

**Defra Regulatory Triage Assessment  
(and Policy Appraisal Statement)**

**Name to be given to potential policy**  
Deregulation and simplification of the Environmental Permitting (England and Wales) Regulations 2010

**Policy Area or Agency:**  
Environmental Permitting

**Driver for policy:** Domestic issue ✓  
**Policy competency:** England ✓  
Wales ✓

**1. Summary: Rationale for Intervention and Options**

**Summary of the problem.**

The Environmental Permitting (England and Wales) Regulations 2010 (EPR) provide a risk-based, streamlined framework, drawing together a number of formerly separate consenting regimes. The Regulations set compliance conditions on operators to minimise pollution into the atmosphere, to ground and to water. As part of the better regulation agenda and Red Tape Challenge continuous improvements are being sought to further reduce burdens while not compromising environmental protection.

The 7 proposals contained within this Regulatory Triage Assessment are independent from one another although have the commonality of all falling under EPR. The main drivers for this submission are Proposals 1 and 2 which are deregulatory and represent OUTS under the scope of one-in one-out. We are also taking this opportunity to introduce a range of other minor simplifications and testing whether to alter appeals handling procedures under the Regulations.

**What are the policy objectives and the desired effects as well as outcomes? Why is Government intervention necessary?**

The collective policy objective here is to deliver better regulation and a ministerial Red Tape Challenge (See Proposal 1.) by improvements to the permitting processes and practices thereby reducing burdens on business and regulators without any reduction in environmental protection. The proposals are:

1. Removing the requirement for waste businesses to have to secure planning permission for certain waste operations before an environmental permit can be issued, as recommended through the Red Tape Challenge process.
2. Providing a registration scheme for low risk discharges to groundwater from some Ground Source Heating and Cooling (GSHC) systems, removing the existing requirement for an environmental permit.
3. Transferring the handling of appeals under the Environmental Permitting Regulations 2010 by the Planning Inspectorate, under delegated powers from the Secretary of State, to the Environment jurisdiction of the First Tier Tribunal.
4. Improvements to i) Lead in times for revisions to standard rules permits, and ii) Consultation requirements for minor changes to such permits.
5. Simplifying requirements relating to landowner permission(s) for the cleanup of pollution

such as sewage overflows in breach of a discharge consent.

6. Applying two technical amendments for a more consistent approach of permit transfers.

7. Introducing greater flexibility in the serving of Notices to business by the regulator.

Other non regulatory approaches have been considered but permitting is a regulatory based framework and any proposed changes need to be underpinned in law to bring them into effect.

Some of the supporting data and information available for a number of the proposals will be revised once consultations have been completed and the results analysed.

These proposals are deregulatory and not subject to any behavioural changes.

See **Annex B** for the supporting Evidence Appraisal.

## 2. **Potential Policy Options**

### **i) Do nothing (Is “doing nothing” an option at all?):**

Option 0 is ‘Do nothing’. Maintain the status quo, not introducing the proposed changes. This is not in keeping with the government initiative to reduce costs and burdens on businesses and/or regulators.

### **ii) Non regulatory options (Outline details of potential non regulatory options):**

A non regulatory approach cannot be considered as this is a regulatory based requirement and the proposed changes need to be underpinned in law to be brought into effect.

### **iii) Regulatory options (Considering the current regulatory landscape):**

Option 1 - introduce only the Ministerial Red Tape Challenge commitment.

Option 2 - in addition to Option 1 introduce the additional measures to reduce burdens to business and further simplify environmental permitting processes and procedures.

Would these options result in additional costs to business? Yes  No

Could such costs exceed £1m per year? Yes  No

### **iv) Options that have been ruled out (Why have these been ruled out?):**

None.

### 3. Initial data to be transferred to the Regulatory Management Tool

Unique policy identification number	1461(a)
An Impact Assessment will be required	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
A formal consultation will be required	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
The type of legislation will be	Primary <input type="checkbox"/> Secondary <input checked="" type="checkbox"/> Affirmative <input type="checkbox"/> Negative <input checked="" type="checkbox"/>
The impact on existing statute will be	New <input type="checkbox"/> Amending <input checked="" type="checkbox"/> Deregulatory <input checked="" type="checkbox"/> Repealing <input type="checkbox"/>
Under One-in One-out status: Proposals 1 and 2 are – Proposals 1 and 2 are – Proposals 3, 4, 5, 6 & 7 are – All proposals are -	In Scope <input checked="" type="checkbox"/> OUTs <input checked="" type="checkbox"/> Out of scope <input checked="" type="checkbox"/> No Cost <input checked="" type="checkbox"/>
Fast track Policy clearance is available	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Target date for call for evidence consultation	N/A
Target date for call for consultation on proposals	early 2013
Target date for Implementation [or to finalise policy options/IA?]	SNR 6
Estimated FTEs required to develop policy to clearance	0.15 FTE

## **ANNEX B – Initial assessment of business impact supporting the Rationale**

### **Proposal 1 - removing the requirement for waste businesses to have to secure planning permission for certain waste operations before an environmental permit can be issued.**

It is estimated by the Environment Agency that 10% of applications for waste management activities requiring prior planning consent are delayed because the status of planning permission is not clear at the time of application. It is the Environmental Permitting Regulations 2010 (EPR) which stipulates the necessity to secure planning permission before an environmental permit can be issued. This requirement brings no environmental benefit and adds a significant administrative burden on business and regulators. In the worst cases where planning decisions are delayed by appeal proceedings environmental permit determinations can take 36 months.

Benefits are calculated as the avoided costs related to the requirement for prior planning permission. The number of relevant waste permits is assumed to grow from 2010 to 2012 as the exemptions transitions grow and there is structural growth in certain types of relevant waste permits. It is assumed that the number of relevant applications will then remain steady at 1,100 and the number of affected permits remains at 10% of these 1100 applications. Costs per affected permits are assumed to remain similar to the EA figures calculated for 2009/10 adjusted using the GDP deflator to the 2012 base price year. This gives estimated annual savings to the EA of £425,860 to £486,000 and savings to operators of £189,841 to £1,121,090.

Information on any transition costs and other costs arising from this change in policy will be sought at consultation Overall benefits during the period 2014 to 2020 are estimated to fall in the range of £4.7m to £12.2m NPV: between £1.4m and £8.5m for business and between £3.2m and £3.7m for regulators.

#### **One-in One-out status**

**Proposal 1 is within scope of OIOO and represents an OUT. The proposal is deregulatory with no costs to business and qualifies for the fast track process.**

### **Proposal 2 - providing a registration scheme for low risk discharges to groundwater from some Ground Source Heating and Cooling (GSHC) systems**

There are two basic types of GSHC systems; closed and open loop. The Environment Agency regulates open loop GSHC systems as they require abstraction licenses as well as a permit to discharge water back to ground. Some of these discharges pose a higher risk to the environment than others yet all currently require a bespoke permit. A more risk based approach would offer savings to business and regulators with negligible detriment to the environment. The proposal is therefore to deregulate a number of these open loop systems where the discharge meets certain threshold criterion. Permits will be replaced with a registration scheme for exempt operators.

The proposed amendment to EPR is to exempt certain low risk open loop GSHC systems. 15 out of the 59 existing systems would be exempt and using this proportion we calculate that two out of the estimated eight new systems installed each year will be eligible for an exemption. Owners of new systems meeting the threshold criteria would not be required to apply for a permit or pay an annual subsistence charge for the discharge. Instead, under the exemption they would be required to register their system on an Environment Agency data base, which is free and will speed up the process considerably.

There would be a transitional cost to the EA in order to modify IT systems to enable people to register online. This has been estimated to be £10,000 and would be incurred in the first year only. For new exempt systems there would be a benefit to business of £5000 per application form. Therefore this equates to a best estimate of £10,000 per year in savings (£5000 for low and £15,000 for high estimates). Discounted over 10 years, this leads to a total net present value of £0.07m.

*Non-monetised benefits* - for any new system, the EA would make savings in their administration costs. This is estimated to be £2,176 per permit application, based on an average determination of 64 hours at a cost of £34 per hour.

**One-in One-out status**

**Proposal 2 is within scope of OIOO and represents an OUT. The proposal is deregulatory with no cost to business and qualifies for the fast track process.**

**Proposal 3 - considering the transfer of the handling of appeals from the Planning Inspectorate to the First Tier Tribunal**

Historically, appeals under the Environmental Permitting Regulations (and previous consenting regulations) have been handled by the Planning Inspectorate (PINS) under delegated authority from the Secretary of State and Welsh Ministers.

PINS handle approximately 60 appeal cases a year on average of which about one-third results in an Inspector's decision after either an inquiry, hearing or an exchange of written representations, with the remainder resolved through negotiation between the operator and regulator. PINS estimates that the cost of administering appeals decided by Inspectors is in the region of £90,000 - £200,000 per year, based on workloads and inspector costs of £1,000 per day (which includes support costs in managing appeals processes). Appeals are free to appellants with costs borne by PINS out of their vote funding.

A new "Environment" jurisdiction of the First-tier tribunal (FTT) was set up in 2010 following Defra and Welsh Government legislation to introduce a range of new civil sanctions for certain environmental offences. In 2011 a report by Professor Richard Macrory highlighted a lack of consistency in environmental appeals and suggested a greater use of the FTT.

It is difficult to estimate whether the transfer of appeals handling from the Planning Inspectorate (PINS) to the FTT would bring savings to the public purse. There would be some FTT start up costs, estimated by MoJ officials to be in region of £15,000 to help with training and IT provision and funding would need to be made available from Defra both for this and during the current spending round to pay for the handling of cases. Appeals would continue to be free to appellants until any change in Government policy regarding full cost recovery is proposed. On this basis, the cost and benefits have not been monetised but further assessment will be conducted during the consultation period and will be subject to stakeholder views on the desirability of any transfer.

**One-in One-out status**

**Proposal 3 is NOT in scope of OIOO. The proposal is seen as an improvement with no additional costs to business and qualifies for the fast track process.**

**Proposal 4 - making some minor simplifications to regulators' handling of standard rules permits**

i) Under the Environmental Permitting Regulations 2010, before revisions to standard rules permits are made by the regulator, any operator who holds a permit that would be affected by the proposed revisions must be notified of those revisions and the date that they will come into force, which must not be less than three months from the date of the notification. This is a necessary protection for existing permit holders as it allows operators time to decide whether they want to be subject to the new rules or withdraw from them. It can however be problematic for new operators because it delays for three months the application of revised rules which are usually relaxations to compliance requirements. While less than a dozen operators would be affected by this change each year (Based on data evidence supplied by the Environment Agency), the proposal would introduce some welcome flexibility. As the numbers impacted are very low the savings have not been monetised.

ii) The Regulations also require that revisions to standard rules permits must be consulted on except where the proposals comprise "only minor administrative changes". Consultation is conducted in accordance with the regulators' public participation statement which currently provides for a minimum 28 day period of consultation. The consultation requirement can be problematic as some changes, whilst minor, cannot be termed administrative, for example assigning the right waste codes to the right waste activity descriptors. In other cases it has been necessary to amend the rules slightly to safeguard the environment and comply with EU Directive requirements. Adjusting the regulatory requirements to remove the condition that changes must be "administrative" in nature would provide more flexibility.

Government guidance to regulators on both the above issues would be provided to ensure they were appropriately applied by the regulator.

**One-in One-out status**

**Proposal 4 is NOT in scope of OIOO. The proposal represents an improvement and simplification with no cost to business and qualifies for the fast track process.**

**Proposal 5 - simplifying requirements relating to requiring landowner permission where there is a need to clean up**

The Environmental Permitting Regulations 2010 allow for the imposition of off-site conditions in environmental permits and require third parties to grant consent to operators (subject to compensation) so that the operator can comply with any off-site permit condition.

The associated condition in water discharge permits relates to permit holders clearing up when the discharge from their overflow results in solid sewage matter being deposited in waters or on banks of waters. At the time the permit is granted it cannot possibly be known whether the condition will be engaged as unless and until there is an unacceptable discharge of sewage from an overflow there is no breach of condition if sewage is not cleaned up. There could be a number of third parties onto whose land the water company may need to have access to clean-up sewage debris but that would not be known until the discharge has occurred i.e. once the permit is granted and the water discharge activity operational.

This proposal is therefore intended to clarify the regulatory position and no costs or benefits are associated with the proposal.

**One-in One-out status**

**Proposal 5 is NOT in scope of OIOO. The proposal represents a regularisation of procedures with no cost to business and qualifies for the fast track process.**

**Proposal 6 - correcting two oversights in the Environmental Permitting Regulations 2010 relating to permit transfers**

These are two technical amendments to bring greater consistency in how the regulator can handle the transfer of permits.

Firstly, the regulator is currently able to vary the terms of a permit when it is partially being surrendered by the operator but it does not have the same ability in relation to the notification of a partial transfer from one operator to another.

Secondly, where an enforcement notice applies to a permit it continues to apply when the permit is transferred to another operator, but there is no equivalent provision for suspension notices. This proposal will correct these anomalies.

There are no quantifiable costs or benefits associated with this proposal bar a potential minimal administrative saving to regulators.

**One-in One-out status**

**Proposal 6 is NOT in scope of OIOO. The proposal represents some regularisations of procedures with no cost to business and qualifies for the fast track process.**

**Proposal 7 - allowing greater flexibility in relation to the service of notices on the body corporate**

Regulation 10 of the Environmental Permitting Regulations 2010 governs the service of notices etc under the Regulations. In the case of "bodies corporate", it specifies that service must be on the secretary or clerk. However, some companies do not have a secretary or clerk and this hinders the service of such notices etc. This proposal would expand the regulation 10 provision to include the director of a company as well as the secretary or clerk to allow greater flexibility.

There are no quantifiable costs or benefits associated with this proposal bar a potential minimal administrative saving to regulators.

**One-in One-out status**

**Proposal 7 is NOT in scope of OIOO. The proposal represents a simplification of process with no cost to business and qualifies for the fast track process.**