Department of the Environment's Guidance

General Guidance Manual on Policy and Procedures for Part C Installations

Guidance for district councils and operators on permitting industrial installations under Local Air Pollution Prevention and Control (LAPPC)

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Department of the
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This document is also available on our website
http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_guidance.htm

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Revision of the Manual

This Manual is the updated version of the 2003 General Guidance Manual. The electronic version of this publication is updated from time to time with new or amended guidance.

Contents

Part C and D sample forms and letters
This is a separate document which can be found at:
http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_guidance.htm and is available in Word format. It contains the following. (There are no hypertext links between the two documents but there are links within each of them.)

Part C

Part D

SHORT SUMMARY FOR BUSINESSES AND MEMBERS OF THE PUBLIC

This General Guidance Manual advises on the workings of the Local Air Pollution Prevention and Control system.

The basics

Your district council 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.

District councils 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 C', and district councils can only deal with air pollution from them.

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

Which installations are regulated?

District councils 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 among the sorts regulated.

Regulations say exactly which installations need a permit. In several cases only bigger installations need one.

Other installations (known as 'Part A and Part B') are regulated by the Northern Ireland Environment Agency. They are usually larger or more complex.

How are they regulated?

a) 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 district council's costs. The Regulations say what information must be in the application.

The district council must consider the application to decide whether or not

to approve it. The district council must consult relevant members of the public and other organisations.

If the district council 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 district council must by law have regard to that guidance, and must also consider local circumstances.

If the district council 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.

b) 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 district council costs of checking the permit is complied with.

District councils 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.

District councils 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 district councils 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.

<u>The legal side</u>

You will find the law in The Pollution Prevention and Control (Northern Ireland) Regulations 2003, S.R. 46 of 2003

The Part C system is known as Local Air Pollution Prevention and Control ("LAPPC").

For many of the listed installations, the Regulations also implement European Community Directives.

<u>More information</u>

If you want more guidance on the procedures you will need to read the relevant sections of the Manual. The Manual and guidance on pollution standards are also on the internet at:

http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_guidance.htm

The Department of the Environment is the Government Department responsible for the system in Northern Ireland. Contact details are epdwebteam@doeni.gov.uk or telephone 028 90254745

Members of the public and operators of installations can contact their district council for information. You should usually ask to speak to the pollution team in the Environmental Health Department. You will find all district councils listed on http://www.nidirect.gov.uk/index/contacts/local-councils-in-northern-ireland.htm
You can also ask your local library for the name and contact details of your district council, or look in the information pages at the front of your telephone directory under the heading "Government/District councils".

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 23 of this General Guidance Manual.

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

Amendments made since publication in September 2010	
Date	Amendment
January 2011	Clarification of Chapter 12 on Odour
February 2011	Amendment of Component 5(c) in Annex XVIII
April 2011	Annex XVIII Dry Cleaning Spreadsheet error deleted (fixed)
April 2011	New paragraph 5.20
June 2011	New Annex X on reduced fees for reduced operating levels
July 2011	New reduced activity sample forms added and references to old PG notes updated
December 2011	Additional PVRII guidance added in Chapter 26

Part A

Guidance on policy and procedure for the permitting of Part C installations

1. Introduction

What is LAPPC? Who should use this Manual and how should it be used?

The Manual

1.1. This Manual is the principal guidance issued by the Department of the Environment, on the operation of the Local Air Pollution Prevention and Control ("LAPPC"), which covers what are known as Part C installations which are regulated by district councils:

1.1A. This guidance document is compliant with the Code of Practice on Guidance on Regulation - see www.berr.gov.uk/files/file46950.pdf, page 6 of 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 epdwebteam@doeni.gov.uk or ring on 028 9025 4876.

1.2. These regimes are regulated under the Pollution Prevention and Control Regulations (Northern Ireland) 2003 ("PPC Regulations").

What is LAPPC?

1.3. The installations regulated under LAPPC are Part C installations (as designated under Schedule 1 of the PPC Regulations) whose air emissions are regulated by district councils. These installations are not within the scope of the Integrated Pollution Prevention and Control ("IPPC") Directive. However, other directives (such as the Solvent Emissions Directive) may apply. LAPPC only regulates air emissions.

1.4. 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 LAPPC.

1.5. Part A, B and C installations require the operators of specified installations to obtain a permit to operate. An application must be made to an enforcing authority who decides whether to issue or refuse a permit. If a permit is issued, it will include conditions aimed at reducing and preventing pollution.

1.6. Part A and Part B permits are issued and enforced by the Industrial Pollution and Radiological Inspectorate (IPRI) within the Northern Ireland Environment Agency (NIEA). Part A installations are within the scope of the IPPC Directive and a practical guide to the permitting regime is available at http://www.ni-environment.gov.uk/ippc_practical_guide.pdf.

How to use the Manual

1.7. This General Guidance Manual ("GGM") is a guide to issues and procedures relating to the making of applications, writing and granting permits, and regulating approved installations under the PPC Regulations. The guidance should be used in conjunction with the Process Guidance 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 PPC Regulations, as may be amended from time to time.

1.8. The Manual comprises statutory guidance under PPC regulation 38 which district councils 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 applies as at the date of publication. Although it is intended to revise the electronic version of the Manual as the need arises, it should not be assumed that the Manual reflects all the latest developments or legislative changes. The web links were checked and found to be functional prior to publication and will be updated where practicable. 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.

1.9. The Manual, together with the process guidance notes advising on BAT for each sector, should provide the necessary basis for decisions in most cases.

Guidance updates

1.10. The Manual does not purport to address every question on all procedures under the LAPPC regime. Where, in the light of experience, feedback or other developments, further guidance is considered necessary, the Department will provide supplementary advice by amending the Manual. In cases like this the Department would contact all district councils and relevant trade bodies alerting them to any such changes.

1.11. Readers should therefore check on: http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_guidance.htm 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, will not be listed.

1.12. All of the web links have been checked prior to publication of the September 2010 revision. The Department will endeavour to keep these up-to-date, but cannot guarantee doing so, especially with external web sites.

Who should use this guidance document?

1.13. This guidance is intended to fulfil a number of functions.

for regulators:

- it constitutes statutory guidance issued by Government to district council regulators under regulation 38 of the PPC Regulations. As such, district councils 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 district councils to be effective, efficient and consistent in discharging their new responsibilities.

  A consistent approach is considered to be one which adopts the same approach in the same circumstances – it should not be taken to mean a uniform approach even where the circumstances are different.

for regulated businesses:

- it provides firms operating, or planning to operate, 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 **Chapter 5**.

  If a business is unsure whether it is regulated or requires help to understand the regulatory requirements contained in this Manual, it should contact its relevant district council. Paragraph 2.19 explains how to find which is your district council, and how to contact them.

  The format is designed so that regulated businesses can consult the Manual for relevant information and guidance, rather than necessarily 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 district council pollution control.

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

2. Activities, installations, operators and district councils

2.1. LAPPC is concerned with controlling the environmental impact arising from pollution emitted into air from installations listed under the heading "Part C" in Part 1 of Schedule 1 to the PPC Regulations 2003.

What is an activity?

2.2. An activity is an industrial activity forming part of an 'installation'. Different types of activities are listed within Schedule 1 of the 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 2.4 below.

2.3. Activities can be carried out in installations or by mobile plant.

What is an installation?

2.4. **Annex III** in Part B of the Manual explains the term 'installation'. In summary, an installation comprises any relevant unit carrying out Part C activities listed in Schedule 1 to the PPC Regulations. 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?

2.5. A mobile plant, for the purposes of LAPPC, is any plant which is designed to move or be moved on roads or otherwise, and is used to carry on any activity.

2.6. A mobile plant is regulated by the district council 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 Northern Ireland, the district council will be the district council which granted the permit or, if there is no permit, the district council in whose area the plant is or will be first operated.

Is the installation Part A, B or C?

2.7. In order to decide which regime an installation falls within, it is necessary first to understand the activity that is being carried out. Part 1 of Schedule 1 of the PPC 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.

- 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** Definitions to this Manual. If an operator is still unsure, he or she should contact the relevant district council or the Northern Ireland Environment Agency (NIEA).

What to do if you are unsure which category the installation falls into?

2.8. In some cases, the question of whether an activity is a A, B or C activity will depend on a capacity threshold. There is further information in **Annex III** on this. In such cases it will be appropriate for the district council to contact the Chief Inspector of the NIEA.

2.9. District councils may also find help by speaking to colleagues in other councils. There are various mechanisms for this. These include

- the Chief Environmental Health Officers Group,
- the Northern Ireland Industrial Pollution Liaison Group;
- the 'link authority' networking arrangements - the list of link groups can be found on the industrial pollution control Community of Practice,
- The Local Authority Unit ("LAU") can assist with new or complex technical queries. The LAU's website is http://www.environment-agency.gov.uk/business/topics/permitting/36421.aspx.

2.10. The Department may be able to assist with legal/policy and procedural queries (although decisions will ultimately rest with district councils based on the facts of the particular case).

Neither the Department 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 Department or the Planning Appeals Commission (PAC) in the event of an appeal.

Fees and charges

2.11. Advice on fees and charges for cases of combined activities and installations can be found in **Chapter 14**.

Is the installation trivial?

2.12. There is a 'triviality' exemption for Part C 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 Solvent Emissions Directive ("SED") installations or to Part C installations which may give rise to offensive odour. (Reference to this can be found in Schedule 1, Part 2, paragraph 2 of the PPC Regulations.) In all cases of triviality the district council 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 XIII** Triviality.

Are Research and Development ("R+D") activities excluded?

2.13. Since an amendment to the PPC Regulations in 2005 operators undertaking R+D and testing of new products and processes have been excluded from PPC regulation, with the exception of SED activities.

> "An activity shall not be taken to be an activity falling within Sections 1.1 to 6.9 if it is –"…carried on at an installation or mobile plant solely used for research, development and testing of new products and processes."

2.14. 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 R+D/testing is carried out in an installation that has a permit issued by a district council, the R+D/ testing will be subject to the requirements of the permit.

2.15. 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?

2.16. An operator is defined as the person who has control over the operation of an installation or who will have control if it is not yet operating. 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 e.g. a company, partnership or other corporate body, or a natural person e.g. an individual. In most cases a single operator will have to obtain a single permit for a single installation.

2.17. District councils should find that the following questions help decide whether the operator has the authority and/or 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?

2.16A. The Environment Agency has published guidance on dealing with death, financial difficulties or striking off of an operator which may be of use to district councils: http://publications.environment-agency.gov.uk/pdf/GEHO0609BQEI-e-e.pdf.

2.18. It is fairly uncommon for different operators to run different parts of a single part C installation. This does not affect district councils' determination of what is the installation in the first place. Where this situation arises, each operator will need a separate permit and will 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 district council?

2.19. Every part of Northern Ireland belongs to one of the 26 district councils. A council's environmental health or environmental services department generally administers this operation - and it often helps when contacting them to refer to their pollution team. In order to find out which is your district council, you should contact the authority to which you pay either your business rates or, if you are a member of the public, the rates on your home. Alternatively you will find the district council listed in your telephone book, or you can ask at your local library. All district council contact details are listed on their websites, which can be accessed through www.nidirect.gov.uk**.**

2.20. Working with other district councils is a means by which councils with few regulated activities may be able to secure greater critical mass and economies of scale. Known examples in GB are where all the local authorities in a county use the fire service or county trading standards officers to enforce LAPPC for petrol stations. The Department will take into account these and other potential efficiency savings in reviewing the level of fees and charges. LACORS (now LGR) /CIEH issued guidance on partnership working in GB in 2008 – see http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=18943.

Appointment of a suitable person + delegation of decisions

2.21. Under section 19 of the Environment (Northern Ireland) Order 2002, powers of entry are available to Inspectors who may also take with him any person duly authorised by the district council as outlined in PPC Regulation 27. Officers should therefore ensure that they have the appropriate written authorisation, and district council managers should ensure that all officers so authorised have the necessary competence to undertake all their functions (see also final paragraph in Chapter 8).

2.22. Issues have arisen in the past in England and Wales 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.

3. Permits and the timeframe for obtaining permits

This chapter provides guidance which type of permit is required and when they are required. It is relevant to the regulation or operation of LAPPC installations.

What is a permit?

3.1. A permit is a document issued by a district council to an operator allowing him or her to operate an installation or mobile plant, subject to conditions.

3.2. An application for a permit must be refused if the district council 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 (Part 2, paragraph 10(3) of the PPC Regulations).

3.3. District councils may follow the approach commonly adopted for the district council 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 detailing 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 designated 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. District councils 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 the drafting of permit conditions can be found in Drafting permit conditions.

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 Process guidance note PG6/34b(06)[1] as guidance. In these cases, the

[1] Process guidance notes from 2010 will be issued on a UK wide basis and will continue on from the previous NIPG notes. References to process guidance notes issued before 2010 refer to the NIPG notes published in Northern Ireland.

relevant process guidance note contains a specimen application form and specimen permit, and the application fees and subsistence charges are lower.

Granting a permit

3.7. District councils are required to either grant or refuse an application for a LAPPC permit. Councils will grant LAPPC permits subject to conditions against which future enforcement action may be taken.

3.8. 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 that the district council proposes to include. It is certainly good practice for councils 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.

3.9. It is recommended that district councils 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 19** Enforcement.

New and existing installations

3.10. Some Part C activities were previously permitted under the Industrial Pollution Control Order Authorisations. Since 1st April 2007 all part C activities are permitted under the PPC Regulations. No new installation or substantial change to an existing installation may be operated without a permit or variation. It is an offence under PPC regulation 33(1) to operate a regulated facility without a permit, and to the extent authorised by that permit.

3.11. An existing installation means a Part C installation put into operation before the introduction of the PPC Regulations came into force for the relevant activity. All existing installations are now permitted under the PPC Regulations.

4. LAPPC Permit Applications

New installations and substantial changes

4.1. This chapter relates to applications for new LAPPC installations or mobile plant, and applications for substantial changes. **Chapter 15** Variations to permits describes the possibilities for varying permit conditions after a permit has been issued.

4.2. In accordance with regulation 6 of the PPC Regulations, operators must make an application on the form provided by the district council 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 Departments website in downloadable Word format http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_guidance.htm.

4.3. An application can, with the agreement of the enforcing authority, be sent to the enforcing authority electronically.

4.4. The Department is 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 councils, and make understanding of the material more difficult for councils, and also for the public, if they wish to delve deeper than the non-technical summary.

4.5. The Department recommends that councils design application forms so that basic information is provided in a prescribed format. The remaining information would then be in a format that suits the operators, but also 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 cases. This is the style adopted in the specimens in **Part C**.

Preparation of applications

4.6. 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 district council 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 15** Variations to permits).

4.7. There is nothing in the PPC Regulations to stop an operator beginning construction work before a permit has been issued or even before the application process begins. However, the district council 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 9** Best Available Techniques (BAT)). 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 been granted a permit will be at their own risk, and the district council will not take an operator's previously accrued costs into account when making a decision.

Pre-application discussions

4.8. An operator and a district council may find it helpful, particularly for larger or more complex proposals, to hold pre-application discussions before the operator makes a formal application. 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 must not imply any advance agreement as to the outcome of any application. It is not within the councils' remit to provide free consultancy advice.

Operators' responsibilities – new installations

4.9. LAPPC place the onus on an operator to assess the effects of their operations, to explore methods of improvement, and to make proposals for the district council's consideration. This also applies to substantial changes. To obtain a permit, an operator should demonstrate how the installations would be managed in a way that will meet the requirements of the PPC Regulations. This should cover the full range of activities that the operator wants the permit to cover.

4.10. 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 of merely a paragraph, if that was agreed to be sufficient for the purpose. However, lengthy documents may be needed in particular circumstances.

4.11. For LAPPC applications, further factors should be considered, when deciding the level of detail included. Examples of factors to consider would be whether the installation is located in or near any sensitive location, or where there is or could be an air quality standard breach. Another factor should be whether there are any abatement techniques, or whether operational procedures deviate from any process guidance ("PG") note.

Content of applications

4.12. The information required by district councils in order determine an application is set out in **Annex V** Content of applications. In deciding the extent of information to provide, the operator is advised to read the relevant PG note where available. Having regard to these note(s) and to paragraphs 4.9 - 4.11 above, councils 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 must include sufficient supporting maps and diagrams, to allow a council to examine all elements of the activities and installation for which a permit is being sought.

4.13. Overall, operators should bear in mind that when regulators are determining the conditions of an LAPPC permit, they are required to take into account 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, and;

b) no significant pollution is caused.

4.14. Where an installation is located near to a sensitive area the operator should specify whether additional measures, are proposed to ensure that emissions do not cause harm. Where the installation is likely to cause a breach of an air environmental quality standard the operator should assess the effects of any additional emissions (see paragraph 11.1 for further details).

Ensuring applications are complete and duly-made

4.15. Applications should give all the information a district council 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 the 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 if all necessary parts of such a form have not been completed);

- it is for an installation that falls outside the remit of the LAPPC regime;
- 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;
- the operator is not a legal entity, or;
- the necessary fee has not been paid.

4.16. When a district council is of the opinion that an application is not duly-made, it should return the application, along with any fee. As a matter of good practice, councils should always tell the applicant why they consider an application was not duly-made. Councils 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. This would enable the application to be treated as duly-made, and the determination period to begin, once the additional information is supplied.

4.17. An application may be duly-made and yet still not contain everything a district council needs to determine the application. Councils 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, district councils are encouraged in the following case 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.

4.18. Where the Department has indicated a strong likelihood that the PPC 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 the Department. In this case, 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 a further information notice issued under the PPC Regulations, and the 6-month determination period will be extended by this procedure in the usual way.

Using existing data

4.19. 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.

Offence of making false or misleading statements

4.20. It is an offence under PPC regulation 33(1)(h) 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 PPC 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.

Withdrawal of applications

4.21. If an operator withdraws an application, the district council 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 councils are likely, by then, to have begun public consultation and commenced a detailed assessment of the application.

4.22. Where an application is submitted for an installation which is subsequently deemed to be exempt from regulation by reason of amendment to the PPC Regulations, councils 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 14** Fees and Charges and in the charging scheme on the Department's website: http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution.htm

EU Services Directive

4.23. The EU 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") at http://elmsportal.businesslink.gov.uk/.

4.24. The following should be borne in mind:

- if a district council 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

- councils can still accept paper applications and applications made using forms provided on their website.

- there is no specific obligation on district council to promote the PSC or electronic applications.

- the PSC route does not override GGM advice on pre-application discussions (see paragraph 4.8 above), which are generally beneficial to all parties for any Local Air Pollution Prevention and Control “LAPPC” applications that are not straightforward.

- LGR has issued specific guidance for enforcing authorities on PPC regulation and the EU Services Directive. All councils should also to have a Primary Liaison Point specifically to provide advice to staff on the EU Services Directive.

5. Determining Applications

This chapter provides guidance on the procedures for determining LAPPC applications.

5.1. A flowchart showing the procedure for LAPPC applications is provided at the end of this chapter.

Receiving an LAPPC application

5.2. On receipt of an application for a Part C installation, the district council should allocate the installation a reference number, which should be used in all correspondence. The district council 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. Councils should aim to complete the assessment of whether an application is duly-made within 10 working days. Paragraphs 4.15-4.17 of the Manual advise on deciding whether an application is duly-made.

Duly-made applications

5.3. Once a council has confirmed that everything is in place to determine an application, the district council should acknowledge to the operator that the application is duly-made, and is being processed. As a matter of good practice, councils should 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 6** Confidentiality and access to information) or national security (see paragraph 20.12). The application must be sent by the council to statutory consultees, and be advertised by the operator, within the timescales given in the flowchart in this chapter.

Returning applications not duly-made

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

Determination by district councils

5.5. The district council should determine a duly-made application within 6 months of its submission (Schedule 4, paragraph 15 of the PPC Regulations). In most cases, the six months begins on the day the duly- made application is received by the district council. 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 six months begins on 2nd May.

5.6. This 6 months therefore does not include:

a) any time between the date an operator is served with a notice under paragraph 4 to Schedule 4 of the PPC Regulations, 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 directs that a specified description of information must be referred to him (to decide whether it should go on the public register), and the date that the decision is made by the Secretary of State Ministers; or

d) in relation to commercially or industrially confidential information, any time between the date a district council 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 district council 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 6**.

5.7. A council and operator may agree a longer period than 6 months. If the operator does not agree to a longer period and the 6 months pass without a determination, the operator can serve a notice on the council referring to paragraph 16(1) of Schedule 4 of the PPC 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 6 months as a deemed refusal, the determination period simply continues until the council reaches a decision.

5.8. Councils must either grant a permit with conditions, or refuse the permit.

5.9. Reasons may 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, with reasons,

that particular conditions have been inserted to represent the council's judgement of what constitutes BAT (with regard to the statutory guidance, and to all site specific considerations).

5.10. As soon as practicable, councils must inform the applicant of their decision. The applicant has the right of appeal and further details are included in Chapter **21** Appeals.

Determination by the Department

5.11. The Department can require any application to be sent to them for determination. Although there is no determination timeframe, the Department will try to manage these cases promptly. The district council must consult as normal, but should send any representations to the Department. The Department may choose to arrange a hearing, and will at present do so in any case if the council or the operator requests one. The Department may then direct the council to grant a permit, specifying which conditions should be included. Alternatively, the Department may direct the council to refuse the permit.

Requests for further information

5.12. District councils must decide which information they require to determine an application. Even when an authority concludes that an application is duly-made, it may still require the operator to submit additional details.

5.13. To obtain more information, councils can serve a further information notice on the applicant under paragraph 4 of Schedule 4 of the PPC Regulations. A specimen notice is included in **Part D** of the Manual and can be downloaded as a Word document from http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_guidance.htm. The notice must specify which further information is required, and a deadline for its provision. It should do so in clear and unambiguous terms. Councils should also consider whether any further information merits additional consultation.

5.14. District councils should not use this procedure to delay applications unnecessarily, or to obtain additional information that is peripheral, or is not strictly needed to determine the application. The provision of extra information will impose a cost on the operator. On the other hand, it is appropriate 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 acceptable that certain information cannot be provided until the application is approved. An example would be decisions on the precise location of sampling ports in chimneys, which might only be determined during construction of a new installation. This situation is therefore best dealt with by a condition requiring final details to be agreed prior to commissioning.

5.15. Pre-application discussions can reduce the likelihood of more information being needed.

5.16. It is also possible for councils 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. It can consequently be included on the public register, subject to any commercial confidentiality and national security considerations.

5.17. Councils should not grant an application until they are satisfied with all the information. If the further information required is still insufficient, councils may serve further notices. They should not repeatedly request information on the same topic, but still make all reasonable attempts to obtain the necessary details from the operator.

5.18. Paragraph 4 of Schedule 4 to the PPC regulations gives councils the power to serve a notice that an application is deemed to have been withdrawn. This occurs if the information required in a further information notice has not been provided by the due date, and the application fee is not refundable. In these cases, there is no right of appeal, and the operator will have to make a fresh application if a permit is still required. District councils should inform operators of these procedures at the time of a request for additional information.

Granting a permit

5.19. Advice is given on drafting permit conditions in **Chapter 10** Drafting permit conditions**,** and **Annex XI** Conditions of permits gives the detailed legal basis for conditions, as well as example conditions.

5.20. Some companies who operate at many different sites might find it helpful if district councils 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

5.21. In accordance with regulation 10(3) of the PPC 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.

5.22. An example of where a council might refuse an application is if an operator proposes the location of a new installation close to an extremely sensitive environment, but with no known way to provide adequate control. Another example would be if 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.

5.23. Councils should not grant a permit if they are of the opinion that that the operator will not be able to comply with the conditions set within the permit. This may be where the council 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 8** Operator competence, including management systems).

5.24. Councils must be able to justify their decisions.

5.25. Finally, councils should refuse applications if they consider that the applicant would not be the person who would have control over the operation.

Health and safety issues

5.26. The PPC Regulations are in place to effect environmental protection rather than worker protection. Full co-operation between the Health and Safety Executive Northern Ireland ("HSENI") and district councils is important to ensure that both sets of controls are effective and compatible.

5.27. 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 HSENI or, where appropriate, district council officers enforcing Health and Safety legislation.

5.28. If environmental protection demands tighter standards of control than those required to safeguard persons at work, those tighter standards should apply, provided that they have no adverse effects on worker protection.

5.29. The HSENI is not a statutory consultee for LAPPC (except in relation to installations on a site requiring a major accident prevention policy document), however there is a possibility of overlap between the requirements of both sets of legislation. Effective liaison is necessary between district councils and HSENI officials to ensure that both are adequately informed on matters of mutual concern.. This may include operational matters, enforcement, comments on planning issues, incidents, interpretation of technical standards, and disclosure of information.

5.30. It is recommended that the HSENI or district council health and safety team is informed, if it is proposed to take formal or informal enforcement action at premises where there is a joint interest.

5.31. The HSENI 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 district council learns of an incident where HSENI 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

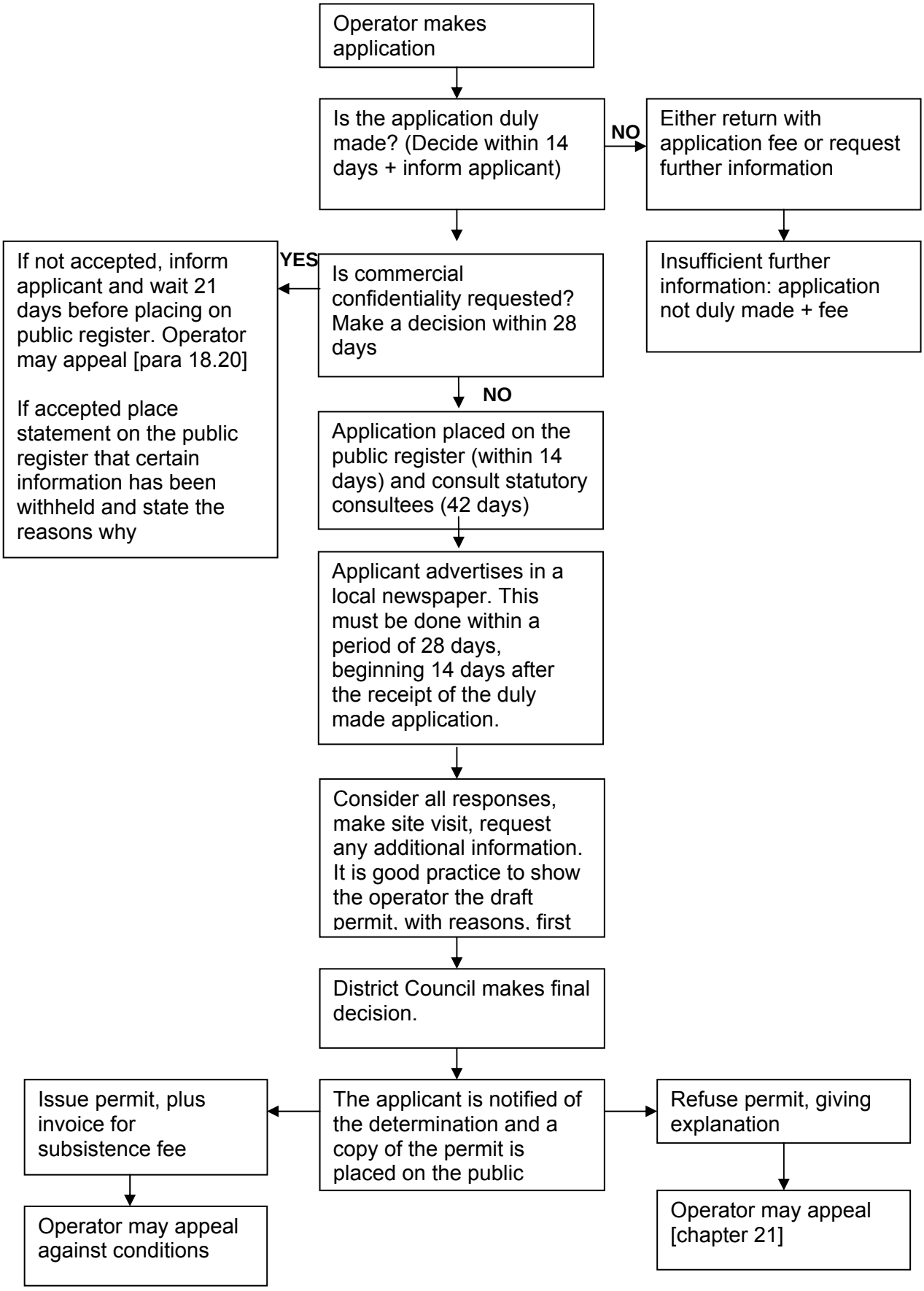
5.32. The applicant has the right to appeal to the Planning Appeals Commission ("PAC") if the district council refuses a permit or if the applicant is dissatisfied with the conditions imposed. **Chapter 21** Appeals gives more information on appeals.

Permit reviews

5.33. Permits should be reviewed periodically. How often a particular permit is reviewed will depend on the particular circumstances of each case. However, in general terms, it is considered that a frequency of once every 8 years ought normally to be sufficient for the purposes of regulation 15(1) of the PPC Regulations.

5.34. In particular permits should 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;
- new provisions of Community or national legislation so dictate.


Operator makes application
Is the application duly made? (Decide within 14 days + inform applicant)
NO
Either return with application fee or request further information
Insufficient further information: application not duly made + fee
YES
Is commercial confidentiality requested? Make a decision within 28 days
If not accepted, inform applicant and wait 21 days before placing on public register. Operator may appeal [para 18.20]
If accepted place statement on the public register that certain information has been withheld and state the reasons why
NO
Application placed on the public register (within 14 days) and consult statutory consultees (42 days)
Applicant advertises in a local newspaper. This must be done within a period of 28 days, beginning 14 days after the receipt of the duly made application.
Consider all responses, make site visit, request any additional information. It is good practice to show the operator the draft permit, with reasons, first
District Council makes final decision.
The applicant is notified of the determination and a copy of the permit is placed on the public
Issue permit, plus invoice for subsistence fee
Operator may appeal against conditions
Refuse permit, giving explanation
Operator may appeal [chapter 21]

6. Confidentiality and access to information

This chapter provides guidance on dealing with commercial confidentiality requests and information access under the Freedom of Information Act and Environmental Information Regulations. It is relevant to the regulation or operation of LAPPC installations.

6.1. An operator may request that certain information remains confidential in relation to a LAPPC permit, i.e. not be placed on the public register. The onus is on the operator to provide a clear justification for each item requested to be kept from the register.

6.2. The Freedom of Information Act (FOIA) and the Environmental Information Regulations (EIR) are relevant to commercial confidentiality decisions and also to issues relating to public registers (see **Chapter 20** Public registers and information).

6.3. Paragraphs 6.4-6.10 give general advice on the operation of the FOIA and the EIR. Paragraphs 6.11-6.13 deal commercial confidentiality under LAPPC and address the inter-relationship with the EIR.

Freedom of Information Act and Environmental Information Regulations - general

6.4. The Freedom of Information Act 2000 ("FOIA") and Environmental Information Regulations 2004 (SI 3391/2004) ("EIR") 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.)

6.5. More about access to information legislation can be found:

- in the Defra guidance entitled EIR 2004 Detailed Guidance
- from the Information Commissioner's Office http://www.informationcommissioner.gov.uki
- and in "Hints for Practitioners Handling FOI/EIR Requests" issued by the Information Commissioner's Office, Defra and others http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/foi_hints_for_practitioners_handing_foi_and_eir_requests_2008_final.pdf

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.

6.6. There are a number of exemptions in FOIA and exceptions in the EIR which protect information from disclosure. The EIR **exceptions are more limited if information to be disclosed relates to emissions** (see paragraphs 6.8-6.10 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.

6.7. 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 district councils 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 council to take careful account of this in deciding upon the public interest. Councils should consider the statutory Codes of Practice issued under both FOIA and EIR, which can be found at:

http://www.foi.gov.uk/reference/imprep/codepafunc.htm

http:///corporate/policy/opengov/eir/cop.htm

6.8. The exceptions to disclosure under the EIR are covered by EIR regulations 12(4) and (5) and can be summarised as follows: (please note that 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.

6.9. 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 originates, 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".

6.10. The Defra guidance referred to in paragraph 6.5 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 district council 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 details relating to possible future emissions should be taken into account in assessing the public interest test.

Confidentiality under LAPPC + relationship with the EIR

6.11. PPC regulation 32 deals with cases where a district council is required to determine whether information must be included on the public register, or excluded from the register because it is confidential.

6.12. Information is commercially confidential, in relation to any individual or other person, if its existence on the register would prejudice the commercial interests of that individual or other person to an unreasonable degree.

6.13. Exclusion of confidential information is also overridden, if there is a direction from the Department under PPC regulation 32(7), requiring the information to be included in the public register.

Procedures for deciding whether to withhold confidential information under LAPPC

6.14. The possible exclusion of confidential information from the register can be triggered where a district council makes a determination that the information may be commercially confidential (regulation 32(10)).

6.15. If an operator wants confidential information be excluded from the register, a request should be made 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 a clear justification for each item 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 be the case that certain confidential information merely needs to be edited out of documents, before they are placed on the register.

6.16. The amount of information requested for exclusion from the register should be kept to the minimum necessary to safeguard the operator's commercial advantage (to the extent that this permitted under the above criteria). It may assist a district council 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’).

6.17. The district council must reach a decision on whether information must be withheld from the register within 28 working days (or such longer period, if agreed with the operator) of application.

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

6.19. If a council fails to notify the operator of its determination within the 28 days of the date of application, the operator may write to the council to confirm that the request has not been determined. Such a notice automatically triggers a deemed decision to place the information on the register and also triggers the operators right of appeal against this decision. The operator may appeal within 21 days of the end of the original 28 day determination period against such deemed refusal.

6.20. Whether a district council 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 21 days. This is the period within which an appeal may be made to the PAC (see Appeals). If no appeal has been made within that time, the information must be put on the register.

6.21. If an appeal is made to the PAC, the information in question must not be placed on the public register until 7 days after an unsuccessful appeal or of an appeal being withdrawn. (PPC regulations 32(6)(b))

6.22. If a determination is made regarding the confidentiality of monitoring information, and the information is to be withheld from the public register, paragraph 1(s) of Schedule 10 to the PPC Regulations requires a statement in the register indicating whether the operator has complied with permit conditions.

6.23. Schedule 10, paragraphs 2 and 3 of the PPC regulations deal with the removal of information from the public register, in cases where applications are withdrawn, or where installations are no longer regulated, because of a change to the PPC Regulations.

Reconsideration of confidentiality after four (or fewer) years

6.24. PPC regulation 32(8) states that an authority may only grant confidentiality for up to four years. A council can specify a shorter period when they make the original decision.

6.25. 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, councils must place all previously commercially confidential information on the public register. As a matter of good practice, councils should inform operators in writing that the end of the time period is approaching, allowing sufficient time for re-application; but operators should not rely on councils providing this service. Councils should have systems in place to remind officers to add information for which the confidentiality protection has lapsed.

7. Consultation and public participation

This chapter deals with consultation for permit applications and substantial change variations. It is relevant to the regulation or operation of LAPPC installations.

Consultation on permit application

7.1. Consultation serves to inform the public (and other interested bodies) so that they can make better informed comments to the district council, allowing the regulator to make better decisions. Consultation can provide the council 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.

7.2. The PPC regulations provide for consultation with the public on all permit applications, allowing people to bring local or wider issues or concerns to the district council's attention. District councils must take into account any representations made by consultees during the allowed time periods.

Procedures

7.3. The district council should place the application on the public register within the timescale set out in chapters 4 and 6 (less any information excluded for national security or commercial confidentiality following the guidance laid out in chapter 6, and that on appeals, in chapter 21. The district council should in particular ensure that the application is on the public register before the applicant advertises it.

7.4. The PPC Regulations also require the operators of Part C installations to advertise an application in a local newspaper. The advertisement must be placed during a 28 day period. (This does not apply to dry cleaners, some petrol stations and small waste oil burners, see Schedule 4 paragraph 8) This normally begins 14 days after the operator submits the application, which gives the district council time to check that it is duly made, and place it on the public register. However, where the operator argues that information should be protected on the grounds of national security or commercial confidentiality (see chapter 6), the period begins 14 days after the claim is determined.

7.5. The advertisement must include those matters set out in paragraph 6 of schedule 4 to the PPC regulations which are in summary:

- the applicant's details;

• the address of the installation;

• the activities to be carried out;

• a statement that the application contains a description of any foreseeable significant effects on the environment of emissions from the installation;

• details of where the public can view the application, and that this is free;

• the procedure and timeframe for making representations.

7.6. Advertisements must state that any person may make representations in writing within 42 days of the advertisement's appearance. For reasons of transparency, district councils should ask anyone who makes representations by any other medium to put their comments in writing as well.

7.7. Responses to public consultation will be placed on the public register unless the consultee requests otherwise.

7.8. In order to verify compliance with the advertising requirements, it is recommended that district councils ask operators to send a copy of the advertisement, and a certificate stating where and when it was published, within 10 days of the advertisement appearing in the press.

7.9. No advertisements are necessary for applications for small waste oil burners (below 0.4 megawatts net rated thermal input), petrol stations, or dry cleaners as per Schedule 4, paragraph 8 of the PPC Regulations.

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

Statutory Consultees

7.11. The district council must send copies of the application to various statutory consultees (see Annex IV). The consultees for Part C installations, depending on the relevance of the application, are:

• The Public Health Agency;

• Department of the Environment;

• Health and Safety Executive for Northern Ireland;

• Petroleum Licensing Authority; and

• Such other persons as the Department may direct.

7.12. The Department, through the Conservation Designations and Protection ("CDP") unit of the NIEA, should provide advice on the

potential impacts of installations on nature conservation sites, designated under European Community legislation, and also on Areas of Special Scientific Interest ("ASSIs").

7.13. Normally, the district council should forward copies of the application to consultees within 14 days of receiving the application. A sample consultation letter is included in Part D of the Manual. The district council should not, however, provide information which is protected on grounds of national security or commercial confidentiality to statutory consultees (with the exception of the Department where necessary). However this protection may not always apply, such as if the applications include information about an ASSI, then the relevant consultees for those interests (specified in Part 3 of Schedule 4 of the PPC regulations) should not be restricted from viewing such information.

7.14. If the question of whether information is protected on these grounds is being determined under the regulations, the district council should wait until the outcome of the determination, before consulting the statutory consultees. If it is determined that the information is not protected, it should be provided to statutory consultees within the 14 day period, beginning 14 days after the determination.

7.15. Once statutory consultees have been notified of an application, they have 42 days to make representations. Statutory consultees should provide the district council with any advice they think would help determine the application, and set any permit conditions where appropriate.

7.16. The district council must take account of statutory consultees' advice. They 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 LAPPC determination;
- specific effects of the proposal, such as the possible effects of releases on health.

Considering consultation comments

7.17. District councils must take into consideration any representations made by consultees during the allowed time periods. However, the district council 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. District councils may wish to respond to points raised within consultations.

7.18. Though it is not a requirement of the regulations, district councils may wish to alert residents of neighbouring properties to the existence of an application, to enable them to comment.

8. Operator competence, including management systems

This chapter provides guidance on operator competence. It is relevant to the regulation and operation of LAPPC installations

Operator competence

8.1. Operator competence is relevant to a district council's decision to grant a permit. It examines the operator's ability to carry out and maintain the relevant activities and fulfil the obligations of an operator. Chapter 2, paragraph 2.15 advises on the meaning of 'operator'.

8.2. District councils must consider operator competence when assessing:

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

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

8.3. Councils must not issue or transfer a permit if they consider that the operator will not operate the installation in accordance with the permit (PPC Regulations, paragraph 10(3)). In making this decision, councils should consider whether the operator cannot, or is unlikely to, operate the facility in accordance with the permit. Councils might doubt whether the operator could, or would 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.

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

Management systems

8.5. 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.

8.6. Management systems are therefore an integral part of BAT; the individual process guidance notes contain further guidance on this.

8.7. 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.

8.8. These issues should all be covered as necessary by the conditions within the permit (as per process 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 of procedures for inspection.

8.9. The Department is seeking to encourage sector-specific or general industry training programmes which incorporate training on LAPPC issues. Where such specialised training is available, Councils should, generally speaking, give credit for attendance on relevant courses. This will also apply in relation to risk rating (Chapter 18) and consequently good practice could help to secure lower fees and charges for operators.

8.10. All the reviewed process guidance notes (from 2005) 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 councils may wish to encourage wider adoption of EMS, it is outside the legal scope of an LAPPC permit to require an EMS for purposes other than 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.

8.11. District councils are advised to give effect to this by consulting operators to agree an appropriate level of environmental management. Where no EMS is being used, the Department suggest that councils make use of the annual discussion on the risk-based methodology (see Annex XVIII Risk Assessment) , which in section 7 includes a score for an appropriate environmental management system being in place. Councils 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 are being taken, or are planned to be taken, which amount to an EMS tailored to the particular size and nature of the installation. Councils can, if they see fit, reinforce this by using a variation notice to require EMS proposals to be submitted within a given timescale. This is relevant for standard fee permits only.

8.12. 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".)

8.13. In addition, the following guidance is included in all revised PG notes, which states 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."

8.14. District councils 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".

8.15. Sources of further information/advice on EMS is available at http://www.iema.net/ems/emas

8.16. An EMAS toolkit for small businesses is available at http://ec.europa.eu/environment/emas/about/summary_en.htm

Petrol stations

8.17. 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.

8.18. The Department 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, and
- operator competence

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

8.19. 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.

8.20. Environmental management systems may be the means of demonstrating and maintaining technical competence. The competence of individuals should form part of those management systems.

8.21. When assessing operator competence, councils 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.

8.22. A "relevant person" in relation to a conviction for a relevant offence would include:

- the operator (see Chapter 2.15); 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.

8.23. Councils 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 to transfer a permit 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 councils ask applicants to make a declaration in their application form. The delaration would state 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 PPC Regulations. A form of words is included in the specimen application forms in Part C of the Manual – see also paragraph 8.26 below.

8.24. Councils must take into account the terms of the Rehabilitation of Offenders (Northern Ireland) Order 1978. The Order applies only where an individual has been convicted of an offence. However, if the convicted is a corporate body, the regulator should consider whether the conviction would have been spent, had it been committed by an individual, and should normally treat the corporate body in the same way.

8.25. The Department recommend that councils publicise notices relating both to significant cases, and also to successful prosecutions. The reasons are that knowledge at national level of the extent and details of district council 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 councils sharing their enforcement experience with one another.

8.26. A council, 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.

Record of compliance with previous regulatory requirements

8.27. 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 PPC 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 PPC regulations.

Financial competence

8.28. The operator of any regulated facility should be financially capable of complying with the requirements of the permit. Councils should normally only consider financial solvency explicitly in cases where the costs of complying with permit conditions (including purchase of equipment and costs of operation and maintenance) are high relative to the profitability of the activity, or if they have any other reason to doubt the financial viability of the operator.

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

a) credit reference check: with the authorisation of the operator, district councils 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

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

8.31. If competences are not sufficiently maintained, district councils may consider reassessing the competence of the operator. Councils can

reassess competence at any time, and, if not satisfied, can revoke the permit.

District council competence

8.32. Although the focus of this chapter is on the requirements for operator competence, it is equally important that officers undertaking LAPPC regulation have the necessary capability to do so (see also paragraph 2.20 of the Manual). Guidance on this can be found in the 2004 edition of the Chartered Institute of Environmental Health's ("CIEH") Industrial Pollution Control Management Guide: http://www.cieh.org/library/Knowledge/Environmental_protection/IPCManGuide.pdf In early 2007, the CIEH accredited a new one-week course specifically to train officers new to LAPPC or needing a refresher. District councils' training costs are one of the considerations in the Department's ongoing review of the level of LAPPC charges.

9. Best Available Techniques (BAT)

This chapter provides guidance on the definition of BAT, assessing BAT and its use in permit conditions. It is relevant to the regulation and operation of LAPPC installations.

General

9.1. The LAPPC regime is concerned with the inclusion of all measures necessary in permits 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 (regulation 11(2)). 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").

9.2. The BAT approach requires that the cost of applying techniques should not be excessive in relation to the environmental protection they provide. It follows that the more environmental damage BAT can prevent, the more the district council can justify requiring the operator to spend on it before the costs are considered excessive (see regulation 3 and schedule 2 to the PPC regulations).

9.3. If emissions would cause serious harm even after applying BAT, the district council 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 this should be considered carefully where any other EQS is threatened. Stricter emission limit values are always required in this case (see **Chapter 11** Environmental Quality Standards and Air Quality Management Areas).

Process guidance notes

9.4. District councils are obliged by PPC regulation 38 to take into account any guidance issued to them by the Department, when determining BAT. BAT for each installation should be assessed by reference to the appropriate technical guidance note. For LAPPC installations, these are process guidance (PG) notes. All notes are published on the Departments website http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_guidance.htm and also the Defra website http:///environment/quality/pollution/ppc/index.htm.

9.5. These guidance notes should be regarded by district councils as their primary reference document for determining BAT in drawing up permits, and councils 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 the council's responsibility (subject to appeal to the Planning Appeals Commission) to decide what is BAT for the individual installation. The council 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

9.6. District councils must take account of other legislation given effect through LAPPC activities, such as coating activities which are subject to the EU Solvent Emissions Directive. These requirements must be met through 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 LAPPC requirements. The relevant 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 district councils.

Meaning of "best available techniques"

9.7. 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".

9.8. 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.

Implied BAT

9.9. Under Regulation 12(10), there is an implied duty on the operator to use BAT to prevent or reduce emissions that are not covered by specific permit conditions. This is intended to cover the most detailed level of plant design and operation where, in particular, the operator will

usually be in the best position to understand what pollution control means for an installation in practice.

Basic principles for determining BAT

9.10. As stated above, determination of what is BAT must ultimately be made on a case-by-case basis, and must take into account that individual circumstances may affect BAT judgements, and must determine what the appropriate permit conditions are. The following paragraphs describe the steps that would be necessary, if starting such an exercise from scratch. However, where 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 EU Waste Framework Directive objectives), in a given situation. Any additional assessments and option identification should be undertaken as seems necessary, taking into account the specific facts of the particular case.. These specific facts should include the precise size and configuration of the installation and activities, the actual production process used, and the location of the installation.

9.11. 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, district councils, in determining applications, should take account of the relevant considerations mentioned in paragraph 9.8 above. They may be required to demonstrate that they have done so in subsequent proceedings, 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.

9.12. 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 having 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

9.13. Once the options have been identified, there should be an assessment of their environmental effects. It should focus particularly on the most significant environmental effects – both direct and indirect. It should also look at the major advantages and disadvantages of techniques used to deal with these effects. Account should be taken, in particular, of the various considerations listed in Schedule 2 to the PPC

Regulations. This should help to rank techniques according to their overall environmental effects.

9.14. 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 the air. 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. The main polluting substances are listed in Schedule 5 to the PPC Regulations. However, as this list is just indicative, consideration should be given to other substances capable of causing pollution in the same way.

9.15. 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. 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

9.16. Once the options have been ranked, the best techniques will be BAT unless economic considerations mean that these best techniques 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.

9.17. An objective approach needs to taken to balancing costs and advantages, when assessing what is BAT. The lack of profitability of a particular business should not affect the determination of BAT. For example, if it has been established that a particular technique constitutes BAT for certain types of installation, then councils should

normally impose the ELVs that correspond to the use of that technique in all permits. There may be some cases where district councils 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, simply because an operator argued for this on the basis of its own financial position. Conversely, councils should not impose stricter standards than BAT merely because an operator can afford to pay more.

BREF notes and LAQM plans

9.18. 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 ("BREF notes"). The BREF notes do not contain any binding requirements, but Member States are required to take account of them in their own determinations of BAT, and they should therefore be reflected in the sector-specific guidance notes. Published BREF notes and information about emerging guidance can be found on the European IPPC Bureau website at http://eippcb.jrc.es/

9.19. Environmental plans, such as local air quality management ("LAQM") plans, may also provide relevant information. If there is concern or doubt about the sensitivity of the local environment, operators may wish to contact the relevant district councils, and possibly public consultees, to find out more about the location and nature of protected areas.

Determining BAT for new and existing installations

9.20. 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 which techniques constitute BAT.

9.21. 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, district councils should be concerned with establishing timescales for upgrading existing installations to new standards, or as near to new standards as possible. In doing this they should take into account the timescales and any other related guidance contained in the relevant sector guidance note. Thus, permit conditions should be written in terms of compliance with specified standards and requirements from a set date onwards. (One instance where local circumstances may make a full upgrade 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 were to

carry out a major modification in any case (for example, a substantial change), the new plant standards might be applicable.)

Planned closure of existing installations

9.22. If an installation is scheduled for closure and its effects are not excessive in respect of other aspects of the PPC Regulations, it might be appropriate for the district council to impose only limited BAT controls. This is because releases from the installation over its remaining life might not justify significant expenditure on reductions. Councils 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 may wish to continue operating beyond the agreed closure date, councils 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

9.23. District councils and operators should be aware of a Court of Appeal judgment in GB (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.

9.24. The judgment (http://www.hmcourts-service.gov.uk/cms/judgments.htm) 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'. ("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.) 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…."

9.25. The judgment makes a general point that tighter limits than in the guidance can represent BATNEEC. 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 councils 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.

10. Drafting permit conditions

This chapter provides guidance on how to write and interpret permit conditions. It is relevant to the regulation and operation of LAPPC installations.

10.1. District councils should ensure that permit conditions under LAPPC are:

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

Enforceable

10.2. 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

10.3. It is important that the operator and industry as a whole know the exact standards required of them 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.

10.4. 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 district councils' own need to be supplied with monitoring, sampling and analytical data to verify compliance with conditions. Councils are encouraged to make

permit documents clear and legible, by the use of titled sections and logically numbered conditions. Where a permit covers a number of activities, the permit should explain this.

Relevant

10.5. All permit conditions must relate only to the installation, including any directly associated activities. LAPPC can only cover conditions relating to emissions, and the environmental effects of emissions, to air.

10.6. Permit conditions must not be included if they are solely to deliver other regulatory functions, such as planning or health and safety.

10.7. The use of surrogate measurements to ensure conditions are met is acceptable, if 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

10.8. All conditions must have a clearly defined purpose. For example, conditions might require an audible or visual alarm, in a case where emissions are required to be continuously monitored. This would be so that the operator is alerted to any emissions higher than the specified level.

10.9. Permit conditions may, for example, require operators to look into specific issues, and report detailed findings and proposals for improvement to the council. Reporting conditions should have specific deadlines, reflecting the shortest reasonable period for the operator to provide the information.

10.10. **Annex XI** contains additional advice, with examples of what are suggested to be'good' and 'bad' conditions.

Time periods in permit conditions

10.11. A case has come to the attention of the Department where a local authority in GB has specified that particular improvement work must be completed "forthwith". There are two reasons why this approach should be avoided:

10.12. 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".

10.13. Second, councils 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 councils when seeking to enforce. If there are uncertainties involved, one option is for councils to specify

interim deadlines, such as requiring a report by x date on the abatement options. Councils may also specify that the report must include a date by which the preferred option will 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.

Monitoring update

10.14. Since publication of the 2004 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 web site http://www.s-t-a.org/ppc/ and this describes each standard referred to in each PG note. Where a standard has been superseded, the replacement standard is identified and described.

11. Environmental Quality Standards and Air Quality Management Areas

This chapter provides guidance on the setting of permit conditions, taking other legislation into account. It is relevant to the regulation and operation of LAPPC in relation to air quality issues only.

Environmental Quality Standards

11.1. The main basis for setting emission limit values under the PPC Regulations will be the application of BAT (see **Chapter 9**). However, where an environmental quality standard ("EQS") as set out in European Community ("EC") legislation requires stricter conditions than those achieveable 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.

11.2. The EQS term 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 VIII**. If an EC EQS changes or new ones are introduced, the district council may need to vary the permit conditions (see **Chapter 15**).

11.3. In setting permit conditions, district councils must first consider whether any EC EQS is being or may be breached. If so, councils 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.

11.4. 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. District councils and the NIEA 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 LAPPC installations compared to other pollution sources (see paragraph 11.9 below). Note the only EC EQS relevant to LAPPC are those relating to air quality.

New installations

11.5. 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.(i.e. a new permit cannot allow an installation to breach an EQS). 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 permit, it will normally be more desirable for district councils and the Chief Inspector to work together to control the other, main sources of pollution, thus ensuring the EC EQS is met.

11.6. 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

11.7. District councils are required to carry out a review and assessment of local air quality under the Environment (Northern Ireland) Order 2002. In areas where air quality standards or objectives are being breached, or are in serious risk of breach, it may be necessary to impose tighter emission limits (this would only apply in cases where it is clear from the detailed review and assessment work under LAQM that one or more LAPPC installations are a significant contributor to the problem). 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 district council'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 council should not unduly penalise the operator by requiring disproportionate emissions reductions. More guidance on this is provided in the LAQM Policy Guidance LAQM.PG NI(09)

11.8. Where an existing installation is the main or only cause of an EC EQS breach, district councils must impose conditions beyond BAT on the installation to comply with the EC EQS. If this is not enough, the council 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 council should review or revoke the permit.

11.9. Where an existing installation is a significant contributor to an EQS breach, but other sources such as traffic also make major contributions, district councils should explore all options for rectifying this type of breach. It may be appropriate for releases from the other sources to be restricted, rather than tighten the emission limits for the installation. To

what extent a council can do this will depend on its powers to control the other sources. Alternatively, the council may take other action to rectify the breach, such as the creation of an action plan for an Air Quality Management Area ("AQMA") under the Environment (Northern Ireland) Order 2002. However, if the council 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.

11.10. Where an existing installation makes only a minor contribution to an EQS breach caused by other, non LAPPC sources, it would not normally be appropriate for the district council to impose stricter conditions beyond BAT. They would only have a minor effect on the problem in any case. It will be much more important for the district council to seek to control the main sources of the breach in other ways.

11.11. 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 capacity for compliance with EQSs is not taken up by the sectors that come under PPC regulation early, thereby causing difficulties for the sectors which come under regulation later.

National requirements

11.12. 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. http:///environment/quality/air/airquality/strategy/index.htm. 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, if 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 permitted, 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.

12. Odour control

This chapter provides guidance on controlling odour from installations. It is relevant to the regulation and operation of LAPPC installations.

12.1. There are controls in the PPC Regulation over offence to any human senses (PPC Regulation 2(2) –definition of "pollution").

12.2. 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, and location), and

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

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

12.3. 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 (i.e. prevailing wind direction) and topography, which may affect dispersion. It may be useful to make use of the technique of dynamic olfactory (see next point for an explanation of this term).

12.4. 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 via http://www.bsonline.bsi-global.com/server/index.jsp

12.5. 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 this view has been reached.

12.6. Further guidance on odour assessments can be found in the IPPC guidance (H4 – Horizontal Guidance Note for Odour).

12.7. Individual process 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 10**.

12.8. It is envisaged that in many cases it will be sufficient for district councils 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.

12.9. Where the potential odour could be particularly offensive, an odour boundary condition might be warranted.

12.10. The predecessor to Sector Guidance 8 - PG6/1(00) - was the subject of legal challenge relating to odour boundary conditions, and those needing to investigate these issues should be aware of the Court of Appeal judgment of May 2002 upholding the guidance (case number C/2001/2094).

The Court of Appeal provided that
"Given that there is no legal objection to a policy of refusing authorisations unless the emission of offensive odours beyond the process boundary will be avoided, we find it difficult to see why there should be a legal objection to the grant of authorisations subject to a condition that the emission of offensive odour beyond the process boundary must be avoided unless the best available techniques not entailing excessive costs had been used to avoid such emissions. One can describe such a condition as a qualified odour boundary condition."

12.11. Where district councils are drafting an odour boundary, they should include the phrase: "it shall not be a breach of the condition in a particular case if the operator can show that he or she took all reasonable steps and employed BAT to prevent the release of offensive odour”

12.12. Accordingly, any emission of offensive odour where the operator can show that he/she employed BAT ought not to give rise to the council issuing proceedings against the operator for the breach of an odour boundary condition.

12.13. District councils will need to investigate incidents where offensive odour escapes across the site boundary to establish whether there has been a breach of any condition. The Department would expect that if the activity is properly managed, with the operator taking all reasonable steps and employing BAT, there should be very few escapes of offensive odour beyond the site boundary.

12.14. Certainly the Department would expect district councils to investigate very carefully whether an operator was taking all reasonable steps and employing BAT if there were more than two such occurrences in any 12-month period.

13. Surrender of LAPPC permits

This chapter sets out the procedures for the surrender of permits for Part C installations and mobile plant.

13.1. PPC Regulation 20 contains the statutory procedures for LAPPC installations.

13.2. Where the operator of an LAPPC installation or mobile plant wishes to surrender their Part C permit either in whole or in part, they must notify the relevant district council. The operator must use the notification form provided by the council, and these forms should ask for the information specified in regulation 20(3), namely:

- operator contact details
- details of the permit to be surrendered and, if partial surrender, which parts are to be surrendered, and a plan or map identifying the part of the site used for the operation of the surrender unit.
- if a partial surrender of a mobile plant permit, a list of the mobile plant to which it applies
- the date on which the surrender is to take effect, which must be no less than 28 working days after the date when the notification is given.

13.3. Councils may wish to use the specimen form in **Part C** of the Manual.

13.4. If the surrender is partial, the district council may decide that there needs to be consequential variation of the permit.

Surrender and revocation – LAPPC

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

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 PPC Regulations.

14. Fees and Charges

This chapter contains guidance on the fees and charges payable for LAPPC applications, the annual subsistence of permits, the transfer of permits and for surrender of LAPPC permits.

Charging and cost accounting

14.1. The Department, in laying down the fees and charges to be levied by district councils, must, as far as practicable, ensure (taking one year with another) that they are sufficient to cover: a) district councils' costs in carrying out their functions, and any costs incurred in preparing LAPPC guidance. This follows the Department's policy and ensures a fair allocation of costs. It also promotes the 'polluter pays' principle.

14.2. The fees and charges are set down in The Pollution Prevention and Control (District Councils) Charging Scheme (Northern Ireland). Relevant stakeholders are consulted in the reviews of the scheme. Each review takes into account evidence on district council 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. There is also the need for cost recovery of the services that are provided to those being regulated.

14.3. The fees and charges collected must be used by each council for the administration and enforcement of the LAPPC regime. Financial shortfall cannot therefore be a justification for a council failing to fully exercise its functions if it has failed to devote its charging income to funding this regulatory service. Councils should keep separate accounts of income and expenditure – a system known as cost accounting.

14.4. The LAPPC charging scheme for Northern Ireland can be found on the DoENI website at: http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution.htm

14.5. **Annex IX** Cost accounting contains guidance on how to undertake cost accounting. In summary, the cost accounting methodology expects district councils to:

- count the number of hours of work devoted to 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 each staff pay band.

- calculate the hourly rate for each of the pay bands involved in the LAPPC function:

  The hourly rate should include the calculation the Council normally uses to add on costs for pension, accommodation, IT, etc. (known as "gross total cost"). So, if an officer's wages are, say, £28,000 per year, it might be that the additional costs of funding the officer's pension, his/her office space, stationery, human resources, etc. may be an additional £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 (e.g. 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 officers' wages before the addition of pension, office space etc.

Risk

14.6. The Department has introduced a risk-based charging scheme since 2011/12 for all standard activities (i.e. not dry cleaning, petrol stations, small waste oil burners, or vehicle refinishers, where simplified permits are used).

14.7. 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 which is available as **Annex XVIII**.

14.8. Key points arising from the risk-based methodology 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) mobile plant is risk assessed;

e) where two activities carried out at an installation come under the same section in Part 1 of Schedule 1 to the PPC 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. This is because 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. However, 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 following April;

h) the risk rating methodology does not at present apply to petrol stations, small waste oil burners, dry cleaners, or any vehicle refinishing which is covered by PG6/34b(06). There is a fixed fee for these activities and they are inspected as low risk activities.

New LAPPC installations – application fees

14.9. 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 district council must receive this before the application can be considered duly-made. If the council judges that an application is not duly-made, it will return the fee to the applicant.

Refunds – application fees

14.10. Where an operator withdraws an application, the district council 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 councils are likely, by then, to have begun public consultation and commenced a detailed assessment of the application.

Operating without a permit

14.11. The charging scheme specifies an additional 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

purpose of the additional fee is to reflect district council costs in tracking down unpermitted installations, and was the subject of consultation as part of the review of the charging scheme during 2009. If it is considered by the council that there were extenuating circumstances which led to the non-payment of the fee, it may, at it's own discretion, choose to waive the fee. The council may additionally consider whether a prosecution is warranted.

Late Payment Fee

14.12. The Department has introduced a £50 fee to cover council's reasonable additional costs incurred in chasing late payers and as such applies to all activities including, for example, reduced fee activities. Should the operator persist with non-payment, councils can enforce the debt in the usual way and can, under regulation 22 of the Pollution Prevention and Control (Northern Ireland) Regulations revoke the permit for non-payment of fees and charges without scope for appeal. The £50 fee will apply when an invoice remains unpaid 8 weeks from the date the invoice was issued. During the 8-week period, councils are expected to take reasonable steps to remind operators of the outstanding fee.

Annual subsistence charges

14.13. Operators must pay an annual subsistence charge to cover district councils' continuing regulatory costs, once a permit has been issued. It will cover such things as checking monitoring data or carrying out inspections – see Annex IX Cost accounting for full list. The level of subsistence charge is contained in the relevant charging scheme, and will become due on 1st April each year. The operator is liable for the full subsistence charge for the year of operation.

14.14. If the installation begins operation after 1st April, the operator is liable for the remaining full months of that financial year.

14.15. 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

14.16. In 2011 the Department introduced a scheme whereby operators can pay a reduced fee for up to 3 years for installations which, due to the downturn in the economy, have mothballed plant or are operating below the threshold for which a permit is required, but do not wish to surrender their permit.

14.17. Installations which either cease to operate, or fall below the threshold above which a permit is required can apply to the district council for their permit to be amended, and will qualify for a 60% reduction of the annual subsistence charge.

14.18. If the reduced operations or mothballing are likely to last for more than 12 months, district councils should be able to dispense with inspecting the premises during this period.

14.19. If the reduced operating or mothballing lasts for more than 36 months, the circumstances on restarting could be significantly different (in terms of standards of Best Available Techniques, the condition of the on-site equipment, etc).

14.20. Therefore the reduced subsistence fees are limited to a timeframe of between 12 and 36 months in these cases, subject to certain qualifications. This only applies to installations that normally are liable for the full charge - ie not the 4 'reduced fee' sectors: small waste oil burners, dry cleaners, petrol stations, or vehicle body shops.

14.21. Once any period of reduced charges has expired (whether at the end of 36 months or earlier), a further period cannot be sought for the same installation within 24 months of that expiry date, irrespective of whether there has been a change of operator or any changes to the way the installation operates.

Non-payment of subsistence charges

14.22. If an operator fails to pay a subsistence charge, the district council may revoke the permit (regulation 22(8)).

Applications to vary a permit

14.23. Fees are only payable for a variation that involves a substantial change (see paragraphs 15.11 to 15.17, and 25.12 for guidance on ‘substantial change’). An application fee is payable to the district council for processing the variation application, to cover their administration, inspection and other costs. Variations are dealt with fully in **Chapter 15**

Transferring permits

14.24. LAPPC installations may change hands through normal business transactions. The PPC 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 16**.

14.25. When an operator wants to transfer all or part of a permit to someone else, the operator and the proposed transferee must make a joint application, signed by both parties. They must submit both 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.

Surrendering permits

14.26. 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 PPC Regulations

14.27. Where two activities which co-exist at an installation come under different sections of Part 1 of Schedule 1 to the PPC Regulations, 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 1 of Schedule 1 to the PPC Regulations, they must be treated as one activity for charging purposes.

Combined activities

14.28. Some industrial activities within an installation may fall into different sections of Part 1 of Schedule 1 to the PPC 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 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.

Reduced fee activities

14.29. There are some industrial activities which fall under the PPC 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 PG6/34).

15. Variations to permits

This chapter provides guidance on applying for and determining variation to permits. It is relevant to the regulation and operation of LAPPC installations.

Changes proposed by the Operator

15.1. Once an operator has a permit, he/she must advise the district council whenever a change in the operation of the installation is proposed. A change in operation is defined in regulation 2(2) as "a change in the nature or functioning or an extension of the installation or mobile plant which may have consequences for the environment". (In the case of an SED installation, a change in the nominal capacity leading to an increase of emissions of VOCs of more than 10%).

15.2. A change in operation therefore could entail either technical alterations, or modifications in operational or management practices.

15.3. Many changes will not have consequences on the environment, and operators will therefore not need to notify their district council. However, there may be cases where it is good practice for an operator to do so, such as where the changes might alter an activity's risk rating. These could include alterations to management or training practices , or technical changes such as the use of less toxic chemicals.

15.4. If an operator has any doubt over whether a particular change is substantial, the relevant district council should be consulted.

15.5. The operator can tell the district council about a planned change in one of two ways:

(a) a notification under regulation 16 or

(b) an application for a variation of the permit under regulation 17. Regulation 17 also allows the district council to initiate a variation in the permit conditions.

Notifications under regulation 16

15.6. Regulation 16 requires operators to notify the relevant district council of any proposed change in operation at least 14 days before making the change. This must be in writing and must contain a full description of the proposed change in operation and its likely consequences. An example form is included in Part C at the end of this guidance. These notifications are appropriate for changes that are not likely to require the variation of permit conditions. If the change could result in a breach

of the existing permit conditions, the operator should apply under regulation 17(2).

15.7. The district council is required by regulation 16 to acknowledge receipt of such a notification by notice. Unless the district council acts to prevent it, the operator may then make the change, as long as it does not breach any permit conditions. As a matter of good practice, the council should tell the operator if it believes that the change can go ahead as notified. In order to prevent unforeseen breaches of permit conditions (and without prejudice to the minimum 14 day notice required by regulation 16(1)) operators are strongly advised to notify the councils in sufficient time for the proposed change to be assessed effectively. This will prevent operators unintentionally breaching permit conditions and laying themselves open to enforcement action.

15.8. If the district council believes that the change may breach the existing permit conditions, or that the nature of the change requires more detailed reconsideration of the permit conditions under regulation 17, it should inform the operator. Councils should aim to advise operators within 14 days of notification, although there might be circumstances where this is not possible. However, if an operator has not had any comment from the district council after 14 days, he/she is still responsible for ensuring that the permit conditions are not breached if it is decided to go ahead with the change.

Applications to vary conditions under regulation 17

15.9. Whilst regulation 16 makes notification of proposed changes mandatory, regulation 17(2) merely enables operators to apply for a variation if they wish. However, if they make a change which warrants a variation and have made no application, as above they lay themselves open to enforcement action for breach of permit. Applications under regulation 17(2) may be needed, for example, if the operator wanted to extend the installation, or modify the operating procedures, or make a change which alters the type or amount of substances released from the installation. The procedures for making and determining these applications are broadly similar to those for permit applications.

15.10. The application must be in writing and, in accordance with Part I of Schedule 7 to the PPC Regulations, must contain:

- the name, address and telephone number of the operator;
- the address of the installation;
- a correspondence address;
- if appropriate, a description of the proposed changes in operation and a statement of any changes concerning the matters noted in paragraphs (f)-(k) of paragraph 1(1) of schedule 4 to the Regulations,
- an indication of the variations the operator would like to made;
- any other information the operator would like the district council to consider.

15.11. If the variation constitutes a substantial change, the operator must also pay a fee, within the timescale specified by the district council, to the district council for processing the variation application, see Chapter 14 Fees and Charges.

15.12. The district council should ensure the application is duly made and may also ask for further information in the normal manner if required. If the operator does not supply the information in time, the district council may give notice that it treats the application as withdrawn.

15.13. The public and the statutory consultees will be given the opportunity to comment on any proposed variation involving a "substantial change" (defined in **Annex I**). The district council will notify the operator if this is the case. The consultation process will then be the same as for a permit application (see Chapter 7 Consultation and public participation).

15.14. The district council may also require consultation in cases that do not involve substantial changes, i.e. for some reason other than the change being substantial. In these cases, the district council will notify the operator of its decision and the consultation will proceed as if there were a substantial change.

15.15. The district council should largely follow the approach set out for a permit application in determining whether to vary the permit conditions, or set conditions, if it allows the change.

15.16. The main difference is that the determination should only relate to those parts of the installation affected by the proposed variation.

15.17. If the district council decides to vary the conditions, it must issue a 'variation notice' under regulation 17(5). A specimen notice is included in Part D of the Manual. This will specify the permit conditions to be varied, any new permit conditions to be added to the permit and the dates they take effect. District councils do not have to accept the operators' proposed changes. They must impose conditions sufficient to comply with the PPC Regulations. The council may decide that some parts of the variation sought by the operator could be reflected in new permit conditions, while others should not be. The council may also need to impose conditions that go beyond the operator's proposals. The earlier guidance on permit applications, the use of BAT and the process guidance notes, the option of refusal, etc., all apply to determining substantial changes variations.

15.18. District councils must include their reasons when determining all variation applications (see paragraph 5.9 of the Manual). Determinations should also specify what, if any , variations are made and the date on which the variation takes effect.

15.19. If the district council decides not to vary any of the permit conditions, it must notify the operator under regulation 17(7). The operator may appeal against this refusal (see Chapter 21 Appeals). If the council does decide to vary the conditions, but the operator is not satisfied or

cannot comply with the conditions, or feels they do not reflect BAT, the operator can appeal against them in the normal manner.

15.20. Paragraph 4(4) of Schedule 7 to the regulations disapplies many of the procedures for regulation 17 variations from small waste oil burners (less than 0.4MW) and dry cleaners. Paragraph 4(3) of schedule 7 does the same in relation to variation notices issued in order to comply with a Department direction.

Timescale for determination of variations

15.21. Part 2 of Schedule 7 to the PPC Regulations sets time periods for determining applications for variations. There are a few exceptions, such as where the Department makes the determination. The district council should normally determine applications that require consultation with the public and statutory consultees within **six months** of receiving them.

15.22. Where consultation is not needed, the period is **three months**. These periods do not include any time operators take to respond to requests for additional information. In both cases the district council and the operator may also agree to a longer period. If the operator does not agree to this and the district council fails to decide within the set time, the operator may give notice that it treats the application as having been refused. The operator may then appeal against this deemed refusal within 21 days of the refusal.

Public register

15.23. Notifications under regulation 16(1), applications for variation, and variations themselves are among the papers required to be placed on the public register, subject to commercial confidentiality and national security considerations.

Variation of permit conditions by the district council

15.24. Under regulation 17(1), the district council may vary permit conditions at any time, even if the operator has not requested this. District councils must vary permit conditions if, taking account of the general principles and specific requirements for conditions in regulations 11 and 12, different conditions are necessary. Councils are most likely to do this in response to the findings of a permit review (see Chapter 17 Permit reviews), or because additional conditions are needed to deal with new matters (for example a review of the sector guidance notes or the outcome of an appeal for a similar installation). However, a variation may be necessary for another reason, such as a new or revised EQS, or the declaration of an AQMA (see Chapter 11).

15.25. Where a council decides to vary permit conditions, it must serve a variation notice and require the operator to pay a fee, if one has been established. The council must consult on a proposed variation notice in

the same manner as when the operator asks for a variation. The notice must specify the variations of the conditions of the permit, the date by which the variation will take effect, and the period in which the operator will be required to pay relevant fees.

15.26. It is a matter of good practice that councils give advance warning where possible that a variation may be needed. As a minimum they should explain to the operator, preferably in writing, and before serving the formal notice, what will occur, what opportunities there will be for him/her to make representations, and their right of appeal.

Variations

15.27. The procedures for substantial variations on the initiative of district councils are contained in Part 2 of Schedule 7 to the PPC Regulations.

15.28. As with operator-instigated variations, changes initiated by councils 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.

15.29. A council proposing to vary a permit which entails a substantial change must first notify the operator:

- that the council is proposing to do so
- of the details of the proposed variations
- that a fee must be paid, and the amount that this will be
- that the operator can make representations, and
- where and by when such representations must be made.

15.30. The council should undertake consultation with statutory consultees exercising the same judgement as set out in Chapter 7 Consultation and public participation of the Manual.

15.31. All representations made within the specified timescale must be considered.

15.32. If, following completion of these stages, the council decides to vary the permit, it must, in accordance with paragraph 17 of Schedule 5 to the PPC Regulations, notify the operator of the decision (including the reasons for the decision). This must include the date on which any variation takes effect, any rights of appeal, and both the method of making an appeal and detiails of the time limit. A specimen notice can be found in **Part D** of the Manual. Councils must also notify the Department if a proposed variation is likely to have a significant negative effect on the environment of another EU Member State.

15.33. All decisions on variations, including reasons, must be placed on the public register, subject to commercial confidentiality, or national security claims.

15.34. It is a matter of good practice that councils give advance warning, where possible, that they propose to activate these procedures. At minimum it is recommended that councils explain to the operator, preferably in writing, before serving the formal notice, what will be happening, what opportunities there will be for the operator to make representations, and the rights of appeal.

15.35. No fee is payable for **non-substantial variations**, which are intended to be covered by the income from the annual subsistence charge. It is councils' responsibility 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 web-site. Non-substantial variations must be placed on the public register.

Other variations

15.36. It is also good practice for operators to notify the council of any administrative changes , such as the name or address of the operator (where the installation has not changed ownership), and councils can then merely amend the permit, without going through formal procedures.

15.37. Regulation 17(10) of the PPC Regulations allows for variations that do not affect permit conditions. This may be, for example, when the operator amends the plan that must accompany the permit.

15.38. The district council may also replace a permit with a consolidated permit, without varying the conditions. This might be for clarity, if a permit has been varied several times. The above procedural guidance applies in these cases.

16. Permit transfers

This chapter provides guidance on applying for and issuing permit transfers.

Applications for transfers

16.1. LAPPC installations may change hands through normal business transactions. PPC regulation 18 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.

16.2. When an operator wants to transfer all or part of a permit to someone else, the operator and the proposed transferee must make a joint application and also pay a fee. The application form must be signed by both. 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** of this guidance. This form can be downloaded from http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_guidance.htm .The application should be accompanied by the current permit document, and must include the appropriate transfer fee.

Determining applications

16.3. District councils must determine whether to allow the transfer. Under Regulation 18(4) of the PPC Regulations, councils 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 8 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.

16.4. The PPC Regulations specify a two-month period for councils to determine transfer applications. A council and the applicants may agree a longer period. If a council has neither effected the transfer, nor rejected the application within the time limit, the applicants may treat this as a deemed refusal. They may then appeal against this deemed refusal under paragraph 28 and schedule 9 to the PPC Regulations within 6 months of the decision or deemed decision.

Whole installation transfers

16.5. If councils 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.

16.6. The transfer will take effect from the date requested by the operator or a date that may be agreed by the council and the applicants.

Partial installation transfers

16.7. 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.

16.8. For partial permit transfers, councils 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).

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

16.10. 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 consequence of shared operation. It may be necessary to include conditions which ensure that the operators collaborate on control of the installation as a whole.

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

Failure to apply for a permit transfer

16.12. The PPC regulation 18 transfer procedures requirements must be followed. If an operator fails to do so a council can take enforcement action against that operator for operating without a permit.

17. Permit reviews

This chapter provides guidance on when and how permit conditions should be reviewed. It is relevant to the regulation and operation of LAPPC installations.

17.1. PPC regulation 15 requires district councils to periodically review permits.

17.2. The purpose of permit reviews is 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. Councils should review permit conditions in the light of new information on environmental effects, available techniques or other relevant issues. The 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.

17.3. If a review shows that new or varied permit conditions are needed, councils should use the variation procedures set out in **Chapter 15.**

Frequency of reviews

17.4. 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.

17.5. In addition, advice can be found in the process guidance notes on a frequency for reviews, where the above circumstances do not apply. In most cases the advice is that a frequency of once every eight years ought normally to be sufficient.

17.6. The Department, in conjunction with Defra, SEPA and WAG will aim to review each of the process guidance notes on a six-yearly cycle.

17.7. For efficiency, councils 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 councils are content that environmental protection will be maintained,

and that any change of timing does not put an added burden on the operator.

Nature of reviews

17.8. 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 the obligations intended to be imposed on the operator. The purpose of this is to ensure that the overall requirements of the PPC Regulations are being met, including the duty on councils to follow developments in BAT.

17.9. 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 councils. 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, taking the relevant guidance into account
- written confirmation of the outcome of the review, detailing proposals for any new or changed permit conditions
- a variation notice under regulation 17 if conditions require variation.

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

This chapter provides guidance on monitoring requirements, reporting and record keeping and inspections of installations. It is relevant to the regulation and operation of LAPPC installations.

18.1. 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 15** Variations to permits). The role of the district council 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.

18.2. The Department proposes, subject to consultation, that charges set by the Department and levied on operators will be categorised from April 2011 in most cases according to the risk rating given to each installation in accordance with the 'polluter pays principle'.

Self-monitoring and reporting by the operator

18.3. 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 or parameters.

18.4. District councils should normally include conditions for LAPPC installations:

- establishing 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 council, without delay, of any incident or accident that is causing or may cause significant pollution.

18.5. 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 ELVs, that they are monitoring using the required techniques, and that they have the necessary management systems in place.

18.6. 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 district council within….. In the case of abnormal monitoring results, the district council shall be informed immediately of the results and of the corrective action taken or intended to be taken to reduce emissions."

18.7. Usage of the data can help to ascertain how well the installation is performing, and also to assess the need for inspection visits. There is, of course, no value in asking businesses to provide data which is not being examined.

EU Inspection Recommendation

18.8. The EU adopted in 2001 a Recommendation on minimum criteria for environmental inspections ("the Recommmendation"). This applies to all activities regulated under the Solvent Emissions Directive. Much of what is contained in the Recommendation is already good practice, which district councils are expected to follow under LAPPC.

18.9. Formally, the Recommendation is not required to be implemented in the UK. However, it is the Department's intention 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 PPC Regulations. So, it is expected that district councils will follow it for the regulation of all LAPPC installations. To that end, the Department routinely asks questions in its annual

statistical survey about the number of programmed inspections and inspections for general compliance monitoring.

18.10. The key elements promoted in the Recommendation, in addition to the inspection actions which are expected to be undertaken under LAPPC, are:

a) **inspection plans**. Before the start of each financial year, district councils should draw up a programme/plan setting out the type and frequency of visits intended for each installation, taking into account the Department's guidance on inspection frequency (see paragraphs 18.12-23). Each subsequent year's plan should draw on the experience of the previous year. This type of inspection planning is already done by some councils, 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 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 (i.e. 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 request as soon as possible, and certainly within two months of the date of inspection.

18.11. 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 HSENI or the Chief Inspector. 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, which can be found at www.cieh.org/library/Knowledge/Environmental_protection/IPCManGuide.pdf This Guide also contains additional advice for practitioners on good inspection practice. The CIEH also accredited in 2007 a new one-week course in pollution prevention and control, aimed at providing a basic grounding to district council officers new to this work area or needing to refresh their knowledge. Information about the course and syllabus can be found at

http://www.cieh.org/media/media3.aspx?id=4124. District council training costs are one of the considerations in the Department's review of the level of LAPPC charges.

Risk-based approach to regulation and inspection frequency

18.12. Inspections are carried out to ascertain compliance with conditions (this can include councils undertaking their own compliance monitoring), to check process changes, and in response to complaints. Inspections can also provide an opportunity for councils 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 (www.envirowise.gov.uk, 0800 585794) or the Carbon Trust (http://www.carbontrust.co.uk/default.ct, 0800 085 2005).

18.13. The benefits of the physical inspection of premises are that it can reveal operational and practical compliance issues which monitoring data alone will not show. Disrict councils will also normally be required 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 an abnormal operation.

18.14. A risk-based inspection methodology has been introduced for LAPPC. This does not include 'reduced-fee' activity sectors (petrol stations, dry cleaners, small waste oil burners, and vehicle refinishing). The methods can be found in Annex XVIII

18.15. 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.

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.

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

  If scheduled visits to processes are undertaken, the scoring should be used as a basis for discussion with operators. The scoring 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 standard 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.

18.16. District councils must use the risk-based method for standard LAPPC activities to determine inspection frequency.

18.17. Under the current methods, each installation is rated as 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 reduced fee activities).

18.18. 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

18.19. The following are the minimum levels of inspection the Department would expect for all standard activities:

HIGH - two "full" inspections a year, during which the district council officer must examine full compliance with all authorisation conditions and look 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. "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: "Reduced Fee activities"

18.19A The reduced fee activities are charged a flat fee and undergo a single annual inspection. Councils should of course undertake more frequent inspections where they are warranted.

Inspection frequency: "Mobile Plant"

The Department expect the council in which the mobile plant operator has his or her principal place of business to ensure that the periodic inspections are carried out.

18.20. In all cases:

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.

18.21. District councils 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.

18.22. The risk methodology can be found at **Annex XVIII.**

Action following inspection

18.23. The 2006 Atkins Performance Review ("APR") which was endorsed by Defra, LGA, CIEH, NSCA (now Environmental Protection UK), found considerable variability in the amount of action to be taken following an inspection. The Department does not expect uniformity. But, on the other hand, if one council is suggesting improvements or issuing notices much less or more frequenty than many others, it might suggest that the approach needs to be reconsidered.

18.24. The following Atkins recommendation was endorsed by the LGA/LGR, NSCA 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 (e.g. less than 25% of inspections resulting in no action)."

18.25. The Atkins Review 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".

18.26. It would be 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 U.K Industrial Pollution Liaison Committee ("IPLC"), therefore, that it would be wise for all councils 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 councils.

18.27. An audit review was undertaken in 2008 by the Chief Environmental Health Officers Group (CEHOG). As well as highlighting the strengths of the service provided by councils, the audit detailed a number of recommendations and a follow up report detailed the improvements made. The Department encourage such reviews as a good method of sharing best practice and reserves the right to instigate a similar review in the future.

The audit covered the following areas :

- Variation Notices
- Enforcement and Suspension Notices
- Inspection Reports and Follow-up Letters
- Premises Working Files
- Facilities and Equipment
- Documented Procedures and List of Legislation & Guidance
- Premises Profile, Enforcement Statistics and Promotion of Service
- Investigation of Complaints about District Council
- Competence and Training / Authorisation
- Review and Quality Assessment of District Council's Management of P.P.C. Enforcement
- Managed Work Programme
- Enforcement Policy and Procedure

MCerts

18.28. MCerts was established by the Environment Agency (In conjunction with the Environment and Heritage Service ("EHS"), now renamed the NIEA) 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 www.mcerts.net .

Continuous emissions monitors ("CEMs")

18.29. 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.

18.30. The Department is concerned to ensure that CEMs that are used are 'fit for purpose' – that they can reliably show whether the particular ELV is being breached or not.

18.31. The Department recognises 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 or tolerances of an non-approved instrument are known or 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 C processes and installations are generally characterised by having a lower pollution potential compared with Part A or B processes/installations, as well as there being a preponderance of SMEs,

it is the view of the Department 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 it is considered to represent BAT, notwithstanding that the existing CEM meets the above criteria.

18.32. However, 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.

18.33. Where, taking account of the uncertainties or 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 either taking steps to further reduce emissions, or of installing an instrument with narrower tolerances (which may well be an MCerts-certified instrument).

18.34. If there are cases where the uncertainties of existing CEMs are not known or have not been quantified, district councils 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

18.35. 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.

18.36. The MCerts scheme has two elements: certification of personnel and accreditation of organisations.

18.37. 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.

18.38. 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.

18.39. Good health and safety practices are essential when carrying out extractive testing, and the Department recognise the important focus of the MCerts scheme on health and safety matters. District councils may wish to consult 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: www.s-t-a.org/. However, as stated in paragraph 5.27 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 HSE or, where appropriate, district council officers enforcing health and safety legislation.

18.40. The Department considers that accreditation of organisations for stack emission monitoring will normally be more extensive than is necessary for the regulation of LAPPC activities or 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.

18.41. The Department 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 the Department considers that district councils and operators should generally favour such contractors. Those operators using in-house monitoring services should be encouraged to secure certification for their personnel. However, it is not envisaged that this should be made a requirement unless there are good reasons in a particular case. (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 district council regulators).

19. Enforcement

This chapter provides guidance on district council enforcement procedures. It is relevant to the regulation and operation of LAPPC installations where indicated.

19.1. Regulation 23 of the PPC Regulations places a duty on district councils to take actions necessary to ensure compliance with permit conditions.

19.2. Enforcement action taken by district councils 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.

19.3. 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.

Enforcement Notices

19.4. Regulation 24 allows a council 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.

19.5. 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, district council 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, a

council 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 a council's normal practices, to state how the operator may complain through the council's complaints procedure. Prosecution would then be an option if there was continued contravention despite the warnings.

19.6. An enforcement notice must:

a) state that the district council is of the opinion that the operator has contravened, is contravening or is likely to contravene any condition of that operator's 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.

19.7. 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 any pollution which may have been caused. A council 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 if the notice is a result of a direction issued by the Department. An appeal will not suspend the terms of the notice (see Chapter 21).

19.8. 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 of £30,000, or to imprisonment;
- on conviction on indictment (ie in the Crown court), to an unlimited fine and/or up to five years imprisonment;
- if a council considers that prosecution would be an ineffectual remedy, to proceedings in the High Court.

19.9. Sections 10.11 to 10.13 advises on time periods in permit conditions.

19.10. Chapter 10 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.

Suspension Notices

19.11. If, in the opinion of an council, the operation of an installation involves an "imminent risk of serious pollution" the council may serve a 'suspension notice' under regulation 26 of the PPC Regulations (power of enforcing authority to prevent or remedy pollution). This power applies whether or not the operator has breached a permit condition. A specimen notice is included in **Part D** of this Manual.

19.12. When an council 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 council must withdraw it. Councils may withdraw a suspension notice at any time. The situation on appeals is the same as for enforcement notices.

19.13. 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 (i.e. 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.

19.14. The penalties for contravention of a suspension notice are the same as for an enforcement notice.

Power of district councils to prevent or remedy pollution

19.15. As an alternative to a suspension notice, if, in the opinion of a district council, the operation of an installation involves an imminent risk of serious pollution, the council may arrange for steps to be taken for the risk to be removed under regulation 26. This may take the form, for example, of removing or making safe chemicals, or ensuring safety works are carried out.

19.16. If an operator commits an offence that causes pollution, the district council may arrange for steps to be taken to remedy pollution at the operator's expense. Where the offence occurs due to

- the operation of an installation without a permit,
- the failure to comply with the conditions of a permit, or

- failure to comply with an enforcement notice or suspension notice,

the council must give the operator 7 days notice of the steps the council intends to take.

19.17. The costs incurred by the district council may be recovered from the operator, except where the operator shows that there was no imminent risk of serious pollution requiring any remedial steps to be taken. Other costs which the district council has incurred cannot be recovered if the operator shows that they have been unnecessary.

Revocation Notices

19.18. Under regulation 21, the district council 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 the Manual. 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. The district council may use revocation whenever appropriate. Revocation may be appropriate where exhaustive use of other enforcement tools has failed to protect the environment properly.

19.19. Revocation notices must specify:

- the reasons for the revocation;
- the extent to which a permit is being revoked;
- any variations being made to existing permit conditions (including, if desired, replacement of the existing permit with a consolidated permit); and
- the date on which the revocation will take effect, which cannot be less than 28 days from the date the notice is served.

19.20. Revocation notices may be withdrawn before they come into effect. In accordance with regulation 28(6) of the PPC Regulations, a revocation notice does not take effect until the 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 Department.

Service of notices

19.21. All notices must be served in writing. They may be served on or given to a person by:

- leaving it at that person's proper address, or
- sending it to that person by post at that address or by electronic means to a proper email address.

19.22. In the case of a body corporate, the notice may be served on the secretary or clerk; in the case of a partnership, they may be served or given to a partner or person having control or management of the partnership business

19.23. The proper address to serve a notice is the last known address except in the case of a body corporate or its secretary or 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. A person to be served with a notice can specify an alternative address.

Offences

19.24. Offences under the PPC Regulations are listed in regulation 33. In summary they are:

(a) operation of an installation without a permit;

(b) failure to comply with, or contravention of, a permit condition;

(c) failure to notify a change to the installation without informing the district council;

(d) failure to comply with the requirements of an enforcement or suspension notice;

(e) failure to supply, without reasonable excuse, information sought under regulation 27;

(f) failure to provide, without reasonable excuse, facilities or assistance to an inspector;

(g) failure to comply, without reasonable excuse, with a notice issued under regulation 29(2);

(h) making false or misleading statements;

(i) making false entries in any record;

(j) forgery and deception in relation to documents;

(k) failure to comply with a regulation 36 court order;

(l) intentionally obstructing an inspector;

(m) falsely pretending to be an inspector.

19.25. Prosecutions can be taken against a body corporate or someone purporting to act in such a capacity.

19.26. PPC regulation 33(8) 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:

- there is a design fault in abatement equipment bought and installed by an operator which results in a substantial emission incident (notwithstanding appropriate servicing and maintenance and complying with monitoring conditions);

- 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 with any instructions from the hire company.

19.27. Where a district council and another enforcement body (e.g. the Chief Inspector or the Health and Safety Executive for Northern Ireland) 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

19.28. In accordance with regulation 33(2) of the PPC Regulations, the maximum penalties for offences (a), (b), (d) and (k) are £30,000 and/or up to six months imprisonment per offence for a summary conviction, and an unlimited fine and/or up to five years imprisonment for conviction on indictment. The maximum penalties for the remaining offences are the statutory maximum fine on summary conviction, and an unlimited fine and/or up to five years imprisonment on indictment.

19.29. Regulation 36 of the PPC Regulations also allows that the court may (instead or as well as the above penalties) order a person convicted of offences (a), (b), and (d) to take specified steps to remedy the cause of the offence.

19.30. In accordance with PPC regulation 33, the maximum penalties for offences are as follows:

Offence	**Summary conviction** **(Magistrates Court)**	**Conviction on Indictment** **(Crown Court)**
(a) operating without a permit (b) contravening a permit condition (d) failure to comply with an enforcement notice or suspension notice (k) failure to comply with a court order to remedy matters under regulation 36	Fine of up to £30,000 and/or up to 6 months imprisonment	Unlimited fine and/or up to 5 years imprisonment
(c) failure to notify the notify the council of a change in operation (g) without reasonable excuse, failing to provide the council with requested information (h) knowingly or recklessly making a false statement (i) Intentionally making a false entry in a record required by a condition (j) with intent to deceive, to have, use or forge a document required by a permit condition.	Fine not exceeding the statutory maximum	Unlimited fine and/or up to 2 years imprisonment
(l) Intentionally obstruct an Inspector in the exercise or performance of powers or duties • under regulation 26 • In any other case	Fine not exceeding the statutory maximum Fine not exceeding level 5 on the standard scale	Unlimited fine and/or up to 2 years imprisonment
(e + f) without reasonable excuse failing to comply with a requirement of an officer exercising powers under regulation 27. (m) falsely pretend to be an inspector	Fine not exceeding level 5 on the standard scale (£5,000 in 2010)	

Proceeds of Crime Act 2002

19.31. Where a defendant is convicted of an offence under the PPC Regulations by a Maigstrates' court, section 218 of the Proceeds of Crime Act 2002 ("POCA") http://www.opsi.gov.uk/acts/acts2002/ukpga_20020029_en_1 enables a district council to ask the 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.

19.32. 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.

The Department is aware of case prosecuted by Rhondda Cynon Taf Council 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 at http://www.cps.gov.uk/legal/p_to_r/proceeds_of_crime_act_guidance/. Two 2008 cases were prosecuted by the Environment Agency under POCA.

Formal cautions

19.33. Where a prosecution is not the most appropriate course of action, district councils should consider issuing a formal caution and the need to increase the inspection frequencies. As with convictions, councils must place details of any formal caution on the public register. Formal cautions must be removed from the register after 5 years.

Admissibility of evidence

19.34. Under PPC regulation 35, 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

19.35. The Crown is bound by the PPC Regulations, as are people who work for it. However, the Crown is not criminally liable even if it contravenes the PPC Regulations. The district council cannot take proceedings to the High Court if the Crown does not comply with an enforcement or suspension notice. However, district councils may apply to the High

Court to have an act of the Crown (or something the Crown has failed to do) declared unlawful if it contravenes the PPC Regulations (see regulation 5). These special provisions do not apply to people who work in the public service of the crown.

District councils giving publicity for enforcement action

19.36. The Department annual statistical survey collects data on notices and cautions. It is suggested that district councils give publicity to successful prosecutions and also to notices served relating to significant cases. Knowledge at national level of the extent and details of district council 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 councils sharing with one another their enforcement experience.

Enforcement where there are no complaints

19.37. The Department is aware that some LA officers in GB 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.

19.38. Councils 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 pollution which may not cause a local nuisance and, indeed, may not have any potential impacts locally.

19.39. NOx and mercury are two examples of pollutants with non-local impacts. NOx 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 NOx 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, eaten by fish, and then consumed by humans.

19.40. Therefore (except where odour is the only pollutant being controlled), the absence of perceptible emissions or of complaints from a process should not 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.

20. Public registers and information

This chapter provides guidance on obtaining information district councils and the content, format and availability of public registers in relation to PPC.

Information

20.1. In accordance with regulation 29 of the PPC Regulations, district councils can serve a notice on anyone, requiring information to be provided to the council, as long as the information requested is for the purpose of discharging their PPC functions. A specimen notice is included in **Part D** of this Manual and is available as a Word document from http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_guidance.htm. The notice can also specify the form in which the information should be supplied, and the deadline for its submission. Such information can include information on emissions which is not in the possession of the person to whom the notice is served, or would not otherwise come into their possession, if the requirement is reasonable.

20.2. Regulation 29 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 6 Confidentiality and access to information, and later in this chapter.

Public registers

20.3. District councils are required by regulation 30 of the PPC Regulations to maintain a public register containing information on all the LAPPC installations and mobile plant for which they are responsible. A register can be held in any form, which includes electronically.

20.4. Councils' registers must also hold information on Part A and B installations and mobile plant regulated by the Chief Inspector of the NIEA. The NIEA will supply the council with the appropriate information about A and B permits.

20.5. The registers must be available at all reasonable times (i.e. 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.

20.6. There is no obligation to publicise the existence of the register in connection with applications, but councils are encouraged to advertise the existence of the public register, e.g. 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. If it is not directly available from the enquiry counter, reception staff at such a location should know its location, 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.

20.7. 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 council to decide.) It is advisable therefore to have photocopying 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 be 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

20.8. Many councils 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. The Department has considered whether councils 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 district council file will have to be released if requested under FOI or EIR (see **Chapter 6** Confidentiality and access to information).

20.9. The Department suggests that there are three possible options which councils can consider:

1. one file is kept which includes all the public register information required to be included by Schedule 10 to the PPC Regulations. The file pages are marked to identify either the information that is, or is not, Schedule 10 information. This is likely to be more workable where files are kept in electronic format. It is also more efficient if the different categories of information can readily be identified or separated if inspection of the register is requested in accordance with PPC regulation 30(5).

2. one file is kept which includes all the Schedule 10 information, and a separate detachable folder containing non-register information is inserted therein. (This would avoid the necessity to hold duplicate papers on two separate files.)

3. subject to each council's own assessment of risk, have one file containing all information other than

a) any public register information that is required by the PPC Regulations to be withheld for reasons of commercial confidentiality or national security, and

b) any non-register information that it is considered by the council likely to be refused a request for disclosure under either FOI or EIR. (The risk relates to whether a council 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.)

20.10. The public register can be in any form that allows proper public access. Councils 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.

20.11. Subject to exclusions of commercially confidential information and information affecting national security, registers must contain the information set out in paragraph 1 of Schedule 10 to the PPC Regulations.. In summary this includes:

- applications for a permit and decisions
- notices asking for information and responses to these notices
- advertisements and 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)
- statutory consultee responses to applications or applications for variations.
- 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 (Northern Ireland) Order 1978 regarding spent conditions, and councils must take care to remove relevant entries at the appropriate time.
- monitoring data obtained by the council from its own monitoring, or sent to the council on accordance with a permit condition or an regulation 29(2) information notice
- if any monitoring information is omitted because it is commercially or industrially confidential, the council 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 council relating to assessment of environmental consequences of the operation of an installation
- any directions given by the Department other than a national security direction under regulation 31(2)

All papers should be placed on the register as soon as possible following receipt by a district council. The only exception is where either commercial confidentiality is applied for or there is an extant appeal against refusal of commercial confidentiality. In these cases the council should wait until the outcome of the determination. Councils should ensure that applications for permits and substantial changes are freely available for public consultation from the date that consultees are first informed. Where a council has more than one office and operates a paper-based system, it should consider holding copies of the full application or the non-technical summary in each office. Alternatively, it could arrange for the appropriate file to be taken to a satellite office for a specific appointment.

National security

20.12. Regulation 31 of the PPC Regulations allows for information to be kept from public registers for reasons of national security. For this to happen, the Department 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. The operator must notify the district council that the

operator has asked for this determination, but must not exclude the information from any submission to the council, such as a permit application. The Secretary of State may direct the council on what information, if any, to exclude from the register.

Commercial confidentiality

20.13. Advice on the interpretation of 'confidentiality' and the main procedures can be found in **Chapter 6** Confidentiality and access to information. If the district council accepts that information is confidential, it should not be placed on the public register unless the Department issues a direction under regulation 32(7) requiring information to go on the register in the public interest. If a council withholds monitoring data, Schedule 10 also requires a statement in the register indicating whether the operator has complied with permit conditions.

20.14. A council may grant commercial confidentiality claims for up to four years. Operators can also re-apply before the period expires to extend the period of confidentiality for a further four years (see paragraph 6.25 of the Manual). Information losing its commercial confidentiality must be put on the public register – paragraph 6.25 also advises on good practice warnings for operators.

Removal of information

20.15. If an operator withdraws an application for a permit or variation before it is determined, the district council should take all references to it off the register between two and three months after the withdrawal. The district council should include no further information about the application in the register. Similarly, if an installation ceases to fall under the PPC Regulations, councils should remove the information from the register between two and three months after the amendment is made.

20.16. Paragraph 4 of Schedule 10 to the PPC Regulations says that no information needs to be kept on the register for more than four years, nor does any information which has been superceded by subsequent infrormation.

Removal of such information may make the register easier to consult. However, this will in part depend on whether the register is held on paper or electronically.

Facilitating the use of the register 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. Key information would include everything applicable to the current operation of an installation, and any relevant background information. It is unlikely to be appropriate to remove any permit or variation while an installation is still operating. Other information, such as previous representations, notices and monitoring data may, however, lose their

relevance over time, and councils may wish to introduce a system of periodic scrutiny to remove older items.

In deciding the approach to adopt in practice, councils are reminded that information that is removed from the register may still need to be available through a council's publication scheme. It may also be needed in response to information requests under the Freedom of Information Act or Environmental Information Regulations.

20.17. Formal cautions must be removed from the register after 5 years have lapsed. Spent convictions must be removed from the register in line with the Rehabilitation of Offenders (Northern Ireland) Order 1978 and the time periods given under that Order. It is important that councils have the systems in place to ensure that this is done.

21. Appeals

This chapter provides guidance on the procedures for appealing against and dealing with an appeal against various district council decisions.

21.1. Operators of installations may appeal to the PAC under regulation 28 against certain decisions made by the district council. Schedule 9 of the Regulations sets out the detailed procedures.

21.2. 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 district councils 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 councils – but also bearing in mind the deadline for making an appeal.

Types of appeal

21.3. Under regulation 28 operators have the right of appeal against the district council in the following circumstances:

(a) refusal or deemed refusal to grant a permit;

(b) refusal of an application to vary a permit;

(c) if the operator disagrees with the conditions imposed by the council as a result of a permit application, or an application for a variation notice;

(d) refusal of an application to transfer a permit, or if the operator disagrees with the conditions imposed by the council, to take account of such a transfer;

(e) refusal of an application to surrender a permit, or if the operator disagrees with the conditions imposed by the council to take account of the surrender;

(f) 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;

(g) the decision that information will not be withheld from the public register for reasons of commercial confidentiality.

21.4. The right to appeal in the circumstances listed in (a)-(f) above do not apply where the decision or notice implements a direction given by the Department.

21.5. Appeals under (c)-(e) above **do not** stop the conditions coming into effect. Appeals against variation, enforcement and suspension notices also **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

21.6. Notice of appeal must be given within the time-scales detailed below.

- appeals listed in (a)-(e) above must be received by the PAC 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 PAC 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 PAC 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 PAC within 21 days after the district council has given its determination.

How to appeal

21.7. A comprehensive guidance booklet has been compiled by the PAC and is available on the PAC website http://www.pacni.gov.uk.

21.8. There are no charges for appealing and there is no statutory requirement to submit an appeal form. However, an online appeal form has been prepared and is available for use at: http://applications.pacni.gov.uk/AppealForms/Environmental/default.asp

21.9. Appellants (the person/operator making the appeal) should provide all of the following:

- 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 district council requests this, or an appointed person or the PAC decides to hold one
- 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.

21.10. Appellants should state whether any of the information enclosed with the appeal has been the subject of a successful application for commercial confidentiality under regulation 31 of the PPC regulations and provide relevant details. Unless such information is provided all documents submitted will be open to inspection.

Where to send your appeal documents

21.11. Appeals should be despatched on the day they are dated, and addressed to:

Planning Appeals Commission
Park House
87-91 Great Victoria Street
Belfast
BT2 7AG

21.12. On receipt of an appeal and during the appeal process, both main parties will be informed by the Inspectorate about the next steps, and will also normally be provided with additional copies of each other's representation.

21.13. Appeals may be withdrawn at any time. To withdraw, the appellant must notify the PAC in writing.

District council responsibilities

21.14. Within 14 days of receipt of the notice of appeal the district council should inform the PAC of the names and addresses of:

- statutory consultees
- any person who has made representations to the council with respect to the subject matter of the appeal; and
- any person who appears to the council to have a particular interest in the subject matter of the appeal.

22. Connections with other legislation

This chapter provides guidance on where the PPC Regulations may overlap with other legislation not described elsewhere.

The PPC regime is implemented through the Pollution Prevention and Control (Northern Ireland) Regulations 2003, enacted through Part 2 of the Environment (Northern Ireland) Order 2002.

Since being issued, amendments have been made to the PPC Regulations through the following legislation:

- The Greenhouse Gas Emissions Trading Scheme Regulations 2003
- The Landfill Regulations (Northern Ireland) 2003
- Waste Incineration Regulations (Northern Ireland) 2003
- Solvent Emissions Regulations (Northern Ireland) 2004
- Pollution Prevention and Control (Amendment) Regulations (Northern Ireland) 2004
- The Hazardous Waste Regulations (Northern Ireland) 2005
- Pollution Prevention and Control (Amendment) and Connected Provisions (No. 2) Regulations (Northern Ireland) 2005
- Pollution Prevention and Control (Amendment) (No. 3) Regulations (Northern Ireland) 2005
- The Waste Management Regulations (Northern Ireland) 2006
- Pollution Prevention and Control (Miscellaneous Amendments) Regulations (Northern Ireland) 2006
- Pollution Prevention and Control (Amendment) Regulations (Northern Ireland) 2007
- The Large Combustion Plants (National Emissions Reduction Plan) Regulations 2007
- The Waste Batteries and Accumulators (Treatment and Disposal) Regulations (Northern Ireland) 2009
- The Pollution Prevention and Control (Amendment) Regulations (Northern Ireland) 2009
- The Solvent Emissions (Amendment) Regulations (Northern Ireland) 2011
- The Waste Regulations (Northern Ireland) 2011

An up to date list of relevant legislation can be found on the Department's Industrial Pollution webpage:
http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/regulatory_framework.htm

Clean Air (NI) Order 1981, Pollution Control and Local Government (Northern Ireland) Order 1978, and the Public Health Act (The Public Health (Ireland) Act 1878.

22.1. Councils have powers under the Clean Air (NI) Order 1981, the Public Health Act (The Public Health (Ireland) Act 1878, as amended by Part 1 of Schedule 5 to the Environment Order 2002) and the Pollution Control and Local Government (Northern Ireland) Order 1978 (as amended) to deal with polluting activities not otherwise regulated.

22.2. These regimes allow councils to tackle various specified types of pollution which are considered either a nuisance, or prejudicial to health. This would include emission of dark smoke from industrial or trade premises and odour or noise nuisance to a neighbourhood arising from activities at any premises.

22.3. Where a nuisance or public health issue is covered by conditions in a permit (Part A, B or C), the matter should be primarily pursued through the enforcement of the permit conditions

22.4. Where councils are aware of issues at a premises permitted by the NIEA they should contact the NIEA in order to address the issue through the enforcement of the permit conditions. This is to avoid “double jeopardy”: the possibility of enforcement under two separate provisions.

22.5. In order to avoid overlap with IPPC, unless the Department has granted consent, a council may not begin proceedings against specified nuisances where proceedings can be brought under IPPC. The service of a notice is not considered to constitute “beginning proceedings” under Public Health legislation. However, consent is required if the council wishes to serve a noise nuisance abatement notice under the PCLGO 1978 on an IPPC (not LAPPC) installation.

Waste and Contaminated Land (NI) Order 1997

22.6. Waste management is covered by the Waste and Contaminated Land Order (NI) . This refers to the deposit, treating, keeping or disposing of controlled waste (Article 4).

22.7. The Waste Management Licensing Regulations (Northern Ireland) which were introduced in 2003 set out the waste regulatory regime. There are some exemptions for Part C activities from the waste management licensing regime in Schedule 2.

22.8. These exemptions apply to some heating and melting of metal activities under Part C of sections 2.1 and 2.2 and also small waste oil burning under Part C of section 1.1, although other provisions such as the Duty of Care will remain valid.

EC Directives and emission limit values (ELVs)

22.9. The Air Quality Standards Regulations (Northern Ireland) 2007, SR 2007/265 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 (such as PM_{10} – sub-10 micron particulate matter), sulphur dioxide, arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air. See Chapter **11** of the Manual for guidance on the role of environmental quality standards within LAPPC.

Solvent Emissions Directive and the Paints Directive

22.10. The Solvent Emissions Directive (1999/13/EC) is intended to reduce emissions of Volatile Organic Compounds ("VOC") from certain industrial sectors. It does this by applying emission limit values, or setting reduction schemes for individual installations.

22.11. The so-called 'paints directive' (2004/42/EC) came into force on January 1st 2007 and specifies the VOC content of different paints, varnishes and refinishing products.

22.12. Guidance on both Directives and their implementation is in **Chapter 25**.

Conservation issues: Conservation (Natural Habitats etc) Regulations (Northern Ireland) 1995; Part (iv) of the Environment (Northern Ireland) Order 2002; Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (NCALO)

22.13. The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 ("the Habitats Regulations") (as amended by the PPC Regulations, Schedule 11) place obligations on regulators of the PPC Regulations as to the way pollution impacts are assessed on statutory conservation sites. This is designated under European Community legislation (European Sites comprising the Natura 2000 network), and also under Areas of Special Scientific Interest (ASSIs). The Conservation Designations and Protection Unit of the NIEA may be consulted on LAPPC applications. The Habitats Regulations require that a district council, in assessing 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.

22.14. The Environment (Northern Ireland) Order 2002 ("the Environment Order") places a general duty on public bodies regarding ASSIs. Under Article 38, all public bodies must, in exercising their functions, take

reasonable steps, 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, Article 40 places duties on district councils in relation to granting a permit capable of damaging an ASSI and the council must in such cases submit formal notice to the NIEA.

22.15. **Annex XIV** contains guidance on applying the requirements of the Habitats Regulations and the Environment Order to applications for PPC permits.

23. District Council good practice

This chapter contains good practice guidance for district councils on different aspects of their PPC regulatory functions, and refers to additional sources.

23.1. Other chapters have suggested a number of examples of what would be good practice for district councils in regulating LAPPC. These include the importance of maintaining proper accounts of income from fees, charges and expenditure on the regulatory functions, and the desirability of talking to operators before serving a formal variation notice. (Indeed, in England and Wales, it is now a legal requirement for councils to place cost accounts on the public register.)

23.2. This chapter contains a more comprehensive list of good practice. Other sources of good practice advice include:

- the CIEH second edition of their LAPC Management Guide (2004) which can be found at: www.cieh.org/library/Knowledge/Environmental_protection/IPCManGuide.pdf This offers practical advice on inspection planning and reporting, resource management, officer competence, inspection frequencies, public register handling, enforcement policies, and service levels.
- good practice examples are given in **Annex VI** Good practice examples of the Manual.
- guidance issued in 2008 by LGR and CIEH about partnership working: http://www.lacors.gov.uk/lacors/upload/19919.pdf

23.3. 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 those that do not cause a nuisance complaint,
- checking for unregulated installations, and
- sources of advice for district councils and businesses from organisations such as Envirowise and the Carbon Trust.

Good practice checklist

23.4. The following table contains a checklist of issues which are a guide to district council performance. Some are statutory and therefore mandatory. The remainder constitute good practice and most of these are taken from the first Atkins performance review in 2004 and the above-mentioned CIEH Management Guide (second edition). The table references have been updated where appropriate.

23.5. It is a matter for each council to decide how precisely to measure for its own purposes its effectiveness and efficiency in delivering its LAPPC service. It is highly desirable, however, that each council assesses and monitors its own performance. This good practice checklist can serve as a framework for such assessments as well as for benchmarking and peer review exercises.

23.6.

Category	**Issue**	**Origin***	**Done Y/N** **Planned delivery date [ ]**	**Performance**
Officer appointment and competence	1. have an officer(s) responsible for ensuring that legally required duties are carried out	A/C	Y/N [ ]	
	2. ensure that the officer(s) responsible receive the training necessary to undertake the function and that this training is regularly undertaken	A/C	Y/N [ ]	
	3. construct a skills profile for each post	C	Y/N [ ]	
	4. ensure that the pollution control team keep abreast of current and future issues (NB continuing professional development)	A/C	Y/N [ ]	
	5. carry out cascade training within the council, and between neighbouring councils	A	Y/N [ ]	
Benchmarking	6. ensure that time is allocated to enable members of the pollution control team to attend pollution groups, undertake peer reviews and participate in benchmarking with other councils	A/C	Y/N [ ]	
Time monitoring, income and expenditure, cost accounting	7. undertake time monitoring and cost accounting for PPC activities in accordance with **Chapter 14** Fees and Charges of the General Guidance Manual	A/C	Y/N [ ]	Income from fees and charges …. Expenditure on function (including on-costs) ….

	8. have procedures to ensure the pollution control team are notified of any non-payment of fees and charges	A	Y/N [ ]	
	9. develop and maintain good communication links between the pollution control team and the departments involved in the recovery of fees and charges	A	Y/N [ ]	
Assistance to operators	10. have an information pack available for new applicants, which include a general information leaflet, an example logbook, and a copy of the enforcement policy	A	Y/N [ ]	
	11. perform a customer survey to assess levels of satisfaction with the service provided, in order to improve the service if necessary	A	Y/N [ ]	
Public register	12. place applications on the public register within 14 days, subject to commercial confidentiality procedures	S		% put on register within timescale
	13. maintain the public register separately to the working files and have individual files in the public register for each authorised process/ permitted installation	A	Y/N [ ]	
	14. ensure the contents of each file conform with the public register checklist, as detailed in **Chapter 20** Public registers and information of the revised Manual	A / S	Y/N [ ]	
	15. include on register information previously withdrawn on commercial confidentiality grounds unless confidentiality re-applied for and approved every 4 years	S	Y/N [ ]	
Files and records	16. ensure the working files demonstrate continuity of regulation and inspection and ensure the working file [hard copy or electronic] contains records of all letters, inspection notes, monitoring data, etc.	A	Y/N [ ]	
	17. use IT for data collection and record keeping which enables easy collation of data, for day to day management of the function and reporting of performance	A	Y/N [ ]	

Procedures	18. use a written procedure for authorising a process/permitting an installation to ensure consistency	A	Y/N [ ]	
	19. adopt an overall procedures for handling these pollution control functions, perhaps in conjunction with neighbouring councils	C	Y/N [ ]	
	20. send a draft copy of the authorisation/permit document to the applicant prior to the process/ installation being granted authorisation/permit to operate	A	Y/N [ ]	
	21. make use of standard letters, forms and notices wherever possible (e.g. as found in the Department's Manual and CIEH Guide)		Y/N [ ]	
	22. use IT to improve efficiency of managing the function and for communicating with operators, the public, and consultees		Y/N [ ]	
	23. have procedures for dealing with complaints and/or emergencies etc	C	Y/N [ ]	
Inspection	24. draft an inspection plan (detailing the type and frequency of visits intended for each process/installation regulated) at the start of the financial year	A	Y/N [ ]	
	25. perform inspections in accordance with **Chapter 18** of the Manual and the advice on inspection conduct in the CIEH Management Guide	A/C	Y/N [ ]	Average no of full, check and extra inspections for different categories: High …. Medium …. Low ….
	26. use checklists as an *aide memoire*, and record the findings of each inspection/visit	A	Y/N [ ]	
	27. use the guidance on inspection frequency in Chapter **18** of the Manual as a tool for engaging with operators	A	Y/N [ ]	
	28. allocate time to review monitoring reports received from operators	A	Y/N [ ]	
	29. advise operators on availability of guidance and advisory visits		Y/N [ ]	

Unregulated processes/installations	30. adopt procedures to ensure regular checks are made for unregulated processes/ installations	A	Y/N [ ]	
Enforcement	31. adopt an enforcement policy relevant to LAPPC	A	Y/N [ ]	
	32. take enforcement action against installations in accordance with policy		Y/N [ ]	
New permit/substantial change applications	33. decide permit applications within statutory timescale: New permit application (6 months) Substantial change (6 months) (3 Months where no consultation)	S		% determined within timescale:- New permit … Substantial change...
Consultation	34. send applications to statutory consultees within 14 days?	S		% of applications sent within timescale
4/6-year reviews	35. LAPPC reviews undertaken in accordance with Chapter **17 Permit reviews** of the revised Manual, normally at least every 6 years	S		% undertaken within timescale:- … 6-year reviews …
Best value/ efficiency/effectiveness	36. undertake a scrutiny/business planning review of the function having regard to best value principles	C	Y/N [ ]	
Outsourcing	37. consider options of using consultants or sharing expertise with neighbouring councils as part of any best value/business planning review and where staffing difficulties arise. (See LGR/CIEH 2008 guidance on partnership working: (http://www.lacors.gov.uk/lacors/upload/19919.pdf)		Y/N [ ]	
BAT	38. take necessary steps to ensure that improvements specified in process and sector guidance notes are made within timescales/deadlines in the notes, subject to site-specific BAT considerations	S	Y/N [ ]	Percentage of deadlines met
Department's web site	39. check the Department's website once a week for updated guidance or other developments, and use the Guidance Manual for procedural and interpretation		Y/N [ ]	

	guidance			
Statistical returns	40. Complete Department's annual statistical returns within timescale allowed		Y/N	
Report to members	41. Make annual formal report to members presenting key performance indicators	C	Y/N [ ]	
Awareness in other DC departments	42. Ensure other appropriate departments (e.g. finance, planning and legal) are aware of the pollution control process and of their responsibilities within the process	C	Y/N [ ]	
Magistrates	43. Ensure local JPs are aware of the pollution control regimes and their involvement in enforcement issues	C	Y/N [ ]	
Decisions	44. Councils should be in a position to justify their decisions to the operator		Y/N [ ]	

* A = Atkins best practice list on pages v-vii & iii-viii of their reports (2004 & 2006 respectively)
S = statutory
C = CIEH Management Guide second edition (September 2004)

Checking for unregulated installations

23.7. The recommended methods and information sources to be used to check for unregulated processes are:

- local knowledge
- tours around the district or borough
- use of students
- use of planning authorities and planning applications
- environmental business forums
- liaison with health and safety or trading standards colleagues
- Yellow Pages or equivalent
- previously revoked authorised processes
- targeted visits to all industrial estates
- adverts placed in local trade press by district councils 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
- NIEA
- other government departments (eg Driver and Vehicle Agency for unregulated small waste oil burners (SWOBs)).
- use of Companies' House database. http://www.companieshouse.gov.uk/toolsToHelp/findCompanyInfo.shtml

23.8. Some district councils 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 district council officers.

23.9. Whilst this list is not definitive, it provides many ideas as to the sources of information available which were useful to the councils who contributed to this good practice advice.

23.10. If councils become aware of an unregulated installation in a particular sector and believe that there may be others in that sector, they can contact the Department who will be able to investigate and issue guidance to all councils if appropriate.

23.11. The charging scheme has been amended to financially penalise companies operating without a permit, with the aim of funding councils' work of checking for unregulated installations.

23.12. District councils can choose to waive the fee for operating without a permit if there are extenuating circumstances.

Advice services from Envirowise, Carbon Trust, Wrap, NISP, Brew, Business Links etc

23.13. The following are various sources of advice for district councils and businesses. Councils will doubtless already recognise the benefits of alerting businesses to these advisory services, at the same time as undertaking their regulatory functions.

Envirowise (now subsumed by Wrap)

Envirowise provides advice to regulated and non-regulated businesses about good environmental practices, and in particular those that can save businesses money. Their website, which includes the number of their free advice line, is: http://www.envirowise.gov.uk/

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 http://www.carbontrust.co.uk/default.ct

Wrap (now incorporating Envirowise)

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 waste more often. Wrap offers support services and publications. Contact 01295 819900 or visit the WRAP web site at: http://www.wrap.org.uk/

NISP

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 www.nisp.org.uk.

Regional Development Agencies ("RDAs")

RDAs can provide advice to businesses on resource efficiency. Invest Northern Ireland contact details can be found at http://www.investni.com

NetRegs

NetRegs, on the Environment Agency website, is targeted at giving guidance to small businesses on compliance with the full range of environmental legislation. http://www.netregs.gov.uk

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 http://www.defra.gov.uk/environment/business/reporting/pdf/ghg-small-business-user-guide.pdf .

Other advice

Other sources of business advice and support can be found on the Business Links website: http://www.nibusinessinfo.co.uk

32.17A 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
- The Centre for Remanufacturing and Reuse http://www.remanufacturing.org.uk/
- Construction Resources and Waste Platform http://crwplatform.org.uk/conwaste/
- Action Sustainability http://www.actionsustainability.com/
- BREW Centre for Local Authorities http://www.lga.gov.uk/lga/core/page.do?pageId=1411355 .

Ecolabels

23.14. Some 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 LAPPC objectives. More information can be found at http://www.direct.gov.uk/en/Environmentandgreenerliving/Greenerhomeandgarden/Greenershopping/DG_064871 .

LGR benchmarking toolbox

23.15. LGR has 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 LGR website: http://www.lacors.gov.uk/lacors/home.aspx

24. Relationship between the Department, district councils and business

This chapter gives guidance on the relationship between the Department and district councils. It also contains text on the relationship between the Department and business.

Relationship with district councils

24.1. The Department's role is to manage the whole regime, liaising as appropriate with other government departments, but not to undertake local delivery.

24.2. The Department is attempting to ensure that the regime is achieving its policy objectives, and is therefore monitoring and evaluating delivery. The overall policy objective is to reduce polluting releases from regulated installations, as part of a wider sustainability and environmental protection agenda. It is for this reason that the Department collects and publishes statistical returns, and introduces new approaches such as risk management and cost accounting.

24.3. This monitoring and evaluation includes the provision of proactive and reactive assistance in a variety of forms, notably technical and procedural guidance and some helpline support. However, in line with the freedoms and flexibilities agenda, the Department's role is neither to micro-manage the regime, nor to take on a close advisory role. While the Department or the Local Authority Unit will endeavour to answer queries that are raised, the prime support mechanism is the publication of guidance and other proactive support. (The Department cannot provide a definitive interpretation of legislation – that ultimately is the responsibility of the courts, and the Department cannot offer advice on individual cases that would prejudice the Planning Appeals Commission's decision should the matter come before the PAC on appeal.)

24.4. The Department has additionally provided training to assist district councils with major new initiatives, such as the new Solvent Emissions Directive, but the Department is not a mainstream training provider, nor does it have a function in day-to-day continuous professional development.

24.5. The Department 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. The Department does not have a monopoly on wisdom on these industrial pollution control regimes. Views of individual councils and pollution

groups (as well as industry and other stakeholders) are therefore valued, and expressly sought in many cases.

24.6. The Department 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 district councils' full actual costs. However, setting the fees and charges is not a simple matter of fixing them to reflect the current costs; it is also incumbent on he Department to ensure that the fees and charges reflect the amounts that an efficient, effective and economical council should be earning. It is for this reason that the Department often stresses Best Value principles.

24.7. The Department's specific activities can be listed as:

- issuing procedural, policy and legal guidance, after consulting stakeholders where appropriate;
- issuing, in conjunction with Defra and Sepa, based on Local Authority Unit drafts and after detailed consultation with stakeholders, process guidance ("PG notes") on BAT; and, with the LAU, providing an 'after sales service' for regulators and business, whereby queries are answered and the Department/LAU benefit from the feedback which may trigger further/amended guidance. The PAC will take this guidance into account 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 district council resources and interests are taken into account when considering regulatory changes;
- setting the Northern Ireland level of cost-recovery fees and charges;
- where resources permit, issuing specimen standard forms and letters for district council use;
- undertaking and publishing an annual statistical survey showing performance in deciding applications, inspecting installations etc;
- Attending the UK Industry Forum with industry representatives twice a year;
- holding an Industrial Pollution Liaison Group meeting with district council and NIEA representatives a minimum of two times per year;
- maintaining regular contact with all other key stakeholders;
- undertaking annual evaluation activities, such as independent district council performance reviews, sounding boards with front-end environmental health staff, and ad hoc surveys;
- with CIEH and LGR, promoting best value efficiency, effectiveness and economy among distrcit councils, including looking at the scope for joint working;
- with CIEH and LGR, promoting peer review by district councils;

- working with CIEH, LGR and Environmental Protection UK to ensure sufficiently high levels of training for staff undertaking this function;
- looking for synergies with the NIEA's parallel regulatory regime;
- handling broad implementation and policy issues;
- assisting where possible on occasional individual cases, where it does not prejudice the PAC's appeal function.

24.8. The Department provides support and guidance to district council regulators of the pollution control function.

The support and guidance comes in three distinct forms:

- statutory guidance e.g. PG notes which councils must follow;
- Policy changes and technical updates provided through Air Quality (AQ) notes.
- support services such as technical support provided by the LAU.

The Department's role

The Department has a formal role of setting the fees and charges and satisfying themselves that the money raised has been spent as intended. The Department 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.

Council's role

Councils have a legal role, as the regulator of the function. Councils discharge the function using the finance raised from fees and charges. Because process operators pay these fees, for a service, councils are duty bound to deliver that service. Councils also determine BAT for all installations, inspections and enforcement, and ensure all key installations are permitted.

Chartered Institute of Environmental Health ("CIEH")

The CIEH, to which most Environmental Health Officers (EHOs) belong, plays an important supporting role including

- 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.

Environmental Industries Commission ("EIC") and industry bodies

Those representing industry provide feedback from regulated businesses, expressing their opinions on the implementation of the function. They also provide advice as to how implementation may be improved.

Relationship with business

24.9. The primary relationship is between the regulators (district councils) and the individual regulated businesses. This is because decisions on pollution standards must ultimately be made individually for each particular site, taking specific circumstances into account.

24.10. The Department is concerned to ensure that the regulation of LAPPC is effective but, whilst being so, it must also minimise 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. 'Consistency' means equivalence of standard where the circumstances are the same.

24.11. Defra and the Devolved Administrations (DAs) meets twice a year with a group of trade associations representing the main categories of sector regulated by LA-IPPC (Part A installations) and LAPPC. This is known as the Industry Forum. Minutes and papers for the Forum are published on the Defra website at http://www.defra.gov.uk/environment/quality/pollution/ppc/localauth/meetings/index.htm.

24.12. Defra and the DAs hold discussions with individual trade bodies where specific issues arise in relation to their sector. This may relate to guidance in PG notes, an on-going practical problem in the sector, interpretation of the legislation, or other matters. Where appropriate, The Department will publish guidance to district councils following such discussions.

24.13. The Department are sometimes asked to intervene in individual cases. For the reasons set out in paragraphs 24.3 and 24.9 above, the Department will not comment on individual cases. However, within these limitations, it may be possible for the Department to facilitate discussions between district councils and businesses, and this service will be provided where practicable. Discussions will only be held if they do not infringe on district councils' decision-making responsibility or compromise the Planning Appeals Commissions appellate role.

How process guidance notes are produced

24.14. The PG notes are the foremost factor in maximising consistency of district council decision making. Each guidance note is drawn up using the following approach:

- The Department along with Defra, WAG and SEPA set the broad policy parameters;
- for each guidance note, the Environment Agency's Local Authority Unit (LAU) http://www.environment-agency.gov.uk/business/topics/permitting/36421.aspx identify key trade bodies (including those representing the environmental industry sector) and find district councils 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 the Department 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 and the DAs will then consider the draft and conduct a final written consultation with TWG members and wider interests (including industry representative bodies such as the Confederation of British Industry and the Federation of Small Businesses, with environmental groups, and with district council 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 and the DAs 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. District councils and relevant sector trade bodies are consulted where appropriate on such amendments and informed when they are published.

Networking for multi-site industries

24.15. The Department are aware that sometimes companies with many sites contact district councils individually over issues which affect all the company's sites, for example the service station sector.

24.16. This note is to suggest that councils advise such companies of the potential benefits of speaking to the Department in these cases about any strategic issues. Alternatively, or additionally, councils may like to tell the Department if such cases arise.

24.17. It is ultimately for each council to deal with each application/permit in their area. However, it will often be beneficial all round if the Department is aware of issues which impact on significant numbers of councils.

24.18. We may be able to offer advice to the company on how to work with all relevant councils. This may be more efficient for them and help to maximise consistency of approach across the country.

24.19. We may be able to alert all councils to what is happening in the sector concerned. This could improve networking among councils; 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.

24.20. The Department therefore suggest that where councils receive approaches from multi-site industries, they ensure that the company is aware of the coordinating role of the Department. If not, they can be pointed to our contact details at http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_contacts.htm

The environmental industry sector

24.21. In addition to the above, the Department maintains contact with the environmental industry sector. In particular, it is of interest to the Department 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. The Department also discusses the adequacy of LA-IPPC and LAPPC regulation and enforcement with the environmental industry sector.

25. Solvent Emissions Directive and the Paints Directive

This chapter provides guidance on the EU Solvent Emissions Directive - 1999/13/EC, referred to as 'SED'. SED was amended by the so-called 'Paints Directive'.

25.1. The Solvent Emissions (Northern Ireland) Regulations 2004, SR 2004/36 (the 2004 Regulations) came into force on 27 February 2004. These give effect to the Solvent emissions Directive 1999/13/EC (as amended).

25.2. Amendments to the 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, and not the requirements. The amendments are also intended to align with the Globally Harmonized System of Classification and Labelling of Chemicals, details of which are available at: http://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html

25.3. The amendments substitute "mixture" for "substance" throughout the text, and amend Article 5.6 in two stages:

- 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 The Solvent Emissions (Amendment) Regulations (Northern Ireland) 2011 SR 2/2011.

A document comparing the two classification criteria is available at: http://ec.europa.eu/enterprise/sectors/chemicals/files/ghs/ghs_comparison_classifications_dec07_en.pdf

25.4. The SED applies to specified activities carried out at an installation ("SED activities"). These are the activities listed in Section 7 of Part 1 of Schedule 1 to the Pollution Prevention and Control (Northern Ireland) Regulations 2003 (as amended). 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 guidance notes found at http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_guidance.htm and listed at **Annex II** Useful websites, contacts, and list of guidance notes to this Manual.

Outline of the Directive requirements

25.5. SED activities listed in Annex I of the SED Directive must be regulated by permit. The permit must deliver certain requirements.

25.6. There are two main compliance options:

- meeting a 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 on the DOENI website at: http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_guidance.htm

25.7. 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).

25.8. A solvent management plan (guidance in SED Annex III) must also be produced.

25.9. All new activities must now comply with the SED requirements before starting operation.

25.10. 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 a reduction scheme;

- the reduction scheme involves calculating an annual reference limit and a target emission. The target emission, multiplied by 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 or preparation concerned so that the risk phrase(s) no longer apply/applies ("substitution"). For discharges of these compounds and of halogenated compounds involving risk phrase R40 or R68, 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 SED Annex IIA limit values is deferred until 1 April 2013. This postponement only applies if the total emissions of the whole installation do not exceed what would have resulted had SED Annex IIA been fully complied with.

25.11. The 2004 Regulations included the following deadlines for various actions, and these deadlines remain in force:

- operators had to apply for a variation notice by 27 June 2004 where they were:
    1. putting a new SED installation into an existing process/installation,
    2. an existing SED installation is undergoing a substantial change, or
    3. an existing SED installation is already using a risk phrase substance or preparation. (This third case [use of risk phrase substances or 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 that the operator wished to use the reduction scheme, the operator 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 27 June 2004 for any new SED installation (i.e. 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 by 31 October 2006.

25.12. All substantial changes must result in the substantially changed part of the activity being treated as a new activity. However, 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 PPC 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."

25.13. 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

25.14. As stated in all the relevant process guidance notes, no derogations can be made except those specifically allowed by the SED. This guidance sets out the Department's understanding of what those specific derogations are.

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 that the contents of each of the "SED boxes" contain mandatory requirements and conditions which

must be included in permits to deliver these requirements EXCEPT if 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 SED Annex IIA (limit values etc) or SED Annex IIB (reduction scheme). SED 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.

If 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 emission limits, or alternative control mechanisms, and, in particular, district councils 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 SED Annex IIA, if 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, district councils 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, R61 or R68 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 the Department, 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 the Department

Decisions on whether or not a derogation should be allowed under Articles 5(3)(a) or (b) of the SED are a matter for individual district councils. However, because such decisions are likely to involve issues such as consistency, as regards practice elsewhere in the UK and the EU, district councils may wish to seek guidance from the Local Authority Unit. The Department 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 also 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.

District councils 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.

Process notes

25.15. The following advises on how to use the process 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 PPC 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 this is the case, the guidance notes in most cases contain 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 or R68 (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 applies to non-SED activities.

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 have been:

  - by 26 June 2004 if the new or substantially changed activity or the installation of the new abatement plant was carried out prior to 27 February 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 added to the substantially changed part of the activity is less than or equal 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 district council 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 and R68 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 guidance notes:

- PG6/03 (11) – Chemical treatment of timber and wood-based products
- PG6/07 (11) – Printing and coating of metal packaging
- PG6/08 (11) – Textile and fabric coating and finishing
- PG6/13 (04) – Coil coating
- PG6/14 (11) – Film coating
- PG6/15 (11) – Coating in drum manufacturing and reconditioning
- PG6/16 (11) – Printing
- PG6/17 (11) – Printing of flexible packaging
- PG6/18 (11) – Paper coating
- PG6/20 (11) – Paint application in vehicle manufacturing
- PG6/23 (11) – Coating of metal and plastic
- PG6/25 (04) – Vegetable oil extraction and fat and oil refining
- PG6/28 (11) – Rubber
- PG6/32 (11) – Adhesive coating including footwear manufacturing
- PG6/33 (11) – Wood coating
- PG6/34 (11) – Respraying of road vehicles
- PG6/40 (11) – Coating and recoating of aircraft and aircraft components

- PG6/41 (11) – Coating and recoating of rail vehicles
- PG6/43 (11) – Formulation and finishing of pharmaceutical products
- PG6/44 (11) – Manufacture of coating materials
- PG6/45 (11) – Surface cleaning
- PG6/47 (11) – Original coating of road vehicles and trailers
- PG6/46 (11) – Dry cleaning

These process guidance notes along with spreadsheets for the calculation of solvent consumption at dry cleaners can be found at the bottom of this webpage:

http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_guidance.htm

Meaning of “shortest possible time”

25.16. 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 or R68, 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 to 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

District council 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. Because of their VOC content, they 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; and
- the economic consequences, in particular, the costs and benefits of the options available,

in relation to both the existing substances or preparations and their potential substitutes, and

c) any guidance published by the European Commission under Article 7 of the SED.

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 the Department 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 or preparations assigned these risk phrases before 29 March 1999: 31 October 2007

- in the case of substances or preparations assigned to 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. 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

District council 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. This applies only if the operators 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 the Department considers that where mass flow thresholds are exceeded, emission limit value compliance should normally be no later than the 31 December 2007 or 6-years dates set out above (but without taking account of the criteria in paragraphs a)-c) above – i.e. 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 the period could well be substantially shorter in the former case, the Department considers it likely that the timescales will mostly be the same. This is 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 of the SED, a condition would be placed in the authorisation or permit requiring annual re-appraisal of the feasibility of substitution

(3) the date when a substance or preparation is considered to have been assigned an SED 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 Risk 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

25.17. The following guidance advises what district councils and vehicle refinish operators should do to comply with EU Directive 2004/42/EC– the ‘paints’ directive. 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”.

25.18. The directive was put into national law by the VOCs in Paints, Varnishes and Vehicle Refinishing Products Regulations 2005, SI 2005/2773 (the 2005 Regulations). The Pollution Prevention and Control (Northern Ireland) Regulations were amended by SR 454/2005. The new requirements did not affect existing installations until 1 January 2007, but affected new installations from 30 October 2005 onwards.

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 PPC Regulations has reverted to 1 tonne per annum ("tpa") consumption (Part C of Section 6.4).

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 Paints Directive. An exception is made for use in an installation regulated by the PPC Regulations, and which meets SED standards.

A revised version of PG6/34 was published in 2011 which supercedes PG6/34a(06) and PG6/34b(06).

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 2008 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 the Public Health (Ireland) Act 1878 remain available for district council 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, the operator must comply with the new requirements, so that it is now be unlawful for anyone to sell non-compliant paint for vehicle refinishing:
Although there is no time period in which an operator is obliged to use up stocks of non-compliant products, the 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 application form contained in PG6/34(11) and be charged the appropriate application fee in the prescribed charging scheme available at
http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution.htm

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 the Department 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.

Risk phrase substances and the SED

25.19. 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 aspects of the CHIP Regulations) and the Department. The following 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). The current enforcing regulations are S.R 2009 No. 238 - the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2009

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	Possible risk of harm to the unborn child
Xn; R48/20	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. (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008J0425:EN:HTML)

Therefore the legal position at present is that the classification of nPB 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 Northern Ireland this is The Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2009.

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 of the SED 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 of the SED, by less harmful substances or preparations **within the shortest possible time**.

The guidance on 'shortest possible time' 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 district council 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 Risk 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.)

The Department'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. The Department considers 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, for example, 1 January 2002. It would be within the terms of the Departmental 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, the Department would expect in most cases that newly assigned substances could be excluded from use.

Enforcing compliance with the Solvent Emissions Directive

The following guidance, deals with the subject of enforcement of SED.

District councils will know that all installations covered by SED, by 31 October 2007, not only

a) have a PPC permit, but
b) be fully compliant with the requirements of the SED Directive.

The only exception to b) is where a council has specifically approved a derogation under the terms of Article 5(3) of the Directive, as explained in paragraph 25.14 above, and notified the Department of the terms of the derogation.

Where operators have failed to comply, councils will need to consider what steps to take.

The Department cannot and do not wish to dictate to district councils about enforcement action to be taken in individual cases. Councils would most probably prefer to be able to exercise their discretion

according to the specific facts of each case. Bearing these things in mind, this guidance is aimed at providing a framework for district council decision-making and does not seek or intend to specify what decisions should be in individual circumstances.

It is advised that councils should bear in mind the following:

- the UK is legally obliged to comply with the SED Directive. So-called 'infraction' proceedings against the UK could be taken for the UK's insufficient enforcement of the Directive. 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 the Department were unsuccessful in defending such an action and continued to be in **breach of the SED Directive,** then the UK could ultimately be fined substantial sums.

- it will not be justifiable 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, councils 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, councils should bear in mind that this figure relates to 12 months' data.

Question and answer briefing

25.20. **Annex XVII Solvent emissions Directive Q+A** contains some questions and answers from a series of seminars held by Defra in 2004, with minor updating.

Coatings with a short lifespan

25.21. 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 lasts 3-9 months.

25.22. The Department 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 PPC Regulations and solvent consumption exceeds the relevant threshold, it requires regulation.

26. Petrol Vapour Recovery Directives

This chapter provides guidance on the EU Petrol Vapour Recovery Directive – 94/63/EC (known as PVRI) and the 2009/126/EC Stage II PVR Directive (PVRII).

PVRI

26.1. The 2003 consolidated version of EU Directive 94/63/EC (the PVRI Directive) on the control of volatile organic compound emissions resulting from the storage of petrol and its distribution from terminals to service stations, is transposed into by Schedule 1 Part 1 of the PPC Regulations.

26.2. The PVRI Directive covers:

a) the unloading of petrol at service stations with a likely 12-monthly throughput of 500m^3 of petrol. (This is so-called “Stage 1” of the petrol vapour recovery.)

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.

PVRII

26.3. On 21 October 2009 the European Commission adopted Directive 2009/126/EC ("on Stage II petrol vapour recovery during refuelling of passenger cars at service stations"). The “PVRII” Directive covers the fitting of equipment to recover petrol vapour when refuelling motor vehicles.

26.4. The salient points in the proposal are set out below. Please note that the PPC Regs and the relevant PG notes, e.g. PG1/14(07), have been extended and enhanced where necessary in accordance with the PVRII directive which will come into force on 1st January 2012:

- PVRII to be fitted to all service stations with a petrol throughput of >3000m^3 by the end of 2018
- new service stations with a throughput of >500m^3 to be equipped with PVRII from January 2012
- existing service stations with a throughput of >500m^3 to be equipped with PVRII if they undergo "major refurbishment"

- substitute >100m^3 for 500m^3 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

- a sign or sticker, or other notification, must be displayed on, or in the vicinity of, the petrol dispenser informing consumers that a PVRII petrol vapour recovery system has been installed (Article 5.3).

26.5. Since January 2010 Stage II petrol vapour recovery has been required for stations which dispense more than 3,500 m^3.

Practical implications

26.6. The standards contained in the Directive are the same as those specified in PG1/14(07) for existing Stage II.

26.7. There is minimal change for new service stations: all new stations with an actual or intended annual throughput of >500m^3 must be equipped with PVRII. The difference is that from 1 January 2012 the threshold is >100m^3 for a service station situated under permanent living quarters or working areas.

26.8. There could be cases where a new 100-500m^3 service station is on the drawing board 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.

26.9. The big changes are for existing service stations:

- all existing service stations with an annual petrol throughput of >3000m^3 must have fitted Stage II by 31 December 2018

- existing service stations with an actual or intended annual petrol throughput of >500m^3 (or >100m^3 under permanent living quarters or working areas) which undergo a major refurbishment, must fit Stage II at the time of this major refurbishment.

26.10. It is envisaged that councils will use their discretion in enforcing the Article 5.3 'sticker' provision, and what constitutes "in the vicinity of a petrol dispenser".

Major refurbishment

26.11. 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.

26.12. 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 Department'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 Department 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 second-hand dispensers which do not have a PVRII capability
  (iv) replacement of part of the petroleum pipe work 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 PVRII 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."

(g) It is expected that district councils 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.

26.13. LAPPC petrol vapour recovery activities are defined in Section 1.2 of Part 1 of Schedule 1 to the PPC Regulations.

26.14. Guidance on the procedures and standards needed to comply with the directive and with BAT can be found in two process guidance notes:

- Guidance for Unloading of Petrol into Storage at Petrol Stations, PG1/14(07)
- Guidance on Storage, Unloading and Loading Petrol at Terminals, PG1/13(04)

27. Environmental Liability Regulations

This chapter explains the role of district councils under the Environmental Liability Regulations in relation to LAPPC installations in Northern Ireland

Introduction

27.1. The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 ("ELR") introduce certain responsibilities for those operating Part C installations.

27.2. The ELR is available at: http://www.opsi.gov.uk/sr/sr2009/pdf/nisr_20090252_en.pdf

27.3. The Department have produced guidance which is available at http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/environmental_liability.htm

27.4. **The district councils do not have an enforcing role in relation to the ELR**. The enforcing authority for the purposes of the ELR is the Department. This is different to the situation in England and Wales where local authorities do have some enforcing responsibilities.

Background

27.5. The ELR requires 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 ELR and referred to as 'environmental damage'. The ELR apply to both imminent threats of environmental damage and actual environmental damage. The ELR does not cover any other types of damage.

27.6. The ELR seeks to ensure action is taken to put damage right rather than to penalise those responsible. The ELR 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 ELR, 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. The measures should also provide for the loss of environmental resources and environmental services pending recovery.

27.7. The onus is on the operator - which includes those operating 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 NIEA.

27.8. Therefore, the main expectation in relation to LAPPC is that district councils:

- are aware of the potential for environmental damage where anything goes wrong with an installation;
- are aware of the ELRs' main provisions and how they fit in with other relevant legislation.

District councils may wish to remind operators of the ELR requirements to notify the NIEA of any imminent threat of environmental damage or actual environmental damage when inspecting installations for PPC purposes.

General Guidance Manual on Policy and Procedures for Part C Installations

Part B of Manual

Annexes

Contents

Annex I. Glossary of Terms

The following list aims to provide brief explanations of many of the words, phrases and acronyms to which particular meanings are attached in IPPC.

The information given is general and abbreviated in nature. In considering the precise meaning of any of the entries, therefore, the definitive source should be consulted. Some of the more important expressions are also discussed in more depth in **Annex III**.

Activity	An activity listed in Part 1 of Schedule 1 to the PPC Regulations which will form part of a PPC installation
Air	Includes air within buildings and air within any other natural or man-made structures above and below ground (Article 8 of the Environment Order (Northern Ireland) 2002)
Appeal	The opportunity provided for the operator to dispute certain actions or decisions by the district council, by appealing to the Planning Appeals Commission – see Chapter 21
Application	A submission made by an operator to a district council to seek the grant of a permit (see Chapters 4 and 5), surrender of a permit (see Chapter 13), variation of the conditions of a permit (see Chapter 15) or transfer of a permit (see Chapter 16)
Available Techniques	In connection with BAT, those techniques developed on a scale which allow implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the cost and advantages, whether or not the techniques are used or produced inside the United Kingdom, as long as they are reasonably accessible to the Operator (see Chapter 9 and Annex VII)
BAT	The main basis for determining standards under the PPC Regulations, and defined as 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 ELVs designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole – see Chapter 9 plus separate definitions for Best, Available and Techniques (Chapter 9 and Annex VII)
Best	In relation to 'techniques' in BAT, the most effective in achieving a high general level of protection of the environment as a whole (Chapter 9 and Annex VII)
BREF Notes	BAT Reference Notes – documents – typically of some 500 pages or more - published by the European Commission which follow from an exchange of information on BAT between the

	Member States – see Chapter 9 of the Manual and http://eippcb.jrc.es/
Capacity	See Annex III
Change in Operation	In relation to an installation or mobile plant, a change in its nature or functioning or an extension which may have consequences for the environment – see Chapter 15 of the Manual
COMAH	Control of Major Accident Hazards – the subject of an EC Directive and domestic Regulations applicable to industrial sites, some of which will also fall within the PPC regulations
Commercial confidentiality	An operator may request certain information in relation to a LAPPC permit to remain confidential for commercial reasons, 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. The exceptions are very limited where information relates to emissions – see Chapter 6
Contaminated land	Land determined to be contaminated under The Waste and Contaminated Land (Northern Ireland) Order 1997
Determination	The process by which a district council decides whether or not to grant the request sought by an operator in an application, for example by issuing a permit with appropriate conditions or by refusing the permit – see Chapter 5
Duly-made	A condition that an application must satisfy by being sufficiently complete in a legal sense before determination is possible – see Chapter 5
EC/EU	European Community/ European Union. EU law can be accessed via http://europa.eu.int/eur-lex/lex/en/index.htm
EIA	Environmental Impact Assessment
ELV	Emission Limit Value – the mass, concentration or level of an emission which may not be exceeded over a given period (or under specified conditions).
Emission	For Part C installations, the direct release of substances or heat from individual or diffuse sources into the air
Enforcement notice	A notice served by an enforcing authority to enforce compliance with the permit conditions or require remediation of any harm following a breach of any condition – see Chapter 10
Environment Order	The Environment (Northern Ireland) Order 2002 under which the PPC regulations are made.
Northern	A government agency protecting and conserving the natural and

Ireland Environment Agency	built environment. The NIEA is the regulator for Part A and B Installations in Northern Ireland - website http://www.ni-environment.gov.uk/
EQS	Environmental Quality Standard – see Chapter 11
Fees and charges	Amounts required to be paid by operators of Part C installations to district councils in accordance with any charging scheme made by the Department under regulation 22 of the PPC Regulations
Holding company	Section 1159(1) of the Companies Act 2006 is as follows: (1) A company is a "subsidiary" of another company, its "holding company", if that other company- (a) holds a majority of the voting rights in it, or (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or (c) is a member of it and controls along, pursuant to an agreement with other members, a majority of the voting rights in it, or is a subsidiary of a company that is itself a subsidiary of that other company.
Installation	A technical unit where one or more activities listed in Part 1 of Schedule 1 to the PPC Regulations are carried out and any other location on the same site where any other directly-associated activities are carried out and any activities that are technically linked. The terms 'regulated facility' and 'installation' are, in effect, interchangeable for Part C activities. (See also Chapter 2.)
IPPC	Integrated Pollution Prevention and Control – a general term used to describe the Regulatory regime applied to Part A installations under the PPC Regulations which give effect to the IPPC Directive
IPPC Directive	Directive 2008/1/EC concerning Integrated Pollution Prevention and Control
LAPPC	Local air pollution prevention and control - a general term for the Part C regime which regulates only emissions to air from installations carrying on activities listed in Part 1 of Schedule 1 to the PPC Regulations
Local authority (LA)	In relation to Part C activities and installations, 'local authority' means district, borough and unitary councils, Contacts for district councils at http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_contacts.htm

Local Authority Unit (LAU)	This is a small unit located in the Environment Agency. The LAU provides technical support and assistance to district councils on issues specifically related to the LAPPC regime. They can be contacted for advice on **new and complex technical matters** and for advice on the **interpretation of PG notes**. District councils should, however, contact the Department in the first instance. The LAU is also dedicated to providing technical advice to the Department, Defra and WAG in support of IPPC and LAPPC, and prepares the sector and process guidance notes in line with the DOENI/Defra/WAG policy (see in particular paragraph 24.14 of the Manual). Contact: lau@environment-agency.gov.uk . Webpage http://www.environment-agency.gov.uk/business/topics/permitting/36421.aspx
Operator	The person who has control over the operation of the installation/regulated facility (PPC regulation 2)
Part C activity	An activity listed under Part C of Part 1 of Schedule 1 to the PPC Regulations and subject to air pollution regulation by the relevant district council
Part C installation	An installation comprising one or more Part C activities which is not a Part A or Part B installation. (Annex III of the Manual has a more detailed interpretation.)
Permit	A permit granted under PPC regulation 10 by a district council allowing the operation of an installation subject to certain conditions
Pollution	Any emission as a result of human activity which may be harmful to human health or the quality of the environment, cause offence to any human senses, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment (PPC Regulation 2)
Production capacity	See Annex III of the Manual
Public registers	Registers maintained by regulators containing information on PPC installations – see Chapter 20 of the Manual and Part 5 (regulations 30-32) of the PPC Regulations
The PPC Regulations	The Pollution Prevention and Control Regulations (Northern Ireland) 2003 (SR 2003/46), as amended several times.
Regulator	The body responsible for applying the permitting regime. The Northern Ireland Environment Agency is the regulator for a Part A and B installations, while the relevant district council is the regulator for Part C installation, unless a direction is issued to

	change the regulator in a particular case or set of cases
Revocation notice	A notice served by the regulator under PPC regulation 21 revoking all or part of a permit – see Chapter 19
The Secretary of State	The Secretary of State for Northern Ireland
SED	The Solvent Emissions Directive http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999L0013:EN:HTML
Substantial change	See Chapter 15 and Annex III of the Manual
Suspension notice	A notice served by a the enforcing authority which results in a permit ceasing to authorise the operation of the entire installation or specified activities, until remedial action has been taken against a risk of serious pollution – see Chapter 19
Techniques	In connection with BAT, includes both the technology used and the way in which the Installation is designed, built, maintained, operated and decommissioned (Chapter 9 and Annex VII)
Variation notice	A notice served by an enforcing authority under PPC regulation 17 varying the conditions or other provisions of a permit – see Chapter 15.
WAG	The Welsh Assembly Government

Annex II. Useful websites, contacts, and list of guidance notes

Useful websites

Department for Environment, Food and Rural Affairs homepage	http://www.defra.gov.uk
Environment Agency homepage	http://www.environment-agency.gov.uk/
UK statutory instruments on the Office of Public Sector Information website	http://www.opsi.gov.uk/stat.htm
EU Bref note bureau	http://eippcb.jrc.es/
EU legislation	http://europa.eu.int/eur-lex/lex/en/index.htm
Industrial Pollution Control by District councils (DoE website)	http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution.htm
LAPPC charging scheme (DoE website)	http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution.htm
UK Air Quality Strategy	http:///environment/quality/air/airquality/strategy/index.htm
Air Quality Management Areas	http://laburnum.aeat.co.uk/archive/laqm/laqm.php
Envirowise	http://www.envirowise.gov.uk/

Useful contacts

The Communities Of Practice Industrial Pollution Forum	http://www.communities.idea.gov.uk/comm/landing-home.do?id=9573276
Northern Ireland Environment Agency	http://www.ni-environment.gov.uk/

The Department of the Environment Northern Ireland • for enquiries about the Regulations and policy/procedural matters	for up-to-date contacts see: http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_contacts.htm as at March 2010 contact: Tel: (028) 90254876 Bruce.harper@doeni.gov.uk
Environment Agency Local Authority Unit (LAU) • for technical enquiries only	http://www.environment-agency.gov.uk/business/topics/permitting/36421.aspx lau@environment-agency.gov.uk
The Chartered Institute of Environmental Health Northern Ireland	http://www.cieh-nireland.org/

Guidance

All the following guidance notes, are available on the DOENI Industrial Pollution website at http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_guidance.htm.

A program reviewing the PG series of notes on a UK wide basis runs from 2009-11. The progress of this review can be viewed at http://www.defra.gov.uk/environment/quality/pollution/ppc/localauth/pubs/guidance/notes/pgnotes/6year-review.htm.

The revised notes will be hosted on the Defra website at http://www.defra.gov.uk/environment/quality/pollution/ppc/localauth/pubs/guidance/notes/pgnotes/index.htm and also on the DOENI Industrial Pollution website.

LAPPC process guidance (NIPG) notes

The current PG notes relevant to Northern Ireland are listed below.

Animal and Vegetable Processing Sectors
NIPG6/1 The Processing of Animal Remains and By-Products
NIPG6/12 Production of Natural Sausage Casings, Tripe, Chitterlings and other Boiled Green Offal Products
NIPG6/24a Pet Food Manufacturing involving the processing of Raw Animal Material
NIPG6/24b Pet Food Manufacturing not involving the processing of raw materials
NIPG6/26 Animal Feed Compounding
NIPG6/30 Mushroom Substrate Manufacturing Processes
NIPG6/36 Tobacco Processes

Combustion and Incineration
NIPG1/1 Waste Oil Burners: Less than 0.4MW net rated thermal input
NIPG1/12 Combustion of Fuel Manufactured from Waste: 0.4-3MW
NIPG5/2 Crematoria
NIPG5/3 Animal Carcase Incineration Processes under 1 tonne an hour

Minerals Sector
NIPG3/1 Blending, Packing, Loading and use of Bulk Cement
NIPG3/2 Manufacture of Heavy Clay Goods and Refractory Goods
NIPG3/5 Coal, Coke and Coal Product Processes
NIPG3/16 Crushing and Screening
NIPG6/2 Manufacture of Timber and Wood-based Products

Metals Sector
NIPG2/9 Metal Decontamination Processes

Organic Chemicals Sector
NIPG1/13 Storage, Loading and Unloading of Petrol at Terminals
NIPG1/14 Unloading of Petrol into Storage at Service Stations
NIPG6/31 Powder Coating (including Sheradizing)

Solvents Sector
PG6/03 (11) – Chemical treatment of timber and wood-based products
PG6/07 (11) – Printing and coating of metal packaging
PG6/08 (11) – Textile and fabric coating and finishing
PG6/13 (04) – Coil coating
PG6/14 (11) – Film coating
PG6/15 (11) – Coating in drum manufacturing and reconditioning
PG6/16 (11) – Printing
PG6/17 (11) – Printing of flexible packaging
PG6/18 (11) – Paper coating
PG6/20 (11) – Paint application in vehicle manufacturing
PG6/23 (11) – Coating of metal and plastic
PG6/25 (04) – Vegetable oil extraction and fat and oil refining
PG6/28 (11) – Rubber
PG6/32 (11) – Adhesive coating including footwear manufacturing
PG6/33 (11) – Wood coating
PG6/34 (11) – Respraying of road vehicles
PG6/40 (11) – Coating and recoating of aircraft and aircraft components
PG6/41 (11) – Coating and recoating of rail vehicles
PG6/43 (11) – Formulation and finishing of pharmaceutical products
PG6/44 (11) – Manufacture of coating materials
PG6/45 (11) – Surface cleaning
PG6/46 (11) – Dry cleaning
PG6/47 (11) – Original coating of road vehicles and trailers

Additional guidance notes (AQ notes)

AQ notes are generally brief items of additional guidance published as the need arises to address procedural, policy, legal or technical issues that arise and sometimes to amend or expand existing guidance.

All AQ notes have been incorporated into the GGM as of July 2011.

Annex III. Definitions

The following information summarises and interprets some of the key terms that are relevant to LAPPC. Where appropriate, reference should also be made to the PPC Regulations and other legislation for precise legal definitions. A more general glossary is provided in Annex I.

Definitions relating to installations, mobile plants and operators

"Operator"

PPC regulation 2 defines an "operator" as

> "(a) the person who has control over the operation of the installation or mobile plant;
>
> (b) if an installation or mobile plant has not been put into operation, the person who will have control over it when it is put into operation; or
>
> (c) if an installation or mobile plant has ceased to be in operation, the person who holds the permit which authorised the operation of the facility".

An installation or mobile plant need not be in operation for there to be an operator. Legal obligations may be imposed on an operator during the pre- and post-operational phases as well.

The operator must demonstrably have the authority and ability to ensure the permit is complied with.

Special care is needed where two or more operators run different installations on a site. Any necessary inter-reliance between the different operators and their parts of the site should be demonstrated. The operators, between them, must be able to operate their installations in a satisfactory way that meets the requirements of the PPC Regulations.

"Installation"

"installation" means –

i) a stationary technical unit where one or more activities listed in Part 1 of Schedule 1 to the PPC Regulations are carried out; and

ii) any other location on the same site where any other directly-associated activities are carried out which have a technical connection with the activities carried out in the stationary technical unit and which could have an effect on pollution,

and references to an installation include references to part of an installation.

The following criteria and examples are provided to assist district councils and operators when applying this definition in individual cases.

Limb (i) of the definition

Two criteria are proposed for the purpose of determining whether plant or machinery satisfy the first limb of this definition –

(1A) the plant or machinery must be a "technical unit" where one or more activities listed in Part 1 of Schedule 1 to the PPC Regulations ("listed activities") are carried out;

(1B) the technical unit must be stationary.

For the purpose of criterion 1A, "technical unit" can be taken to mean something which is functionally self-contained in the sense that the unit – which may consist of one component or a number of components functioning together – can carry out the Schedule 1 activity or activities on its own.

Where, however, there are two or more such units on the same site those units should be regarded as a single technical unit for these purposes if –

a) they carry out successive steps in one integrated industrial activity;

b) one of the listed activities is a directly-associated activity of the other; or

c) both units are served by the same directly-associated activity.

Limb (ii) of the definition

An installation consists of the stationary technical unit identified under the first limb of the definition plus any location on the same site where activities that satisfy the second limb are carried out. Three criteria are proposed for the purpose of determining whether an activity satisfies the second limb-

(2A) the activity must be directly-associated with the stationary technical unit;

(2B) the activity must have a technical connection with the listed activities carried out in or by the stationary technical unit; and

(2C) the activity must be capable of having an effect on pollution.

Criterion 2A: requires that the activity is carried out on the same site as the stationary technical unit and that the activity serves the stationary technical unit (ie there is an asymmetrical relationship whereby the activity serves the stationary technical unit but not vice versa). If an activity, such as operating a landfill, serves a stationary technical unit carrying out a listed activity and some other industrial unit or units on a different site or carrying out non-listed activities, then the activity will only be directly-associated with the stationary technical unit if that unit is the principal user of the activity.

Criterion 2B: gives rise to four types of directly-associated activities which may be said to have a technical connection with a stationary technical unit:

a) input activities concerned with the storage and treatment of inputs into the stationary technical unit;

b) intermediate activities concerned with the storage and treatment of intermediate products during the carrying on of the listed activities – this might apply particularly where the stationary technical unit consists

of a number of sub-units with the product of one sub-unit being stored or treated prior to being passed on to the next sub-unit in the production chain;

c) output activities concerned with the treatment of waste (or other emissions, like manure) from the stationary technical unit; or

d) output activities concerned with the finishing, packaging and storage of the product from the stationary technical unit.

These activities have a technical connection in the sense that they are integral parts of the overall listed industrial activity. Often there will also be a physical connection, such as a conveyor belt or pipeline, but this does not have to be the case.

(The need for input, intermediate and output activities to be an integral part of a listed activity before it is caught by limb (ii) is presented as part of criterion 2B. Note, however, that the requirement for associated activities to be "directly" associated in criterion 2A also emphasises the need for associated activities to be an integral part of a listed activity before they are treated as part of an installation.)

- **Criterion 2C**: covers both activities which have an effect on emissions and pollution from the listed activities with which they are associated and activities which have such an effect in their own right.

Examples

The following examples illustrate the application of these criteria.

- *Example 1: Three combustion plants discharging through a common stack*

  Limb (i): This constitutes one unit. None of the individual plants can be regarded as a unit because, viewed individually, none of them is functionally self contained – the stack is an essential component of the combustion plant (criterion (1A)). So the three combustion plants form three components of one stationary technical unit.

- *Example 2: Three combustion plants discharging through a common stack plus one combustion plant discharging through its own stack*

  Limb (i): This constitutes two stationary technical units even if all of the plants are on the same site and operated by the same operator.

  The two statutory technical units could, however, be regarded as a single installation if they were served by the same directly-associated activity, eg 'fuel handling'.

"Part A Activity", "Part B Activity", "Part C Activity"

"Part A Activity" means an activity listed under the heading "Part A" of Part 1 of Schedule 1 to the PPC Regulations.

“Part B Activity” means an activity listed under the heading “Part B” of Part 1 of Schedule 1 to the PPC Regulations.

“Part C Activity” means an activity listed under the heading “Part C” of Part 1 of Schedule 1 to the PPC Regulations.

In some cases, the question of whether an activity is a “Part A Activity”, a “Part B Activity” or a “Part C Activity” will depend on capacity threshold.

Capacity

The capacity of an installation is to be determined by the regulator on a case by case basis. The starting point is the operator's description of the installation. The regulator must be satisfied that any application is duly-made, and then process that application on the basis of the operator's description, recognising that there are mechanisms in the legislation that enable the operator to be held to his description. There are also powers to require the supply of information by the operator to demonstrate that he continues to operate within the scope of his permit.

So, in the view of the Department, capacity will be limited where:

a) an application for a PPC permit specifies operational constraints upon relevant equipment or of the process or installation as a whole, and those constraints are incorporated into the permit; or

b) such capacity constraints are contained in an extant permit or are incorporated therein by means of a variation.

It is, of course, incumbent upon regulators to ensure that all permit conditions are complied with, and to make plain to operators that breach any condition that this could lead to enforcement action both for non-compliance and for potentially operating an installation without the permit it ought to have under a different regime.

“Part A Installation”, “Part B Installation” and “Part C Installation”

These terms are defined in Part 3 of Schedule 1 to the PPC regulations.

"Part A installation" means an installation where a Part A activity is carried out (including such an installation where a Part B or Part C activity is also carried out);

"Part B installation" means an installation where a Part B activity is carried out, not being a Part A installation (including such an installation where a Part C activity is also carried out);

"Part C installation" means an installation where a Part C activity is carried out, not being a Part A installation or Part B installation.

For the purpose of these Regulations –

"Part A mobile plant" means mobile plant used to carry out a Part A activity (including such plant which is also used to carry out a Part B or Part C activity);

"Part B mobile plant" means mobile plant used to carry out a Part B activity, not being Part A mobile plant;

"Part C mobile plant" means mobile plant used to carry out a Part C activity, not being Part A mobile plant or Part B mobile plant.

Existing and new operations

The terms “existing” and “new” for Part C installations are defined in paragraph 2 of Part 2 of Schedule 3 to the PPC Regulations.

“Existing” means a Part C installation or Part C mobile plant put into operation before the relevant date for that installation, after which it was regulated under the PPC regulations.

Definitions relating to changes to installations

“Change in operation”

Regulation 2(1) defines a change in operation as “a change in the nature or functioning, or an extension, of the installation or mobile plant 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.

“Substantial change”

According to Regulation 2(1) a substantial change is “a change in operation which, in the opinion of the enforcing authority, may have significant negative effects on human beings or the environment”.

This definition means that whether any particular change proposed by an operator would constitute a “substantial change” is something that can only be determined given the facts of the case. This requires consideration of all impacts of any proposed change rather than just the net environmental effect. Therefore, the potential impacts of proposals on all possible receptors should be examined to inform a judgement on whether, either in combination or in any individual case, there may be a significant negative effect.

Some changes bringing about net benefits may have some constituent negative effects. For example, changing a fuel may lead to reductions in some releases but increases in others. If any potential negative effect is identified, the district council must consider whether it judges this “significant”. District councils should make this judgement by considering whether the effect is of such significance that it justifies requiring the operator to submit proposals that will be subject to consultation with the public consultees. This should be assessed having regard to:

a) the extent of the potential impact (including geographical area and size of the affected population);

b) any effects on specifically protected areas, species or other assets of particular significance;

c) the transboundary nature of the impact;

d) the magnitude and complexity of the impact;

e) the probability of the impact; and

f) the duration, frequency and reversibility of the impact.

The large majority of substantial changes are expected to arise at Part A and B installations. Part C installations are generally smaller in scale and, as a result, are much less likely to undergo a change which may cause a significant negative effect.

Changes of releases in polluting substances are the most likely causes of substantial changes. In this regard, district councils should consider changes in:

a) the substances released: if a new substance were to be released, consideration should be given to whether this would have a significant negative effect. However, if this new release were to be accompanied by a reduction in releases of another substance, then it would be appropriate to consider any similarity of effects between the two substances. If the effect of the new substance would be broadly similar to that now reduced from the old substance, then the change would not be substantial;

b) the level of releases of any particular substances: an increase in releases would give rise to a substantial change only if it would significantly increase the negative environmental effect. The test of significance should not be based on the relative increase in releases from the site but on the absolute effect those releases will have on the environment. For example, a small factory might seek to increase its capacity by two or three times, yet this would constitute a substantial change only if the resulting increase in releases may cause a significant negative effect. The absolute increase in substances to be released would not in itself be considered significant;

c) the nature of releases of any particular substance: beyond increases in levels of releases, other changes could include changes in temperature, pressure, viscosity, appearance, phase, size and shape of particle, colour and density. The possibility of such changes having a significant negative effect should be considered. For example, a change in particle size which does not enter a different environmental pathway is unlikely to be a substantial change, unless it becomes so ultra-fine that it starts to have a different uptake.

Finally, it is important to stress that whether or not a change is substantial is a judgement for the district council to make. District councils should be able to demonstrate that their decisions are reasonable, based on the facts of the case and the standard of common sense.

It will not be acceptable for operators to state that ‘no complaints have been received’. Lack of complaint does not necessarily imply that there is no problem.

Annex IV. Statutory consultees

This annex relates to chapter 7 of the Manual

As set out in Part 2 of Schedule 4 to the PPC Regulations the statutory consultees of Part C installations are:

a) the Regional Agency for Public Health and Social Well-being, (The Public Health Agency);

b) in the case of an application where the operation of the installation may involve an emission which may affect an area of special scientific interest or a European site, the Department of the Environment;

c) in the case of an application for a permit to operate an installation on a site in respect of which a major accident prevention policy document is required under Regulation 5 of the Control of Major Accident Hazards Regulations (Northern Ireland) 2000 or a safety report is required under Regulation 7 of those Regulations, the Health and Safety Executive for Northern Ireland;

d) in the case of an application for a permit to operate an installation involving only the carrying out of an activity falling under paragraph (b) of Part C of Section 1.2 of Part 1 of Schedule 1 (unloading of petrol at service stations), the petroleum licensing authority for that installation;

e) in the case of all applications, such other persons as the Department may direct.

Consultee	**Contact Details**
Public Health Agency	Dr Gerry Waldron Public Health Agency (Northern Office) County Hall 182 Galgorm Road BALLYMENA BT42 1QB gerry.waldron@hscni.net
The Department	http://www.doeni.gov.uk epdwebteam@doeni.gov.uk
Health and Safety Executive	http://www.hseni.gov.uk
The petroleum licensing authority	This is likely to be the district council

Annex V. Content of applications

This annex relates to chapters 4 and 5 of the Manual

Specimen application forms

Specimen application forms for LAPPC installations can be found in **Part C** of the Manual, with Word versions on the Department's website http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_guidance.htm

Part C Solvent Emissions Directive applications

Two additional matters should be addressed in the application – see 'Solvent Emission Directive' heading near the end of this annex.

Part C applications: small waste oil burners

The application should be the same as for other Part B activities, but for these waste oil burners with a rated thermal input of less than 0.4 MW, paragraphs (e)–(h) must be substituted with four new paragraphs – see 'small waste oil burners' heading near the end of this annex.

Part C applications: dry cleaning activities

The application should be the same as for other Part C activities, but for these dry cleaning activities, paragraphs (e)–(h) must be substituted with four new paragraphs – see 'dry cleaners' heading near the end of this annex.

Further information

Under paragraph 4 of Part 1 of Schedule 4 to the PPC Regulations, if a district council considers it needs further information to determine an application that has been duly-made, the council can serve a notice which must specify what the further information is and when the information must be provided by. If the operator fails to provide the further information or fails to provide it by the specified date, a district council can serve a notice, which must refer to paragraph 4 of Part 1 of Schedule 4, that the application is deemed to have been withdrawn on the day on which this second notice is served, and that the applicant is not entitled to the return of any fee which accompanied the application.

Solvent Emission Directive

The applications must also include a description of the measures which are envisaged to guarantee that the installation is designed, equipped and will be operated in such a manner that the requirements of the SED are met. This must include

- where the operator wishes to use a reduction scheme, details of the proposed scheme

- where the SED installation uses a substance or preparation which is assigned or needs to carry risk phrases R45, 46, 49, 60 or 61, a timetable for replacing as far as possible such substance or preparation by a less harmful substance or preparation within the shortest possible time.

Small waste oil burners

The applications must include:

- the name and number, if any, of the appliance used for the burning of the waste oil, and the name of its manufacturer, its rated thermal input and whether or not it is constructed or adapted so as to comply with the specification for fixed, flued fan-assisted heaters in Part 2 of the specification for oil-burning air heaters published by the British Standards Institution and numbered BS 4256 1972;

- details of the type of fuel to be used and its source;

- details of the height and location of any chimney through which waste gases produced by the appliance would be carried away and details of the efflux velocity of the waste gases leaving such a chimney produced by the appliance in normal operation;

- details of the location of the fuel storage tanks of the appliance;

Dry cleaners

The applications must include :

- the name and model number, description and number, if any, of the dry cleaning machine, the date when it was installed, the name of its manufacturer and its rated capacity;

- details of any spot cleaning to be undertaken and details of checking and maintenance procedures to be followed and of the supervision, training and qualifications of operating staff;

- details of the solvents to be used, including a description of any risk phrase substance or preparation;

- details of the arrangements for storing solvents prior to use, and used solvents and solvent-contaminated materials, including a description of the location where the materials are stored.

Annex VI. Good practice examples

This annex relates to chapter 23 of the Manual

All councils should ensure that they have written procedures to minimise the disruption caused by turnover of pollution control officers. Procedures should include instructions for those leaving, to organise files and records in such a manner as to be understandable by their replacement and provisions for new post holders to be able contact previous incumbents should they wish to do so. Written procedures are essential for succession planning. No district council should be without these, bearing in mind resource costs for the council of not having adequate succession arrangements, coupled with the loss of service provision.

The CIEH Management Guide provides straightforward and sensible advice on planning and conducting inspections. Good management of inspections can save councils time, as well as ensuring that inspections are carried out when and how is best for environmental protection purposes.

Any inspection plan may need to be flexible to take account of councils reactive pollution control work. But the bad practice of councils rushing to complete inspections in February and March just to satisfy statistical needs should be eradicated. Environmental protection is not a numbers game.

CIEH Management Guide: Inspections (p41) and Appendix 11 Inspection forms (p149)

All authorities who have not yet done so should assess their conduct of inspections, against the guidance provided in the CIEH Management Guide as a matter of priority.
http://www.cieh.org/library/Knowledge/Environmental_protection/IPCManGuide.pdf

Councils not currently practising cost accounting should begin to do so. Cost accounting guidance can be found at Annex IX of the Manual.

There is the obvious concern from business that the charges they pay are devoted to the service they are ‘buying’ and costs accounts provide an audit trail for this.

From a district council perspective, if there is no record of the income received and how much LAPPC is costing (including on-costs), it makes it difficult for officers to justify retaining adequate resources in-house to undertake the function. It is recognised that many councils do not normally budget at this sub-service level, but, as explained below, cost accounting does not amount to a major budgeting exercise.

The cost accounting guidance envisages just

- counting up the money received in charges
- time recording by officers undertaking the function
- advice from LA finance officers in order to add in the costs of accommodation, pensions etc. The AQ note offers a formula for calculating which aligns with the Best Value Code of Practice.

Cost accounting data also helps provide evidence for the Department for the annual review of charging levels.

CIEH Management Guide: Appendix 6 – Cost Accounting (p117)

http://www.cieh.org/library/Knowledge/Environmental_protection/IPCManGuide.pdf

Annex VII. Determining BAT for LAPPC installations

This annex relates to chapter 9 of the Manual

Article 2(11) of the IPPC Directive defines “best available techniques” as follows:

“’Best available techniques’ shall mean the most effective and advanced stage in the development of activities and their methods of operation which indicate 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.

- ‘techniques’ shall include both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned,

- ‘available’ techniques shall mean those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator,

- ‘best’ shall mean most effective in achieving a high general level of protection of the environment as a whole.

In determining the best available techniques, special consideration should be given to the items listed in Annex IV.”

Annex IV of the IPPC Directive specifies:

“Considerations to be taken into account when determining the best available techniques, as defined in Article 2(11), bearing in mind the likely costs and benefits of a measure and the principles of precaution and prevention.

(1) comparable processes, facilities or methods of operation which have been tried with success on an industrial scale;

(2) technological advances and changes in scientific knowledge and understanding;

(3) the nature, effects and volume of the emissions concerned;

(4) the commissioning dates for new or existing installations;

(5) the length of time needed to introduce the best available technique;

Annex VIII. EC Environmental Quality Standards

This annex relates to chapter 11 of the Manual

Air Quality

The Air Quality Standards Regulations (Northern Ireland) 2007 give effect to the following directives:

- Directive 96/62/EC on ambient air quality assessment and management (Air Quality Framework Directive);
- Directive 1999/30/EC relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air (first Daughter Directive);
- Directive 2000/69/EC relating to limit values for benzene and carbon monoxide in ambient air (second Daughter Directive)
- Directive 2002/3/EC relating to ozone in ambient air (third Daughter Directive).
- Directive 2004/107/EC relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons (PAHs) in ambient air (fourth Daughter Directive).

The Air Quality Standards Regulations 2007 apply only to England, with the exception of regulation 29 (relating to transboundary pollution), which applies throughout the United Kingdom.

Annex IX. Cost accounting

This annex relates to chapter 14 of the Manual

The following three Sections contain a detailed version of the summary guidance in paragraph 14.5 of the Manual

- Section 1 gives the background
- Section 2 is for environmental health practitioners (EHPs)
- The guidance on financial calculations in Section 3 is written for district council finance officers
- the guidance in this annex was drafted in consultation with CIPFA, LACORS, DCLG and the Audit Commission.

Section 1 – general approach

Background

1. The CIEH have previously endorsed the use of cost accounting for LAPPC and the two Atkins performance reviews of LAPPC in England and Wales have both strongly endorsed cost accounting.

2. The Department regard open and transparent cost accounting for LAPPC as an important element of a best value approach. Effective challenge, significant comparison, informed consultation and fair competition all depend on making financial and performance information consistent accessible and meaningful.

3. Cost accounting is necessary to show that money levied from business under the statutory LAPPC charging scheme to pay for its regulation is generally devoted to this function. And it is only right that operators who pay the fees and charges should be able to see how this money is spent. The Department also make use of data provided from cost accounts to inform the decision on the level of fees and charges, so it is in district councils' best interests to ensure that all relevant costs are fully accounted for and reported.

Purpose and content of this guidance

4. This guidance is to help those councils with cost accounting practices and those who currently do not to develop a consistent and effective approach to cost accounting. In essence, the guidance

a) in paragraphs 5 - 8, requires environmental health practitioners to determine the amount of time and resources devoted to LAPPC work. Section 2 lists what should be counted as LAPPC work

b) in Section 3, provides a method that should be familiar to finance departments for calculating the full cost, including overheads and 'on costs'.

Method – guidance for environmental health practitioners

5. LAPPC officers should record the costs of the duties listed in Section 2, which may be best done by time-sheet recording. These costs form part of the "gross total cost", as defined in the Best Value Accounting Code of Practice.

6. The expertise to calculate cost will rest in district councils' finance department. It is envisaged that EHPs will pass the cost information they record to their finance colleagues either quarterly or annually.

Method – summary of financial calculations for finance officers (and for the information of EHPs)

7. There are already established methods of calculating cost which district council accountants and finance personnel will be well aware of. Section 3 describes the calculation of gross total cost and other relevant on costs and overheads. It is suggested that this annex is passed to your council's finance department, drawing particular attention to Section 3.

8. For your information Section 3 advises that the following information is used to calculate LAPPC full cost:

- **Gross Total Cost** includes all expenditure relating to the service/activity, including employee costs, expenditure relating to the premises and transport, supplies and services, third party payments, support services and depreciation.

- **Corporate and Democratic Core (CDC)** costs comprise the costs of corporate policy making, other member based activities and a range of other costs relating to the "corporate management" of the authority, such as corporate financial management, external audit and inspections and corporate reporting to the public.

- **Non Distributed Costs** comprise a miscellaneous set of costs the common feature of which is that no service currently benefits from them. Examples are pension past service costs and the costs of unused IT facilities

- **Capital financing charge** comprising an interest charge on the value of capital assets (see CIPFA LAAP bulletin 67 for further information).

Full cost for LAPPC purposes will include a relevant apportionment of these four cost categories

Section 2 – guidance for EHPs on chargeable activities

Relevant LAPPC duties should be taken to comprise the following:

- Full, check and extra risk-based inspections
- Review of monitoring data
- Dealing with complaints
- Monitoring upgrading
- Periodic reviews of permits
- Enforcement activities, appeal and prosecution work (not including the costs of prosecutions which are recoverable through the courts)
- Assessing applications
- Producing, varying and transferring permits
- Visits in connection with (including travel time):
  - a new application
  - existing application (including periodic review)
  - complaint
  - training
- Identifying processes operating without a permit
- Serving information notices
- Checking and maintaining the public register
- Liaising with other regulators, the Department for the purpose of information exchange, benchmarking and auditing related to LAPPC
- Related LAPPC IT work not covered under "on costs"
- Administration and management directly related to LAPPC duties (including cost accounting, inspection planning, producing internal regulatory procedures)
- Purchase of LAPPC -related equipment or monitoring services
- Clearing decisions with Members where required

Section 3 - guidance for finance personnel

Background

9. The Department recommend councils follow the Best Value Accounting Code Of Practice[3] (BVACOP) in calculating their "expenditure" on these duties. The Department believe that "expenditure" should reflect the "gross total cost" of the service as set out in the BVACOP in addition to a relevant apportionment of Corporate and Democratic Core, Non Distributed Costs and a Capital Financing Charge for these duties.

10. The BVACOP defines "gross total cost". Councils should follow the guidance that is given in the BVACOP to calculate "gross total cost" for the LAPPC Service. The Best Value Accounting Code of Practice establishes "proper practice" with regard to consistent financial reporting below the statement of accounts level. The guidelines help to ensure the transparency,

[3] Best Value Accounting Code Of Practice, published by CIPFA, ISBN 0 852 99 891 0

comparability and financial discipline that is necessary for the effective application of Best Value.

Gross total costs

11. The "gross total cost" including depreciation should be calculated for the LAPPC service based on the cost/time information provided by your Pollution Control officers.

12. Depreciation should be defined in accordance with the Code of Practice on Local Authority Accounting in the United Kingdom 2006. A Statement of Recommended Practice (SORP 2006) (CIPFA June 2006) (ISBN 184508 X) paragraphs 3.128 to 3.137.

Calculating on-costs and overheads

13. The definition of "gross total cost" excludes certain elements of costs and overheads, which were not considered relevant for the purposes for which the definition was designed. These are, however, relevant for the calculation of the full cost of LAPPC for the purposes of the PPC Regulations, and an appropriate apportioned share should be added back. These elements are the Corporate and Democratic Core, Non Distributed Costs and a Capital Financing Charge, which are defined in the BVACOP.

Presentation of accounts

14. It would be helpful if accounts were set out as detailed below to enable helpful comparison. But if this is not done because individual councils have their own accounting methodologies, identification of the component elements set out below would be very welcome.

- Gross total cost - broken down by all expenditure relating to the service/activity, including:
    - Employee costs;
    - Expenditure relating to premises and transport;
    - Supplies and services;
    - Third party payments;
    - Transfer payments;
    - Support services;
    - Depreciation calculated in accordance with the local authority SORP;
    - An appropriate share of all services and overheads, which need to be apportioned;
    - Provisions if related to the service.

    (source: paragraphs 2.10-13, section 2 of the Best Value Accounting – Code of Practice)

- Corporate and Democratic Core
- Non Distributed Costs

- Capital Financing Charge
- Total of all above costs
- Income
    - Total amount received in fees in respect of applications for permits and for variations involving a substantial change
    - Total amount in annual subsistence charges in respect of permitted installations.

Annex X. Reduced subsistence fees due to mothballing or reduced operating levels

Introduction

1. Some businesses may at present be operating at reduced levels, or have mothballed their plant. This may mean that they do not legally have to have an LAPPC permit for as long as this continues. However, they may want to keep their permit, rather than surrender[2] it and have to make a fresh permit application when economic circumstances improve.
2. If the reduced operations or mothballing are likely to last for more than 12 months, councils should be able to dispense with inspecting the premises during this period, although will still have costs associated with the maintenance of the permit, such as holding the public register, maintaining their knowledge of the sector, etc.
3. If the reduced operating or mothballing lasts for more than 36 months, the circumstances on restarting could be significantly different (in terms of standards of Best Available Techniques, the condition of the on-site equipment, etc).
4. As a result, the LAPPC charging schemes have been amended to allow for a reduced charge for between 12 and 36 months in these cases, subject to certain qualifications. This only applies to installations that normally are liable for the full charge - ie not the 'reduced fee' sectors: dry cleaners, petrol stations, or vehicle body shops. Relevant trade associations have been advised.

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[2] If the permit is not surrendered or revoked, paragraph 22 of Part 3 of Schedule 1 to the Regulations states:

"Where an installation is authorised by a permit to carry out Part A activities, Part B activities or Part C activities which are described in Part 1 of this Schedule by reference to a threshold (whether in terms of capacity or otherwise) at an installation, the installation does not cease to be a Part A installation, Part B installation, or a Part C installation, as the case may be, by virtue of the installation being operated below the relevant threshold unless the permit ceases to have effect in accordance with these Regulations".

For completeness, paragraph 13.5 of the Manual advises: "The procedures for revocation and surrender should not be confused. It is the view of the Department that there is no need or requirement for a permit to be revoked once it has been surrendered. "

Procedures

5. The main procedures are as follows:

Step 1. Any Part C operator may submit a declaration stating that they are either operating below the threshold requiring a permit, or have mothballed their plant.

Step 2. Each declaration must be considered on its merits, but we would normally expect a council should normally accept the declaration at face value, without further enquiry, unless there was good reason to do otherwise. If, based on considerations of risk (including, but not limited to past experience of regulating the particular operator), a council is not satisfied with the reliability of the declaration as to mothballing or below-threshold operation, but might be satisfied if certain additional information was supplied, the council should write to the operator listing the additional information needed. A specimen letter is attached. It is ultimately open to a council to refuse to accept a declaration. There is no right of appeal, but an operator could use the council's complaints procedures.

Step 3. Where a council agrees that reduced charges are warranted, it should write confirming that this is the case (an "acceptance letter"). The letter should specify what information about future operation of the installation must be supplied to the council to demonstrate continued eligibility for the reduced charge. A specimen letter is contained in the forms and notices guidance. A council may also want to vary the permit, and could insert a condition along the lines of:

> "You must inform the council immediately and in writing if and when you expect to restart or increase your level of operation to above the threshold requiring a permit at the installation, including the likely date this will occur."
>
> ["You must also write to the council by [date 3 months hence] and every three months thereafter while reduced charges are payable, stating whether the installation is being operated and, if so, the level of operation."]

6. The reduced charge is 40% of the full charge that would otherwise have been payable based on the risk rating at the time of the declaration. The 40% figure applies to each full month operating at reduced level or in mothballs after the issuing of an acceptance letter.

7. The reduced charge should be payable as follows:

- Where charges are paid quarterly: at the time the next quarterly payment is due following the date of the acceptance letter. Unless the qualifying criteria cease to be met, this should continue for a further 7 quarters.
- Where charges are paid annually: at the time the next annual payment is due following the date of the acceptance letter. Unless the qualifying criteria cease to be met, the reduced charge should also be payable when the following annual payment is due.

8. The procedures are complicated by the fact that in many cases acceptance letters will be issued in the middle of a financial year. It has therefore been necessary to devise a system for deciding how much is

payable in each year in these situations. The worked example at the end of this note is aimed at helping explain the arrangements that have been put in place. Paragraphs 9 and 10 set out the generalities.

9. What happens if an installation is accepted for a reduced charge but ceases to qualify before the end of 36 months? (The "qualifying criteria" are mothballing or reduced operation, as set out in paragraphs a) and b) on the front page of the declaration form.)

(i) if this happens within the first 12 months, the operator must retrospectively pay the full charge that would have been payable for the period, plus a £50 administration fee. So, for example, if the 40% reduced charge has been paid, the operator should be invoiced for the remaining 60% and an extra £50.

(ii) if this happens after a full 12 months has elapsed and before the end of the 24-month period, the operator pays the reduced charge for every full month that the qualifying criteria apply. So, if an installation was taken out of mothballs 15½ months after the acceptance letter gets the benefit of 15 months at the reduced rate. There is no additional administrative charge.

10. What happens if an operator pays the full rate in April of Year 1, then obtains an acceptance letter for reduced charges during the financial year. There is no refund of the full payment. If the operator pays annually, the amount payable in April of Year 2 will be 40% minus the amount overpaid in Year 1. In Year 3, the amount payable the next financial year will reflect the number of full months operating at the reduced rate, plus the number of remaining months operating at the full rate.

11. Once any period of reduced charges has expired (whether at the end of 36 months or earlier), a further period cannot be sought for the same installation within 24 months of that expiry date, irrespective of whether there has been a change of operator or any changes to the way the installation operates.

12. The general assumption underlying the reduced charges is that inspections and related activities will not take place during the period that the installation is operating at reduced levels the plant has been mothballed. Where a declaration is accepted in the middle of a financial year the council may have already carried out the appropriate number of planned inspections in accordance with the risk rating of the installation. If the council has done so, this should be balanced by carrying out no planned inspections in the final year of the declaration being in force, when reduced charges will be being paid. If the council has not yet undertaken the planned inspections, or has carried out some but not all, it will be for the council to decide whether or not to defer the inspection(s) until the final year of the declaration being in force.

13. The LAPPC charging scheme has been amended to deliver the above. The revisions come into force on 1 April 2011 and are not retrospective.

14. The annual statistical survey will take account of these new procedures in relation to the annual statistical survey, so that councils are not penalised for missing inspections for these reasons. A note should however be kept of any cancelled inspections arising from these new arrangements.

Example

Anybusiness Timber Company operates a sawmill with a works' sawing throughput of 12,000 cubic metres. No other timber activities are carried on at the facility. It paid the full annual subsistence charge for 2011/12 in full on 10 April 2011 (Year 1).

In September 2011 throughput has reduced to 9,000 cubic metres. The company completes a declaration. AnyPlace council has found the company to be reliable in the past and accepts the declaration at face value and on 5 October sends an acceptance letter. The operator will be eligible for the reduced charge at the time of the next annual payment in April 2012 provided the reduced working continues for 12 months or more.

AnyPlace Council varies the company's permit to insert the condition in Step 3

above.

AnyPlace Council has not yet inspected the installation by 5 October. It must decide whether to

a) inspect during 2011/12 having received the full charging income for that year, but with the installation operating at a lower rate, or

b) defer the inspection until a later date during the 36-month period.

(If the Council had already inspected, that choice would be removed.)

On 8 December 2012 (Year 2) - ie 14 full months from the date of the acceptance letter - the company sees business picking up and expects its throughput to increase to over 10,000 cubic metres for the following 12 months (ie into Year 3). The company notifies the LA.

The amounts payable based on the above example are set out in the following table, based on the current medium risk subsistence charge and assuming this doesn’t change in Years 2 and 3:

	April 2011 (Year 1)	April 2012 (Year 2)	April 2013 (Year 3)	Total
Full fee	£1024	£1024	£1024	£3072
Amount paid/payable	£1024	£153.56	£1177.60	£2355.16
Explanation	No refund, but credit given in Year 2 for 5 full months at reduced charges	Reduced charge plus credit for 5 months in Year 1	Full rate for Year 3 plus underpayment for 3 months in Year 2 when back to full operation	Saving of £716.84 over 3 years based on 14 months mothballing or below threshold operation

Calculations:-

Full annual charge = £1024 (one month at this rate = £85.33)

Reduced annual charge = £409.60 (one month at this rate = £34.13)

Year 1: 7 months @ £85.33 plus 5 months @ £34.13 = £767.96. Amount paid = £1024.

Credit due in Year 2 = £256.04

Year 2: 12 months reduced charge = £409.60; credit carried forward from Year 1 = £256.04 to be subtracted from £409.60

Year 3: £1177.60 to cover the standard Year 3 charge, plus 3 months at end of Year 2 paying at £34.13 rather than £86.33 = £153.6

Annex XI. Conditions of permits

This annex relates to chapters 5 and 10 of the Manual

Legal basis

Introduction

Under the Pollution Prevention and Control Regulations, the requirements are detailed in regulations 11-13.

Applicability of IPPC Directive articles

The following segments of Article 3 - General principles governing the basic obligations of the operator, from the IPPC Directive Apply to Part C Installations.

> Member States shall take the necessary measures to provide that the competent authorities ensure that installations are operated in such 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;
>
> For the purposes of compliance with this Article, it shall be sufficient if Member States ensure that the competent authorities take account of the general principles set out in this Article when they determine the conditions of the permit."

Article 9 is headed 'Conditions of permit'. Paragraphs 1-4 apply to Part C installations.

> "Article 9 - Conditions of the permit
>
> 1. Member States shall ensure that the permit includes all measures necessary for compliance with the requirements of Articles 3 and 10 for the granting of permits in order to achieve a high level of protection for the environment as a whole by means of protection of the air, water and land.
>
> 2. In the case of a new installation or a substantial change where Article 4 of the Environmental Impact Assessment Directive applies, any relevant information obtained or conclusion arrived at pursuant to Articles 5, 6 and 7 of that Directive shall be taken into consideration for the purposes of granting the permit.

3. The permit shall include emission limit values for pollutants, in particular, those listed in Annex III, likely to be emitted from the installation concerned in significant quantities, having regard to their nature and their potential to transfer pollution from one medium to another (water, air and land). If necessary, the permit shall include appropriate requirements ensuring protection of the soil and ground water and measures concerning the management of waste generated by the installation. Where appropriate, limit values may be supplemented or replaced by equivalent parameters or technical measures.

For installations under subheading 6.6 in Annex I, emission limit values laid down in accordance with this paragraph shall take into account practical considerations appropriate to these categories of installation.

[The following text was added to Article 9.3 in 2003]

Where emissions of a greenhouse gas from an installation are specified in Annex I to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (1) in relation to an activity carried out in that installation, the permit shall not include an emission limit value for direct emissions of that gas unless it is necessary to ensure that no significant local pollution is caused.

For activities listed in Annex I to Directive 2003/87/EC, Member States may choose not to impose requirements relating to energy efficiency in respect of combustion units or other units emitting carbon dioxide on the site.

Where necessary, the competent authorities shall amend the permit as appropriate.

The three preceding subparagraphs shall not apply to installations temporarily excluded from the scheme for greenhouse gas emission allowance trading within the Community in accordance with Article 27 of Directive 2003/87/EC.

4. Without prejudice to Article 10, the emission limit values and the equivalent parameters and technical measures referred to in paragraph 3 shall be based on the best available techniques, without prescribing the use of any technique or specific technology, but taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions. In all circumstances, the conditions of the permit shall contain provisions on the minimization of long-distance or transboundary pollution and

ensure a high level of protection for the environment as a whole.

Article 10 addresses the relationship between BAT and EQS (see Chapter 15 of the Manual)

> "Article 10 - Best available techniques and environmental quality standards
>
> Where an environmental quality standard requires stricter conditions than those achievable by the use of the best available techniques, additional measures shall in particular be required in the permit, without prejudice to other measures which might be taken to comply with environmental quality standards."

Article 12 says that BAT above requirements apply equally to conditions imposed because of a change to an installation.

Article 18(2) requires that relevant emission limits set under other directives must be included in conditions as a minimum. All such relevant emission limits are contained in the published process guidance (PG) notes for Part C installations.

Where in the articles there is mention of "competent authority", for the purposes of the PPC Regulations this means the relevant regulator.

Annex III of the IPPC Directive

Annex III of the Directive, is as follows:

> "ANNEX III - INDICATIVE LIST OF THE MAIN POLLUTING SUBSTANCES TO BE TAKEN INTO ACCOUNT IF THEY ARE RELEVANT FOR FIXING EMISSION LIMIT VALUES
>
> AIR
>
> 1. Sulphur dioxide and other sulphur compounds
> 2. Oxides of nitrogen and other nitrogen compounds
> 3. Carbon monoxide
> 4. Volatile organic compounds
> 5. Metals and their compounds
> 6. Dust
> 7. Asbestos (suspended particulates, fibres)
> 8. Chlorine and its compounds

9. Fluorine and its compounds
10. Arsenic and its compounds
11. Cyanides
12. Substances and preparations which have been proved to possess carcinogenic or mutagenic properties or properties which may affect reproduction via the air
13. Polychlorinated dibenzodioxins and polychlorinated dibenzofurans

Drafting conditions

'Good' and 'bad' conditions

The following commentary and examples, which expand on the advice in Chapter 13, are without prejudice to the case-by-decisions by district councils, or by the Department on appeal.

There are two main disadvantages of imprecise or unclear conditions. First the operator does not know exactly what is required of him or her. Nor does the public. Second, clear and unambiguous conditions are essential for successful enforcement action.

A condition which requires action to be taken in accordance with the manufacturer's instructions, but does not give the name of the manufacturer or the reference number of the instructions, could be difficult to enforce.

Conditions which rely on subjective interpretation, such as 'frequent inspection', 'appropriate monitoring' or 'all reasonable hours', do not meet the tests of clarity and enforceability. An operator's or the Court's interpretation of eg 'appropriate' may be significantly different to that envisaged by the district council when including the word in the condition.

Conditions which relate to matters not relevant to the regulation of air emissions must not be included in Part C permits.

Conditions ought also to contain sufficient information to identify the main mechanisms for controlling emissions, such as the type of arrestment plant to be used and the nature and frequency of the monitoring to be undertake. If there is a condition which requires that emissions are at all times discharged through eg a bag filter of type x, there can be no defence if, for instance, a less efficient bag is substituted at some future date.

Conditions should be expressed in terms of "shall" or "must". The guidance uses the words "should" or "ought to", but conditions must require something to be done.

Where councils require the submission of an improvement plan, it is important to be precise about what is required – for example "no later than [date] a

programme for the upgrading of [describe precise aspect of the installation] shall be submitted for the approval of this Council. The programme shall have regard to the guidance in [PGX/XX]".

Where an operator informs the council that an installation will be closing down, and this is accepted as a reason for not requiring improvements to be made, it is advisable to reinforce the operator's commitment by including a condition requiring that the specified improvements/tighter standards must be operating from the day after the stated closure date.

Conditions should not normally include explanatory material. To avoid any doubt as to what comprises the enforceable permit document and what comprises additional, non-enforceable explanatory guidance, it is best to ensure that any guidance is contained in a separate annex headed eg "Explanatory Note: this note does not comprise part of permit reference xyz, but contains guidance relevant to the permit".

The explanatory note could cover, for example, advice on what matters are covered by the general BAT condition; a statement making clear that the permit does not affect responsibilities under health and safety legislation or any other statutory requirements; advice on the procedures for varying permits; the arrangements for paying the annual subsistence fee; etc.

The function of the process description in a permit is to set down the main characteristics of the activity being authorised by the permit. The reason is that it should be clear to all concerned (the operator, the council, and the public) what exactly is being approved. And the process description provides a check on the operator, since if any of these characteristics are altered – for example, one piece of equipment substituted for another – and this change results in poorer performance, the operator could be held to be operating outside the terms of the permit and enforcement action could be considered for carrying on the activity without a permit. One option is to include a basic process description in the introduction and an 'activities table'.

The process description does not normally need to be lengthy, but should described the main features of the installation. The sort of information for inclusion is:

- the general nature of the process (eg the manufacture of window frames using wood and wood-based materials)
- the Section in Part 1 of Schedule 1 of the PPC Regulations which applies to the activity
- the fact that the site and installation boundary are marked on a referenced plan, and the plan forms part of the permit
- the main equipment forming the installations (eg the manufacturer and rating of the combustion plant)
- other information such as throughput of the installation, the type of fuel and raw materials used, the height of the existing chimneys.

This can be achieved by including a basic description. An alternative approach is to produce an 'activities table' with a basic description which goes into the introductory note, as its not a condition or part of the permit. Good

practice is to draft an effective activities table saying what can be done on site and the limits of that activity.

The following are examples of the style of condition which may be termed 'good' ✓ and 'bad' **x** conditions together with comments in **bold**. These are not necessarily conditions which ought be included in any particular permit.

✓	x
"visual and olfactory assessment shall be made frequently and at least once per day….The assessments shall be carried out on the site boundary at locations in easterly and southerly directions. Details of such assessments shall be recorded in a log book which shall include date, time, wind, weather conditions, position of observation"	"regular visual checks shall be made throughout the working day"
"spillages of finely divided materials shall be cleared by means of vacuum cleaning using Nilfisk GM 83 equivalent or better."	"the aim shall be that all emissions are free from offensive odour outside the process boundary" **an aim is not enforceable**
"within 6 months of the date of this permit, the operator shall submit to x Council's Pollution Manager a programme detailing a timescale for completing the work necessary to upgrade the process having regard to the guidance notes listed on the front page of this permit"	"should any condition not be attainable at the time of issue of this permit, the district council must be informed in writing and a scheme for upgrading the process submitted within 6 months of the date of issue" **an application must be refused if the applicant will not operate the facility in accordance with the permit**
"emissions from the chimney marked X on the attached plan (reference EP/01/A…) shall be free from visible smoke and shall not exceed the equivalent of Ringelmann Shade 1, as described in British Standard BS2472:1969, except for a maximum of 15 minutes on start-up from cold. In the case of start-up from cold, emissions shall at no time exceed the equivalent of Ringelmann Shade 2.	"notes on the Ringelmann smoke charges are given in British Standard BS 2742:1969"
"all emissions shall discharge eight and a half metres above ground level through the chimney marked A on the attached plan marked EP/017/A and which is also marked A on the attached plan EP/017/B"	"NB In addition to the above conditions it is recommended that the requirements of the guidance on collection, handling and storage of clinical waste given by the Health and Safety Commission ….should be followed". **This should be placed in a separate, clearly-marked**

	explanatory section, not tacked on to the end of the conditions
"…..hereby authorise the applicant…. the process subject to authorisation being the breeding of maggots involving the use of x tonnes of fish, chicken meat and offal in any 7-day period"	"wherever possible the final discharge point from particulate matter arrestment plant where it is not necessary to achieve dispersion of residual pollutants shall be at low level" **This leaves the matter to the operator's discretion, rather than the operator submitting his/her proposals and the permit should specify where the final discharge point should be**
"when any visible escape of dust is observed or when any malfunction or breakdown is likely to lead to an escape of dust is found, then a) immediate investigation shall be carried out; b) prompt corrective action shall be taken; c) the observation, finding, result of the investigation , and actions taken under headings b) and d) in this condition shall be entered in the log required by condition 8; and d) if the corrective action is not immediately effective then action to mitigate any effects shall be taken."	"it should be noted that no condition has been attached to this first permit requiring a programme for upgrading to be submitted to X Borough Council since it is understood that the applicant does not intend to operate the incinerators beyond x date"
	"the above-named company is hereby authorised to carry on a process involving the manufacture of timber and wood-based products". **This lacks essential details, such as equipment and throughput**
	"'harm' means harm to the health of living organisms or other interference with the ecological systems of which they form part" **this is not material for a condition. If a council wants to draw attention to an aspect of the legislation, the explanatory notes should be used**

The following specimen conditions may be appropriate:

1. all emissions from process vents, chimneys and building openings shall be colourless

2. no emissions shall contain persistent mist or fume

3. no emissions shall contain droplets

4. odour-masking agents and counteractants shall not be used

5. dilution air shall not be admitted after the combustion zone for the purpose of meeting an emission limit

6. exhaust gas flow rates from spray booth A on attached plan AB/1 shall not exceed x m^3/hr when expressed at 273K, 101.3kPa, without correction for water vapour content

7. emissions of chloride from the 27m chimney serving the cremator shall not exceed x mg/ m^3, expressed as hydrogen chloride

8. emissions of carbon monoxide from the chimneys marked A, B and C on attached plan AB/1 shall, on average taken over any one-hour period of the process operation, not exceed x mg/ m^3

9. the mass emission rate of volatile organic compounds from the whole process shall not exceed x grams per square metre of coated area, calculated in accordance with Appendix X of PG B/C(04)

10. all continuous monitoring equipment required by a condition attached to this permit shall be examined at least once on each day that the process is operating. This examination shall include a zero check and a visual inspection to confirm satisfactory operation of the instrument

11. emissions from the furnace chimney shall be tested for particulate matter at least once in every x-month period. Sampling shall be undertaken in accordance with BS xxx

12. an olfactory assessment of odours shall be carried out once per day at locations x, y and z on the site boundary, as indicated on plan AB/1 attached to this permit. The results of these assessments shall be recorded in the log book required to be kept in accordance with condition number xx

13. equipment for manual testing of emissions for nitrogen dioxide shall be held on the premises at all times, for use in the event of a failure or suspected malfunctioning of continuous monitors required by condition number x of this permit

14. the results of those tests undertaken during the commissioning of the installation which relate to the control parameters specified in conditions x, y and z shall be submitted to xx Council within zz weeks of completion of the testing

15. an inventory of the amount of organic solvents used in the process shall be made and a copy of the inventory for the preceding 6 months shall be sent to xx Council on 1 April and 1 October in each year

16. the temperature of all ovens shall be continuously monitored and continuously recorded

17. all furnaces and ductwork shall be made and maintained gas tight

18. emissions from melting and holding furnaces shall be contained by local exhaust ventilation

19. the sulphur content of all liquid fuels shall not exceed x% by weight

20. all charging vessels shall be fully covered except when charging, mixing or sampling

21. exhaust ventilation shall be maintained at not less than x mg/ m^3 to maintain an adequate negative pressure within the material storage and processing area

22. no halogenated materials shall be used as a fuel

23. any malfunction or breakdown leading to abnormal emissions shall be dealt with immediately. Process operations shall be adjusted in order to minimise emissions until normal operations are restored

24. all pigments and resins shall be stored in covered containers, sealed bags, or in purpose-built silos. All such silos shall be fitted with bag filters to control the emissions of particulate matter caused by displacement of air during charging

25. storage areas for drummed organic solvents and liquid waste shall be provided with spillage containment kerbs

26. all spillages shall be cleared immediately

27. all external, above-ground conveyors and transfer points shall be completely enclosed

28. all coatings shall be transferred from storage containers to coating heads via and enclosed pipeline system

29. all bulk storage tanks shall be fitted with a high-level alarm and volume indicators, which shall be interlocked to the charging system in order automatically to interrupt the material transfer when the tank is filled to x% of its total volume

30. all emissions from the fettling process shall be discharged through a bag filter in order to meet the requirements of condition x

31. all emissions from the coating curing ovens shall be vented to an incinerator. The temperature of the gases in the combustion zone shall be maintained between x^{o}C (xx K) and y ^{o}C (yy K) and shall be held at this temperature for not less than z second(s). The temperature of gases in the combustion zone shall be continuously monitored and continuously recorded.

32. all bag filters shall be fitted with pressure drop indicators

33. all chimneys and ducts joining the process exhausts to the chimneys shall be insulated in order to prevent condensation on their internal surfaces

34. chimney flues and ductwork shall be cleaned every x months

35. chimneys and vents shall not be fitted with any restriction at the final opening, such as a plate, cap or cowl

36. all emissions from the incinerator shall be discharged from the xx metre chimney marked C on attached plan AB/5

37. the process shall be monitored using X or Y model of monitoring equipment. The xx Council shall be notified of the model that has been selected within z days of the equipment being installed

38. the furnace shall at no time be operated coal with a sulphur content in excess of x%

39 FOR A MOBILE PLANT: the xx Council shall be notified no less than one week before the plant is to be moved to another location. Such notification shall include details of the intended new location.

Annex XII. Offences

This annex relates to chapters 8 and 19 of the Manual

This annex contains extracts from the PPC regulations relating to offences and penalties.

Legal provisions

The following replicates PPC regulation 33.

Offences

33.—(1) It is an offence for a person –

(a) to contravene regulation 9(1);

(b) to fail to comply with or to contravene a condition of a permit;

(c) to fail to comply with regulation 16(1);

(d) to fail to comply with the requirements of an enforcement notice[, a suspension notice or a closure notice under regulation 16 of the 2003 Landfill Regulations];

(e) without reasonable excuse to fail to comply with any requirement imposed under regulation 27;

(f) without reasonable excuse –

(i) to fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an inspector in the execution of his powers or duties under regulation 27; or

(ii) to prevent any other person from appearing before an inspector, or answering any questions to which an inspector may require an answer, pursuant to regulation 27(3);

(g) without reasonable excuse to fail to comply with any requirement imposed by a notice under regulation 29(2);

(h) to make a statement which he knows to be false or misleading in a material particular, or recklessly to make a statement which is false or 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 of these Regulations [or the 2003 Landfill Regulations]; or

(ii) for the purpose of obtaining the grant of a permit to himself or any other person, or the variation, transfer or surrender of a permit;

(i) intentionally to make a false entry in any record required to be kept under a condition of a permit;

(j) with intent to deceive, to forge or use a document issued or authorised to be issued under a condition of a permit or required for any purpose under a

condition of a permit or to make or have in his possession a document so closely resembling any such document as to be likely to deceive;

(k) to fail to comply with an order made by a court under regulation 36;

(l) intentionally to obstruct an inspector in the exercise or performance of his powers or duties;

(m) falsely to pretend to be an inspector.

Penalties

(2) A person guilty of an offence under sub-paragraph (a), (b), (d) or (k) of paragraph (1) shall

be liable –

(a) on summary conviction, to a fine not exceeding £30,000 or to imprisonment for a term not exceeding six months or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding five years or to both.

(3) A person guilty of an offence under sub-paragraph (c), (g), (h), (i) or (j) of paragraph (1)

shall be liable –

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(4) A person guilty of an offence under sub-paragraph (e), (f) or (m) of paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person guilty of an offence under sub-paragraph (l) of paragraph (1) shall be liable –

(a) in the case of an offence of obstructing an inspector in the execution of his powers under regulation 26 –

(i) on summary conviction, to a fine not exceeding the statutory maximum;

(ii) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or to both;

(b) in any other case, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(6) For the purposes of this regulation, section 20(2) of the Interpretation Act (Northern Ireland) 1954 applies with the omission of the words “the liability of whose members is limited”.

(7) Where the affairs of a body corporate are managed by its members, paragraph (6) shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(8) Where the commission by any person of an offence under this regulation is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this paragraph whether

or not proceedings for the offence are taken against the first-mentioned person.

Enforcement by High Court

34. If the enforcing authority is of the opinion that proceedings for an offence under regulation 33(1)(d) would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice or a suspension notice, the enforcing authority may take proceedings in the High Court for the purpose of securing compliance with the notice.

Annex XIII. Triviality

This annex relates to chapter 2 of the Manual

There is a 'triviality' exemption for most Part C installations. This applies 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 it does not apply to sites which may give rise to offensive odour or SED sites. (See paragraph 2 of Part 2 of Schedule 1 to the PPC Regulations). The final decision will be a matter for each enforcing authority, based on the facts of the individual case and it is suggested that authorities will be best able to satisfy themselves that an installation is trivial or not by asking the operator a number of questions relating to that process. There are examples of such checklists below.

Triviality and Zinc Die casters

The following checklist contains the questions which it is suggested councils should address in reaching that decision:

a) *Have there been any justifiable air pollution complaints against the zinc diecaster during the previous 2 or so years?* Care should be taken if the complaints were received at a time when the zinc diecaster was in other than the present ownership

b) *Are there any smoke emissions from the zinc diecaster?* Exemption may be justified if smoke emissions are minor and the other questions in this list are satisfactorily answered. However, it is suggested that further investigation may be appropriate where there are any smoke emissions, since even minor emissions can be an outward sign of a more serious pollution potential.

c) *What fuel is used for the melting or holding vessel?* The use of natural gas, electricity or fuel within classes A2 or D of Part 2 of British Standard BS2869:1988 will strengthen any case for exemption.

d) *What type of material is being melted?* Many zinc diecasters utilise raw material which complies with the British Standard BS1004:1972 (as confirmed in 1985). The quality requirements of this standard or any forthcoming successor standard are such that diecasters using only raw material in compliance with it would strengthen the case for exemption. This standard allows only the melting of zinc ingot from refiners or the operator's returns, runners and risers.

e) *Are substances added to the melt (principally fluxing agents and degassing agents)?* Care should be taken offering exemption in such cases.

f) *Is the melting or holding vessel temperature thermostatically controlled?* The use of a mechanism to control temperature so that it does not exceed 460°C would support the case for exemption

g) *Are any grinding, fettling and shotblasting machines vented internally or externally?* Internal venting will tend to support exemption

h) *Is a solvent based die lubricant used?* Most die lubricants in use are water based and therefore present no particular air pollution problems. Some rapid cycling diecasting machines however use a solvent based lubricant, the use of which will generate VOCs. It is suggested that the sole use of water based die lubricants would support the case for exemption and that likewise, full time use of solvent based die lubricants is likely to warrant control. If solvent based lubricants are used only occasionally then the decision should rest on the proportion of plant time and lubricant usage that they make up.

It is important that the exemption should only be agreed on the basis of the currently understood operation. Enforcing authorities should check periodically that a process continues to warrant exemption

Triviality and small coal mines

The following checklist contains the questions which it is suggested councils should address in reaching that decision:

a) *Have there been any justifiable air pollution complaints against the mine during the previous two or so years?* Care should be taken if the complaints were received at a time when the mine was being worked by a different operator.

b) *How much coal is extracted from the mine on a daily basis?* If, on average, 50 tonnes or less per day is mined there might be a case for exemption.

c) *How wet is the coal when extracted?* Moist coal is obviously less likely to give rise to emissions of a particulate matter.

d) *Where trams are emptied or where the discharge conveyor terminates to the stock area, how high is the drop from the point where trams are emptied to the stock area?* A large drop height may give rise to greater levels of particulate matter emissions, as the coal is more likely to break up on impact.

e) *Is any processing carried out other than loading and unloading?* If screening, grading, crushing or grinding of coal take place, there will clearly be additional potential sources of emissions which will need to be weighed against the factors in favour of exemption.

f) *How much coal is stored/intended to be stored in the stockyard?* A large amount of coal will generally have a greater potential to give rise to dust emissions. Again, the wetness of the extracted coal may have some relevance.

g) *What amounts of dust are emitted as a result of vehicles transporting coal on the site?* The nature of the site roadways is likely to affect emissions of dust during vehicle movement.

h) *Where is the mine located?* If dust emissions from the process are likely to be minimal, the nature of the surrounding area may nonetheless be a factor - for example, account should be taken of whether there are nearby dwellings or ecologically sensitive areas nearby.

dispense more than 3,500 m^3.

Mobile plant triviality

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 factors that should be taken into account when deciding whether a Part C permit is not required on "triviality" grounds.

Part 1 of Schedule 1 (Section 3.5) of the PPC 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 2.12 in Chapter 2 of the Manual refers to the legal basis for the triviality exemption.

In the view of the Department, 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.

- *triviality checklist*

The following is a suggested framework for councils to use in reaching their decision whether a particular mobile plant warrants exclusion on triviality grounds:

❶ The plant has a crusher drive of <15bhp* or, in the case of a bucket crusher, has a crushing capacity of <2m^3*. Provided that the plant is fitted with dust suppression, it is most likely that it will justify a triviality exclusion.

Cases where triviality might <u>not</u> 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

ASSI which could be significant 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.

❷ The plant has a crusher drive of ≥15bhp* but <50bhp* or, in the case of a bucket crusher, has a crushing capacity of ≥2m^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.

❸ *The plant has a crusher drive of ≥50bhp*.* 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

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

If an operator of a <15bhp mini/micro crusher or of a bucket crusher <2m^3 is unsure whether triviality does apply in a given case, the operator is strongly advised to consult their district council before beginning to operate the plant.

An operator risks enforcement action (with the penalties set out in Chapter 19) if the operator does not check this and it is subsequently decided by the council that a permit is needed because the triviality exemption does not apply. Consultation with the council 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 on the previous page may apply.

The council 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.

The strict criteria for relying on the “triviality” exemption are not very often likely to apply in cases involving a 15-50bhp mobile plant or a bucket crusher ≥2m3. Therefore, operators risk enforcement action if they do not contact their relevant district council in all cases before starting to operate 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 council should explain their position with regard to the limits of any triviality exclusion.

An operator of a ≥50bhp mobile plant should always contact the district council before starting operating, and also if operating circumstances change.

Annex XIV. Applying the Habitats Regulations and the Environment (Northern Ireland) Order to applications for PPC permits

This annex relates to chapter 22 of the Manual

1. This annex gives advice to district councils on assessing applications for permits or substantial changes which could affect the following sites which are protected because of their wildlife and nature conservation value:

    - Areas of Special Scientific Interest (ASSIs)
    - European Sites (as defined in the Regulations, these sites are collectively known as the Natura 2000 network, and include Special Areas of Conservation and Special Protection Areas).
    - Wetlands of international importance under the Ramsar Convention (Ramsar sites)

    Advice on assessing whether a permit may be likely to have a significant effect on a protected site is available from Conservation Designations and Protection within the NIEA (CDP@doeni.gov.uk).

    Note: In most cases district councils should not need to progress beyond paragraph 7.2 of this annex, except for the further information web addresses for the location of relevant sites which are at paragraph 13.

2. This annex also contains further advice in 3 appendices:

    - appendix 1 – procedures flowchart
    - appendix 2 – advice on how to carry out a conservation assessment

Background

3. The Conservation (Natural Habitats etc,) Regulations (Northern Ireland) 1995 (known as the 'Habitats Regulations') (as amended) and the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985 (NCALO (as amended by the Environment (Northern Ireland) Order 2002) place obligations on PPC regulators.

4. Regulation 43 of the Habitats Regulations requires that a district council, in assessing a Part C (LAPPC) application that is likely to have a significant effect on a European Site, either alone or in combination with other plans or projects, must make an 'appropriate assessment' of the implications for the site in view of that site's conservation objectives. In the light of the assessment, the council shall agree to the application only after having ascertained that it will not adversely affect the integrity of the European site. Habitats Regulation 44 stipulates the circumstances in which an application may be approved notwithstanding a negative assessment. As a matter of policy the same considerations should be applied to listed Ramsar sites.

5. The Environment (Northern Ireland) Order 2002[3] places duties on district councils in relation to granting various forms of approval, including planning permission and Part C PPC permits, which are capable of damaging an ASSI. The district council will need to submit a formal notice to the NIEA if the activity to be granted a permit under PPC constitutes an "Operation Likely to Damage" (OLD, also known as a "notifiable operation") the notified features of interest of the ASSI[4].

6. It is important to note the different requirements under these two sets of legislation, and as a result the different procedures which apply when dealing with protected sites.

Additional steps necessary (summarised in the flowchart in appendix 1 of this annex)

7. The combined effect of the PPC and Habitats Regulations and the Environment Order is that if an installation applying for a PPC permit or a substantial change has the potential to affect a protected site then the following procedures must be followed:

Initial screening

7.1 Every application for a Part C permit or substantial change must be subjected to an initial screening. In many cases, no further action will be needed.

7.2 The initial screening must assess the potential of the proposal to affect a relevant conservation site. The initial screening is simply a matter of determining whether the proposal is located within the relevant distance of a protected site as set out in appendix 2 of this annex. If it is, a conservation assessment will be required and the remainder of this note must be followed. If the initial screening shows the proposal is beyond the relevant distance then further action would not normally be required, however it is important to bear in mind that installations outside these distances could still have potential to affect a protected site, but such cases are likely to be exceptional

7.3 Where it is unclear whether a conservation assessment is required, the draft application should be discussed with the CDP as early as possible

[3] The Environment (Northern Ireland) Order 2002 places a general duty on public bodies to take reasonable steps consistent with the proper exercise of the authority's functions to further the conservation and enhancement of the flora, fauna or geological or physiological features by reason of which the area is of special interest.

[4] Each ASSI will have a citation and include a list of 'OLDs' or 'notifiable operations'.

Producing a conservation assessment

- role of the operator

7.4 The district council may request reasonable information from the applicant in order to make a conservation assessment. In practice the district council may ask operators to submit this information as part of their application. Advice on how to carry out such a conservation assessment is included in appendix 2 of this annex.

7.5 It may take some time to collect the information required for this assessment, so it is advisable for operators to take account of nature conservation issues at an early stage. If the proposed installation is shown through the assessment to be likely to affect a protected site then the CDP should be contacted as early as possible. Where appropriate, including the CDP in the pre-application discussions will speed-up the final assessment of any impact the operation of the installation may have on the protected site, and may help to smooth out any necessary notice procedures.

- role of the district council

7.6 District councils should alert operators to the possible need for a conservation assessment during any pre-application contact or discussions.

7.7 Once the application has been received, district councils may need to use their powers under Schedule 4, paragraph 4 of the PPC Regulations to obtain further information necessary for the conservation assessment or if requested by the CDP.

7.8 The district council would then need to review and consider the information provided in the conservation assessment having regard to any consultation responses – see paragraph 8 below.

7.9 There is a further stage under the Habitats Regulations. If the information in the conservation assessment indicates there is likely to be a significant effect on a European Site then before determining the application the district council is required to carry out an assessment appropriate to the implications for the site in view of its conservation objectives. The CDP will advise on whether an appropriate assessment is required and on what they consider will be the implications for the site in view of its conservation objectives. Reasonable information can be requested from the applicant to inform the appropriate assessment. The nature of the appropriate assessment will depend on the conservation objective of that site.

7.10 District Councils are ultimately responsible for determining the application, and for ensuring the appropriate assessment is carried out. The conclusions of the appropriate assessment should be properly recorded so that the reasons for the decision, including the factors considered for the purposes of Habitats regulation 43(and if applicable, Habitats regulation 44) are transparent.

Consultation

8. The NIEA is a statutory consultee under PPC, see advice on consultation in Chapter 7 of this Manual. Undertaking the initial screening requirements in paragraph 7.2 above will advise whether the application for a particular installation should be sent to the NIEA for their views as statutory consultees. They should also be sent any conservation assessments that have been undertaken. The NIEA will advise on any particular sensitivities with regard to the protected sites which would need to be considered when determining the application for a permit.

9. Under the Habitats Regulations (for European Sites) it is necessary to consult with the NIEA before the appropriate assessment has been made for the installation. The process to produce this appropriate assessment is separate from the consultation with statutory consultees and this consultation period should not be extended as a result of the time taken to complete the appropriate assessment.

Post consultation/determination period

10. The appropriate assessment is conducted after statutory consultations as part of the determination process. As stated earlier it may appropriate to use powers under Schedule 4, paragraph 4 to obtain further information. This will have the effect of extending the normal 6-month determination period. The CDP should be consulted on the conclusions of the appropriate assessment. In the light of the appropriate assessment, and subject to Habitats regulation 44, the district council shall agree to the application only after having ascertained that it will not adversely affect the integrity of the European site.

11. Under the Environment Order 2002 - if the district council judges that the conservation assessment of the proposed installation suggests that the operation is likely to damage the notified features of interest of an ASSI, a notice must be given to the CDP. The CDP would advise within 28 days as to the effects on the ASSI and what elements may require modification to avoid an impact on the site. The district council must take any advice given into account in making its decision. Should the council be minded to issue the permit against the advice of the CDP, a second formal notice will need to be sent to the CDP. The operation may not be permitted to start within 21 days of the giving of that second notice. The CDP may use that period of time to decide whether to request the Departments' involvement in the determination of the application. There is currently no definition of 'damage' under the Habitats Regulations. Damage is assessed on a site-by-site basis according to the notified site features and baseline condition of the site. A risk assessment approach is advised and guidance on this can be found in the horizontal guidance document available at http://www.ni-environment.gov.uk/ippc_h1.pdf

12. Where the Habitats Regulations and Environment Order both apply to a site, best practice is to make any necessary judgements under the Habitats Regulations and undertake a full appropriate assessment (where required) before the service of a notice under the Environment Order.

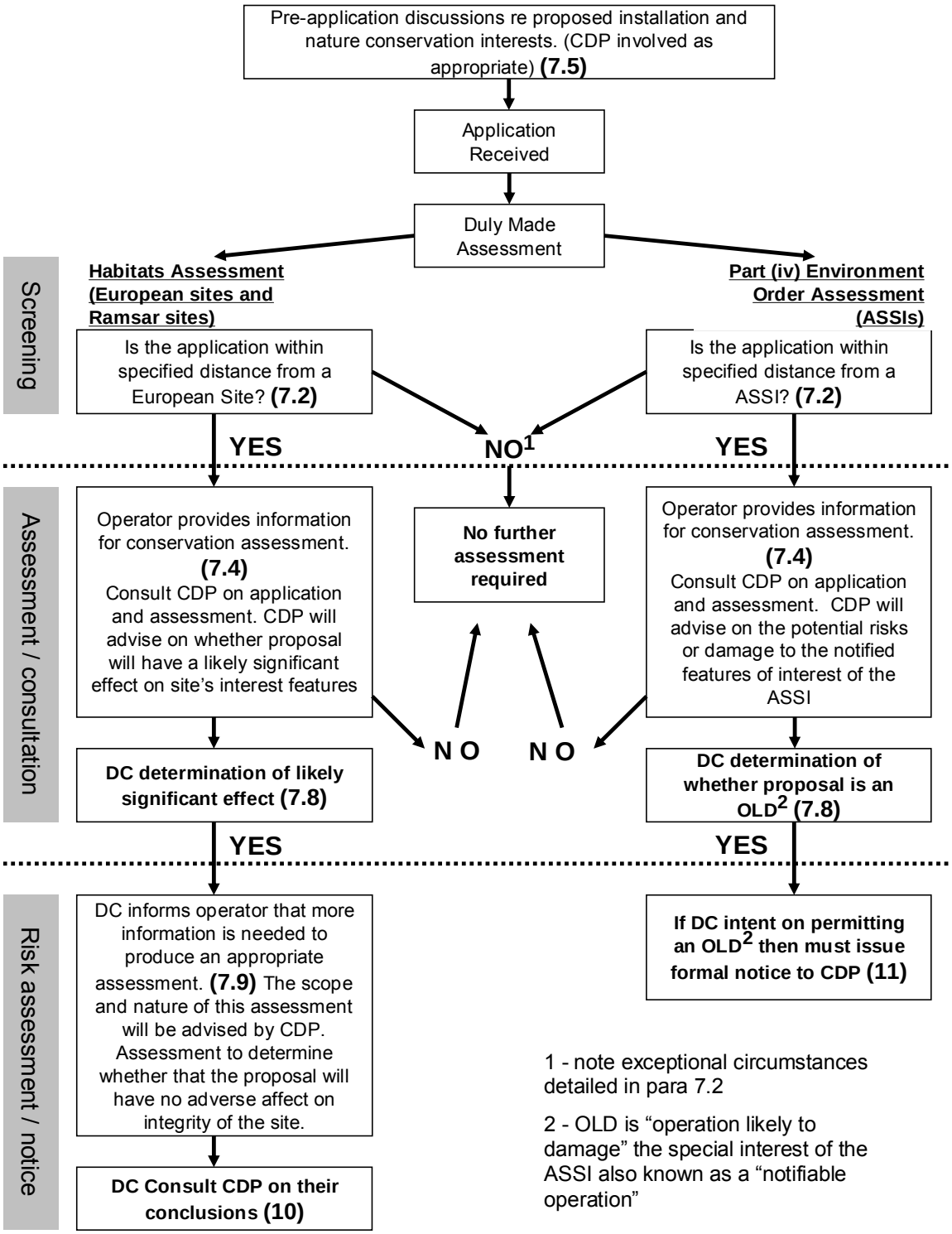
Further information

13. Other sources of information include:

- http://www.ni-environment.gov.uk/ for contact details of the Conservation Designations and Protection unit within the Natural Heritage Directorate.
- http://www.ni-environment.gov.uk/protected_areas_home for details of protected areas.
- http://maps.ehsni.gov.uk/NIEAProtectedAreas Map viewer showing all NI protected areas.
- http://www.ni-environment.gov.uk/habitat_regs_guidance_notes.pdf Habitats Regulations -A guide for competent authorities
- http://www.cnccni.gov.uk The Council for Nature Conservation and the Countryside
- http://www.jncc.gov.uk/ Joint Nature Conservation Committee website

Appendix 1 - simplified assessment procedure for district councils and consultation procedures under the Environment Order and the Habitats Regulations

Note: text boxes below include reference to the relevant paragraph in the main part of this Annex



1 - note exceptional circumstances detailed in para 7.2

2 - OLD is "operation likely to damage" the special interest of the ASSI also known as a "notifiable operation"

Appendix 2 - advice on how to carry out a conservation assessment

1. Paragraph 2 below indicates when it would be necessary for such a conservation assessment to be made. Where a full appropriate assessment is deemed necessary for the purposes of the Habitats Regulations, councils should avail of the comprehensive guide to undertaking appropriate assessment compiled by the European Commission and available at http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf

2. For releases to air, if the installation is within

   - 2 kilometres for an installation which includes Part C combustion, incineration (but not crematoria), iron and steel, and non-ferrous metal activities
   - 1 kilometre for Part C mineral activities and cement and lime activities and
   - ½ a kilometre for all other Part C activities

   of a conservation site (or exceptionally any other installations likely to have a significant effect and therefore deemed to need a conservation assessment as specified in paragraph 7.2 of the annex) the applicant should be asked to provide the following information as part of their application:

   - details of the predicted process contribution to concentrations and deposition at the designated site(s) for released pollutants which have the potential to pollute that site. It is acceptable to use look-up charts or tables to estimate the impact on the conservation site (guidance note H1, http://www.ni-environment.gov.uk/ippc_h1.pdf). More complex dispersion modelling can be used if there is doubt whether there might be a "likely significant effect" to such a conservation site or whether the installation constitutes "an operation likely to damage" such a site (or there is a need to clarify the nature of the impact from the installation).

   - Information on the background (ambient) concentration and deposition at the European Site(s) (Natura 2000). The CDP should be able to advise how to get hold of this information.

   - An estimate of the predicted environmental concentration and deposition at the European Site(s) (Natura 2000) based on the above two bullets.

Annex XV. Interface between the Clean Air (Northern Ireland) Order and, WID and PPC

This annex is to clarify that any exemptions under the Clean Air (Northern Ireland) Order 1981 for appliances burning waste material do not apply if the activity comes under LAPPC. LAPPC applies if their operation constitutes an activity under Section 5.1 (Incineration and co-incineration of waste) or Section 1.1 (Combustion activities) of Part 1 to Schedule 1 of the PPC Regulations.

Clean Air (Northern Ireland) Order 1981 ("CAO")

Under Article 17 of the CAO, the Department has powers to exempt fireplaces, stoves, boilers, etc, for use in smoke control areas from the provisions in the Order which prohibit emissions of smoke in those areas and generally requires people to burn an authorised smokeless fuel.

Manufacturers apply to the Department for exemptions. The appliances are subject to tests to confirm that they are capable of burning an unauthorised or inherently smoky solid fuel without emitting smoke, before being exempted in a Statutory Rule for general use in smoke control areas in Northern Ireland.

Some of the appliances are for home heating, but others, such as small incinerators and boilers, are used in industrial or commercial premises for burning specified materials, including particular types of waste material. A list of current exemptions with details of each appliance and materials and conditions which apply, are available on the website of AEA Energy & Environment: http://www.uksmokecontrolareas.co.uk/appliances.php?country=e.

Among the materials included in the conditions are cardboard, polythene, cardboard cartons, coated papers, plastic and rubber waste, paper, cardboard, corrugated paper, office or domestic waste, wood, polythene sheet or foam, polypropylene, nylon, polyethylene, rubber foam backed carpet, cotton waste, plastic coated chipboard. Many of the exempt appliances are also exempt to burn a variety of waste wood, although this is largely untreated wood.

PPC Regulations

Incinerators and combustion plant burning a wide range of waste materials are subject to LAPPC. Some of the appliances exempted under the CAO installed in industrial premises are subject to NIEA enforcement under Integrated Pollution Prevention and Control ("IPPC") as a result of the implementation of the Waste Incineration Directive (WID).

WID

The Waste Incineration Directive (WID) is an overarching piece of legislation which applies to the burning of wastes (except for exempted wastes) that takes place in a 'technical unit'. WID applies stringent standards to incinerators burning waste. Any incinerator burning a non-exempt waste under WID would be regulated by the NIEA under Part A of Section 5.1 of Part 1 to Schedule 1 of the PPC Regulations.

This annex does not provide guidance on which individual wastes are or are not within the scope of the Waste Incineration Directive controls. Such matters are addressed separately – see the guide on the Waste Incineration Directive at http://applications.doeni.gov.uk/publications/document.asp?docid=12667.

Future CAO applications

The Department cannot consider any new CAO applications for exemptions which relate to appliances which require an LAPPC or IPPC permit. Therefore, for example, an application for exemption for an appliance for burning waste wood will only be considered if the wood waste to be burned will not contain halogenated organic compounds or heavy metals as a result of treatment with wood-preservatives or coating, including, in particular wood waste originating from construction and demolition waste.

Likewise, any existing exemption granted under the CAO will no longer apply if the appliance comes under LAPPC or IPPC.

Annex XVI. Air Curtain Incinerators

This statement confirms the Department's position on the permitting and use of air curtain incinerators (ACIs) otherwise known as Air Curtain Destructors, Air Curtain Burners or Air Burners.

Background

Suppliers and operators of ACI technology have approached the district councils for information regarding permitting requirements. ACIs are devices that have been used to burn forestry waste and other vegetation clearance waste. By contrast with modern incinerators, these plant typically have basic systems to control combustion but no stack, pollution abatement or monitoring equipment and no mechanism for recovering heat from relatively high calorific value wastes (although this may be fitted as an option).

Regulatory controls

If an activity is listed in Schedule 1 to the Pollution Prevention and Control (Northern Ireland) Regulations 2003 (PPC Regulations), then it can be operated lawfully only under, and subject to the conditions of, a PPC Permit.

Plant which is not an incineration plant or a co-incineration plant burning with a capacity of greater than 50 kgs but less than one tonne per hour, which only burns non-hazardous waste, is regulated by district councils as a Part C activity.

Air Curtain Incinerators are deemed to be Incinerators and therefore cannot be permitted by district councils under Part C of the PPC Regulations

The PPC Regulations specify that, in Northern Ireland, the incineration of hazardous or non-hazardous waste in an incineration plant of any capacity is regulated by the Northern Ireland Environment Agency (NIEA) as a Part A activity.

In addition, the requirements of the Waste Incineration Directive (WID) will apply unless the material being burnt is not waste or the only wastes the plant burns are among those listed under Article 2 of the WID. The list of "excluded plant" wastes includes, for example, wood waste with the exception of wood waste which may contain halogenated organic compounds or heavy metals as a result of treatment with wood preservatives or coating. The incineration of most treated or coated wood waste is, therefore, subject to the requirements of WID.

ACIs burning waste that is not covered by the WID must still comply, in Northern Ireland, with the provisions of the IPPC Directive. This requires that all appropriate preventative measures are taken against pollution, in particular through the application of Best Available Techniques (BAT), as well as maximising energy and raw materials efficiencies.

The Department's Approach

We do not consider that ACIs burning waste subject to the WID requirements can comply with the WID and we would not grant a Permit for their operation.

We consider that it is unlikely that an ACI would constitute BAT when compared with standard combustion plant or a waste incinerator which also recovers energy.

The NIEA would consider granting a Permit to an ACI burning waste that is not subject to the WID only in exceptional circumstances, e.g. where there are no practical alternatives.

Annex XVII. Solvent emissions Directive Q+A

This annex relates to chapter 25 of the Manual

The following are questions and answers from a series of seminars held by Defra in 2004 with minor updating and removal of some questions which are no longer relevant.

1. How do I determine the extent of the SED installation?

A SED installation must be a "Stationary Technical Unit", where one or more SED Activity is carried out and the SED activity must have a solvent consumption over the SED threshold. The SED activities are listed in the new Section 7 of Part 1 to Schedule 1 of the PPC Regulations. SED thresholds are contained within Table 1 of each sector specific guidance note.

2. Do solvents removed from site count in the calculation of solvent consumption?

Solvents removed for offsite recovery or reuse do not count in determining solvent consumption. However, solvents which are removed from the site because they have been sold, as a product or part of the product, are counted, along with, any waste solvent which is disposed of and not recovered. Solvent consumption is the solvent purchased and used on site minus any solvent reused or recovered determined over a 12-month period.

3. How are substantially changed operations defined and when must they apply for a permit?

SED Box 3 in the notes gives guidance on ‘substantially changed’ processes or activities as follows: For a small installation, a change of capacity leading to an increase in VOC emissions of more than 25%. For all other installations a change of the capacity leading to an increase of VOC emissions 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. For new and substantially changed activities, permit applications were required by 20th May 2004. New activities are defined as those which were into operation after 1 April 2001 (this includes those plant previously not regulated eg dry cleaners). New

and substantially changed installations must have a permit before they start up.

4. How do I find out whether a solvent has an assigned designated risk phrase?

Risk Phrases are referenced in The Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2009 SR238/2009 and the Approved Guide to the classification and labelling of dangerous substances and preparations dangerous for supply (Third Edition). Suppliers are required by law to display the risk phrase labelling on the original delivery packaging. The Materials Safety Data Sheets should also identify whether a substance or preparation has a Risk Phrase assigned, operators are obliged to hold this information. Note: a preparation may contain substances which are assigned one of the risk phrases R45, R46, R49, R60 or R61, but the preparation itself would not be assigned that risk phrase, as the proportion of the risk phrase material is below the relevant classification threshold in the final preparation for the preparation as a whole to carry the risk phrase. For example White Spirit may contain small amounts of benzene. The benzene which carries the risk phrases, however white spirit itself does not as the amount of benzene within the white spirit is so low. When looking at preparations it must be borne in mind that only VOCs which carry the risk phrase should be considered: eg some chromium paints are assigned the risk phrases because of the content of chromium not the VOC.

5. A process manufactures organic solvents, is it covered by the SED?

No- If it doesn't use organic solvents it is not covered. The manufacture of organic solvents is not a Part 7 activity and hence not covered by SED

6. A process uses organic solvents for the maintenance of boats is it now captured by SED?

Yes - The SED Regulations increase the regulated activities to include coating activities provided they use organic solvents over the SED threshold and disregarding whether the solvents are used in the cause of a manufacturing process.

7. I have an operator with a degreaser (using >1 tonne of R40 solvent) which is directly-associated to an authorised coating process. When permitting, do I also apply all the BAT requirements of PG6/45 as well as the required SED Boxes for PG6/23(04)?

Yes - Where surface cleaning is directly-associated and technically connected with a PG 6/23 (04) coating activities, the provisions that apply will depend on whether the surface cleaning is below the SED surface cleaning thresholds. The surface cleaning activity is above the

SED threshold (>1te R40) and therefore the full provisions of PG 6/45 (04) must be applied in addition to the provisions of PG 6/23 (04). The compliance options may be different for the two SED activities and the permit should reflect this.

8. If a printer has 5 presses (each using around 200 tonnes of solvent per year) and mixes his/her own inks from a dispenser, are there six installations under Part C or 1 installation under Part A?

If there are five prescribed activities (printing) on the same site, they are all captured by the same installation. The printer uses >200 te per annum and is therefore a Part A installation rather than five or six Part C installations. If the combined solvent consumption were less than the A, threshold, the site would comprise one Part C installation.

9. Where an operator has opted for the Solvent Reduction Scheme, do ELVs still apply?

If an operator has opted for the Solvent Reduction Scheme, SED Emission Limit Values do not apply apart from those for designated risk phrase materials. ELVs for non-designated materials may, however be permitted where they are needed as BAT to prevent pollution of the environment and harm to human health.

10. I regulate a company who apply adhesives to rubber who use over 15 tonnes of toluene per year. All releases are fugitive. The PG Note requires a ratio of 1:1 for solids to VOCs but greater than 90% of the solvent is emitted fugitively and therefore the company cannot comply with the Solvent Reduction Scheme but abatement costs would prohibit other compliance options.

With regard to a Solvent Reduction Scheme, Annex IIB - paragraph 1 of SED allows for alternative approaches to compliance. Whilst not strictly a derogation from SED, such alternative approaches are referred to in the guidance as derogations (see paragraph 1.18 of PG 6/32). Annex IIB states that any alternative should provide for reductions equivalent to those achieved by emission limit values. In these circumstances an operator must demonstrate equivalence to the satisfaction of the regulator and also that the best available technique is being used and that there are no significant risks to human health or the environment. Before alternative measures are permitted for SED activities, the regulator must notify the Department and give full justification of each case where SED requirements are not applied. The LAU helpdesk can be used for technical queries in this respect.

11. How do I determine the solids content of any particular coating?

For compliance with the Solvent Reduction Scheme, coating suppliers should be able to provide information on the non-volatile content of their coatings.

12. In PG 6/16(04), do the monitoring requirements adjacent to Row 1 apply to other Rows?

Yes, the solid lines between the rows in the monitoring column in SED Box 5 is not intentional.

13. During the SED Workshops, reference was made to a Reduction Scheme Spreadsheet in development that could be used by LAs and operators to determine ongoing compliance with the Reduction Scheme. Where will the spreadsheet be published?

The spreadsheet was published on the DOENI website http://www.doeni.gov.uk/index/protect_the_environment/local_environmental_issues/industrial_pollution/lappc_guidance.htm .

14. Will all Dry Cleaners come under PPC regardless of their size and tonnage of solvent used.

Yes.

15. What is the status of the Notice under 3(14) of the SED (Northern Ireland) Regulations when an operator fails to comply with any of the requirements of the SED Regulations. Is this equivalent to a 24(1) enforcement notice?

The SED Regulations state (Reg 3 (15)) that a notice served under paragraph 3(14) shall be treated for the purposes of the Regulations as an enforcement notice served under regulation 24(1) of the PPC Regulations

16. Does the operator have to comply with the reduction scheme immediately upon application to the council?

No. The operator must comply with the requirements of the proposed reduction scheme from 31st October 2005 until the determination date for the SED installation by which time SED emission limits should be met. In some circumstances the operator may want the reduction scheme to apply earlier and there is nothing to stop a district council agreeing to this as a BAT decision.

17. When do operators need to implement their management plan?

Refer to the individual PG notes for this.

18. Many of the Processes in the new Section 7 are duplications of those in the existing sections. Which sections should processes be permitted under if they are applicable to both?

The requirements of the SED Regulations (i.e. Section 7) apply only to SED installations. A >15 tonne wood coating activity is subject to all the SED requirements and is listed in Section 7; a >5 tonne wood coating activity is caught in Section 6 which includes all the >15 tonne activities, but those activities between 5 and 15 tonnes are not subject to the SED Regulations. The PG Notes explain it in practice.

Annex XVIII. Risk Assessment

This annex relates to chapter 18 of the Manual

Introduction

Overview of the Risk Assessment Method

This risk assessment method is intended for use by district councils in determining the relative level of risk associated with activities regulated under the Local Air Pollution Prevention and Control regime. The method assigns a level of proposed regulatory effort to individual processes (high, medium or low) according to their relative risks. The method relates to effort expended in regulating processes once they have been permitted (i.e. what is covered by the subsistence element of the LAPPC fees and charges).

The method covers all standard part C activities. It does not cover reduced fee activities.

Risk assessment using this method is based upon both the nature of the process and the way in which it is managed.
It is divided into 2 parts.

- Environmental Impact Appraisal (EIA), which concerns the potential environmental impacts of a process according to its type, level of upgrading to meet regulatory requirements, and its location, and
- Operator Performance Appraisal (OPA), which relates to how well the operator manages the potential environmental impact of the process.

Each of these aspects is evaluated by scoring the process against a number of different components. These components are listed below, together with guidance on how they should be applied and their implications for regulatory planning. Where a component is not relevant, a score of zero should be awarded. Example score sheets are provided to record the scores for each process[1].

[1] Each of the possible scoring options is given a unique scoring identifier. Thus, a standard Part C activity falling into risk rating category 2 under component 1 and with highly sensitive receptors less than 100m away can be identified as 1-B, 3-A-x.

Standard Part C Activities (not Reduced Fee Activities)

Use of the Risk Assessment Method

Set out below is the approach that district councils should take in applying the risk assessment method and utilising the results in determining regulatory effort.

Step 1 Desk-based scoring of processes. All of the Part C processes under a council's control should be scored using the risk assessment method, based on information held on file, together with officer's 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 visits to selected processes. Where scheduled visits to processes are undertaken, the scoring should be used as a basis for discussion with operators. 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 the visit but should provide a focus for discussion.

Step 3 Use the scoring to determine regulatory effort. The Overall Scoring and Determining Regulatory Effort section 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.

Step 4 Review scores on a regular basis. Scores for each process should be reviewed on regular basis, and at least annually. In particular, scores should be reviewed following visits, any changes to the authorisation, 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.

Environmental Impact Appraisal

Component 1: Inherent Environmental Impact Potential of Process
This component of the methodology reflects the fact that certain process types have inherently greater potential environmental impacts than others and may thus require greater regulatory effort.

The Advisory Panel on Risk Ranking (APRR) has rated the various processes, as defined by the relevant PG Note(s), into three categories

according to their inherent environmental impact potential. The rating is provided at Appendix 1 of this Annex.

Where more than one PG Note is used in deriving a single authorisation, councils should base the assessment on the PG Note that is the main one used for the purposes of determining BAT for the process.

Scoring for Component 1 - Inherent Environmental Impact Potential Risk Rating Score Awarded

Component 1 – Inherent Environmental Impact Potential		
APRR Risk Rating Category	**Possible Scores**	Score Awarded
(A) Category 1	10	
(B) Category 2	20	
(C) Category 3	30	

Component 2: Progress with Upgrading
This component of the methodology assesses the extent to which a process has been upgraded to comply with the BAT requirements set out in the process's authorisation. Not only may processes that have not completed upgrading pose a greater potential risk; they are also likely to require more regulatory effort in monitoring progress with the upgrading. Conversely, processes that exceed current BAT requirements will pose reduced risks and may require less regulatory effort.
There are four possible classifications for scoring of processes:

- upgrading to meet the requirements of the authorisation is not yet complete, due to the Guidance Note deadline not yet having been reached;

- upgrading is not yet complete for other reasons, such as variations to the process and the Guidance Note deadline has passed;

- upgrading is complete and the process meets all of the current applicable BAT requirements; or

- emissions control not only meets current BAT requirements but goes beyond those requirements, resulting in lower emissions (for example, where improved emissions arrestment plant has been adopted voluntarily in plant already meeting BAT requirements or where Process Guidance Note requirements are met over a year before the due date).

The nature and extent of upgrading required, or the degree to which BAT is exceeded, may vary considerably amongst processes. However, to ensure objectivity and consistency, the same scores should be awarded regardless of

the magnitude of these factors. Past failure to complete upgrading within the required time should not be included in this Component.
Scoring for Component 2 - Progress with Upgrading Status of Upgrading Score

Component 2 - Progress with Upgrading		
Status of Upgrading	**Possible Scores**	Score Awarded
(A) Upgrading not complete but PG Note deadline has yet to be reached	5	
(B) Upgrading not yet complete and PG Note deadline has passed	10	
(C) Upgrading complete and meets BAT Requirements	0	
(D) Emissions control exceeds BAT Requirements	-10	

Component 3: Sensitivity and Proximity of Receptors
This component assesses the extent to which any receptors in the vicinity of a process could be impacted by emissions from the process. This will be determined by the sensitivity of the receptors in question (their number or the particular importance attached to them) and also by their proximity to the process. This component is not intended to reflect the nuisance potential of a process, and thus the potential for complaints (this is included under the Compliance Assessment component below), but rather the potential for physical harm to the receptors in question.

The sensitivity of receptors is classified as high, medium or low:

- **high** - schools, residential areas, hospitals, designated environmental areas (e.g. ASSIs);

- **medium** - offices, isolated residences, major roads, footpaths/cycle paths, agricultural land; and

- **low** - public open space, minor roads, industrial areas, car parks, derelict land.

The distances used to determine proximity are based upon the distances up to which statutory consultation is required where ASSIs are near to Part C processes (see paragraph 2 of Appendix 2 of Annex XIII). Whilst in practice the distances at which different receptors are affected will vary according to the receptor and the pollutant in question, these standard distances are used in order to assure simplicity and consistency in application of the method.

Scores are awarded according to a combination of the sensitivity of receptors and their proximity to the emission source. The highest possible score is awarded, which may not necessarily be the score for the most sensitive receptor. For example, where there is a high sensitivity receptor 300m away

and a medium sensitivity receptor 150m away, the respective scores are 5 and 10 and the latter is the score awarded.

Component 3 - Sensitivity and Proximity of Receptors (circle appropriate score)			
	Sensitivity of Receptors		
Proximity to Emission Source	**(x) High**	**(y) Med**	**(z) Low**
(A) < 100m*	20	12	5
(B) 100 - 250m*	12	10	3
(C) 250 - 500m*	5	3	1
(D) >500m*	0	0	0
** All distances should be multiplied by a factor of 2 for mineral and cement & lime processes and by a factor of 4 for combustion, incineration (not cremation), iron & steel and non-ferrous metal processes.* *Note: Distances should be measured from the process itself, rather than the site boundary.*			

Mobile plant: Some mobile plant tends to be operated in fixed locations and can therefore be rated as above. In other cases mobile plant should be awarded 10 points.

Component 4: Other Targets

An additional 10 points should be scored if there are particular air pollution problems in the local area to which the process is a potential contributor; for example, where an Air Quality Management Area has been established for a pollutant that is emitted from the process in question.

Component 4 – Other Targets		
	Possible Scores	Score Awarded
(A) Other air pollution problems in the local area to which process is a potential contributor	10	
(B) No such air pollution problems	0	

Mobile plant: Unless the mobile plant operates in a fixed location with air pollution, give a score of 0.

Total for Environmental Impact Appraisal	**Range 0 to 70**	

Operator Performance Appraisal

Component 5: Compliance Assessment

This section relates to any incidence of non-compliance that has occurred in the twelve months immediately preceding the assessment or review of the assessment. Compliance is assessed in terms of individual incidents; a single incident that led to a number of justified complaints should be scored as being one incident. For each incident, a score is awarded according to the level of regulatory action required. If there has been no non-compliance, a score of zero is awarded.

For example, a hypothetical cement process received three justified complaints on three separate occasions around eight months ago from local residents. The emissions leading to the justified complaints were caused by repeated failures of a bag filter, which was remedied by the operator replacing the filter bags. The process also received an enforcement notice nine months ago in relation to a failure to record emissions in the log book. The score would be 15 points for the justified complaints and 15 points for the enforcement notice, giving a total of 30 points.

The maximum possible score under normal operating conditions is 50 points; for example, a score of 50 points will be awarded even where there have been more than ten incidents leading to justified complaints. This is to ensure that scores for non-compliance do not distort the overall scores.

Only air pollution related incidents should be included under this component (i.e. general nuisance or noise related incidents are not covered).

All incidents that have occurred within the twelve months immediately preceding the assessment or review of the assessment should be included.

Where a justified complaint has been received but no incident leading to non-compliance has occurred, no score should be awarded. The process operator should not be penalised under this component if they are in compliance with the permit and the implied BAT.

Component 5 - Compliance Assessment		
Scale of Non-Compliance	**Possible Scores**	Score Awarded
(A) Incident leading to justified complaint but no breach of any specific authorisation condition or of the general/residual BAT condition	0	
(B) Incident leading to a justified complaint*	5 per incident	
(C) Breach of a permit condition not leading to formal action**	10 per breach	
(D) Incident leading to formal caution, Enforcement Notice or prosecution	15 per incident	
(E) Incident leading to a Prohibition Notice or Suspension Notice	20 per incident	
Total	**(Max 50)**	
** Unjustified complaints may be e.g. those considered by the inspector to be unreasonable or which cannot be clearly linked to an incident at the process.* *** Where two conditions relate to essentially the same matter it would be reasonable to make the judgement that this is in effect, amounted to a single breach.*		

[For administrative purposes, processes may be identified using the number of incidents under each category. For example, a process having two incidents leading to a justified complaint and one leading to a formal caution would be identified as 5-B2,D1]

Component 6: Monitoring, Maintenance and Records

This component concerns the monitoring activity required to be undertaken by the process operator, the maintenance programme for pollution control equipment (as specified in the authorisation), and the record keeping undertaken by the operator

Where any of the elements is not applicable, a score of zero should be awarded. Where the council has chosen to undertake monitoring itself, operators should not be awarded an adverse score (unless they have failed to meet their own obligations).

Scoring for Component 6 - Assessment of Monitoring, Maintenance and Records				
Criterion	**Possible Scores**			**Score Awarded**
	(x) Yes	**(y) No**	**(z) N/A**	
(A) All monitoring undertaken to the degree required in the authorisation?	0	10	0	
(B) Monitoring requirements reduced because results over time show consistent compliance?	-5	0	0	
(C) Process operation modified where any problems indicated by monitoring?	0	5	0	
(D) Fully documented and adhered to maintenance programme, in line with authorisation?	0	5	0	
(E) Full documented records as required in authorisation available on-site?	0	5	0	
(F) All relevant documents forwarded to the authority by date required?	0	5	0	
Total Score	**(-5 to 30)**			

Mobile plant: In the case of (F) failure notify the regulator promptly of all relocations of mobile plant shall score 10 points.

Component 7: Management, Training and Responsibility

This component assesses whether documented procedures for implementing all aspects of the authorisation are in place, with responsibility allocated to particular staff members. The extent of documentation may vary, particularly for smaller processes.

Additional points are awarded where an appropriate environmental management system is in place. Guidance on what constitutes an appropriate management system is given below

Component 7 - Assessment of Management, Training and Responsibility				
Criterion	**Possible Scores**			**Score Awarded**
	(x) Yes	**(y) No**	**(z) N/A**	
(A) Documented procedures in place for implementing all aspects of the authorisation?	0	5	0	
(B) Specific responsibilities assigned to individual staff for these procedures?	0	5	0	
(C) Completion of individual responsibilities checked and recorded by the company?	0	5	0	
(D) Documented training records for all staff with air pollution control responsibilities?	0	5	0	
(E) Trained staff on site throughout periods where potentially air-polluting activities take place?	0	5	0	
(F) Is an 'appropriate' environmental management system in place?	-5	0	0	
Total Score	**(-5 to 25)**			

Total for Operator Performance Appraisal	**Range -10 to 105**	

Overall Score for the Process	**Range -10 to 175**	
Regulatory Effort Category **High =>80, med = 40 – 80, low = <40**	**Low/Med/High**	

Overall Scoring and Determining Regulatory Effort

Overall Scoring

The overall score for a process is obtained by summing the scores for each component. The table below summarises the maximum possible scores under each of the components. The total maximum score is 175.

Overall Maximum Scores		
Assessment Component	**Minimum Score**	**Maximum Score**
Environmental Impact Appraisal		
1. Inherent Environmental Impact Potential of Process	10	30
2. Progress with Upgrading	-10	10
3. Sensitivity and Proximity of Receptors	0	20
4. Other Targets	0	10
Operator Performance Appraisal		
5. Compliance Assessment	0	50
6. Monitoring, Maintenance and Records	-5	30
7. Management, Training and Responsibility	-5	25
Total	**-10**	**175**

Determining the Level of Regulatory Effort

The result of the risk assessment can then be used to determine the appropriate level of regulatory effort to be devoted to the subsistence aspects of a process. The total score awarded places the process in one of three regulatory effort categories, as follows:
1. A process scoring less than 40 points is categorised as Low.
2. A process scoring between 40 and 80 is Medium.
3. One scoring over 80 points is High.

The table below gives an indication of the amount of regulatory effort that could be devoted to the process in question, depending upon the regulatory effort category.

Determination of Regulatory Effort from Scores		
Overall Score	**Regulatory Effort**	
	Category	**Hours per Year***
Less than 40	Low	9 to 15
40 to 80	Medium	18 to 30
Over 80	High	27 to 45
** Estimated average regulatory time per process varies from 18 to 30 hours per year*		

Regulatory effort refers to the time taken to regulate a process that is dependent upon the process characteristics. This includes both time spent on inspections and time spent at the office preparing for inspections, writing reports and reviewing data supplied by operators. The average regulatory time spent per process varies from 18 to 30 hours per year.

Note that it is not intended that application of the risk-based method should lead to a significant reduction in overall regulatory effort; rather effort should be prioritised towards those processes posing the greatest risk of environmental pollution.

Paragraph 18.19 of the General Guidance Manual advises on the minimum levels of inspection the Department would expect for high, medium and low risk installations.

Appendix to Part 1: Classification of Processes by Advisory Panel on Risk Ranking (APRR)

The table below, provides a ranking of processes based on their inherent environmental impact potential. Process categories are placed in one of the following three categories, taking into account potential for contained and/or fugitive emissions, for health impacts, for environmental impacts and potential for 'offensiveness' impacts:

Category 1: Processes with an inherent environmental impact potential that was lower/below average when compared with other Part C processes.

Category 2: Processes with an inherent environmental impact potential that was medium/average when compared with other Part C processes.

Category 3: Processes with an inherent environmental impact potential that was higher/above average when compared with other Part C processes.

Risk Rating of LAPPC Processes according to APRR	
Process Guidance note	**Category**
PG1/1(04)-waste oil burners, <0.4MW	1
PG1/2(05)- waste recovered oil burners, less than 3MW	2
PG1/3(95)-boilers and furnaces, 20-50MW	1 - gas fed 2 - other fuel
PG1/4(95)-gas turbines, 20-50MW	1
PG1/5(95)-compression ignition engines, 20-50MW	1
PG1/10(92)-waste derived fuel combustion <3MW	3
PG1/11(96)-reheat, heat treatment furnaces, 20-50MW	2
PG1/12(04)-combustion of solid waste 0.4 to 3MW	3 – WID 2 - non-WID 1
PG1/13(04) storage, loading, unloading petrol at terminals	3
PG1/14(06)-unloading petrol into storage at service stations	1
PG1/15(04)-odorising natural gas, liquefied	

petroleum gas	1
PG2/1(04)-furnaces to extract non-ferrous metal from scrap	3
PG2/2(04)-hot dip galvanising	2
PG2/3(04)-electrical and rotary furnaces	Reverberatory/Rotary –3 Gas/electric fed-1* Crucible oil fed -2 Crucible gas fed -1
PG2/4(04)-iron, steel, non-ferrous metal foundry processes	Core making, chemically bonded moulds, thermally reclaimed sand -3 All other processes – 2*
PG2/5(04)-hot and cold blast cupolas	3
PG2/6a(04)-aluminium and aluminium alloy processes	Ingots and in house clean scrap used - 2 Other scrap used - 3
PG2/7(04)-zinc and zinc alloy processes	Ingots and in house clean scrap used - 2 Other scrap used - 3
PG2/8(04)-copper and copper alloy processes	Ingots and in house clean scrap used - 2 Other scrap used - 3
PG2/9(04)-metal decontamination processes	3
PG3/1(04)-blending, packing, loading and use of bulk cement	1
PG3/2(04)-manufacture of heavy clay and refractory goods	3
PG3/3(95)-glass (exc. lead glass) manufacturing processes	3
PG3/4(04)-lead glass manufacturing processes	3
PG3/5(04)-coal, coke, coal product and petroleum coke	Bagging plant -1 All other processes -2
PG3/6(04)-polishing, etching of glass etc using HF acid	3
PG3/7(04)-exfoliation of vermiculite and expansion of perlite	1
PG3/8(04)-quarry processes	1*
PG3/12(04)-plaster processes	1
PG3/13(95)-asbestos processes	3

PG3/14(04)-lime processes	1
PG3/15a(04) - roadstone coating	WID - 3 Non-WID/non gas fed - 2 Gas fed – 1
PG3/15b(04) -mineral drying	Non gas fed - 2 Gas fed - 1
PG3/16(04)-mobile crushing and screening	1
PG3/17(04)-china and ball clay & spray drying of ceramics	spray dryers -1 Ball/China clay processes - 2
PG4/1(04)- surface treatment of metals	2
PG4/2(05)- manufacture of fibre reinforced plastics	3
PG5/1(95)-clinical waste incineration < 1 tonne/hour	3
PG5/2(04)- crematoria	3
PG5/3(04)-animal carcass incineration < 1 tonne an hour	3
PG5/4(95)-general waste incineration < 1 tonne an hour	3
PG5/5(91)-sewage sludge incineration < 1 tonne an hour	3
PG6/1(00)-processing of animal remains and by-products	3
PG6/2(04)-manufacture of timber and wood-based products	1
PG6/3(04)-chemical treatment, timber, wood-based products	1
PG6/4(95)- manufacture of particleboard and fibreboard	3
PG6/5(05)-maggot breeding	3
PG6/7(04)-printing and coating of metal packaging	2

PG6/8(04)-textile and fabric coating and finishing	2
PG6/9(96)-manufacture of coating powder	2
PG6/10(97)-coating manufacturing (now 6/44(04))	1 or 2#
PG6/11(97)-manufacture of printing ink (now 6/44(04)	1 or 2#
PG6/12(91)-production of natural sausage casings, tripe, etc	2
PG6/13(04)-coil coating	2
PG6/14(04)-film coating	2
PG6/15(04)-coating in drum manufacture and reconditioning	2*
PG6/16(04)-printworks	2
PG6/17(04)-printing of flexible packaging	2
PG6/18(04)-paper coating	3
PG6/19(05)-fish meal and fish oil	2
PG6/20(04)-paint application in vehicle manufacturing PG6/21(96)-hide and skin (under review)	2
PG6/22(04)-leather finishing	2
PG6/23(04)-coating of metal and plastic	2
PG6/24(05)-pet food manufacturing	cooking involved in process - 2 no cooking in process - 1
PG6/25(04)-vegetable oil extraction, fat and oil refining	vegetable oil processes - 2 heat refining processes - 3
PG6/26(05)-animal feed compounding	2
PG6/27(96)-vegetable matter drying	2
PG6/28(04)-rubber	carbon black used in process - 3

	all others processes - 2
PG6/29(04)-di-isocyanate	3
PG6/30(06)-production of compost for mushrooms	2
PG6/31(96)-powder coating (including sherardizing)	1
PG6/32(04)-adhesive coating	2
PG6/33(04)-wood coating	2
PG6/34A(06)-respraying of road vehicles	1*
PG6/35(06)-metal and other thermal spraying	2
PG6/36(97)-tobacco processing	2
PG6/40(04)-coating, recoating of aircraft and components	2
PG6/41(04)-coating and recoating of rail vehicles	2
PG6/42(94)-bitumen and tar	coal tar, oxidised bitumen and cutback bitumen processes - 3 asphalt processes – 1
PG6/43(04) – pharmaceutical formulation and finishing	2
PG6/44(04) – manufacture of coating materials	1 or 2#
PG6/45(04) – surface cleaning	2
IPR 4/17 chemical storage	3
WID - Process will come under the Waste Incineration Directive *Non WID - Process will not come under the Waste Incineration Directive* ** - Where a particular process is large for the sector and, in the judgement of the EHO, this has significant impacts for risk, the ranking should be increased by one category.* *# - District Councils to decide for themselves which category. Feedback from the first year of operation in GB is that most local authorities rated coating processes at category 1.*	