EXPLANATORY MEMORANDUM TO THE

POLLUTION PREVENTION AND CONTROL (PUBLIC PARTICIPATION) (ENGLAND AND WALES) REGULATIONS 2005

2005 No. 1448

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations provide an increase in the already high level of public participation in the process by which regulators consider applications for environmental permits to operate new or substantially changed industrial installations subject to Directive 96/61/EC concerning integrated pollution preservation and control ("IPPC"). These Regulations do so by making amendments to the Pollution Prevention and Control Regulations (S.I. 2000/1973). Most notably, they provide a period of 20 working days within which the public can make representations to the regulator on draft permits. These amendments are consistent with a more open approach to taking decisions which may be of considerable significance to local communities and wider environmental interests. They are also made against a background of improvements by regulators in their administration of existing permitting procedures which are helping to reduce the overall time between application and determination.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Department wishes to draw to the attention of the Joint Committee on Statutory Instruments that it is in the process of drafting Regulations to consolidate the Regulations (the Pollution Prevent and Control Regulations, SI 2000/1973) which the present Regulations amend. The Department plans to make those consolidating Regulations later this year.

4. Legislative Background

4.1 These Regulations implement in England and Wales the amendments to the public participation provisions in Directive 96/61/EC ("the IPPC Directive") made by Article 4 of Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (the "Public Participation Directive").

4.2 The requirements of the IPPC Directive have been implemented in England and Wales by means of the Pollution Prevention and Control Regulations (S.I. 2000/1973) ("the PPC Regulations"). In the Annex to this Memorandum is a document which reproduces the text of the amendments to the IPPC Directive and sets out how these Regulations transpose them, principally by reference to Schedule 4 and 7 of the PPC Regulations.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 Not applicable

7. Policy background

7.1 The importance of fostering increased public participation in environmental decision-making was recognised at the international level in the UN/ECE Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters ("the Aarhus Convention") which the Community signed on 25 June 1998 and which has also been signed by the UK. Since signing the Aarhus Convention in 1998, the EU has taken steps to update existing legal provisions in order to meet the Convention's requirements by means of legislation directed to Member States. The main legal instrument used to align Community legislation with the provisions of the Aarhus Convention on public participation is the Public Participation Directive.

7.2 The IPPC Directive was transposed in England and Wales through the PPC Regulations, made under the Pollution Prevention and Control Act 1999. That Directive requires industrial installations in a wide range of sectors to have permits governing their operation, containing pollutant emission limit values and other conditions based upon the application of best available techniques. The PPC Regulations 2000 set out a clear process for dealing with all applications for permits or variations to permits. The main features are as follows.

- Operator submits application, containing specified details, to the regulator, who will place a copy on its public register.

- Within 14 days of the receipt of application, the regulator sends copies to statutory consultees who are asked to respond within 28 days.

- Within 42 days of the application date, the operator has to advertise the application in the London Gazette and a local newspaper, incorporating specified details within the advertisement including notification that representations on the application have to be made to the regulator within 28 days of the date of the advertisement.

- The regulator has four months from the date of receipt of the application in which to determine the application unless a longer period is agreed with the applicant. If no extension is agreed, the application is deemed refused. The four month "clock" is stopped in certain circumstances, including where the regulator needs to obtain further information from the applicant.

- The result of the determination is notified to the applicant and a copy of the permit is placed on the regulator's public register.

7.3 Through availability of the application and the advertised arrangements for making representations to the regulator, this process already provides for public participation in the permitting process. But the amendments to the IPPC Directive made by the Public Participation Directive require the following main additions to what the process already provides:

- inclusion of an outline of the `main alternatives, if any, studied by the applicant' within the application;

- notification of the public of the permit decision and availability of the permit together with a document giving `the reasons and considerations on which the decision [was] based';

- notification of the public `early in the procedure…or, at the latest, as soon as the information can be provided' of `the nature of possible decision or, where there is one, the draft decision'; and

- making available `within appropriate time frames' (i) the main reports and advice' issued to the regulator in accordance with national legislation when the application was made, and (ii) information relevant to the decision which only becomes available after the advertisement of the application.

7.4 Although the first of these additions applies to all permit applications, the remainder apply only to three categories of those applications. These are applications:

- for a permit for a new installation (*ie* not existing installations);

- for a permit variation covering a substantial change to an already-permitted installation; and

- in circumstances where a permit needs to be varied because the pollution caused by an already-permitted installation is of such significance that the emission limits in the permit need to be revised or extended.

7.5 These Regulations amend the PPC Regulations 2000 so as to accommodate these additions. Most notably, they require the regulator to advertise on its web site and by any other means it considers appropriate the existence of a draft permit. A period of 20 working days from the date of advertisement is allowed for the public to make representations on the draft permit. If none is made, the permit enters force five working days thereafter. If representations are made, the regulator has to take them into account in finalising the permit with 15 working days or a longer period agreed with the applicant.

7.6 Consultation with over 200 industry, environmental and other organisations with an interest about these Regulations in advanced draft produced 31 responses which showed general support – or at least reluctant acceptance – for what they provide. Further details are included in the accompanying Final Regulatory Impact Assessment.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is mainly upon the Environment Agency and – to a considerably lesser extent, local authorities as regulators for the purposes of the PPC Regulations 2000.However, they are obliged to recover their regulatory costs from those whom they regulate and do so through charging schemes approved by the Secretary of State. In a few cases, public sector bodies might themselves have to apply for permits under the PPC Regulations 2000 as amended by these Regulations.

9. Contact

Muna Ahmad at the Department for Environment, Food and Rural Affairs Tel: 020 7082 8387or e-mail: muna.ahmad@defra.gsi.gov.uk can answer any queries regarding the instrument.

ANNEX

THE POLLUTION PREVENTION AND CONTROL (PUBLIC PARTICIPATION) (ENGLAND AND WALES) REGULATIONS 2005

TRANSPOSING

AMENDMENTS TO THE IPPC DIRECTIVE MADE BY THE "PUBLIC PARTICIPATION" DIRECTIVE

Introduction

1. This paper needs to be read in conjunction with the Pollution Prevention and Control (Public Participation) (England and Wales) Regulations 2005 ("the PPCPP Regulations") to which it refers. Where their meaning and effect is reasonably clear in the overall context, some of these regulations are not specifically mentioned in the paper.

2. Directive 2003/35/EC[1] is one of three legislative instruments that transpose the provisions of the UN-ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (also known as the Aarhus Convention), into European Community law. The Directive implements the public participation and access to justice provisions in the Convention. It is referred to in this paper as "the PPD".

3. Article 4 of the PPD makes amendments to the IPPC Directive[2], developing the public participation and access to justice provisions in IPPC. Member States must implement the amendments to the IPPC Directive, along with the other provisions in the Public Participation Directive, by 25 June 2005.

4. For the purposes of this paper, the amendments to the IPPC Directive ("IPPCD") will be referred to as "the PPD requirements", although it will recognised that the requirements of the PPD overall extend far beyond the IPPCD.

5. The IPPCD is being implemented in England and Wales through the Pollution Prevention and Control (England and Wales) Regulations 2000[3] ("the PPC Regulations 2000"). Therefore, the PPD requirements are implemented through amendments to those Regulations made by the PPCPP Regulations.

6. **This paper is therefore structured around the amendments to the IPPCD (reproduced in *italics* in the paragraphs below),** showing how those amendments are

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[1] Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC. OJ L156/17, 25.6.2003. Available through http://europa.eu.int/eur-lex/en/index.html

[2] *Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control.* OJ L257/26, 10.10.96. Available through http://europa.eu.int/eur-lex/en/index.html

[3] SI 2000 No. 1973, as amended by SI 2001 No. 503, SI 2002 Nos. 275 and 1702, SI 2003 Nos. 1699 and 3296 and SI 2004 Nos. 434 and 3276, all available through http://www.legislation.hmso.gov.uk/stat.htm . The Landfill (England and Wales) Regulations 2002 (SI 2002 No. 1559), the Waste Incineration (England and Wales) Regulations 2002 (SI 2002. No. 2980) and the Solvent Emissions (England and Wales) Regulations 2004 (SI 2004 No. 107) also make amendments to the PPC Regulations 2000 in respect of those activities.

either already covered in the PPC Regulations 2000 or how they are covered through the amendments made by the PPCPP Regulations. **References to individual regulations are to those contained in the PPCPP Regulations unless otherwise stated**.

7. PPD Article 4(1)(a): *`the following sentence shall be added to [IPPCD Article 2] point 10(b): 'For the purposes of this definition, any change to or extension of an operation shall be deemed to be substantial if the change or extension in itself meets the thresholds, if any, set out in Annex I.'*.

7.1. Regulation 2(2) does this in relation to an installation which undergoes a change of operation which in itself meets any of the thresholds specified for any "Part A"[4] installation.

8. PPD Article 4(1)(b): *`the following points shall be added: '13. "the public" shall mean one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups; 14. "the public concerned" shall mean the public affected or likely to be affected by, or having an interest in, the taking of a decision on the issuing or the updating of a permit or of permit conditions; for the purposes of this definition, nongovernmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;'*.

8.1. All the relevant provisions dealing with public participation in the PPC Regulations 2000 use the term "person" which is wider than any of the terms used in the PPD, i.e. "the public" or "the public concerned.

9. PPD Article 4(2): *in [IPPCD] Article 6(1), first subparagraph, the following indent shall be added: '— the main alternatives, if any, studied by the applicant in outline.'*

9.1. Note that, because of its inclusion in Article 6(1), this requirement applies to all applications, not only those subject to the rest of the PPD requirements. Regulation 2(3)(a) inserts it into the existing list of the other Article 6(1) requirements contained in paragraph 1 of Schedule[5] 4.

10. PPD Article 4(3)(a): *`paragraph 1 [of IPPCD Article 15] shall be replaced by the following: '1. Member States shall ensure that the public concerned are given early and effective opportunities to participate in the procedure for:*

- *issuing a permit for new installations,*

- *issuing a permit for any substantial change in the operation of an installation,*

- *updating of a permit or permit conditions for an installation in accordance with Article 13, paragraph2, first indent.*

[4] "Part A" installations are those which, as prescribed in Schedule 1 to the PPC Regulations 2000, are subject to IPPC. They are thus distinguished from "Part B" installations which are subject only to air pollution controls under the regulation of local authorities. Part B installations are therefore not subject to PPD Requirements.

[5] `Schedule' throughout this paper means a Schedule to the PPC Regulations 2000.

The procedure set out in Annex V shall apply for the purposes of such participation.';

10.1. Three distinct categories of permit application and variation are thus subject to the PPD requirements. The first – new installations – requires amendment to Schedule 4 (Grant of Permits) so as apply PPD requirements only to permit applications for new installations and not to applications for existing installations[6]. Regulations 2(3)(c) and 2(3)(f) embody this distinction.

10.2. The two other categories fall within the more general category of "permit variations", for which application and determination procedures are set out in Schedule 7 (Variation of Conditions). That Schedule already makes distinct provision for one of them - "substantial change" variations. Regulation 2(4) in various places makes amendments necessary to add provision for the PPD requirements for that category.

10.3. The third category, through its reference to IPPCD Article 13, applies to permit variation procedures 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'[7]. Regulation 2(4)(a)(ii) adds this new category, to which the other sub-paragraphs of draft regulation 2(4) shall apply. Variations not falling within the PPD regime will be unaffected by the amendments.

11. At this point, it is necessary to move straight to the **new IPPCD Annex V.**

12. New IPPCD Annex V, paragraph 1*: `The public shall be informed (by public notices or other appropriate means such as electronic media where available) of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can reasonably be provided*:

12.1. (*a) the application for a permit or, as the case may be, the proposal for the updating of a permit or of permit conditions in accordance with Article 15(1), including the description of the elements listed in Article 6(1)*;

12.1.1. This requirement is already mostly met by paragraphs 5 and 6 of Schedule 4 and by sub-paragraphs 4(8) and 4(9) of Schedule 7. But regulation 2(3)(c) adds a new paragraph supplementing the advertisement specifications in paragraph 6 of Schedule 4.

12.1.2. Note that this new paragraph requires the advertisement only to draw attention to the availability of the `description of the elements' required by sub-paragraph 1(1) of Schedule 4, since it is considered impractical for the advertisement itself to contain a description which in most circumstances would necessarily be quite lengthy. However, the Government will give guidance[8] to the regulators on how

[6] The terms "existing installation" and "new installation" are given meaning in paragraph 6 of Schedule 3 and need no amendment.

[7] See regulation 15(2)(a) of the PPC Regulations 2000.

[8] To be contained in Edition 4 of *Integrated Pollution Prevention and Control – A Practical Guide* which will be issued by Defra and the Welsh Assembly Government at the time the PPCPP Regulations come into force. It will be available on http://www.defra.gov.uk/environment/ppc/index.htm .

that description should be prepared and made available on demand. Regulation 2(4)(a)(iv) supplements the advertisement specifications in Schedule 7.

12.2. *(b) where applicable, the fact that a decision is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 17*;

12.2.1. This requirement is incorporated in the new paragraphs inserted into Schedule 4 by regulation 2(3)(c) and into Schedule 7 by regulation 2(4)(a)(iv).

12.3. *(c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions*;

12.3.1. This requirement is already met in Schedules 4 and 7.

12.4. *(d) the nature of possible decisions or, where there is one, the draft decision*;

12.4.1. In the case of a permit application for a new installation, regulation 2(3)(f) requires the regulator to give notice first of a draft determination. Regulation 2(4)(c) does the same in respect of applications for variation made by the operator. But that same regulation reflects the fact that a variation made at the instigation of the regulator[9] is already in effect a draft decision.

12.4.2. Regulations 2(3)(g) and 2(4)(d) insert new paragraphs into Schedules 4 and 7 respectively which contain requirements for the regulator to advertise its notice of draft determination. Note that the only mandatory requirement regarding advertisement method is the use of the regulator's web site, but that it will lie within the regulator' discretion to use any other means (or none) to supplement that form of advertisement.

12.5. *(e)where applicable, the details relating to a proposal for the updating of a permit or of permit conditions*;

12.5.1. This requirement is already met in Schedule 7.

12.6. (f) an indication of the times and places where, or means by which, the relevant information will be made available*;*

12.6.1. The PPC Regulations 2000 already contain provisions and requirements for regulators to have public registers of information and these will continue to be the source of all the information required to be available under PPD (and indeed under other public information requirements). However, since paragraph sub-paragraphs 6(e) of Schedule 4 and 4(9)(d) of Schedule 7 require advertisements to include particulars only of where the register can be inspected, regulations 2(3)(b) and 2(4)(d) contain amendments which insert the words "how and at

[9] That is, under regulation 17(5) of the PPC Regulations 2000.

what times" in the advertisement specifications in Schedules 4 and 7 respectively.

12.7. *(g) details of the arrangements for public participation and consultation made pursuant to point 5 [of the new IPPCD Annex V*].

12.7.1. In respect of the initial advertisement of applications, Schedules 4 and 7 already contain provisions meeting this requirement. The new provisions for advertisement of notification of draft decisions (see paragraph 12.4 above) also necessarily embody this requirement.

13. New IPPCD Annex V, paragraph 2: `*Member States shall ensure that, within appropriate time-frames, the following is made available to the public concerned*:

13.1. *(a) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned were informed in accordance with [Annex V] point 1*;

13.1.1. Sub-paragraph (1)(a)(iii) of the new paragraph 15B inserted into Schedule 4 by regulation 2(3)(g) requires the availability of this information in the public register to be included in the advertisement of the regulator's notification of a draft determination of an application in respect of a new installation. For variation applications, regulations 2(4)(a)(iv)(bb) and 2(4)(d) make a corresponding addition to sub-paragraph 4(9) and new paragraph 7B of Schedule 7.

13.2. *(b) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information, information other than that referred to in point 1 which is relevant for the decision in accordance with Article 8 and which only becomes available after the time the public concerned was informed in accordance with point 1*.

13.2.1. Sub-paragraph (1)(a)(i) of the new paragraph 15B inserted into Schedule 4 by regulation 2(3)(g) requires the availability of this information in the public register to be included in the advertisement of the regulator's notification of a draft determination. For variations, the new paragraph 7B inserted into Schedule 7 by regulation 2(4)(d) contains this requirement.

14. New IPPCD Annex V, paragraph 3: *The public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken.*

14.1. As embodied in sub-paragraph (b) of the new paragraph 15B inserted into Schedule 4 by regulation 2(3)(g), the public has 20 working days in which to make representations upon a draft determination of a permit application for a new installation. Regulation 2(4)(a)(v) makes a corresponding amendment to sub-paragraph 4(12) of Schedule 7 in respect of draft determinations of applications for variations or, in the case of a variation at the instigation of the regulator, proposed variation notices.

15. New IPPCD Annex V, paragraph 4: *The results of the consultations held pursuant to this Annex must be taken into due account in the taking of a decision.*

15.1. Paragraph 12 of Schedule 4 and sub-paragraph 4(11) of Schedule 7 already require this in respect of representations made following the initial advertisement of any application (not only those to be covered by the PPD requirements), but the amendments made by regulations 2(3)(e) and 2(4)(a)(v) extend the requirement to representations on draft determinations or proposed variation notices.

16. New IPPCD Annex V, paragraph 5: *The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and consulting the public concerned (for example by written submissions or by way of a public inquiry) shall be determined by the Member States. Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Annex.*

16.1. Paragraph 5 of Schedule 4 and sub-paragraph 4(8) of Schedule 7 already prescribe arrangements for informing and consulting the public about applications. The new paragraphs 15A of Schedule 4 and 7A of Schedule 7 (inserted by regulations 2(3)(g) and 2(4)(d) respectively) extend prescription to the advertisement of draft determinations and proposed variation notices. It should be noted that the existing provisions for the Secretary of State to "call in" an application for determination (in paragraph 14 of Schedule 4 and paragraph 6 of Schedule 7) remains unchanged.

17. PPD Article 4(3)(b)*: the following paragraph shall be added [to IPPCD Article 15]: '5. When a decision has been taken, the competent authority shall inform the public in accordance with the appropriate procedures*…

17.1. Sub-paragraph (c) of the new paragraph 15B inserted into Schedule 4 by regulation 2(3)(g) introduces two new requirements for informing the public that a decision has been taken on a permit application for a new installation. In both cases, the public will have been notified of the arrangements in the advertisement of the draft determination.

17.2. In cases where there are no representations on the draft determination, the regulator has to notify the applicant or in the case of a proposed variation the operator of the affected installation (see new paragraph 6A inserted by regulation 2(4)(b)) and enter the details on the public register. Where there are representations, the regulator will have to advertise its eventual finalisation of the determination in the same way as it advertised the draft. Sub-paragraph (c) of the new paragraph 7B inserted into Schedule 7 contains the same provisions in respect of variation applications or notices.

18. [Continuation of new IPPCD Article 15(5)]…*and shall make available to the public the following information*:

18.1. *(a) the content of the decision, including a copy of the permit and of any conditions and any subsequent updates*;

18.1.1. Regulation 29 and Schedule 9 of the PPC Regulations 2000 already require this information[10] to be available in public registers.

18.2. *[and] (b) having examined the concerns and opinions expressed by the public concerned, the reasons and considerations on which the decision is based, including information on the public participation process.*';

18.2.1. Public registers already contain the information underpinning permit decisions. But sub-paragraph (1)(a)(iv) of the new paragraph 15B inserted into Schedule 4 by regulation 2(3)(g) applies this PPD requirement at the stage where a draft determination of a new installation permit application is advertised. The information thus provided will then be confirmed, with any necessary updates, under the requirements for notification of decisions (see paragraph 17). Sub-paragraph (1)(a)(iii) of the new paragraph 7B of Schedule 7 inserted by regulation 2(4)(d) does the same for variations. In the case of proposed variations, regulation 2(4)(b) inserts this requirement.

18.2.2. Regulation 2(5) adds to the list in paragraph 1 of Schedule 9 a requirement that particulars required under the new paragraphs 15A and 15B in Schedule 4 and 6A, 7A and 7B in Schedule 7 are placed on the register.

19. PPD Article 4(4): *the following Article shall be inserted: 'Article 15a - Access to justice…*[the full text is at Appendix 1 to this paper]

19.1. The Government considers that existing domestic judicial review features fulfil the requirements of this new Article.

20. PPD Article 4(5): *Article 17 shall be amended as follows:*

20.1. *(a) paragraph 1 shall be replaced by the following*: *'1. Where a Member State is aware that the operation of an installation is likely to have significant negative effects on the environment of another Member State, or where a Member State likely to be significantly affected so requests, the Member State in whose territory the application for a permit pursuant to Article 4 or Article 12(2) was submitted shall forward to the other Member State any information required to be given or made available pursuant to Annex V at the same time as it makes it available to its own nationals. Such information shall serve as a basis for any consultations necessary in the framework of the bilateral relations between the two Member States on a reciprocal and equivalent basis.*';

20.1.1. Regulations 2(3)(i) and 2(4)(f) respectively make the necessary amendments to paragraph 17 of Schedule 4 and paragraph 9 of Schedule 7.

20.2. *(b) the following paragraphs shall be added [to Article 17]: '3. The results of any consultations pursuant to paragraphs 1 and 2 must be taken into consideration when the competent authority reaches a decision on the application….*

20.2.1. Regulations 2(3)(j) and 2(4)(g) respectively make the necessary amendments to paragraph 18 of Schedule 4 and paragraph 11 of Schedule 7.

[10] Specified in sub paragraphs (f) and (i) of paragraph 1 of Schedule 9.

21. 4. …*[addition to IPPCD Article 17] 4. The competent authority shall inform any Member State, which has been consulted pursuant to paragraph 1, of the decision reached on the application and shall forward to it the information referred to in Article 15(5). That Member State shall take the measures necessary to ensure that that information is made available in an appropriate manner to the public concerned in its own territory.'*;

21.1.1. The requirements in the first sentence of Article 17 (4) are inserted in new paragraphs 15B(2), for applications, 6A(2), for variations proposed by the regulator, and 7B(2) for other variations.

21.1.2. The Government considers the circumstances dealt with by the second sentence of the new IPPCD Article 17(4) are unlikely to arise in England and Wales. If they do, then the Government would proceed in line with the arrangements these draft regulations would establish for domestic decisions and will decide in the light of responses to this consultation how best to give formal expression to that intention.

22. PPD Article 6: *Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 25 June 2005 at the latest.*

22.1. Regulation 3 sets out simple transitional provisions for any PPD-subject application initiated but not completed by the coming into force of the Regulations.

Department for Environment, Food and Rural Affairs
June 2005

FINAL REGULATORY IMPACT ASSESSMENT

of the **Pollution Prevention and Control (Public Participation)(England and Wales) Regulations 2005** which provide for the implementation of the amendment to Directive 96/61/EC made by Article 4 of Directive 2003/35/EC.

May 2005
Department for Environment, Food and Rural Affairs

1 Title

The Pollution Prevention and Control (Public Participation)(England and Wales) Regulations 2005

2 Purpose and Intended Effect of the Measures

The Objective

2.1 The objective is to transpose into national legislation, by regulation, the amendment of Directive 96/61/EC (concerning integrated pollution prevention and control, otherwise known as "the IPPC Directive" or, in this document, "the IPPCD") made by Article 4 of Directive 2003/35/EC (known as the Directive on public participation or "the Public Participation Directive" or, in this document, as "the PPD") by 25th June 2005, in accordance with the PPD's requirements and timetables.

2.2 One of the PPD's objectives is to improve the public participation within Council Directive 96/61/EC concerning integrated pollution prevention and control. This regulatory impact assessment refers only to the transposition of the amendment of Directive 96/61/EC made by Article 4 of Directive 2003/35/EC. Whilst many of the requirements contained in that amendment are already covered by the Pollution Prevention and Control (England and Wales) Regulations 2000 (SI 2000 No. 1973 – "the PPC Regulations 2000"), further requirements are made through the Pollution Prevention and Control (Public Participation)(England and Wales) Regulations 2005 (the "PPCPP Regulations")

Devolution

2.3 The Public Participation Directive applies throughout the UK. It is being transposed separately in Scotland, Northern Ireland and Gibraltar.

Background

2.4 The importance of fostering increased public participation in environmental decision-making was recognised at the international level in the UN/ECE Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters ("the Aarhus Convention") which the Community signed on 25 June 1998 and which has also been signed by the UK. Since signing the Aarhus Convention in 1998, the EU has taken steps to update existing legal provisions in order to meet the Convention's requirements by means of legislation directed to Member States. The main legal instrument used to align

Community legislation with the provisions of the Aarhus Convention on public participation is the Public Participation Directive.

2.5 The IPPC Directive was transposed in England and Wales through the PPC Regulations 2000, made under the Pollution Prevention and Control Act 1999. Similar Regulations have been made for the rest of the UK and a corresponding ordinance has been made for Gibraltar.

2.6 The IPPC Directive requires industrial installations in a wide range of sectors to have permits governing their operation, containing pollutant emission limit values and other conditions based upon the application of best available techniques. The PPC Regulations 2000 established the Environment Agency as the regulator for most (currently estimated as 4,100) installations in England and Wales subject to IPPC , and the relevant local authority as the regulator for a smaller number (currently estimated up to 600) of generally less potentially polluting installations. These installations are collectively referred to for regulatory purposes as “Part A” installations, meaning that they are subjected by the PPC Regulations 2000 to IPPC requirements and distinguishing them from some 15,000 “Part B” installations which are subjected by those Regulations to local authority controls only upon their emissions to air.

2.7 Charging schemes operated by the regulators with prior Government approval seek to recover the costs of IPPC regulation from permit applicants and holders through one-off application charges and recurring annual subsistence charges.

2.8 Under the IPPC Directive, installations in existence at 30 October 1999 have until October 2007 to gain a permit. However, the PPC Regulations 2000 set a statutory timetable under which those “existing installations” are being phased into the permitting process in the period December 2000 to March 2007. By April 2005, this process was about 20% complete, in line with expectations.

2.9 The PPC Regulations 2000 set out a clear process for dealing with all applications for “Part A” permits or variations to permits. The main features are as follows:

- Operator submits application, containing specified details, to the regulator, who will place a copy on its public register.

- Within 14 days of the receipt of application, the regulator sends copies to statutory consultees who are asked to respond within 28 days.

- Within 42 days of the application date, the operator has to advertise the application in the London Gazette and a local newspaper, incorporating specified details within the advertisement including notification that representations on the application have to be made to the regulator within 28 days of the date of the advertisement.

- The regulator has four months from the date of receipt of the application in which to determine the application unless a longer period is agreed with the applicant. If no extension is agreed, the application is deemed refused. The four month “clock” is stopped in certain circumstances, including where the regulator needs to obtain further information from the applicant.

- The result of the determination is notified to the applicant and a copy of the permit is placed on the regulator's public register.

2.10 Through availability of the application and the advertised arrangements for making representations to the regulator, this process already provides for public participation in the permitting process. But the amendments to the IPPCD made by the PPD require the following main additions to what the process already provides:

- inclusion of an outline of the `main alternatives, if any, studied by the applicant' within the application;

- notification of the public of the permit decision and availability of the permit together with a document giving `the reasons and considerations on which the decision [was] based';

- notification of the public `early in the procedure…or, at the latest, as soon as the information can be provided' of `the nature of possible decision or, where there is one, the draft decision'; and

- making available `within appropriate time frames' (i) the main reports and advice' issued to the regulator in accordance with national legislation when the application was made, and (ii) information relevant to the decision which only becomes available after the advertisement of the application.

2.11 Although the first of these additions applies to all "Part A" permit applications, the remainder apply only to three categories of those applications. These are applications:

- for a permit for a new installation (*ie* not existing installations);

- for a permit variation covering a substantial change to an already-permitted installation; and

- in circumstances where a permit needs to be varied because the pollution caused by an already-permitted installation is of such significance that the emission limits in the permit need to be revised or extended.

Risk assessment

2.12 The immediate risk addressed and removed by the PPCPP Regulations is that of infraction proceedings by the European Commission for failure to transpose those parts of the Public Participation Directive to which the Regulations relate.

2.13 Those parts of the Public Participation Directive seek to implement the analogous parts of the Aarhus Convention which set out to improve public participation in decisions relating to the environment, thus by implication dealing with a perceived risk that public participation in those respects may fall short of what is desirable.

2.14 Recital 12 of the Public Participation Directive states that the Directive does not go beyond what is necessary in order to achieve the objective of contributing to the implementation of the obligations arising under the Aarhus Convention.

2.15 The PPCPP Regulations do not affect the principles and requirements on which are already based the environmental considerations regulators have to apply when determining permit applications in these categories. But by improving public participation from that already embodied in the PPC Regulations 2000 they reduce the already low risk that the regulator might overlook a significant consideration in the process of determining the application.

3 Consultation

3.1 Within Government

3.1.1 Representatives of other Government Departments and the Devolved Administrations of Wales, Scotland, Northern Ireland and Gibraltar were consulted on the UK position in the negotiation of the Public Participation Directive as a whole.

3.2 Public consultation

3.2.1 A full public consultation on draft PPCPP Regulations for England and Wales to deliver option 4 (below) commenced on 2 February 2005 and closed on 27 April. A partial Regulatory Impact assessment. Responses from 31 bodies were received. Although a few detailed changes have been made as a result, the consultation indicated general support for what the Regulations provide. The responses also confirmed the already-recognised need for additional guidance to regulators and applicants on how to meet the new requirements (see section 0 of this document).

4 Options

4.1 Option 1: Do nothing

4.1.1 This was not a realistic or desirable option. The UK is legally obliged, as a Member of the European Union, to implement Directive 2003/35/EC fully.

4.2 Option 2: Leave the PPC Regulations 2000 un-amended but amend guidance to regulators

4.2.1 The PPC Regulations 2000 already provide a clear legislative framework within which the permit application and determination process must operate. Notionally, it might have been possible to devise guidance to regulators under which they would have to operate that process in a modified way in order to meet PPD requirements. But since those requirements significantly extend that process for the categories of application concerned, it would be strange not to extend that legislative framework and the clarity it provides. The guidance necessary to meet the new requirements would need a good framework on which to be developed and it is considered that the legislative framework would need at least some modification to enable that development. Furthermore, it is unlikely that the issue of guidance alone would be sufficient to demonstrate to the European Commission that the PPD requirements had been adequately transposed.

4.2.2 In any case, this “guidance only” option would still require operators and regulators to modify their conduct of the PPC permit application in ways

similar to the preferred option and thus with the attendant costs. Therefore, this option was not pursued..

Preamble to regulatory options

4.2.3 The PPC Regulations 2000 already provide a clear legislative framework within which the permit application and determination process must operate, so it is considered in the best interests of regulators, the regulated and the public alike to adapt that framework to the new requirements, particularly since those requirements significantly extend current practice.

4.2.4 However, within this broad option, two approaches were considered, reflecting different interpretations of two key requirements of the Public Participation Directive:

- that the public must be informed of `the nature of possible decisions [on a permit application] or, where there is one, the draft decision' (paragraph 1(d) of the new Annex V to the IPPCD inserted by the PPD); and

- `the public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken' (paragraph 3 of the new Annex V to the IPPCD inserted by the PPD).

4.3 Option 3 – amend the PPC Regulations 2000 - inform the public of the nature of possible decisions at the outset.

4.3.1 There are only two admissible basic decisions to be made about a permit application under the PPC Regulations 2000: to refuse the application or to grant a permit. It is considered that merely informing the public of those self-evident options would not fulfil the intention of improving public participation in the process.

4.3.2 However, some elaboration of the `nature of possible decisions' could perhaps be provided by informing the public of the considerations which the regulator has to make in all cases covered by PPD requirements. These are embodied in regulation 12 and, by reference, regulation 11 of the PPC Regulations 2000. In summary, if the regulator is minded to grant a permit, the permit has to contain conditions relating to a wide range of considerations.

4.3.3 If the advertisement of the application were to contain words to the effect that the regulator may either refuse the application or grant a permit, but in the latter case permit conditions would be included as necessary to meet the requirements of the PPC Regulations 2000 (which would be set out in a document available from the regulator), this might be held to provide sufficient information to the public on the nature of the possible decision. For the purposes of this discussion, such a document is termed "decision nature A". But it is questionable whether such a document could stand as an adequate representation of the "nature of possible decisions".

4.3.4 The value of a "nature of possible decision" document would be increased if it were to incorporate reference to standard permit conditions which might be established for the industry sector in question and to any other aspect of the permit which the regulator regarded as of critical importance in the individual case. For the purposes of discussion, such a document is termed "decision

nature B". There would need to be quite detailed guidance on the minimum requirements for a "decision nature B" document.

4.3.5 Preparation of a "decision nature B" document may be feasible in some cases where, for example, the installation and its associated environmental issues are relatively simple or where the installation is within a sector in which most installations have similar characteristics. But it would remain essential for it to be available by the date of advertisement : that is to say, no more than 42 days after the application - less if the applicant wishes to advertise sooner than that. The regulator would probably be unable in every case to meet such demands and would therefore have to fall back on a "decision nature A" document.

4.3.6 The advertisement of the application already provides opportunity for the public to make representations on the application to the regulator within 28 days of the advertisement date. The public could make its representations in the light of whichever type of "decision nature" document (A or B) had been made available. The regulator would then proceed to determine the application and, if that were its decision, to issue the permit on the basis that the public had opportunity to express comments and opinions in that light before the decision was taken.

4.3.7 Under both this and the following options there would need to be added a requirement on the regulator to inform the public at that stage of the decision and the reasons for it (so as to meet the requirements the new Article 15(5) to be added to the IPPCD under Article 4(3)(b) of the PPD). But the current permit application process would otherwise remain unchanged from what is currently provided in the PPC Regulations 2000.

4.3.8 Although this option would have involved relatively minor adjustment to the application process already set out in the PPC Regulations 2000, it would be susceptible to criticism on the grounds that the public would, at best, merely be informed (by a "decision nature B" document) of generic permit conditions which might be applied. In cases where only a "decision nature A" had been made available, grounds for criticism would be strengthened, not least because such a document would in practice add nothing to what is already available: the PPC Regulations 2000 themselves are of course readily accessible to the public, as are guidance documents from Defra and the Environment Agency which expand upon how the consideration of permit conditions is to be conducted. Consultation on the Partial Regulatory Assessment which accompanied consultation on the draft PPCPP Regulations showed no enthusiasm for this option and some responses tended to confirm its susceptibility to criticism. So this option was not pursued.

4.4 Option 4 – amend the PPC Regulations 2000 - inform the public of the draft decision – THE CHOSEN OPTION

4.4.1 Regulators usually pass at least one advanced draft of the permit to the applicant so that the latter can check for any factual inaccuracies. In other words, there is already usually what amounts to a "draft decision". Making this available to the public would therefore clearly fulfil the option provided in paragraph 1(d) of the new IPPCD Annex V. Moreover, it would enable the public to see in full detail the draft permit conditions which will have been

derived by the regulator taking into account the representations made as a result of the advertisement of the application.

4.4.2 But there seems no purpose in telling the public of a draft decision if there is no further part for the public to play in the process. Moreover, paragraph 5 of the new Annex V requires the Government to determine detailed arrangements for informing the public, and for those arrangements to provide `reasonable time-frames for the different phases, allowing sufficient time…for the public concerned to prepare and participate effectively in environmental decision-making'.

4.4.3 The production of a draft decision may reasonably be regarded as moving the process into a new phase, particularly where that draft decision has been reached following extensive consideration of, amongst other material, representations made when the application was advertised. In any case, regardless of the existence of "phases" in the process, the paragraph 5 requirement to allow effective public participation strongly suggests that further representations on the draft decision should be allowed.

4.4.4 So under this chosen option the current process remains substantially unchanged until the point where the regulator produces a draft permit. Notification of that is provided by the regulator on its web site and any other means it considered appropriate. There is then a 20 working day period in which the public can make representations on the draft decision as embodied in the permit and in a "decision document" setting out the reasons for the draft decision which is made available at the same time (in part fulfilment of the new IPPCD Article 15(5)). If no significant representations are made, the permit automatically enters force at the end of that period, but otherwise the regulator is required to reconsider the draft permit and issue a final version (with associated decision document) thereafter.

4.4.5 By making available the draft permit, this chosen option is considerably more useful to the public than notification of the broad list of considerations which would have been notified under option 3. Moreover, a second opportunity to make representations constitutes a significant improvement in public participation, albeit at the expense of a somewhat prolonged process and attendant work by the regulator.

4.5 Option 5 – apply Option 3 (with enhancement) or 4 according to nature of application

4.5.1 Under this "hybrid" option, the regulator would have been given discretion to decide whether the nature of the permit application is such that the more useful "decision nature B" document outlined under option 3 could be prepared in time for the option 3 process to be followed. If that were not the case, then the regulator would have been obliged to follow the option 4 process.

4.5.2 This option would probably have involved the regulator in additional work at the outset of the process, but might have saved some in comparison to option 4 at the end. However, the regulator might have found it difficult to advise applicants at the outset which process would be followed, thus creating a degree of uncertainty – not least over the likely duration of the process – which applicants might have found hard to bear. And the public might have

found it difficult to comprehend why some applications resulted in a draft permit and others proceeded straight to a finalised permit. So, although a few consultation responses favoured such an option, more (including the Environment Agency) recognised the difficulties and potential confusion. Therefore this option was not pursued.

4.6 Option 3.6 – other combinations of options 3 and 4

4.6.1 Option 3 may be styled “notify decision nature, single period for representations”, option 4 as “notify draft decision, two periods for representation”. It follows therefore that, notionally, there were two other “combination” options: “notify decision nature, two periods for representation” (option 6Y) and “notify draft decision, single period for representation” (option 6Z). These were outlined in more detail in the Partial Regulatory Impact Assessment but found little favour in consultation responses, some of which pointed out the deficiencies of the “decision nature” approach in 6Y and others of which drew attention to the erosion of input by statutory consultees in 6Z. So neither has been pursued.

5 Benefits

5.1 Increasing public participation in the IPPC permitting process delivers mainly environmental and social benefits. It enables the public to express, and the regulator to take account of, opinions and concerns which are relevant to the permitting decisions in question. This increases the accountability and transparency of the process, contributes to public awareness of environmental issues, and may illuminate factors which would otherwise have gone un-remarked, thus assisting the regulator in the task of setting robust permit conditions. But to the extent that the resulting permit is even more finely tuned to those factors, and given that IPPC permits in any case have to be based upon the application of best available techniques for dealing with pollution which are defined in part by reference to technical and economic viability for the industry sector concerned, economic considerations will also be embodied in the outcome.

5.2 However, these benefits can only be quantified on a case-by case basis after the implementation of the proposal, and then with considerable difficulty because of the lack of a clear “base line” from which to assess additional benefits. The benefits will have to be regarded as essentially qualitative, at least until a sufficient number of applications under the new requirements has been processed.

6 Costs

6.1 Option 1

6.1.1 Whilst avoiding any costs additional to those already associated with the PPC permitting process, this “do nothing” option if pursued could ultimately lead to the UK being heavily fined on a daily basis until the infraction of EU requirements is rectified.

6.2 Option 2

6.2.1 As pointed out above, this “guidance only” option would still require operators and regulators to modify their conduct of the process, with potential costs arising in the same way as the preferred regulatory option.

6.3 Options 3 to 6

6.3.1 Under any of these options, for permit applicants there will be three distinct forms of possible costs additional to those already arising under the PPC Regulations 2000.

Direct cost to applicants in preparing applications

6.3.2 All applicants for IPPC permits (that is to say, for any permit application in connection with a “Part A” stationary plant activity, including those in respect of “existing installations”) will have to include in their application a statement of the main alternatives, if any, studied by the applicant in outline in drawing up the application.

6.3.3 The cost of including such a statement will vary considerably according to the nature of the installation and also according to who carries out the work. Guidance on what is required in such a statement will be provided, but given that the requirement is only for a statement in outline it may be reasonable to expect that no more than one person-day of additional effort would be involved in even the most complex cases. It should be noted that the Environment Agency’s guidance methodology for the assessment of best available techniques at the installation level is structured in a way which considers alternatives as a matter of course, so it should be relatively simple matter to distil that consideration into the required statement.

Regulator’s application charges

6.3.4 Regulators are obliged to recover their regulatory costs from those whom they regulate. They already charge permit application fees set to cover the costs of determining the application. In the case of the Environment Agency, these range from £2,500 to £25,000 and in some cases to around £50,000, depending upon the nature and complexity of the industrial activity concerned. Local authority application fees are about £2,000 and reflect the generally less complex nature of installations falling to local authority IPPC regulation

6.3.5 Since options 3 to 6 would all involve some extra work by the regulator, it is likely that permit application charges would have to rise accordingly. In the case of Environment Agency charges, the Agency would need first to estimate the extra costs and then draw up for public consultation a proposal for the necessary modifications to its charging scheme. The proposal would then need to be considered and revised as appropriate in the light of consultation responses before being formally submitted to the Secretary of State for approval. A similar process would be involved in any proposal for an increase in local authority IPPC permit application fees.

6.3.6 Options 3 to 6 had in common the requirements for the decision (irrespective of whether there has been a draft decision) to be notified to the public by the regulator when it is finalised and for the decision details and reasons for the decision to be made available to the public, as required by the new Article 15(5) of the IPPCD. The task of meeting these requirements is likely in most

cases to involve the regulator in a small but nevertheless significant amount of extra work. But to the extent that options 3 to 6 differ in their requirements for additional notification, preparation of "decision nature" documents, draft permits and consideration of further representations, the workload for regulators would differ also.

6.3.7 Based on information from the Environment Agency, an initial rough estimate of the extra costs (above those which are currently incurred and charged) to the Agency of an application made under the chosen option 4 is £3,000. It must be emphasised that:

- this is a rough estimate;
- the actual cost of each application will vary according to its nature; and
- the manner in which those costs would be recovered through charges has yet to be considered in detail.

6.3.8 Costs under the chosen option 4 are much more prone to wide variation because of the unpredictability of the amount of work which would be required as a result of representations on the draft permit. If there is none, the cost may be well below £3,000, but could considerably exceed that if, as a result of representations, the draft permit had to be significantly amended before it was finalised.

Costs to the operator of the time taken to obtain a permit

6.3.9 The third form of cost potentially arises from the time taken for the permit application to be determined and the permit (or varied permit) to enter force. Through the notification of the draft permit and the 20 working day period thereafter in which representations may be made, option 4 adds a distinct extra stage to the current process[11]. Although regulators are expected to carry out their part in the PPD process as rapidly as possible, the extra stage may be perceived as affecting costs to the applicant, particularly in circumstances where the permit is required quickly to allow a business initiative to be implemented.

6.3.10 It is not possible to generalise such costs because, if they arise at all, they will be dictated by the nature and business position of the operation concerned. However, the potential for their arising can be minimised or completely eradicated by the operator through good business planning, early engagement with the regulator and other stakeholders, and the submission of a high quality application in line with guidance from the regulator.

7 Equity and Fairness

[11] The current process requires the regulator to determine applications within four months of receipt unless a longer period is agreed with the applicant. The four month clock is stopped if the regulator needs to obtain further information from the applicant. The Environment Agency has typically taken between 8 and 12 months to deal with each of the 950 or so permit applications it has completed, although recent performance indicates that the typical time is coming down to between five and six months. The chosen option 4 will inevitably add at least seven weeks to this, although this may in simpler cases be partially offset by further reduction in the time taken to reach "draft decision" stage.

7.1 As stated above, regulators may propose to recover their additional costs under the chosen option 4 from applicants for permits and it will be for the Secretary of State to decide whether to accept such a proposal. In reaching a decision, the Secretary of State would in any case have regard to the equity and fairness of the proposal.

7.2 The alternative to recovering additional costs from permit applicants would be for those costs to be covered by Government funds. The Secretary of State would have regard to the equity and fairness of that alternative, given the manifold other calls upon Government funds and also the desirability of ensuring as far as possible that the costs of regulation are recovered from those to whom the regulation directly applies.

8 Consultation with small business: the Small Firms' Impact Tests

8.1 As stated above, regulators will need first to determine what additional costs they might incur before finalising consultation proposals to modify their charges. Only at that stage will it be possible to determine impacts upon small businesses.

9 Competition Assessment

9.1 As stated above, regulators will need first to determine what additional costs they might incur before finalising consultation proposals to modify their charges. Only at that stage will it be possible to finalise a competition assessment, but an initial assessment indicates that the options would have negligible effects upon competition.

10 Enforcement, Sanctions and Monitoring

10.1 The chosen option 4 amends the PPC Regulations 2000, but not in respect of either the identity or the enforcement powers of the regulator which will remain as currently specified in those Regulations.

10.2 The PPC Regulations 2000 already provide sanctions in relation to the permit application process. If applicants fail to meet the requirements the process places upon them, they will find that the process takes longer or, in the extreme, that the application is refused. If regulators fail to meet deadlines without the agreement of the applicant, the application is deemed refused and the regulator may thereupon find itself confronted with an appeal. An appeal may also be triggered if the applicant is dissatisfied with the outcome of the application.

10.3 Article 5 of Directive 2003/35/EC provides that by 25 June 2009, the Commission must send a report on the application and effectiveness of this Directive to the European Parliament and Council. This provision also allows the Commission to review the Directive, taking into account the experiences acquired in the application of the Directive in the Member States. This Article does not impose an obligation on Member States to report to the Commission, but for the Commission to report to the Council and Parliament and for the Commission to review the Directive.

Responses to consultation

10.4 Thirty-one responses were received to consultation on draft Regulations delivering the chosen option 4. Respondents included industry organisations, environmental organisations, local government bodies and the Environment Agency. Overall, there was general support – or at least reluctant acceptance - for what was included in the draft Regulations. The following paragraphs highlight the main points which have required attention in finalising the Regulations.

10.5 The PPD application process initially is virtually the same as the current process, which requires the applicant to advertise its application within 42 days of submitting it to the regulator and for the regulator to consider any resulting representations made within 28 days of the advertisement. But whereas the current process thereafter consists simply in the regulator determining the application and notifying the result to the applicant, under the PPD process the regulator will now have to produce a draft determination, notify it to the applicant and advertise that notification to the public.

10.6 The draft Regulations gave the public 28 days in which to make representations to the regulator on the draft determination. A few respondents complained that this was too short a time, whilst industry, although accepting (albeit reluctantly) the need for this period, was anxious not to see it - and consequently the overall process – lengthened, noting that the public already has a 28 day period in which to make representations upon the application (that is to say, at the early stages of the process). Overall, no compelling case emerged for extending the new representation period. However, the final Regulations express this period for representations as 20 working days so as to deal with concerns about the impact of public holidays.

10.7 The draft Regulations provided that, if no representations on a draft determination were received, the draft decision would become final 7 days after the end of that period. If representations were received, the regulator would have to consider them and finalise its decision within a further 14 days or a longer period agreed with the applicant. The Environment Agency considered that 14 days was too short a period. The final Regulations now make that period 15 working days.

10.8 Several responses commented on the increase in the overall time from the making to determination of an application. The consultation paper pointed out that applicants will be able to minimise further delays by ensuring that their applications are of high quality, by paying careful attention to advice and guidance from the regulator, and by doing what they can to identify and address any public concerns even before the formal application. It also expressed expectation that regulators will ensure that their internal procedures operate efficiently to minimise delays. In order to cement these points and to deal with others raised by respondents to the consultation, a new edition of the Government's guidance on IPPC is being prepared for publication at about the time the Regulations come into force (see paragraph 10.9).

Implementation and delivery plan

10.9 The PPCPP Regulations should come into force by 25 June 2005 provided Parliament is content and the enhanced public participation requirements they contain would therefore take effect immediately. It will be for regulators to ensure compliance. To coincide as closely as possible with the coming into force of the Regulations, the Department for Environment, Food and Rural Affairs and Welsh

Assembly Government will publish a further edition of the "Practical Guide" to IPPC[12]. This will contain material concerning the requirements of the PPCPP Regulations which will be of assistance both to regulators and to applicants for permits.

Post-implementation review

10.10 The Environment Agency reports monthly to Defra on progress with permitting "Part A(1)" installations under the PPC Regulations 2000 and will in that way provide data and commentary on the effects of the advent of the PPCPP requirements. A summary of that report is available on the Agency's web site[13]. Defra carries out an annual survey of local authority permitting activities which should capture the effect upon the permitting of "Part A(2)" installations.

10.11 Defra intends in the course of 2005 to evaluate the more general effect of "Part A" permitting. That exercise will be unlikely to capture any significant effect of the PPCPP Regulations. However, a further evaluation envisaged for 2008 should do so. And the European Commission envisages requiring a report from Member States under Article 16 of the IPPC Directive for the period 1 January 2006 to 31 December 2007 which should also involve consideration of the effects of the Public Participation Directive's amendments to the IPPC Directive.

11 Summary and Recommendations

11.1 Regulations are necessary in order to transpose the amendment of Directive 96/61/EC made by the Public Participation Directive. Whilst many of those requirements are already in place within the PPC Regulations 2000 and their costs to regulators are incorporated in current charges to operators, any additional burdens and their attendant costs will fall mainly upon the regulators, who may consult on proposed modifications to their PPC charging schemes to recover those costs. Only at that stage can cost to business be determined. Those costs are not yet known with any certainty, and in any case the Secretary of State's approval is needed for any modification to regulators' charging schemes.

11.2 It is our recommendation that we transpose the amendment of Directive 96/61/EC made by the Public Participation Directive through the Pollution Prevention and Control (Public Participation)(England and Wales) Regulations 2005

[12] *Integrated Pollution Prevention and Control –A Practical Guide*. Currently at Edition 3, February 2004. Available at http://www.defra.gov.uk/environment/ppc/index.htm .

[13] At http://www.environment-agency.gov.uk/business/444217/444663/298441/505302/

12 Regulatory Quality Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed: **Jim Knight**

Date: **2nd June 2005**

JIM KNIGHT
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