

Explanatory Memorandum to the Environmental Permitting (England & Wales) (Amendment) Regulations 2013

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainable Development of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Environmental Permitting (England & Wales) (Amendment) Regulations 2013. I am satisfied that the benefits outweigh any costs.

John Griffiths AM

Minister for Environment and Sustainable Development

10 December 2012

1. Description

These Regulations amend the Environmental Permitting (England and Wales) Regulations 2010 in order to transpose Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control). The Directive is a recast, streamlining seven existing Directives into one. As a consequence of transposition, there will be stricter limits for air pollution, although there will be some flexibility to extend deadlines for power plants or to waive the rules for other installations in special cases, subject to certain conditions being met. The Regulations aim to improve health and environmental protection, while making the rules clearer and easier to implement.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

These Regulations amend the Environmental Permitting (England and Wales) Regulations 2010. This is a composite statutory instrument which applies to England and Wales only and is subject to affirmative procedure in the National Assembly for Wales and in both Houses of Parliament. As with the 2010 Regulations, it is not considered practicable for this statutory instrument to be made bilingually.

3. Legislative Background

These Regulations apply to England and Wales only. The power to make these Regulations is contained in section 2 of the Pollution Prevention and Control Act 1999. That power was transferred to the National Assembly for Wales, except in relation to offshore oil and gas exploration and exploitation, in accordance with the National Assembly for Wales (Transfer of Functions) Order 2005 (S.I. 2005/1958). Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The administrations in Scotland, Northern Ireland and Gibraltar are bringing forward separate secondary legislation to transpose the industrial emissions Directive by the 7 January 2013 deadline. The Department for Energy and Climate Change is doing so in respect of United Kingdom offshore oil and gas installations to the extent that they are subject to the Directive.

4. Purpose & intended effect of the legislation

The primary purpose of the instrument is to amend the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010 No. 675) (as already amended) so as to transpose Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast). That Directive recasts seven current Directives into a single one about regulating emissions from various industrial activities, ranging from power stations to pig farms and waste incinerators to dry cleaners. Much of the material in the component

Directives is substantively unchanged, but there are some tightened or clarified requirements.

The purpose of the Directive on industrial emissions (integrated pollution prevention and control) (recast) – 2010/75/EU, the “Industrial Emissions Directive (IED)” or simply “the Directive” hereinafter - is “to achieve a high level of protection for the environment taken as a whole” from harmful effects of industrial activities. It does so for many activities by requiring each of the industrial installations concerned to have a permit from the competent authority (in England and Wales, the Environment Agency or, for smaller installations, the relevant local authority). Permit conditions and pollutant emission limit values (ELVs) therein have to be set on the basis of the application of best available techniques (BAT). Post April 2013, the activities attributed to the Environment Agency Wales will be carried out by the Natural Resources Body for Wales.

The Directive also sets out requirements for the monitoring and inspection of permitted activities and for the periodic reconsideration of permits. It contains reporting obligations upon Member States which will contribute to the European Commission’s own obligatory triennial reports to the European Parliament and Council on the implementation of the Directive.

The Directive is a recast, streamlining seven existing Directives into one; these concern 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. These are referred to as the “component Directives”.

Between them, these component Directives apply to some 10,200 industrial installations in England and Wales, ranging from power stations to intensive poultry farms and from waste incinerators to dry cleaners. All of these diverse enterprises have in common the fact that they present, individually and collectively, a significant risk to human health and the environment from polluting activities.

For example, 34 installations, mainly in the chemicals, power, metals and cement sectors, emitted between them in 2009 some 2.8 tonnes of mercury. A total of some 18 tonnes of cyanides was emitted to surface water from 37 facilities in the UK in 2009. Direct emissions from chemicals installations were the largest, but with contributions also from sewage works which treat effluent from industrial processes. The installations in these examples had permits with emission limits based on the application of BAT and there is no suggestion that those limits were breached, but these figures highlight the need for vigilance.

Like the component Directives, the IED aims to provide a high level of protection for the environment taken as a whole. It therefore follows that the substantively changed requirements should help address social, wellbeing and health inequalities, although the precise way in which they do so will depend upon the technical characteristics and location of installations affected

by the substantive changes and upon the quality of the environment in the locality.

Given that IPPC requirements address the need to prevent accidental discharges and to restore the site to a satisfactory state after the industrial activity has ceased, the substantive changes will also contribute to the health and safety of the workforce and of the community around the installation.

It follows that there will be no clear distinction between impacts in rural and urban areas: local criteria alone will determine impacts of the Directive and more particularly the impacts of the substantive changes that it makes to the existing Directives. Similarly, there will be no distinction between regions except to the extent that there happens to be a concentration in particular areas or regions of installations affected by the significant substantive changes. By providing a high level of protection for the environment taken as a whole, the Directive's transposition in Wales and England will help ensure that people and environments in deprived areas are afforded the same level of protection as those in more affluent areas.

In addition to the protection of human health and the environment, the component Directives and hence the IED also impact on other areas. For example, the energy efficiency requirements that form part of IPPC are significant in respect of climate change mitigation policies. The IED also influences carbon capture and storage, both by requiring new large combustion plants to be "capture ready" and also by applying IPPC to carbon capture activities. The IED also impacts on waste policy as it continues IPPC requirements in respect of waste minimisation. In bringing more waste treatment activities into IPPC, the intention of the Directive is to provide a consistent, BAT-based approach to the regulation of waste management techniques, which can be used for both disposal and recovery and which have the potential to cause environmental damage if not appropriately controlled.

5. Consultation

A joint England and Wales consultation run by Defra and Welsh Government was held from 12th March to 6th June 2012. The consultation was aimed predominantly at operators of industrial installations which are subject to the Directive, but anybody with an interest in how such installations are regulated was also invited to respond. However, generally, as this is a highly technical area, with largely specialist interests, responses tended to come from operators, regulators and government agencies.

The consultation pointed out that much of material in the component Directives and so the corresponding provisions in the Regulations to be amended remained unchanged, but that views were sought on 18 detailed points concerning proposed changes. The consultation also sought views on removing 49 industrial activity descriptions from the Regulations on the grounds that they were no longer carried on or that they were in any case covered by other descriptions. Responses were received from 86 organisations, 31 of which were from individual or groupings of local authorities in England and Wales.

The responses largely endorsed the transposition proposals. However, there was virtually no support for the proposed provision – in line with an option in a component Directive that had not previously been transposed – of a registration procedure, rather than full permitting, for activities using solvents. The instrument therefore omits that provision.

Although the responses to the consultation were generally very much in favour of the proposed changes to the Regulations as a consequence of transposing the IED, however, there were some clear differences in approach demonstrated between various groups. This is demonstrated in particular by the suggestion that BAT be removed in respect of incinerators and co-incinerators not subject to IPPC and solvent activities.

The Defra view of these activities, given the UK Government drive to reduce or eliminate what it sees as gold-plating, is that BAT should be deregulated. However, the majority of consultees, including all Welsh local authorities and the Health Protection Agency, indicated that BAT plays a significant role in protecting both human health and the environment. Following extensive policy discussions, it has been decided that BAT in respect of these activities will be retained in Wales, but not in England. These differences between regimes in England and Wales are fully reflected in the amended Regulations.

A detailed Government response to the points raised in the consultation is being prepared by Defra and will be made available on their website as soon as it is completed.

REGULATORY IMPACT ASSESSMENT

6. Options

The only option available is to fully transpose Directive 2010/75/EU (the Industrial Emissions Directive) by way of these Regulations. Delayed or incomplete transposition will precipitate infraction proceedings with the potential for substantial fines from the EU.

7. Costs and benefits

The financial implications of the transposition of the Industrial Emissions Directive via the Regulations will vary tremendously from sector to sector and from installation to installation. Each installation operating under the IED (which includes power stations, steel mills, factories, dry cleaners and large poultry units) will need a permit awarded by the Environment Agency or, in the case of smaller businesses, the local authority, in order to operate legally. They will then need to comply with whatever environmental requirements are set by the permit. The costs of this will vary tremendously as some installations will already be more modern and efficient whilst others may be older, dirtier and less environmentally friendly. For this reason it is impossible

to put an absolute total figure on what the costs of the IED will be to business. However, further detail is presented in subsequent paragraphs.

The contribution of industrial activities to environmental problems is significant and varies widely according to the sectors or the impacts concerned. The European Commission's impact assessment of its draft Industrial Emissions Directive at the end of 2007 found that industrial activities covered by the integrated pollution prevention and control (IPPC) Directive emitted about 55% of the EU's anthropogenic carbon dioxide, 83% of sulphur dioxide, 34% of nitrogen oxides, 43% of particulate matter and 55% of volatile organic compound emissions. About 38% of ammonia emissions were found to be emitted by livestock rearing installations covered by IPPC. IPPC installations were also found to contribute to about 23% and 25% of mercury and dioxin emissions to air respectively. Emissions to water from IPPC installations are also significant, notably of phosphorus, nitrogen and heavy metals. In addition, many priority substances and priority hazardous substances listed in the Water Framework Directive are exclusively or predominantly emitted by industrial installations falling under the IPPC Directive.

A report by the European Environment Agency estimated cost in 2009 of damage caused by emissions from industrial facilities in the EU as being between €102–169 billion. This provides a particular example of the significance of the industrial pollution that is addressed by the EU legislation to be transposed. Industrial emissions affect ambient air quality, which in turn has a significant impact on human health and the natural environment. Current levels of air pollution are estimated to reduce the life expectancy of every person in the UK by around six months. In addition over half of UK habitats are estimated to be exposed to levels of pollution that could lead to significant harmful effects on the local environment.

The costs of implementing the significant substantively changed components of the Directive fall into three main categories:

- administrative costs arising from the need for new or varied environmental permits which those changes bring;
- costs – operating and, in some cases, capital - to operators of complying with those permit requirements; and
- Emissions Trading Scheme cost savings, associated with switching to fuels with lower CO₂ emissions. These are included as a cost-saving, as they offset other cost increases to operators associated with changing the fuel mix for generation.

Administrative costs are subdivided into those incurred by the regulator and those incurred by the operator. The regulator's costs arise from the task of considering applications for new or varied permits and in reviewing existing permits. These costs will be recovered from operators through permit application charges and annual "subsistence" charges. These charges are made through schemes approved by Ministers that reflect the varying complexity of the regulator's task according to the industry sector involved;

they are intended to recover the regulator's costs fully. Combined, the transitional costs for new or amended permits come to around £3,300 per regulated facility.

The **costs** of complying with permit requirements vary considerably, even within industry sectors, according to the particular characteristics of each installation. Abatement measures for Large Combustion Plants include:

For SO₂

- ESI: Wet flue gas desulphurisation (FGD-wet) and low sulphur coal.
- Petroleum refineries: fuel switching to natural gas, amine treating units (scrubbers), low sulphur oil.
- Iron and steel: coke oven gas (COG) desulphurisation.
- Other: FGD-wet and low sulphur oil.

For NO_x

- ESI: selective catalytic reduction (SCR), combustion modification and additionally for gas turbines, closure and reopen new combined cycle gas turbine (CCGT).
- Petroleum refineries: low NO_x burners, selective non-catalytic reduction (SNCR) and SCR.
- Iron and steel: SCR.
- Other: combustion modification, SNCR, SCR; and

For dust

- ESI: (dust abatement included in FGD-wet).
- Petroleum refineries: (dust abatement included in fuel switching to natural gas).
- Iron and steel: High efficiency de-duster.
- Other: (dust abatement included in FGD-wet).

Operating costs arise from the operation of pollution control techniques and of monitoring equipment. Capital expenditure may be required in order to reconfigure the installation so as to meet new permit requirements. The compliance cost estimates have been made after consultation with the regulatory agencies and the relevant industry and trade organisations.

The **benefit** of the substantively changed requirements made by the Directive is improved control of polluting activities, such that pollutant emissions are prevented or reduced. For the changes in respect of large combustion plants, the extent of pollutant reduction can be estimated. This is because the

Directive requires that emission limit values (ELVs) for sulphur dioxide, nitrogen oxides and dust must, from 1 January 2016, be at least as stringent as those set out in the Directive's Annex V. As described in Annex A of this RIA, a comparison has been made between these minimum requirements and those that currently apply.

Benefits are calculated from the calculated reduction in air pollution using the damage cost values agreed by the Inter-departmental Group on Costs and Benefits. The majority of these values are estimates of the cost of the health impacts of marginal changes in emissions, but some other impacts are included, e.g. building soiling. The sensitivity range presented uses the range of high, low and best-estimate damage costs. The high damage cost scenario assumes no lag between exposure to pollution and health impacts, whilst the low damage cost scenario assumes a 40 year lag. Other major impacts, such as those on ecosystems, are not included when using the damage cost approach, which therefore understates the likely benefits associated with reduction of these pollutants.

For the other substantively changed requirements, it is not possible to monetise any of the benefits, as evidence is not developed to place monetary value on the emissions of these pollutants. Amongst the 90 or more pollutants of air, water, and/or land, potentially involved, only 4 can potentially be monetised. Moreover, even if damage costs were available, monetising the benefits of pollutant reductions would require estimates of the amount of each pollutant potentially abated as a direct result of compliance with permit conditions embodying the substantively changed requirements. This would be impractical.

It has therefore not been possible, other than in the specific cases of the three key air pollutants emitted by large combustion plants, to quantify and monetise the benefits of the substantively changed requirements.

The costs and benefits of the substantial changes concerning large combustion plants are summarised in Annex A, drawn from a report commissioned by Defra entitled "Updated Impact Assessment of the Industrial Emissions Directive (IED) – Large Combustion Plants" by Amec Environment and Infrastructure UK Ltd (July 2012). The Present Value Cost for these plants over the years 2016 – 2030 is estimated to lie in the range £1,648 million to £3,060 million.

The transitional and average annual costs for technology in large combustion plants, disaggregated by industry and by year, are shown below. Table 2 shows the costs as they are incurred – i.e. showing that investment needs to take place in the years leading up to 2020 – these costs are not spread over the investment lifetime as they are in the remainder of this assessment.

Table 1 – Distribution of costs by sector

| £millions | Transitional | Average value |
|--|---------------------|----------------------|
| Change in electricity generation costs | - | 66 |

| | | |
|---------------------------------|------|-----|
| Electricity generation industry | 499 | 27 |
| Refineries | 128 | 21 |
| Iron and steel | 56 | 5 |
| Other | 373 | 15 |
| Permit variation (All) | 1 | -33 |
| CO2 cost saving | - | 66 |
| Total | 1287 | 64 |

Table 2 – Distribution of transitional and ongoing costs through time

| | Transitional | Annual |
|------|--------------|--------|
| 2012 | 32 | - |
| 2013 | 32 | - |
| 2014 | 32 | - |
| 2015 | 32 | - |
| 2016 | 33 | 345 |
| 2017 | 228 | 223 |
| 2018 | 228 | 102 |
| 2019 | 228 | 81 |
| 2020 | 240 | 146 |
| 2021 | 0 | 99 |
| 2022 | 0 | 63 |
| 2023 | 0 | 66 |
| 2024 | 0 | 62 |
| 2025 | 0 | 59 |
| 2026 | 0 | 56 |
| 2027 | 0 | 50 |
| 2028 | 0 | 47 |
| 2029 | 0 | 42 |
| 2030 | 0 | 12 |

The costs of the substantial changes which draw additional activities into IPPC are shown in Table 3. Annex A also summarises in qualitative terms the benefits which may accrue, also drawn from the consultants' report. The estimated transitional costs range from £2-14m, with annual costs in the range £18m to £93m over the appraisal period. In comparison with the benefits accruing from the changes in respect of large combustion plants, these costs are minor, although they of course fall upon different industrial sectors.

Table 3 - Distribution of costs for plants other than Large Combustion Plants

| Cost (£millions) | Total annualised transitional costs (£m) | | Total annual recurring costs: (£m per annum) | |
|--|--|------|--|------|
| | Low | High | Low | High |
| 5.3(b) water sector biological treatment | 0.0 | 3.3 | 0.0 | 5.7 |
| 5.3(b) treatment of slags | 0.0 | 0.4 | 0.4 | 5.7 |

| | | | | |
|---|------------|-------------|-------------|-------------|
| and ashes | | | | |
| 5.3(b) treatment of scrap metal with shredders | 0.3 | 1.4 | 12.2 | 27.3 |
| 5.3(b) waste sector biological treatment | 0.3 | 4.0 | 2.2 | 43.5 |
| 6.4(b) mixed animal and vegetable processing | 0.6 | 3.0 | 1.0 | 5.7 |
| 6.10 preservation of wood and wood products | 0.6 | 1.9 | 1.7 | 2.8 |
| 6.11 independently operated treatment of waste water not covered by the Urban Waste Water Treatment Directive | 0.0 | 0.2 | 0.2 | 1.9 |
| Total – all sectors | 2.1 | 14.1 | 17.7 | 92.5 |

The annual net cost to business of £132m has been calculated by averaging the total transitional and annually recurring costs over the 15-year appraisal period. This total has been adjusted to 2009 prices using the GDP deflator, and has not been discounted.

The legislation provides useful simplification of certain regulatory requirements for particular industrial activities:

- The removal from the EPR of 43 descriptions of industrial activities – largely in the energy, metals and chemicals sectors - which have no foundation in the industrial emissions Directive and which are considered to be superfluous in that either (i) they are already incorporated in Directive-founded descriptions, or (ii) describe activities which are not carried out and are considered unlikely to be in the future. There will consequently be no impact upon current costs or benefits from their removal. The change will however somewhat simplify the Regulations.
- The removal from IPPC of six activities currently described in Part 2 of Schedule 1 to the EPR which are not covered by the Directive. Annual savings in permit charges of some £132,000 are estimated. These are set out in Annex B. Annex B also sets out another 13 activity descriptions, covering 137 installations with total annual permit charges of £1.3 million, for which IPPC controls would be retained even though the activities are not listed in the industrial emissions Directive. Retention is considered by the Environment Agency to be justified by the environmental protection it provides.
- The removal of the requirement to monitor for polycyclic aromatic hydrocarbons and polychlorinated biphenyls from most waste incinerators. Annex D shows estimated annual cost savings of up to some £290,000.

The average annual monetised benefits total £188m. Of these: around £86m from reductions in SO₂; £65m from reduced NO_x; and £38m from reduced particulate matter. Note that the monetised benefits are estimated based only on changes in emissions from large combustion plants.

Table 4 - Summary of Costs and Benefits

| Year | Costs (£m) | | | Benefits (£m) | | | Net Benefit (£m) | | |
|------|------------|-------|---------------|---------------|-------|---------------|------------------|------|---------------|
| | Low | High | Best Estimate | Low | High | Best Estimate | Low | High | Best Estimate |
| 2016 | 265 | 547 | 405 | 135 | 194 | 171 | -130 | -353 | -234 |
| 2017 | 166 | 319 | 242 | 130 | 188 | 165 | -36 | -131 | -77 |
| 2018 | 84 | 164 | 123 | 139 | 200 | 176 | 55 | 36 | 53 |
| 2019 | 73 | 145 | 108 | 161 | 231 | 204 | 88 | 86 | 96 |
| 2020 | 126 | 245 | 184 | 178 | 254 | 224 | 52 | 9 | 40 |
| 2021 | 94 | 182 | 137 | 180 | 258 | 227 | 86 | 76 | 90 |
| 2022 | 70 | 135 | 102 | 163 | 233 | 205 | 93 | 98 | 103 |
| 2023 | 73 | 138 | 105 | 172 | 246 | 216 | 99 | 108 | 111 |
| 2024 | 72 | 132 | 101 | 173 | 248 | 218 | 101 | 116 | 117 |
| 2025 | 71 | 129 | 100 | 136 | 195 | 171 | 65 | 66 | 71 |
| 2026 | 64 | 114 | 88 | 139 | 198 | 175 | 75 | 84 | 87 |
| 2027 | 59 | 101 | 80 | 137 | 196 | 172 | 78 | 95 | 92 |
| 2028 | 58 | 96 | 77 | 136 | 195 | 171 | 78 | 99 | 94 |
| 2029 | 55 | 86 | 70 | 135 | 193 | 170 | 80 | 107 | 100 |
| 2030 | 35 | 37 | 36 | 123 | 175 | 154 | 88 | 138 | 118 |
| | | | | | | | | | |
| PV: | 1,120 | 2,131 | 1,617 | 1,725 | 2,472 | 2,175 | 606 | 342 | 558 |

The average costs reported in Table 4 are annualised costs, and do not match the sum of the transitional and annually recurring costs reported above. This is because the appraisal period and the lifetime of the investments are not consistent. The approach taken has been to annualise the cost of investments over their lifetime. A proportion of the transitional costs are implicitly allocated to years beyond 2030 on the basis that investment lifetimes typically can be expected to be 20 years from 2020.

Costs and benefits will both continue to accrue post 2030, so this approach could be considered to represent a reasonable view of the balance of costs and benefits. Readers interested in the distribution of costs through time should refer to tables 2 and 3.

Wider impacts

Large combustion plants

The substantive changes in respect of large combustion plants will have an impact upon existing operators when they take effect from 1 January 2016. Those operators will need to decide whether to use the compliance flexibilities offered by the “limited life derogation” the transitional national plan, and operation for less than an average of 1,500 hours per year. Or they may

decide to close a large combustion plant they operate by the end of 2015. These flexibilities, promoted by the UK during negotiation, were well received by operators at various discussions held with them.

The impact upon operators of plants which receive their permit after 7 January 2013 will be by comparison much less since the design of such plants which are already under construction should have taken account of the tightened minimum requirements (which have been in prospect at least since December 2007). The costs for new entrants to sectors requiring a new large combustion plant are in any case very high (not least because of the need for construction labour resources) and it is unlikely that the changed requirements will significantly affect their entrance.

For all large combustion plant operators in the electricity supply industry, changed compliance costs may feed through into electricity prices for domestic and business users, but only under the supervision of Ofgem. Operators in other sectors may elect to reflect compliance cost changes in their prices to consumers, according to the dictates of the world-wide markets in which they operate. But the European Commission, in its impact assessment of its December 2007 proposal, considered that the changes “will lead to a much more level playing field for [all] the sectors concerned by narrowing the range over which emission limit values can be set. In the context of the liberalisation of the energy market, this option would also avoid unacceptable distortion of competition linked to very different levels of environmental standards currently applied in the electricity generation sector”.

Waste treatment activities

The substantive changes in respect of waste treatment activities will expose existing operators to additional compliance costs that will vary according to the quality of their existing operation in terms of environmental protection. However, ultimately all will already have permits giving effect to the requirements of the Directive on waste which include the use of “measures to ensure that waste management is carried out without endangering human health and without harming the environment”. The additional impact of IPPC controls should therefore prove limited, with additional costs possibly being passed on to consumers (although regulators will need to ensure that any additional requirements are minimised and notified well in advance).

From 7th January 2013, new entrant operators will need a permit incorporating IPPC, but should be able to configure their operation beforehand to meet the requirements at least cost. Nevertheless, there is a risk that the extension of IPPC to more waste treatment activities might adversely affect, in particular, waste recovery activities in ways which cannot be quantifiably predicted. It was on the basis of this concern that several Member States, including UK, argued successfully for a threshold of 75 tonnes/day for recovery activities rather than the 50 tonnes/day proposed by the European Commission and that UK secured a threshold of 100 tonnes/day for anaerobic digestion.

Wood preservation activities

The subjection of existing wood preservation activities to the IPPC permit regime from 7th July 2015 is considered unlikely to present operators with additional compliance costs other than those associated with permit application and maintenance. Operators may reflect those limited costs in their charges to customers, here also subject to the discipline of the market place. New entrants would be expected to adhere to the high environmental standards promoted by the industry's Code of Practice.

Applying BAT to installations newly subject to IPPC

All operators of installations newly subject to IPPC under the Directive will be affected in the same way in that each will need to apply for and retain a permit containing BAT-based conditions. No distinction according to business size is available in that regard. However, the industrial activities newly covered are defined with a clear capacity threshold. Whilst there is not necessarily a direct relationship between the capacity of an installation and the business size of its operator, the existence of those thresholds very probably means that micro business is scarcely affected, and small business to a very limited extent. But any small or micro businesses will be affected as a result of this EU legislation only to the extent of the permit conditions which the regulator considers it necessary to impose. That in turn will affect the attendant charges for permit application and annual subsistence thereafter. Regulators already have established criteria – irrespective of business size - for identifying “low impact” installations and regulating them accordingly within the general requirements of IPPC. It must also be borne in mind that existing installations newly subject to IPPC have until 7 July 2015 to be operating in accordance with a permit incorporating IPPC requirements.

Green economy and carbon emissions

The extension of installations falling within IPPC will provide an opportunity for prospective suppliers of the necessary goods and services to compete for operators' business. This should encourage innovatory approaches on both the part of operators in specifying their needs and suppliers in responding to them. The Directive as a whole carries on the need for suitably skilled operating and regulatory staff.

The compliance flexibilities available to operators of large combustion plants were included in the Directive in order to ease the transition to low carbon power generation by the early 2020s. Those flexibilities have both a direct and beneficial effect upon emissions of carbon dioxide over that period and link to the UK's efforts to encourage the demonstration and take up of low carbon alternatives.

The subjection of additional activities to IPPC also provides an additional means of bearing down upon emissions of greenhouse gases from them, both through specific permit conditions for installations where direct emissions are likely to be significant and through energy efficiency requirements. However,

for the reasons described above, it is not practically possible to estimate the extent of the reductions which might accrue.

9. Competition Assessment

The competition filter has been applied and the outcomes listed in the table below:

| The competition filter test | |
|--|---------------------|
| Question | Answer yes or no |
| Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share? | Y |
| Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share? | Y |
| Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share? | Y |
| Q4: Would the costs of the regulation affect some firms substantially more than others? | Y |
| Q5: Is the regulation likely to affect the market structure, changing the number or size of firms? | N |
| Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet? | N |
| Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet? | N |
| Q8: Is the sector characterised by rapid technological change? | N |
| Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products? | N |

The legislation will impact on all operators of all of the sectors covered in that it sets out the conditions stipulated by the European Commission that they need to adhere to in order to operate their businesses and installations legally in England and Wales. These standards are the same across Europe and will not impact directly on competition.

10. Post Implementation Review

As explained previously, the preferred option will be delivered through amendment of the Environmental Permitting (England and Wales) Regulations 2010. As already amended, these Regulations will be subject to a review and a report published by 6 April 2017. This review will therefore provide a means of post-implementation review.

Article 72 of the Directive itself requires Member States to report to the European Commission on its implementation. These reports will be made according to a questionnaire which is to be agreed by Member States under the regulatory procedure. The Commission currently envisages a report covering the period to the end of 2013 and to be received by the Commission by September 2014, covering transposition and other initial implementation arrangements, with a more detailed report covering the three calendar years 2014 – 2016 due in September 2017. Member State voting on these proposals under the regulatory procedure is expected to take place at the end of 2012. The preparation of these reports will provide a further means of post implementation review.

Furthermore, there is a long established “Sounding Board” arrangement which is run by Defra, but in which Welsh Government also participates, through which representatives of industry organisation, environmental regulators, environmental NGOs, the devolved administrations and other Government Departments meet regularly to discuss issues arising from the component Directives. This arrangement will continue to provide an effective means of reviewing the implementation of the IED.

Financial Implications

Assuming we transpose this Directive by the required date (7th Jan 2013) there are no financial implications for the Welsh Government. Any work associated with transposition will be accommodated within existing administration costs budgets.

There will be inspection and permitting costs for the Environment Agency and its successor in Wales the Natural Environment Body for Wales (funded by Welsh Government), but the organisation runs these activities on a cost recovery basis which will be cost-neutral.

In the unlikely event that we fail to transpose on time, we (or more properly UK as Member State) run the risk of fines as a consequence of EU infraction proceedings. In those unlikely circumstances, there could be a call for some of the costs to be met from ESD budgets.