POLICY NOTE

THE POLLUTION PREVENTION AND CONTROL (SCOTLAND) REGULATIONS 2012

SSI 2012/DRAFT

1. The above instrument was made in exercise of the powers conferred by section 2 of and Schedule 1 to the Pollution Prevention and Control Act 1999 and section 2(2) of the European Communities Act 1972, and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

Policy Objectives

2. The Industrial Emissions Directive[1] is a Recast of seven existing Directives: those concerning integrated pollution prevention and control ("IPPC") (2008/1/EC), large combustion plants (2001/80/EC), waste incineration (2000/76/EC), solvent emissions (1999/13/EC) and three concerning waste from the titanium dioxide industry[2]. Material from those Directives is to be found in Chapters II to VI respectively of the industrial emissions Directive.

3. These "component Directives" are currently transposed in Scotland through the Pollution Prevention and Control (Scotland) Regulations 2000 (SSI 2000/323) [3] – usually referred to as "the PPC Regulations". In this note, the Industrial Emissions Directive is generally referred to simply as "the Directive".

4. As much of the material in the recast Directive remains substantively unchanged from the component Directives, the PPC Regulations provide the most appropriate vehicle through which to transpose the Industrial Emissions Directive.

5. However the PPC Regulations have already been amended by no fewer than 25 other pieces of legislation, up to and including the Waste (Scotland) Regulations 2012. These have ranged from significant amendments dealing with large combustion plants, waste incineration, solvent emissions, and petrol vapour recovery, to more minor amendments updating cross-references and the like. The result is a very complex patchwork of legislation, making it difficult for all users to determine what the current requirements are.

6. Transposition of the Directive inevitably requires a large number of further amendments to the PPC Regulations, compounding the difficulties of use. We have therefore taken the opportunity to consolidate the PPC Regulations, incorporating the changes required to transpose the Directive. While this makes it a little more difficult to see precisely what has changed, the end result is a single clear set of Regulations. The draft Regulations are attached.

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[1] A short summary of the industrial emissions Directive, containing a link to the Directive itself, is at http://europa.eu/legislation_summaries/environment/air_pollution/ev0027_en.htm .
[2] Directives 78/176/EEC, 82/883/EEC and 92/112/EEC.
[3] At http://www.legislation.gov.uk/ssi/2000/323/contents/made.

7. The Scottish Government and SEPA have also consulted on proposals for an integrated framework of environmental regulation [4], which is expected to involve the integration and alignment of the main regulatory regimes operated by SEPA: PPC, the Radioactive Substances Act 1993, the Water Environment (Controlled Activities) (Scotland) Regulations 2011 and waste management licensing. This is similar to changes which have already taken place in England and Wales in establishing the Environmental Permitting Regulations. It is therefore likely that the draft Regulations will be short-lived, being overtaken in time by this integrated framework.

8. As well as meeting the obligation to transpose the Directive, the policy objectives in this exercise are as follows:

- To consolidate numerous sets of amendments to the previous PPC Regulations.

- To use flexibilities offered by the Directive judiciously, in the interests of environmental protection, efficiency for regulated operators and administrative ease for SEPA.

- To take the opportunity to remove from this type of regulation any industrial activities which the Directive does not require to be regulated and where we and SEPA consider the environmental risks to be small.

Consultation

9. A public consultation took place from 12 September to 24 October 2012. The contents of the 31 consultation responses received has already been collated and assessed, and the process of liaising with interested industrial sectors and telling them how their comments have been acted upon is well under way.

10. No major changes to the draft Regulations have been made as a result of consultation, but there have been several adjustments and improvements, some for clarity, some changing the effect of the Regulations for very small numbers of operators. In addition, some provisions of the Regulations have been drafted since the consultation document was published, along the lines indicated in the consultation.

11. Many consultation responses focused on issues around how the new Regulations are to be implemented in practice, and on the EU-driven process to develop BAT reference documents which set the environment standards which regulated industries will need to meet, rather than on the content of the Regulations themselves.

12. We intend to produce a report on the consultation, to which will be attached a list of those consulted and those who have agreed to make their responses available. This report will be published on the Scottish Government website.

[4] http://www.scotland.gov.uk/Publications/2012/05/6822

Impact Assessments

13. No equality impact assessment has been completed on the draft Regulations as there are no aspects of the proposed changes which affect certain equality groups differently from others.

Financial Effects

14. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached.

15. There will be varying impacts of this policy on different regulated industrial sectors. Some sectors are expressing concerns about how tighter regulation will affect their medium to long term planning - for example in the form of stricter emission limits or newly available abatement technologies which need to be installed. They have concerns about how the financial impacts from this regulatory initiative will sit alongside other factors affecting their long term financial planning. These sectors include the energy sector, the chemicals sector, refining and paper industries. They are all conscious of long lead times for planning investment cycles and we are emphasising to them the importance of ongoing liaison with SEPA in the interests of the best possible approach to planning for future changes that may be required.

Scottish Government
Directorate for Environment and Forestry
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