply to all PPC activities albeit proportionally tailored to the activity.

### ***Surrender and baseline reports***

- 5.3.11 For registrations and permits, an application for surrender will need to be made to SEPA that contains information to allow SEPA to assess whether all reasonable steps have been taken by the authorised person to:
- prevent environmental harm resulting from cessation of the activity;
  - prevent ongoing harm arising as a result of the activity having been carried out; and
  - restore the environment affected by the carrying on of the activity to a satisfactory state, where appropriate having regard to the state of that environment before the activity was carried on.

5.3.12 This is described in more detail in paragraphs 3.6.20 to 3.6.24. This proposal is largely equivalent to how permits are currently surrendered under the PPC regime.

5.3.13 To ensure the right information about the condition of a site before the activity is carried on is available at the point of surrender, paragraph 1(1)(e) of Schedule 4 to the PPC regulations requires that all applications for permits for Part A installations include:

- a site condition report, and
- where the permit will authorise an activity that involves the use, production or release of a relevant hazardous substance, a baseline report.

5.3.14 Although the information required by a site condition report and baseline report are similar, the site condition report does not explicitly require the sampling and analysis of pollutants in soil and groundwater. This is an explicit requirement of a baseline report. Furthermore, the baseline report applies only to activities involving the use, production or release of a relevant hazardous substance, having regard to the possibility of soil and groundwater contamination.

5.3.15 These specific requirements must be met by Annex I to IED installations pursuant to Articles 12(1) (d) and 22(2) and will be integrated into the integrated authorisation framework. However, we are proposing a more flexible, risk based approach to the surrender of authorisations for “other industrial pollution risk activities”. For these activities we propose that whether an assessment of site condition needs to be included in an application for a permit or registration, and the information required to be included in a surrender application to demonstrate that the site is in a satisfactory state, will be set out in guidance, as described in paragraphs 3.6.20 to 3.6.24.

**Question 38 – Do you have any comments on the potential impact of this change for other industrial pollution risk activities?**

## **Enforcement**

5.3.16 Regulation 55 of the PPC regulations currently specifies that an enforcement notice can only be served in certain circumstances, where:

- The operator has contravened, is contravening or is likely to contravene any condition of a permit, or
- An incident or accident significantly affecting the environment has occurred.

5.3.17 Under the integrated authorisation framework, a broad power is proposed for SEPA to require steps to be taken:



- In response to non-compliance;
- Where the regulated activity is causing, has caused, or is likely to cause, harm to the environment or human health; and
- Where the authorised person no longer meets a FPP requirement.

5.3.18 This broad power means that SEPA will be able to serve an enforcement notice without needing it to be related to a specific non-compliance such as breaching an authorisation condition and when there is potential harm, not only when a significant effect on the environment has already occurred. This is described in paragraphs 3.7.3 to 3.7.12.

### ***Public participation***

5.3.19 The PPC regulations are currently prescriptive about when consultation and advertisement steps need to take place. The PPC regulations are also prescriptive in terms of who is consulted, and limits consultation to the local authority and health boards under normal circumstances, with additional consultation requirements under certain circumstances with Scottish Natural Heritage, Food Standards Scotland, Scottish Water, harbour authorities and the Health and Safety Executive.

5.3.20 Where an application requires advertisement, PPC states where any advertisement must be placed, specifying one or more newspapers circulating in the locality and the Edinburgh Gazette.

5.3.21 The proposed approach in the integrated authorisation framework will allow SEPA to be more flexible and modernise its approach to public participation.

5.3.22 Article 24 of and Annex IV to, IED contain specific requirements in relation to public participation. These requirements will be included in the integrated authorisation framework and SEPA will need to ensure that such public participation duties related to the operation of an IED installation are compliant with these requirements.

## **5.4 Implementation of specific standards**

5.4.1 The various Directives relevant to PPC activities contain specific standards for some activities. These specific standards will be in the integrated authorisation framework to the extent to which they currently apply to regulated activities. These standards include for example:

- Large combustion plant provisions in Chapter III of, and Annex V to IED;
- Waste incineration plant provisions in Chapter IV of, and Annex VI to IED; and
- Solvent emission installation provisions in Chapter V of, and Annex VII to IED.

**Figure 5: Allocation of activities to tiers being considered**

<b>Proposed Regulated Activity</b>	<b>Specific sub-activity</b>	<b>Relevant Tier</b>	<b>Reasoning/additional information</b>
<b>Operating an IED Installation</b>	All IED Activities as listed in Annex I to the Directive (and DAAs)	Permit	<ul style="list-style-type: none"> <li>• No significant change from current situation;</li> <li>• SEPA is statutorily required to consult;</li> <li>• High risk activities;</li> <li>• SEPA needs to scrutinise;</li> <li>• Detailed assessment and technical provisions.</li> </ul>
<b>Operating a solvents installation</b>	Dry cleaning	Notification with GBRs	<ul style="list-style-type: none"> <li>• Simple, low risk activity;</li> <li>• Common compliance requirements for all activities.</li> </ul>
	All other solvent activities over a specified threshold as listed in Annex VII to IED, i.e: <ul style="list-style-type: none"> <li>• Coating of wooden surfaces;</li> <li>• vehicle coating;</li> <li>• Surface cleaning;</li> <li>• Wood and plastic lamination.</li> </ul>	Registration	<ul style="list-style-type: none"> <li>• Assessment needed by SEPA.</li> </ul>

<b>Carrying out an industrial pollution risk activity</b>	<ul style="list-style-type: none"> <li>• Petrol Vapour Recovery;</li> <li>• Mobile crushing of rock or aggregate (except waste);</li> <li>• Mobile breaking screening or loading coal.</li> </ul>	Notification with GBRs	<ul style="list-style-type: none"> <li>• Common compliance requirements for all activities (currently standard rules);</li> <li>• SEPA need to be aware of location.</li> </ul>
	<ul style="list-style-type: none"> <li>• Cement storage and blending;</li> <li>• Roadstone coating;</li> <li>• Storage of petrol in storage tanks;</li> <li>• Crushing of rock or aggregate (except waste) – fixed location;</li> <li>• Breaking screening or loading coal – fixed location;</li> <li>• Coating with organic solvents;</li> <li>• Repainting road vehicles;</li> <li>• Repainting aircraft/railway vehicles;</li> <li>• Coating manufacture;</li> <li>• Manufacturing wood products;</li> <li>• Fish ensiling</li> </ul>	Registration	<ul style="list-style-type: none"> <li>• Common well understood activities;</li> <li>• Assessment needed by SEPA.</li> </ul>

	<p>All other PPC Part B Activities, i.e:</p> <ul style="list-style-type: none"> <li>• Storage of chemicals in bulk;</li> <li>• Mixing, milling or blending of rubber;</li> <li>• Processing storage or drying of dead animals.</li> </ul> <p>All non-IED PPC Part A activities, i.e:</p> <ul style="list-style-type: none"> <li>• Crude oil handling and storage;</li> <li>• Making solid fuel from waste (sewage sludge drying);</li> <li>• Recovery by distillation of oil (drilling mud treatment).</li> </ul>	Permit	<ul style="list-style-type: none"> <li>• Complex activities which may give rise to odour or nuisance;</li> <li>• Detailed assessment necessary;</li> <li>• Need to consult.</li> </ul>
<b>Operating a medium combustion plant</b>	Standard plant	Registration	<ul style="list-style-type: none"> <li>• Directive requirement for minimum information to be included in register.</li> </ul>
	High risk plant	Permit	<ul style="list-style-type: none"> <li>• Type of fuel or location in Air Quality Management Area may require more detailed assessment and bespoke permit;</li> <li>• MCP on IED installation will be directly associated activity and conditions incorporated into permit.</li> </ul>

<p><b>Operating an EED activity</b></p>	<p>Operating:</p> <ul style="list-style-type: none"> <li>• a thermal electricity generation installation with a total thermal input exceeding 20 megawatts;</li> <li>• an industrial installation with a total thermal input exceeding 20 megawatts generating waste heat at a useful temperature level;</li> <li>• an energy production installation with a total thermal input exceeding 20 megawatts in an existing district heating or cooling network.</li> </ul>	<p>Permit</p>	<ul style="list-style-type: none"> <li>• Detailed assessment required;</li> <li>• Bespoke conditions required.</li> </ul>
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