

# Consultation on Partial Bi-ennial Review of Local Authority Environmental Regulation of Industrial Plant: 2012/13 Fees and Charges

September 2011

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## 1. Consultation Scope

Topic of consultation:	Local Authority Environmental Regulation Of Industrial Plant - Partial Bi-ennial Review of Charging Levels For The Financial Year 2012/13.
Geographical scope:	England.
To:	This is a public consultation, and is open to anyone to respond. We would particularly welcome responses from local authority Environmental Health departments and LAPPC and LA-IPPC regulated businesses.
Duration:	12 weeks from publication. Closing 23 <sup>rd</sup> December 2011.
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After the consultation:	A summary of responses to the consultation will be published on the Department's website alongside an announcement of the Government's decision on the way forward.

## 2. Proposal

1. To revise the prescribed fees and charging schemes in England which specifies the fees and charges to be levied by local authorities (LAs) to recover their full costs of undertaking their functions under regulation 65 of the Environmental Permitting (England and Wales) Regulations 2010 (EPR).

## 3. Policy objectives and intended effect

### Objective

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

### Background

3. Up until 2008/9 the level of fees and charges was reviewed each year taking into account such evidence that is available of costs incurred by LAs and outsourced providers in undertaking the function, information on costs from Local Government (LG) Regulation (formally Local Authority Coordinators of Regulatory Services), data collected on costs and of LA delivery performance by Defra through the annual statistical survey and other performance reviews, and assessment of the average amount of time needed to discharge the function efficiently, effectively and economically.
4. From 2008/9 we have undertaken the full review bi-ennially with a partial review in the intervening years as proposed in the October 2008 consultation. This consultation is part of a partial review which has considered a percentage increase to reflect inflation minus potential cash-releasing efficiencies.

### Why is Government intervention necessary?

5. The Secretary of State would not be following the legislation requirement or Government charging policy if we did not set the level of fees and charges so as to recover LAs' costs as set out in paragraph 2 above. Insufficient cost recovery would lead to the costs of regulation falling upon the taxpayer. Defra's charging policy is that those who directly benefit from a regulatory service should bear the cost of providing that service. The polluter or risk owner should bear the costs of any measures to prevent harm that they might otherwise cause by their actions (often referred to as the "polluter pays" principle) thus increasing the incentives for industry to reduce pollution.

## Consultation

6. The following consultations have taken place:
  - a. within government: HM Treasury, the Department for Communities and Local Government, and the Department for Business, Innovation and Skills,
  - b. external consultation: trade association members of the Defra Industry Forum, LA representative organisations on the Industrial Pollution Liaison Committee and the Environment Agency's Local Authority Unit.
7. This review assessment is now subject to a separate 12-week consultation exercise.

## 4. Proposals Summary

### Freeze in Charging levels

8. Taking into account the evidence obtained from the consultations under paragraph 6 above, we propose a zero increase in charging levels across the board for the next financial year.

### Simplified permitting

9. We propose to extend the simplified permitting approach to some additional industry sectors as part of the ongoing [6 year review](#) of process guidance notes. This will result in reduced regulatory effort, and therefore (as is already the case with those sectors currently subject to simplified permitting) attract lower application and subsistence charges.
10. Simplified permits, and reduced fees, are already in place for, dry cleaners, petrol stations, small waste oil burners and vehicle refinishers. Application and subsistence fees for the latter are higher to reflect their greater complexity in relation to other reduced fee activities. The impact assessment for Defra's [2008 consultation](#) on a better regulation review of Part B activities worked on the assumption the fees for simplified permitted activities would be similar to those of vehicle refinishers and we therefore propose that this level of fees apply to any activities found to be suitable for simplified permits. These are currently **£346** for application and **£218, £349 and £524** respectively for activities rated **low medium** and **high** for annual subsistence. However, if in drawing up the simplified permits and guidance for any particular sector it appears to us that these figures are either too high or too low, having regard to the regulatory effort needed for installations in that sector, we will consult relevant stakeholders separately on figures for that sector. It is proposed that new application fees come into effect as soon as the relevant sector guidance has been published, and the new subsistence fees at the next annual revision of the charging scheme following publication of the guidance.

## Mothballing or Reduced Operating Levels

11. In July 2009 new arrangements were put in place allowing operators to request reduced annual subsistence charges for up to 24 months if they have mothballed their installation, or are operating at reduced levels (below the level at which a permit is required), and still want to retain their permit. This was in order to reduce the cost of retaining a permit in lieu of the higher cost of surrendering the permit and reapplying, in response to reduced activity. Last year we extended the maximum duration for a facility to benefit from the 60% reduction in fees from 24 to 36 months. We now propose that the maximum period be **extended indefinitely**.
12. The original limitation of 24 months was to take into account that the mothballing approach would allow an activity to restart without the need for prior scrutiny or approval. Therefore, there would not be any assessment of changes in techniques or maintenance of equipment on site before restarting. Defra is now of the view that if these arrangements were extended authorities would be able to specify, if they considered it appropriate, whether or not by variation of permit conditions, that the operator gives advance notification of restart. Furthermore, if an activity were to restart and either have a significant environmental impact upon restart or be in a sector where the Best Available Techniques have changed since mothballing began, authorities have a range of regulatory and enforcement tools with which to tackle this. We suspect that not many businesses will want to continue to pay for unused permits beyond three years, but for the above reasons we think it in tune with better regulation to make allowance for it.

## Repeat transfer fee for mobile plant

13. The charging scheme allows for the temporary transfer of a mobile plant permit to another person for which there is a charge of £51. For repeat applications where the same plant user and operator jointly apply for a second time to the same authority for a further fixed period transfer, a reduced £10 fee applies. The July 2011 meeting of the Defra local authority stakeholder group, concluded that the £10 fee was not worth collecting and there was virtually no work involved in registering this second transfer other than issuing the invoice. One suggestion was that raising the initial application fee to £61 would cover all subsequent transfers. Defra's view is that there is no evidence of the need for an additional £10 fee up-front, especially since there may be no subsequent transfers. We therefore propose simply **scrapping the £10 repeat transfer fee**.

## Environment Agency (EA) water fees for A(2) facilities

14. The Environment Agency considers it no longer practical for them to collect these fees when balancing the level of income against the administrative costs of collection. The income received from operators for the work has been marginal. Discontinuing the charges will help to reduce the regulatory burden on both industry and local authorities but does not affect the Agency's statutory duties with respect to advising on water discharge conditions.
15. A complete listing of all the proposed revised charges is at **Annex A**.

## 5. Review of Charging Levels

### Background

16. Each of the options below relates to the fees for the two different pollution control regimes:
- i. Part B: Local Air Pollution Prevention and Control
  - ii. Part A(2): Local Authority Integrated Pollution Prevention and Control.
17. The legislation requires that the fees are set at the level which recovers LA costs of discharging their pollution control functions. LAs are expected to seek continuous efficiency improvements and one of Defra's activities is to promote more efficient effective and economic practices.

## 6. Evidence of local authority costs

### Inflation, pay and grading, pensions, and efficiency

18. The proposed zero increase in all charges has been arrived at using the calculations set out below.
19. For previous reviews, following discussion with LA stakeholders, we have taken the view that a 25/75 goods/labour costs was representative of the costs involved in the specific PPC function, where the majority of expenditure is likely to be in terms of staff time. This split aligns with that used by the Environment Agency in relation to their PPC functions. We have no reason to believe that this is not still the case.
20. **Wages:** Until last year we used the percentage increase in public sector pay in the previous financial year published by the National Office of Statistics (NOS) as the basis for setting the 75% element. This represented a prediction based upon existing information. Last year, as public sector pay had been subjected to a 2 year freeze, including the entire period covered by the consultation, we considered it more appropriate to reflect this known development. However, according to the Office for National Statistics Labour market statistical bulletin of August 2011, in the three months to June 2011 average regular pay in the public sector, excluding financial services, rose by 1.9 per cent on a year earlier and we again need to factor this increase into our calculation [http://www.ons.gov.uk/ons/dcp171778\\_223112.pdf](http://www.ons.gov.uk/ons/dcp171778_223112.pdf).
21. **Non-wage component:** Consumer Price Index (CPI) is the measure adopted by the Government for its UK inflation target. Last year we asked for comments on using the CPI for future reviews to reflect inflation in the non-wage component of LA PPC costs. We received no objections to doing so. [CPI annual inflation](#) stood at 4.4 per cent in July 2011.
22. Using the 25/75 split we get the following figures:  $(0.25 \times 4.4) + (0.75 \times 1.9) = (1.1) + (1.4)$ . This delivers an inflationary increase of **2.5%**.



23. **Efficiencies:** We have to consider the potential for efficiency savings. It is important that all LA functions seek to improve efficiency, whether resulting in cashable or non-cashable savings. There are various considerations to be taken into account as regards LAPPC and LA-IPPC costs. There are no longer any local authority-wide efficiency savings targets set by the Government. The Secretary of State for Communities and Local Government wrote to leaders of Local Authorities in England in October 2010 informing them of an average loss of grant of 7.25%, in real terms, in each of the four following years accompanied by new financial freedoms and flexibility to help maximise efficiency and productivity.
24. It is intended that the 7.25% year on year cut in funding will drive efficiencies which will be spread across the totality of LA services. Defra recognises that it is unrealistic to expect the same level of efficiency savings to be achieved individually by each small sub-service. It is too early to say how these will manifest themselves in specific functions such as LAPPC but if, as in the past, we assume that any greater efficiency savings across the board might play out as a third within the LAPPC function. This then will counterbalance any inflation rises and on the evidence to hand, we cannot justify raising or lowering the charges at this time.

## 7. Other costs

### Local Authority Unit

25. The Local Authority Unit (LAU) continues to provide technical support to Defra and a helpline service to regulators and operators. The Unit has 2.5 full time equivalent (FTE) staff dedicated to supporting Defra and the Welsh Assembly Government (WAG), and recently Northern Ireland (NI), on technical issues relevant to the Part A2 and B Pollution Prevention and Control regimes, plus management support. The 0.5 FTE is an officer in SEPA providing half of his working time. The LAU annual accounts for 2010/11 show an income and total expenditure of £166,321 comprising of £161,122 from Defra and £5199 from Northern Ireland. We propose that Defra's contribution be frozen at this level for 2012/13.

### Policy Options

26. Defra has considered the option of raising the current level of charges to reflect the percentage increase in public sector pay in the previous financial year as set out in paragraph 20. This option would not reflect all the matters considered above, and would result in a failure of the scheme to meet the statutory requirement only to recover the reasonable costs incurred by LAs in undertaking their pollution control functions for Part A(2)s and Bs.
27. The [6-year review](#) of all the process guidance notes is continuing. The review is looking for opportunities for up to 20 Part B sectors moving to simplified permitting, which consequent benefit to operators that they will be classified as 'reduced fee' activities.

## Sectors and groups affected

28. Those affected are all sectors regulated by the LAPPC and LA-IPPC regimes. These include foundries, glass manufacturers, vehicle manufacturers, larger timber processes, larger metal and plastic coating processes, crematoria, mineral processes, larger aircraft painting facilities, and pet food manufacturers. Many are SMEs.

## Benefits

29. Because all facilities pay a subsistence fee based on their [risk rating](#) assessment and risk rating is partly dependent on operator performance, all businesses have the scope to work toward improving their rating, which will result in lower annual charges and benefits to the environment.

## Costs overall to LAs and operators

30. Under the risk rating system those businesses with a high risk rating pay higher fees than medium and low risk rated facilities. The higher costs are proportionate to the increased workload required of the regulator.

## Competition assessment

31. These proposed changes are not substantial enough to have any significant positive or negative effect on the competitiveness of the sectors covered.

## Small Firms Impact Test

32. In line with the statutory requirements set out in paragraph 5 above, fees and charges must be maintained at a level which recovers LAs' reasonable costs. Many installations regulated under LAPPC, and some regulated under LA-IPPC, will be small firms. The freeze in fees and charges levels will be welcome to such firms. Of those installations regulated under LAPPC, most of those operating dry cleaners, small waste oil burners and vehicle refinish processes, which are subject to significantly lower fees and charges, will be small firms. Introduction of risk based regulation to these sectors in 2008 was a further opportunity to lighten the regulatory touch and to reduce fees for well run operations.

## Sustainable Development

33. The proposals in this review comply with the principles of sustainable development.

## Health Impact Assessment

34. Well run facilities have a lower environmental impact and pose a lower risk to employees and the population as a whole

## Race Equality

35. These proposals will have no effect on race equality.

## **Disability Equality**

36. These proposals will have no effect on disability equality.

## **Gender Equality**

37. These proposals will have no effect on gender equality.

## **Human Rights**

38. These proposals will have no adverse effect on human rights.

## **Rural Proofing**

39. The proposals are not likely to have any different impact in rural as opposed to urban environments.

## **Enforcement, sanctions and monitoring**

40. The payment of all charges is mandatory. LAs can enforce bad debts in the usual way and can, under legislation, suspend or revoke permits for non payment of fees and charges without scope for appeal. These fees and charges schemes are reviewed annually.