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Summary of responses to the Consultation on Better Regulation Review of Part B Activities from 14 November 2008 to 6 February 2009

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Introduction

Part B activities are undertaken mainly in factories, but also include other premises such as some petrol stations and all dry cleaners - known as 'installations'. The Part B regime (also referred to as Local Air Pollution Prevention and Control) regulates air polluting emissions and local authorities are the regulators.

Defra, the Welsh Assembly Government, and the Scottish Government concluded in 2005 that a review should be undertaken of the appropriate level of regulation for installations regulated under the LAPPC regime. The review's purpose was to examine those sectors or parts of sectors for which there is no direct obligation under an EU Directive for operators to obtain a pollution permit for their installation. The review looked at some 6,000 installations spread across 61 different sectors.

27 responses to the consultation were received. Several responses focused on specific sectors, so their support or opposition was in relation to the proposals for that particular sector. But, by way of overview, 5 respondents were fully supportive, 12 broadly supportive, 7 broadly opposed, and 3 offered no comments.

The following summary of responses includes Government comments.

Q1. do you agree the approach used in the attached Impact Assessment?

9 respondents commented on this question. Of these 8 agreed or broadly agreed the approach. The main concerns raised were in relation to the length of the consultation (SEG); the level of regulatory input and funding required from Local Authorities (LACORS); the estimated staff costs in the Impact Assessment (Foundry Industry) and concerns that any reduced monitoring as a result of simplified permits or voluntary compliance would not lead to a diminution in public health protection (HPA) .

Defra response. The IA was an extensive document in order to provide consultees with the factual basis and calculations which underpinned the proposals. The multi-criteria analysis for 61 different sectors was inevitably complex. The staff cost estimates used standard figures supplied by the Better Regulation Executive.

The level of monitoring will be unaffected by this review. The first principle in the criteria applied to the review was to consider whether activities constituted a significant source of local, national or transboundary air pollutants, including any which compromise achievement of existing national air quality policy or other environmental and human health objectives, etc.

The Government recognises the concerns raised by LACORS about the impacts of any changes on regulatory effort, relationship with operators and income. The Environmental Permitting Regulations require that fees and charges must reflect full recovery of relevant costs. As with the sectors currently subject to simplified permitting, consultation will be undertaken on

what are the appropriate application and subsistence charges for regulating any additional sectors which are brought under simplified permitting, and LACORS will, as is current practice, be invited to submit evidence. The 6-year review of the process guidance notes will also afford an opportunity to examine the extent of any reduction in regulatory effort that will arise from simplified permitting.

Q2. can you provide any evidence to improve the evidence base for any part of the Impact Assessment?

5 respondents commented on this question, but apart from an offer from some to participate in the review of the process guidance notes, comments about lack of foundry emissions data in the consultation paper and frequency of operator inspections, no additional evidence was provided.

Defra response: Defra is in some respects disappointed that no further evidence was provided, but substantial work was done to produce the evidence base in the Impact Assessment, so it is assumed that consultees agree that this provides a firm basis on which to take decisions.

Q3. do you agree the assessment in section 4 of the Impact Assessment of

a) the pros and cons of the 7 regulatory options?

6 respondents commented, 4 of whom supported the analysis. The main concerns raised were that reversion to statutory nuisance would be a retrograde step; there needed to be clear and coherent briefing if simplified permitting was adopted more widely with sufficient time to train staff; the interpretation of 'triviality' was difficult and could result in wide variation, and local authorities were not resourced to keep checking triviality criteria were being met; there was no evidence that having a waste permit would be any less onerous or more proportionate, and it was unclear that the Environment Agency could manage the increased workload; the implication that self-regulation might provide an inappropriate Best Practicable Means defence under statutory nuisance; and the need for careful monitoring if self-regulation were to be introduced

Defra response: these are also valid concerns, which have been taken into account in deciding next steps.

b) the cost of Information Obligations for each of the 7 regulatory options?

3 respondents commented. None of them specifically endorsed the Information Obligations or provided alternative figures. One respondent considered that the cost

of IOs was difficult to assess, but that most observers considered times allocated for the various functions associated with permitting were under-estimates. Another argued that IOs for medium- and high-risk installations under the statutory nuisance regime should have been quantified.

Defra response: in the absence of alternative concrete data, Defra consider the IO data to provide a good basis for decision-making. There were no high- and medium- risk figures in relation to statutory nuisance, because the assumption was made that only sectors with a low impact might be transferred to statutory nuisance control.

Q4. do you agree the environmental impact assessment of the different sectors in Appendix G of the Impact Assessment?

6 respondents commented. One was pleased to see that the human health impact of changing regulation was specifically considered. The remainder made detailed comments: that bulk cement production and mobile crushing were reasonable candidates for simplified permitting; that the analysis of the metals sector was supported, although there were some specific technical errors in a few entries; and that there was a degree of confusion over whether those sectors with EC Directive 'cover' had all been appropriately excluded.

Defra response: The comments have been noted, but none appear to affect the assessment made in Appendix G.

Q5. do you agree the assessment of

a) social impacts in Appendix I of the Impact Assessment?

4 respondents commented, 3 of whom were in broad support of the assessment. One respondent questioned whether public health had been considered in sufficient detail to warrant the conclusions reached in the sector-specific sections, and asked for more detailed and transparent evidence. The comment was made that any reduced monitoring as a consequence of simplified permitting or voluntary measures must not lead to a reduction of public health protection.

Defra response: Defra believes that the extent of the assessment was proportionate to the circumstances and that more extensive investigation of public health was not warranted. However, as stated by the Health Protection Agency, the review of individual process guidance notes will provide further opportunity to consider health issues, and Defra has subsequently invited the HPA to provide input into the guidance note reviews. Defra agrees that any

reduction of monitoring should only occur where it does not jeopardise and appropriate level of environmental and health protection.

b) the small firm impacts in Appendix J, and do you have any evidence/data to improve the evidence base for this test?

There was general support from the 3 respondents who commented on this question, but no additional evidence was provided. There were two main comments. One was to welcome a focus on a simplified and more flexible approach to find the most effective way of meeting policy outcomes and minimising financial burdens. The other was to comment that not all small and medium-sized enterprises can afford trade association fees.

Defra response: Defra welcomes the support, although notes that no further evidence was forthcoming. Defra will endeavour to identify 3 SMEs for each sector, which can be contacted direct as part of the consultation for the 6-year review of process guidance notes, which will include consideration of the viability of simplified permitting.

c) the competition impacts in Appendix K?

2 respondents supported this and one felt unable to comment.

Defra response: no comments.

d) enforcement and sanctions in Appendix L

2 respondents commented on this. The points raised were to urge the Government to consider civil penalties for minor activities and to support a prescriptive regulatory role rather than a reactive one on the grounds of efficiency.

Defra response: Defra is current working on the issue of civil penalties and may consult on this shortly. In Defra's view a proactive regulatory role is more appropriate for more complex and more polluting activities, but there can be different styles of proactive regulation, such as the less onerous simplified permitting option, the use of which may be extended as a result of this review.

e) proposals for future monitoring in Appendix L

3 of the 5 respondents who commented supported the proposals. Issues raised were that there remained too much emphasis on meeting targets and providing quantitative data; doubts about whether statutory nuisance or the Clean Air Act were appropriate for regulating IPPC activities especially as there is no basis for

monitoring; and lowering of risk evaluations for permit pricing arrangements for companies demonstrating a high level of self regulation.

Defra response: Defra notes the comments made.

Q6. do you agree the conclusions of the Impact Assessment?

Of the 8 respondents who specifically addressed this, 6 were broadly content. 2 respondents disagreed with the proposed exemption of two sectors: vegetable matter drying and coating powder manufacture. Various comments were made about the proposals to extend simplified permitting, but it was generally welcomed that this should be examined on a sector-by-sector basis through the 6-year review of process guidance notes, provided that this was a thorough exercise which ensures a good level of environmental and health protection and the true administrative costs of regulation are properly covered through fees and charges.

In responding to the proposal that no new installation should be added to Part B regulation, it was suggested that sewage treatment works, composting activities and intensive dairy herds ought to be regulated as Part B activities.

Defra response: Defra intends to proceed in line with the consultation conclusions, subject to the following.

Defra recognises that the selection of sectors appropriate for simplified permitting needs to be thorough and that relevant stakeholders need to be fully consulted. The consultation paper on the principles underpinning the 6-year review of process guidance notes, which will be the vehicle for undertaking the assessment of suitability for simplified permitting, set out the approach intended to be adopted. A summary of responses to that consultation and Defra comments has been published at <http://www.defra.gov.uk/corporate/consult/sixyear-review/index.htm> .

As regards coating powder manufacture, the proposed exemption has been supported or broadly supported by the British Coatings Federation, Marine Painting Forum and the Health Protection Agency. LACORS were concerned about loss of Local Authority funding if sectors are removed from Part B activities. They argued that corresponding funding received from businesses for these processes will cease to exist, leaving environmental protection services to rely on additional resources being available via revenue support grant to allow the service to maintain appropriate staffing levels to regulate the deregulated Part B process under statutory nuisance legislation. LACORS also comment that within the powder coating sector there is inconsistency about whether a process should fall within LAPPC depending upon which of

the different methods of application is being used. The Environmental Industries Committee believe that the adoption of voluntary agreements in the sectors like powder coating would result in a significant risk of increasing high emission events. The Department proposes to consult further with interested parties before reaching a decision on the removal of coating powder manufacture from Part B regulation.

As regards vegetable matter drying, it has emerged from this consultation that there are various activities which are considered to fall within this umbrella, not all of which were intended to be covered by the exemption proposal. The focus of the proposal was on those activities, such as grass drying, which are likely to have a low relative offensiveness of odour and a relatively low particulate emission potential, compared with activities more akin to animal feed compounding. Comments were received from a group of local authorities which regulate vegetable drying installations and from the British Association of Green Crop Driers. The Department intends to consult these direct in order to identify whether and how the distinction can be made in the Regulations so as to exempt the low impact activities only.

Defra has considered carefully the arguments put forward for extending the Regulations to cover sewage treatment works, composting activities and intensive dairy herds. It is considered that application of the code of practice on dealing with statutory odour nuisance from sewage treatment works (<http://www.defra.gov.uk/environment/localenv/nuisance/odour/pdf/sewageodor-cop.pdf> - publication of additional guidance on odour control is expected end July 2009) will, when used to compliment other measures covering additional potential sources of pollution (including operation under an Environmental Permit under the EP Regulations), should provide sufficient safeguards. The regulation of composting activities is covered by the waste regime under the Environmental Permitting Regulations, and Defra consulted on amending the current list of waste exemptions in 2008, with a summary of responses being published earlier this year <http://www.defra.gov.uk/corporate/consult/waste-exemption-review/index.htm> . Defra considers this to be the appropriate mechanism for considering the regulating of composting activities.

Defra also does not agree that intensive dairy farming establishments should become a Part B activity. Such establishments potentially affect all media, not just air, and so would possibly be candidate for integrated pollution prevention and control as a Part A activity. However, in its December 2007 proposal for a recast of the IPPC Directive, the European Commission decided, after detailed review, that such a step was not justified and the UK has supported that decision. The text of the recast Directive which was politically agreed in June 2009 contains a requirement which would oblige the European Commission to review by the end of 2012 the need to apply IPPC to cattle farming. If that

requirement remains in the finalised Directive (expected in 2010), the UK will of course contribute to that review process.

Summary of responses

Network Rail

In general, Network Rail supports the views of the Quarry Products Association made in the consultation document, insofar as they relate to Part B Activities undertaken by Network Rail (mobile crushing and screening). Network Rail supports the proposal for mobile plant to be included in the risk-based charging scheme, triggering reduced annual fees for low risk plant. Network Rail also support that a simplified permit should be developed.

Industrial Pollution Liaison Group (Sub group of the Bristol, Gloucestershire and Somerset Pollution Monitoring Committee).

The Industrial Pollution Liaison Group generally support Better Regulation and the current permitting regime. Also, the Risk Assessment for the 6 sectors is welcomed/not objected to. They were less concerned about the loss of fee if certain sectors were designated as low risk in the short term as the relatively small scales should not impact on their budgets.

British Coatings Federation

The British Coatings Federation fully endorse the Better Regulation Review of Part B Activities. They consider that a simplified permitting process should be explored as they consider there to be problems with the enforcement of the current systems. They also consider that going beyond SED is not a sensible option in the current climate and that it could encourage companies to migrate their operations from the UK to other EU countries.

Campaign for Clean Air (CCAL)

The Campaign for Clean Air were supportive and considered it very important that Defra uses assertively its full powers in respect of Part B (and other) processes as a means of ensuring that air quality laws are complied with in full. CCAL also support in full all comments submitted by Environmental Protection UK in respect of these consultations.

Kaolin and Ball Clay Association

The Kaolin and Ball Clay Association were supportive and were concerned only with PG3-17 which they considered fit for purpose. However, they considered within the 6 year review, a lighter touch through simplified permitting for these processes.

Quarry Products Association (QPA)

The Quarry Products Association were broadly supportive and considered that the current system of regulation generally remains appropriate for the industry, establishing known operational standards and providing a means of delivering continuous improvement for environment protection. However QPA can understand the benefits provided by simplified permitting and welcome the opportunity to work with the Government in the formation of the Process Guidance notes. The Quarry Products Association welcomes the possible simplification of permitting amongst some Part B operations and appreciates how this would provide an opportunity to reduce administration burden to industry and the Government.

Suffolk Environmental Protection Group

The Suffolk Environmental Protection Group were broadly supportive and considered that the proposals seemed reasonable. Their members suggested that bulk cement and mobile crushing could both be regulated by “simplified permits”. Their suggestion for mineral drying is that the option for simplified permitting remains open, but that this may not be appropriate.

Marine Painting Forum

The Marine Planning Forum were broadly supportive. They questioned whether installations applying coatings, whether or not subject to the SED, typically, SMEs. They suggested that the percentage of overall coating consumption attributable to shipyards, yards cannot, unless small boat yards, be considered to be SMEs. The scale of coating applications in a major shipyard can cause problems of comprehension with some LAs.

British Association of Green Crop Driers (BAGCD)

The BAGCD were broadly supportive but were concerned that the relationship established with their local authorities, enabling them to have a level of certainty re type and frequency of inspections, would be jeopardised. They suggested that some guidance as to expectations for the future would be great assistance in both financial and investment planning.

Source Testing Association (STA)

Broadly supportive. They consider that there had been changes in monitoring standards and improvements in the quality of monitoring since the last review, and therefore a review of the process Guidance Notes to update BAT is seen as necessary and is fully supported. monitoring issues should be considered across all guidance notes. The STA also support a technically rigorous look at the value and cost effectiveness of the current regulatory regime and support reduced regulatory administration, provided it does not dilute BAT requirements or enforcement.

East Ayrshire Council

Broadly supportive although they expressed a desire that the Local Air Pollution Prevention and Control regime should not be compromised in any attempts to reduce administrative burdens.

Health Protection Agency (HPA)

The HPA were broadly supportive and agree in principle to the approach undertaken in carrying out the Impact Assessment. They recognise that the Part B regulatory regime adopts a proactive approach which provides assurance about what industry and regulators must do to reduce the risk of pollution and its impact on public health.

The HPA would like a more detailed and transparent evidence based justification of the health conclusions, but do acknowledge that the technical working groups will develop areas further as part of the 6 year review of the PG notes. They would like assurances that any health impacts are fully considered.

Scotch Whisky

Broadly supportive and welcomed simplification. However, they would like reassurance that any simplified permits or industry standards will not be more onerous than existing legislation.

Suffolk Environmental Protection Group

Broadly supportive and considered that more regulatory impact is required for premises such as concrete block manufacturers compared to simple concrete

batching. They suggested a redefinition so that concrete batching is covered by a simplified permit but concrete block manufacture remains as is.

Non-ferrous Alliance (NFA)

Broadly Supportive but had some concern as to whether LAs will be consistent in their approach to applying risk based regulation of Part B activities and whether additional regulatory measures actually bring environmental benefits. They welcomed further investigation into the application of standard permits to the sector.

Essex Environmental Protection Study Group

Broadly supportive although concerned that there were no proposals to mirror Scottish legislation and include wood shredding. Stockpiles create fire hazards and the emissions from shredding are 'gross' and totally uncontained.

Foundry Industry Environment Committee (FIEC)

FIEC broadly supports the conclusions of DEFRA regarding the approach suggested for the foundry sector. FIEC have always taken the view that foundries have now implemented the Part B approach to regulation and have become used to the regime, in most cases working with their regulatory authority to provide the environmental protection required by the legislation. FIEC also supports Defra's views that following the better regulation review, foundries will continue to be subject to the Part B regulatory system. They also agree that during the forthcoming 6-year review of Process Guidance Notes for Part B Foundries and Foundry Processes, the possibility of some simplified permitting should be evaluated, although they consider that the sector processes are too varied to offer much opportunity.

Agricultural Industries Confederation

Questioned the withdrawal of vegetable drying activities from the regulation. They consider that there is a parallel between vegetable raw material drying and feed compounding activities and that the anomaly is due to the inclusion of animal raw materials in the animal feeds production processes.

Leeds City Council

Leeds City Council oppose deregulating Vegetable Matter Drying largely due to offensive odours. There is evidence from other local authorities with similar concern. They also consider that simplified permitting is not suitable for most of the sectors due to the variation in each industry, consequently each permit needs to be site specific. They recommended a separate PG note for each type of printing activity as the current one is cumbersome and confusing.

Salisbury District Council

Salisbury District Council oppose the removal of vegetable matter drying operations from the regulation. They have had previous problems with Statutory Nuisance proceedings and believe that the current permit regime is cost effective and efficient.

Tunnel Tech

Tunnel Tech were concerned with the inconsistency between commercial and 'own use' growers. They would like all mushroom compost yards to be Part B regulated on the same basis to provide a fair and competitive market.

Environmental Industries Commission (EIC)

EIC is against any change but would welcome simplified permitting if it doesn't result in any change in technical requirements (BAT). Their members were concerned with the proposals for the vegetable matter drying and the manufacture of coating powder sectors.

LACORS

LACORS were concerned that the IA process does not consider the affect on local authorities. If sectors removed form Part B then the funding normally received from these will not be available to regulate higher risk activities. They stated that they would like to see Defra/WAG explore how moving to simplified permits will affect the level of regulatory effort , they do not wish to see it under funded.

LACORS recognises the certainty Part B provides for operators and would not wish to see the erosion of the relationship established with operators, through the option of operating waste permits and hence operators shifting to dealing with the Environment Agency (EA). They detailed that resources are not available to keep rechecking Triviality. Self regulation is seen as something that would have to be

carefully monitored to ensure that at least the equivalent of the current level of control is maintained.

Lacors question whether simplified permits actually reduce administrative burdens as they do not eliminate other tasks involved with environmental permitting. Generally lacors recognises that there may well be opportunities to utilise simplified permits but more consideration is needed.

Intensive Dairy Herds –Lacors stated that increasing ‘industrialisation’ means that there is a need for proactive regulation and not statutory nuisance. As it is looking unlikely that the proposed directive on industrial emissions will include this sector Lacors suggests that LAPPC could contribute to its regulation.

Norfolk Environmental Protection Group

The Norfolk Environmental Protection Group agrees with the IA approach but not all conclusions. They favoured annual inspections as opposed to ‘onerous’ paperwork which they have evidence that such paperwork requires frequent reminders.

They would like to see the status quo maintained; queried why medium and low cost activities are costed into the Information Obligations; highlighted that not all SMEs may be able to afford Trade association Fees; asked if civil penalties should be considered for non-submission of data for minor activities such as mobile crushers and waste oil burners; were against Statutory Nuisance and CAA for IPPC activities particularly as there is no basis for monitoring; oppose self regulation as can give a false sense of compliance.

Broadly agree with the IA conclusions except that Vegetable Matter Drying should be regulated on grounds of dust and odour and certain proposed additional sectors should remain under consideration.