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|--|---|--|--|
| <b>Title:</b> Validatory IA: Deregulation and simplification of the Environmental Permitting (England and Wales) Regulations 2010 (EPR)<br><b>IA No:</b> Defra1461a<br><b>Lead department or agency:</b><br>Defra<br><b>Other departments or agencies:</b><br>Welsh Government | <b>Impact Assessment (IA)</b>                 |  |  |
|  | <b>Date:</b> 17/10/2013                       |  |  |
|  | <b>Stage:</b> Final                           |  |  |
|  | <b>Source of intervention:</b> Domestic       |  |  |
|  | <b>Type of measure:</b> Secondary legislation |  |  |
| <b>Contact for enquiries:</b> Eddie Bailey/Mike Denbigh@defra.gsi.gov.uk : 020 7238 6294   |   |  |  |

|  |                                     |
|--|-------------------------------------|
| <b>Summary: Intervention and Options</b> | <b>RPC Opinion:</b> EANCB Validated |
|--|-------------------------------------|

| Cost of Preferred (or more likely) Option |                            |  |                              |
|---|----------------------------|--|------------------------------|
| Total Net Present Value                   | Business Net Present Value | Net cost to business per year (EANCB on 2009 prices) | In scope of One-In, Two-Out? |
| £m  | £m                         | £m   | Yes/No                       |
|   |                            |  | £m                           |
|   |                            |  | In/Out/zero net cost         |

**What is the problem under consideration? Why is government intervention necessary?**

We are proposing 5 Environmental Permitting regulatory amendments which will deliver continuous improvements and further reduce burdens. EPR's provide a legislative framework allowing businesses to operate whilst not compromising on environmental protection. The proposals include: removing the requirement for certain waste operators to have to secure planning permission before an environmental permit can be issued; easing requirements on low risk discharges to groundwater from some ground source heat pumps; and 3 simple amendments designed to improve basic mechanical permitting procedures. Government intervention is necessary to make these legislative based changes.

**What are the policy objectives and the intended effects?**

The policy objective is to improve environmental permitting processes and practices so as to reduce burdens on business and regulators.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

This validatory Impact Assessment considers three options:  
 option 0 - do nothing, so maintaining the status quo, not introducing any of the proposed changes.  
 option 1 - introduce the change that meets the Ministerial commitment.  
 option 2\* - in addition to the changes comprising option 1, to introduce additional measures to further simplify environmental permitting processes and procedures. Option 2 is the preferred option.

\*Please note that option 2 is a revision from that submitted originally as 2 of the original 7 proposals are not being progressed with as part of this regulatory amendment. These are the proposals to consider the transfer of appeals to the First Tier Tribunal and the simplification of regulators handling of standard rules permits. Additionally this validatory IA has been amended to reflect the comments made by RPC.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 04/2018

|  |                       |                      |                           |                      |                     |
|--|-----------------------|----------------------|---------------------------|----------------------|---------------------|
| Does implementation go beyond minimum EU requirements?   | N/A                   |                      |                           |                      |                     |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.                       | <b>Micro</b><br>Yes   | <b>&lt; 20</b><br>No | <b>Small</b><br>Yes       | <b>Medium</b><br>Yes | <b>Large</b><br>Yes |
| What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent) | <b>Traded:</b><br>N/A |                      | <b>Non-traded:</b><br>N/A |                      |                     |

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

Signed by the responsible SELECT SIGNATORY: \_\_\_\_\_ Dan Rogerson \_\_\_\_\_ Date: \_\_\_\_\_ 10/02/2014 \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

## Description:

### FULL ECONOMIC ASSESSMENT

| Price Base Year 2012 | PV Base Year 2013 | Time Period Years 10 | Net Benefit (Present Value (PV)) (£m) |             |                     |
|----------------------|-------------------|----------------------|---------------------------------------|-------------|---------------------|
|                      |                   |                      | Low: 4.40                             | High: 10.99 | Best Estimate: 7.68 |

| COSTS (£m)    | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|---|--|----------------------------|
| Low           | Optional                                | Optional   | Optional                   |
| High          | Optional                                | Optional   | Optional                   |
| Best Estimate | 0.01                                    | 0  | 0                          |

#### Description and scale of key monetised costs by 'main affected groups'

Transitional costs for the Environment Agency in 2013 to modify IT systems to allow operators of ground source heat pumps to register on line (£0.01m).

#### Other key non-monetised costs by 'main affected groups'

N/A

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low           | Optional                                | Optional   | Optional                      |
| High          | Optional                                | Optional   | Optional                      |
| Best Estimate | 0                                       | 0.9  | 7.7                           |

#### Description and scale of key monetised benefits by 'main affected groups'

Benefits to business requiring a waste permit of lower costs relating to the removal of the pre-requisite for planning permission before a permit can be issued (£0.55m pa from 2014 onwards) and reduced costs to the public sector relating to its removal (£0.45m pa from 2014 onwards) plus deregulation of those operating ground source heat pumps (£0.01m pa from 2014 onwards).

#### Other key non-monetised benefits by 'main affected groups'

Reduced uncertainty for businesses requiring a permit of reduced time and costs of processing.

#### Key assumptions/sensitivities/risks

Proposal 1 (5.1.3). That 45 permits reflects the 10% estimation rate.  
Proposal 2 (5.2.10). That £5,000 would be the benefit to business per application form.

#### Discount rate (%)

3.5

### BUSINESS ASSESSMENT (Option 1)

|   |               |          |                   |                      |
|---|---------------|----------|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: |               |          | In scope of OITO? | Measure qualifies as |
| Costs: 0.0  | Benefits: 0.4 | Net: 0.4 | Yes               | OUT                  |

# Evidence Base (for summary sheets)

## 1.0 Introduction

1.1 The Environmental Permitting (England and Wales) Regulations 2007 established an environmental permitting framework for waste management licensing and pollution prevention and control and came into force in April 2008. The framework cuts administrative red tape without affecting environmental standards. It allows businesses that would otherwise require several permits for activities falling under the regulations on a single site to have just one permit and enables regulators to focus resources on higher risk activities. By comprising a common set of definitions, processes and controls for the permitting of specified activities to prevent pollution, it rationalises various permitting regimes into a common framework that is intended to be easier to understand and use.

1.2 In April 2010, the EPR 2010 expanded the framework to include water discharge and groundwater activities and radioactive substances regulation. In general, environmental permitting does not change the substantive requirements of permits, but it is expected to reduce the administration necessary to deliver those requirements. The benefits are, therefore, generally expressed in terms of savings in administrative costs.

## 2.0 Problem under consideration

2.1 There are 5 proposals contained within the draft amending Regulations to which this Validation Impact Assessment relates. These can be broken down into two categories: those meeting a Ministerial commitment; and those introducing additional simplifications.

2.2 The Ministerial commitment is to consult on:

Removing the requirement for waste businesses to have to secure planning permission for certain waste operations before an environmental permit can be issued. This proposal stems from the outcome of the Red Tape Challenge consideration of environmental regulations, announced on 19 May 2012. The prerequisite for securing planning permission is considered to be an unnecessary hurdle for business to address (see section 5.1).

2.3 The additional measures contained within the consultation document are to consult on:

Providing a registration scheme for low risk discharges to groundwater for some Ground Source Heating and Cooling (GSHC) systems. Under current legislation each open loop GSHC scheme requires three different permissions from the regulator, two for the abstraction of water from the ground and an environmental permit for the subsequent discharge to water. For discharges considered to be low risk, the proposal is to replace the requirement for an environmental permit with a less onerous scheme that would require operators to register these systems with the regulator (see section 5.2).

Simplifying requirements relating to requiring landowner permission where there is a need to clean up, eg debris on river banks around a sewage outfall following a storm overflow (see section 5.3).

Correcting two oversights in the Environmental Permitting Regulations 2010, to allow (i) variation as part of a permit transfer notification and (ii) suspension notices to continue to apply following permit transfer (see section 5.4).

Allowing greater flexibility in relation to the service of notices on the body corporate (see section 5.5).

## 3.0 Rationale for intervention/policy objective

3.1 The introduction of most of the above measures will further simplify environmental permitting processes and procedures to the benefit of business, regulators and others. Other measures correct minor errors and omissions to the Environment Permitting Regulations. As permitting is a regulatory based framework, the proposed changes need to be underpinned in law to bring them into effect.

3.2 The policy objective is to improve environmental permitting processes and practices so as to reduce burdens on business and regulators.

## 4.0 Description of options considered

4.1 Option 0 – do nothing – would maintain the status quo, failing to introduce any of the benefits associated with the measures and reduce costs and burdens on businesses and regulators. Also a Ministerial commitment would not be met. A non regulatory approach cannot

be considered as this is a regulatory based requirement and the proposed changes need to be underpinned in law to be brought into effect.

4.2 Option 1 – introduce only the Ministerial Red Tape Challenge commitment.

4.3 Option 2 – regulatory options – in addition to Option 1 introduce the additional measures to reduce burdens to business and further simplify environmental permitting processes and procedures. This is the preferred option.

## 5.0 Costs and Benefits

**Table 1: Summary table \***

|   | Transition costs                  | Annual costs (best estimate) |                  | Annual benefits (best estimate)  |  |
|---|-----------------------------------|------------------------------|------------------|--|--|
|   |                                   | To business                  | To public sector | To business  | To public sector   |
| Proposal 1<br>removal the pre-requisite for planning permission before an environmental permit can be issued for certain waste operations   | 0                                 | 0                            | 0                | £0.55m (from 2014 onwards) from reduced costs of admin, legal and possibly applying for a bespoke permit | £0.45m (from 2014 onwards) from reduced costs relating to checking and liaising with the Local Planning Authority, reviewing delayed applications and legal issues |
| Proposal 2<br>GSHC systems  | £0.01m (to public sector in 2013) | 0                            | 0                | £0.01m (from 2014 onwards) reduced costs of shifting from a permit to a registration system              | 0  |
| Proposal 3<br>Clean up permission   | 0                                 | 0                            | 0                | 0  | Negligible   |
| Proposal 4<br>Permit transfers  | 0                                 | 0                            | 0                | 0  | 0  |
| Proposal 5<br>Service of notices  | 0                                 | 0                            | 0                | 0  | Negligible   |
| <b>Total Option 2 Proposals 1-5</b>   | <b>£0.01m (2013 only)</b>         | <b>0</b>                     | <b>0</b>         | <b>£0.56m (from 2014 onwards)</b>  | <b>£0.45m (from 2014 onwards)</b>  |
| <p>* All impacts cover the 10 year period of 2013 to 2022, using the Impact Assessment calculator version which expires on 27 September 2013 and calendar year GDP deflators.</p> |                                   |                              |                  |  |  |

Equivalent annual net cost to business (EANCB) is calculated for those policies that are in scope of one in two out (OITO). Specifically, the present value of the net benefit to business of option 2 is £4.27m in 2012 pounds and a present value base year of 2013 i.e. £4.19m from proposal 1 and £0.08m from proposal 2. This is then converted into 2009 pounds giving a net benefit to business of £3.99m and then the present value base year is rebased from 2013 to 2010 giving £3.60m. The latter is then divided by the annuity rate (8.60769) to give the **EANCB of Option 2 (proposals 1-5): -£0.42m** of saving to business.

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

5.1.1 The Environment Agency and, in limited circumstances, local authorities determine applications for waste management activities under the Environmental Permitting Regulations 2010. For certain waste activities that were previously regulated through the waste management licensing system until 2007, an environmental permit cannot be issued unless planning permission is in place. For other regulated activities - including waste incinerators and other large industrial plants – permits may be issued once the determination has been completed, regardless of the status of planning permission of a waste facility. This pre-requisite need for planning permission, termed by some as the “planning bar”, was reviewed under the Red Tape Challenge process when examining the environment theme and it was concluded, with Ministerial agreement, that this condition should be removed, subject to public consultation.

5.1.2 The requirement to secure planning permission before an environmental permit can be issued brings no environmental benefit but adds a significant administrative burden on business and regulators. By removing the requirement to secure planning permission a range of activities and associated costs (as detailed in Table 2) would no longer be necessary, thereby avoiding the time spent on ensuring and defending consistency between planning and permitting. It is estimated by the Environment Agency that 15% of applications for waste management activities have to be cross checked with local planning authorities. They also estimate that 10% of applications for waste management activities under the Environmental Permitting Regulations affected by the requirement for prior planning consent are delayed because the status of planning permission is not clear at the time of applying. In the worst cases where planning decisions are delayed by appeal proceedings permit decisions can take 36 months, the costs of which are detailed below.

5.1.3 Data assumptions are based on the EA’s permitting database in 2009/10. A sample of 91 applications was taken from the Warrington office which is one of the four national permitting offices and is representative of the other 3 offices. The database tracks progress of applications and records the reasons why certain applications are delayed. From this data set it was shown that 10% of relevant applications are directly affected. In 2009/10 there were a total of 454 new environmental permit applications across all offices where relevant waste operations can be affected. This amounts to 45 permit applications based on the 10% estimation rate. This information is used as the basis for estimating the benefit of reduced administrative costs for this policy proposal to business and the EA.

5.1.4 The costs to the EA of requesting additional information, dealing with the Local Planning Authority, reviewing delayed applications and involving legal counsel in considering appeals and Judicial Reviews is estimated to be £172,000 (£3,822 per permit directly affected) see Table 2 Costs Column (a). The costs to operators of additional administration, legal counsel and actions such as applying for a bespoke permit are estimated at £47,392-£374,092 (£1,053-£8,313 per permit directly affected) see Table 2 Costs Column (b).

5.1.5 Applying a calendar year GDP deflator uplift of 1.0704346 to convert the above figures into 2012 pounds<sup>1</sup> gives cost savings (i.e. benefit) of extra administrative costs avoided (see next para) per application of £4,091 for EA, and £1,127 to £8,899 for operators.

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<sup>1</sup> For the purpose of applying the GDP deflator in calendar years, it is assumed that the financial year 2009/10 is equivalent to the calendar year 2009.

5.1.6 Benefits are calculated as the avoided costs related to the requirement for prior planning permission. The number of relevant waste permits is assumed to grow from 2010 to 2012 as the exemptions transitions grow and there is structural growth in certain types of relevant waste permits.

5.1.7 In 2010/11 the EA issued 152 bespoke and 557 standard rules permits in waste which would have required the planning check. (i.e. total permits = 709). In 2011/12 EA issued 191 bespoke permits and 750 standard rules permits in waste which would have required planning (i.e.941 total). By 2014 we expect this to have grown due to bigger exemption transitional tranches coming through. Therefore an increase to 1,100 might be a reasonable estimate. It is assumed that the number of relevant applications will then remain steady at 1,100 and the number of affected permits remains at 10% of these 1100 applications i.e. 110 directly affected applications. Costs per affected permits are assumed to remain similar to the EA figures calculated for 2009/10 adjusted to the 2012 base price year. This gives estimated annual savings to the EA of £450,058 and savings to operators of £124,006 to £978,855.

5.1.8 Although this policy will come into effect in October 2013, it is assumed that the full impact of the benefit of this policy will occur from 2014 as there will be on-going costs relating to applications received prior to that date. Overall benefits occur annually during the period 2014 to 2022 are estimated to fall in the range of £4.4m to £11.0m NPV: between £0.9m and £7.4m for business and £3.4m for regulators. Best estimates of benefits overall are £7.7m NPV: £4.2m to business and £3.4m to regulators. We consulted on the possibility of any unintended consequences of this proposal (such as an increase in number of applications as a result of the likely less expensive and less complex procedure) and no additional consequences were highlighted in the responses received.

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

5.2.1 Ground source heating and cooling systems use energy stored in the ground to heat or cool buildings. Groundwater temperature at depth generally maintains an approximate constant temperature throughout the year whilst the air temperature fluctuates. The difference between the building temperature without heating and cooling and the groundwater temperature enables groundwater to be used for both heating and cooling purposes. Electricity can be used to power the heat pumps and they can typically provide three or four times the amount of energy used to drive the system.

5.2.2 There are two types of scheme: open and closed loop. Closed loop schemes are out of Environment Agency regulatory remit as no water abstraction is involved. Open loop schemes, on the other hand, do abstract water from the environment, removing heat or cold from the water via a heat exchanger and then return the water back to the environment. For these schemes, the Environment Agency requires a groundwater investigation consent to test drill the borehole, and abstraction licence to abstract the water and an environmental permit to discharge the water.

5.2.3 There are a number of environmental risks associated with the discharges from open loop ground source heat pumps systems. Some of these systems pose a higher risk to the environment than others, yet the discharges all currently require a bespoke environmental permit. A more risk based approach would offer savings to business and regulators with negligible detriment to the environment. The proposal is therefore to deregulate a number of these systems, where the discharge falls below a certain threshold which in turn is dependent on the type of heating/cooling system or combination thereof. Permits will be replaced with a requirement for operators to register the systems with the regulator as exempt from the need for a full permit.

5.2.4 There are currently 59 open loop systems in England and Wales and all of these would continue to be subject to the annual subsistence charge which is based on volume for discharges to the ground of hotter or colder water (2012/3 charges):

- £102.60 for 20 - 100m<sup>3</sup>/d
- £205.20 for 100 - 1000m<sup>3</sup>/d
- £307.80 for 1000 - 10000m<sup>3</sup>/d

5.2.5 Assuming under the baseline that the uptake seen in the past few years will continue, we estimate that there would be around eight new schemes per year. As the majority (80%) of existing

schemes are in the private sector, we also make the assumption that the new schemes will be in the private, rather than public sector.

5.2.6 It has been estimated that new entrants pay approximately £5,000 per permit application. This figure accounts for filling in the application form, gathering information associated with the application and any additional monitoring (chemical sampling or drilling monitoring points) that may be required. There are no hard numbers on this as each applicant may require different amounts of work and some may even employ consultants to fill in the application, so this is simply a best estimate based on industry practice which would also take account of overheads, employer contributions to pension and national insurance.

5.2.7 There are also administration costs for the EA to work on each new permit, which have been estimated to be £2,176 per permit based on an average determination of 64 hours at a cost of £34 per hour (as per Treasury Green Book guidelines paragraph 15 page 59). Specifically, any costs incurred by EA are subsequently recouped through the EA's cost recovery system, which are calculated to include overheads and employer costs such as pensions and national insurance contributions.<sup>2</sup> It is assumed a cost recovery scheme is in place so the costs for the EA are recovered via the application and yearly subsistence fees.

5.2.8 Under the proposed amendment, 15 out of the 59 existing schemes would be exempt under this option. We therefore use this same proportion of 25% to calculate what new schemes would be exempt. As a result, we calculate that two schemes per year will be eligible for exemption. We will also use a low estimate of one and a high estimate of three in order to present a range.

5.2.9 *Costs* - there would be a transitional cost to the EA in order to modify IT systems to enable people to register online. This has been estimated to be £10,000 and would be incurred in the first year only (i.e. 2013).

5.2.10 *Benefits* - new schemes: where there is an exemption, there would be a benefit to business of £5,000 per application form. We estimate a low and high range of savings based on one and three applications, with the best estimate based on two applications (see para 5.2.8). Therefore this equates to a best estimate of £10,000 per year in savings (£5,000 for low and £15,000 for high estimates). It should be noted that this is a saving to business, rather than representing a true economic benefit.

Discounting the benefits minus the costs over 10 years leads to a best estimate of total net present value of £0.07m: low estimate of £0.03m and high estimate of £0.10m.

5.2.11 *Benefits not included* - for any new scheme costs incurred by the EA are subsequently recouped through their cost recovery system, which is calculated to include overheads and employer costs.<sup>2</sup> The EA costs are estimated to be £2,176 per permit application (See 5.2.7 for cost calculation). For existing and new schemes, businesses that would be exempt will no longer need to pay the annual subsistence charge. However, we assume there is a cost recovery system in place for permits previously issued as businesses would have had to pay an application fee (£885), followed by an annual subsistence charge based on volume. These fees would cover the costs that the EA incurs. However, there is uncertainty in the process as to how long it takes to recoup costs so these are not included in the calculations.

### 5.3 *Proposal 3 - simplifying requirements relating to requiring landowner permission where there is a need to clean up*

5.3.1 The Environmental Permitting Regulations 2010 allow for the imposition of off-site conditions in environmental permits and require third parties to grant consent to operators (subject to compensation) so that the operator can comply with any off-site condition. However where the Agency (or where appropriate, a local authority) proposes to include an off-site condition in a permit, it must serve a notice on every person who would have to grant rights of entry to the operator so that the operator could comply with the condition. The notice served by the Agency forms part of the consultation on the proposed permit.

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<sup>2</sup> <http://www.environment-agency.gov.uk/business/regulation/38823.aspx> [Accessed 14th June 2013]

5.3.2 Historically water discharge consents under Water Resources Act 1991 (now water discharge activity permits under EPR) relating to water company combined sewer overflows and emergency overflows had a condition ('clean-up condition') requiring the clean-up of sewage debris around the overflow and in waters and adjoining land downstream of the sewer outfall. This condition was subject to appeals which were upheld but some water companies have now suggested that these conditions should be the subject of off-site consultation. The Environment Agency takes the view that the off-site consultation provisions were not intended to cover situations of this type and do not need to be interpreted in this way. However, an amendment would be beneficial to clarify the position.

5.3.3 The condition in water discharge activity permits relates to permit holders clearing up when the discharge from their overflow results in solid sewage matter being deposited in waters or on banks of waters. At the time the permit is granted it cannot possibly be known whether the condition will be engaged as unless and until there is an unacceptable discharge of sewage from an overflow there is no breach of condition if sewage is not cleaned up.

5.3.4 Therefore it is impossible for the Agency to comply with requirements of paragraph 9 of Part 1 of Schedule 5 in respect of the clean-up condition because it will not know at the time of the application for a permit which landowners or occupiers have to be consulted. There could be a number of third parties onto whose land the water company may need to have access to clean-up sewage debris but that would not be known until the discharge has occurred i.e. once the permit is granted and the water discharge activity operational. This proposal is therefore intended to clarify the regulatory position and no costs or benefits are associated with the proposal.

#### 5.4 Proposal 4 - correcting two oversights in the Environmental Permitting Regulations 2010 relating to permit transfers

5.4.1 These are two technical corrections to bring greater consistency in how the regulator can handle the transfer of permits. Firstly, the regulator is currently able to vary the terms of a permit when it is partially being surrendered by the operator but it does not have the same ability in relation to the notification of a partial transfer from one operator to another. Secondly, where an enforcement notice applies to a permit it continues to apply when the permit is transferred to another operator, but there is no equivalent provision for suspension notices. This proposal will correct these anomalies. There are no quantifiable costs or benefits associated with this proposal.

#### 5.5 Proposal 5 - allowing greater flexibility in relation to the service of notices on the body corporate

5.5.1 Regulation 10 of the Environmental Permitting Regulations 2010 governs the service of notices etc under the Regulations. In the case of "bodies corporate", it specifies that service must be on the secretary or clerk. However, some companies do not have a secretary or clerk and this hinders the service of such notices etc. This proposal would expand the regulation 10 provision to include the director of a company as well as the secretary or clerk to allow greater flexibility. There are no quantifiable costs or benefits associated with this proposal bar a potential minimal administrative saving to regulators.

5.5.2 The status of a recipient of notices served on corporate bodies does not change and will not be subject to any special treatment with regard to liability or similar. Any costs associated with the serving of a notice on a recipient will not be affected by their status or position within the organisational structure of the corporate body involved.

**Summary** –Option 2 (proposals 1-5) is estimated to have an overall NPV of £4.41m - £10.99m (£7.68m best estimate). Note that the £0.07m in para 5.2.10 refers to overall NPV of proposal 2.

#### 6.0.0 **Wider impacts and Consultation analysis**

6.1.0 There are no wider impacts to consider with respect to these proposals.

6.2.0 The consultation document was widely circulated to business, NGOs and Local Authorities as regulators and other government departments. Fifty-three responses were received commenting on one or more of the proposals: 22 from local authorities or local authority representative organisations; 12 from companies (four in the waste sector, seven in the water sector and one rail company); seven from trade associations; eight from Non-Governmental Organisations; two from regulators; and two from consultancies.

6.2.1 Proposal 1 received 39 comments. The great majority of the respondents were in favour of the proposal, offering no amendments to the RTA that formed part of the consultation and which Government now intends to implement. The original cost figures provided require no amendments post consultation.

6.2.2 Proposal 2 received 22 comments. The great majority of the respondents were in favour of the proposal, offering no amendments to the RTA that formed part of the consultation and which Government now intends to implement. The original cost figures provided require no amendments post consultation.

6.2.3 Proposal 3 received 7 comments. The great majority of the respondents were in favour of the proposal, offering no amendments to the RTA that formed part of the consultation and which Government now intends to implement.

6.2.4 Proposal 4 received 0 comments.

6.2.5 Proposal 5 received 5 comments. All respondents were in favour of the proposal, offering no amendments to the RTA that formed part of the consultation and which Government now intends to implement.

6.3.0 In light of the consultation two of the original proposals have been withdrawn from the package of measures. The transfer of appeals from PINs to the First Tier Tribunal requires further discussion and consideration with MoJ and HMCTS to ensure a full understanding of what arrangements will be needed to manage such a transfer. These discussions will not be completed to come into effect in October when the amending Regulations are due to come into force; and the second proposal, simplifying certain handling procedures in relation to standard rules permits, has been dropped in light of concerns expressed by respondents.

6.4 The environmental impacts for each of these proposals have been assessed as negligible.

## 7 **Conclusions**

7.1 The proposals contained in this IA aim to further improve permitting processes, the outcome being to reduce costs and administrative burdens to business and regulators and to the public at large, without any reduction in environmental protection.

**Table 2: Breakdown additional tasks undertaken for the determination of permit applications requiring prior planning consent**

| TASKS  | (a) Costs to Regulator (£k) | (b) Cost to Operator (£k) |
|--|-----------------------------|---------------------------|
| <p><b>1. Assessing relevant applications planning status.</b></p> <p>The applicant tells the EA the status of planning when they apply. The EA check that the information on the application form is correct, i.e.: does permission exist or if not is there evidence it has been applied for; does the description of the permission cover the applied-for activity; does it cover all of the area on the site plan for the applied-for activity. [Installations take longer to asses due to the complexities of the operation]. Applications for Sites of High Public Interest (SHPI) require greater scrutiny given the risk of legal challenge.</p> <p>2 hours @ £125* x 14 installations = £3,500<br/>           1 hour @ £125* x 145 specified waste permits = £18,125<br/>           1 hour @ £125* x 288 standard specified waste permits = £36,000<br/>           additional 3 hours@ £125* x 23 applications that are SHPI = £8,625</p>  | 66.25                       |                           |
| <p><b>2. Additional information requests.</b></p> <p>Some applicants don't provide enough information on planning status with their application form. The EA must request the information and then have to wait for the response.</p> <p>1 hour @ £125* x 12 incomplete permits = £1,500<br/>           This delays the start of determination by about 2 weeks.</p>   | 1.5                         |                           |
| <p><b>3. Liaising with Local Planning Authorities.</b></p> <p>In some cases planning status is unclear and the EA need to write to the Local Planning Authority (LPA) to attempt to clarify. These cases can range from a few simple exchanges between the EA, the operator and the LPA, to cases where all parties seek Counsel's opinion. The Environment Agency estimate that 15% of relevant waste operation (RWO) applications require cross-checking with the LPA and fall into the following categories:</p> <p>Simple cases: 10% (45 applications) x 2 hours @ £125* = £11,250<br/>           Medium cases: 4% (18 applications) x 4 hours @ £125* = £9,000<br/>           Difficult cases: 1% (4 applications) x 8 hours permitting officer @ £125* = £4,000<br/>           60 hours legal support for queries @ £125* = £7,500</p> <p>**Operators and LPAs incur costs in this category as well. It is assumed that operators incur the same time as above for administrative staff (on a salary of £26,000 including overheads based on current industry data) and a further 0.5 hours of senior staff time (assumes a salary of £58,500 based on current industry data). Legal support costs are assumed the same based on the likelihood professional expertise will be charged at a similar rate. Further breakdown is in Table 3.</p> | 31.75                       | 11.10                     |
| <p><b>4. Checking the progress of a relevant planning application.</b></p> <p>The EA have to check progress on the planning application where permission is not in place: this applies to 5% RWO installations, 20% bespoke permits and 33% standard permits. If planning is delayed the EA have to keep repeating this process.</p>   |                             |                           |

|  |     |     |
|--|-----|-----|
| <p>2 hours @ £125* x 96 applications = £24, 000</p> <p>Delays to the permit determination caused by a lack of planning vary. It can range from less than 1 month to 36 months if there is an appeal following refusal of planning permission.</p>  | 24  |     |
| <p><b>5. Reviewing permit conditions for delayed planning consents.</b></p> <p>Where planning has delayed issue of the bespoke permit decisions (15 cases annually), the EA have to review the draft decision to check if the conditions are still appropriate and update them if needed. The longer the delay the more likely the necessity to revise conditions.</p> <p>8 delayed for &gt;6months &lt;12 months x 1 hour @ £125* = £1,000<br/> 5 delayed for &gt;12 months &lt; 24 months x 4 hours @ £125* = £2,500<br/> 2 delayed for 24 plus months x 8 hours @ £125* = £2,000</p>  | 5.5 |     |
| <p><b>6. Refused permit appeals.</b></p> <p>In cases where the EA have no evidence that the operator is progressing planning permission or they (and usually the LPA) disagree that planning permission is in place for what has been applied for, then they will refuse the permit application. This usually results in an appeal.</p> <p>On average there is one appeal on these grounds per year. Costs include preparation time and the actual hearing</p> <p>Typical costs per appeal: 2 days permitting staff costs £900 plus legal support of £1100 (which may require Counsel's opinion) = £2,000.</p> <p>**The operator also bears costs for an appeal proceeding with the assumption that time incurred is assumed similar to the EA, with administrative staff salaries as above, at £26,000 p.a. Legal support assumed the same at £1,100. Detailed workings are in Table 3.</p>   | 2.0 | 1.3 |
| <p><b>7. Managing Judicial Reviews.</b></p> <p>When determining a permit application for a potential SHPI past evidence indicates an increased likelihood of a Judicial Review (JR) being raised against the application. This would be based on the challenge that the planning permission provided does not accurately reflect the operation being permitted. This is most likely to occur where the operator is relying on planning permission obtained in the past or on established use rights, where there can often be considerable doubt about the precise scope of the planning permission. The prior planning requirement means that arguments about the scope of the planning permission or established use rights can be made as a challenge to the permit. The EA is not well placed to deal with such challenges as the subject matter is the responsibility of the local planning authority. Even if such challenges do not reach court, a lot of resources may have to be spent, including legal counsel. By removing the planning bar then this legal challenge can no longer be brought against the EA's permit and if progressed would have to be taken against the original planning decision.</p> |     |     |

|   |                   |                            |
|---|-------------------|----------------------------|
| <p>The EA may have a JR threat on this point, once per year. Costs to fend off a JR vary considerably, but on average assumed at about £6k. A full blown JR costs the EA about £177k. The EA assume that they might get one full JR involving this point, every five years, the 'annualised' cost is estimated at £35k. Added to the £6k annual cost gives a total cost of £41k</p> <p>Operators have to bear the costs of judicial proceedings as well. The assumption is that costs are similar for all parties. In this case, the majority of costs relate to the legal costs for judicial proceedings and are assumed to be similar to the estimate of costs incurred for the EA. Although administrative costs may differ slightly, in the interests of proportionality, it is reasonable to assume that overall costs incurred will be similar. The £6k costs by the EA of fending off a JR are assumed not to be incurred by businesses.</p>   | 41                | 35                         |
| <p><b>8. Confirmation that permit and planning waste types align.</b></p> <p>When determining a standard rules permit (SRP) the EA presently has to check whether any associated planning permission includes waste types not listed as acceptable for a SRP. Where a waste type does not align with the type of permit being applied for then the operator may need to either amend their planning permission or apply for a different permit type. Currently time is spent by the EA engaging with the planning authority and the operator to determine the correct position and appropriate course of action. By removing this cross checking requirement, the potential for ambiguity and misunderstanding arising from the information submitted in both planning and permit applications will be avoided. The onus will be on the operator to ensure they comply with the conditions of their planning permission and environmental permit.</p> <p>There is no available data to provide any trend analysis of how many times this occurs and so we have provided costing's based on none of the potential 45 permits having to change from a SRP to a bespoke permit, which represents the minimum cost, to all of the 45 permits being changed which represents the maximum cost to business.</p> <p>A bespoke permit costs £8,350 compared with £1,590 for a SRP and annual subsistence fees are £500 more. If all 45 permits had to apply for bespoke permits it would cost industry an additional £304.2k in application fees and £22.5k in subsistence per annum.</p> |                   | 0 – 326.7                  |
| <p><b>Totals</b></p>  | <p><b>172</b></p> | <p><b>47.4 – 374.1</b></p> |
| <p>* The £125 per hour figured used throughout Table 2 includes overheads, employer costs such as national insurance and pensions as well as support.<br/> ** Basic salary for administrative staff of £20,000 p.a. is £26,000 including standard 30% overheads. Assuming 7.5 hour working days, this is £13.33 per hour. For senior staff, salary of £45,000 is a total salary cost of £58,500 including standard overheads. Assuming 7.5 hour working days, this is £30.00 per hour. These figures have been calculated based on salary data collected from waste businesses for equivalent personnel who would be involved in permitting activities plus the 30% uplift for overheads.</p>   |                   |                            |

**Table 3:** Detailed breakdown of calculations for costs to businesses

| <u>3. Liaising with local planning authorities</u>      | applications | hours | Hourly rate of staff | costs £          |
|---|--------------|-------|----------------------|------------------|
| simple  | 45           | 2     | 13.33                | 1,200.00         |
| medium  | 18           | 4     | 13.33                | 960.00           |
| difficult   | 4            | 8     | 13.33                | 426.67           |
| Senior sign off for all cases                           | 67           | 0.5   | 30.00                | 1,005.00         |
| 60 hours legal support for queries (assumed same as EA) |              | 60    | 125                  | 7,500.00         |
| <b>Total</b>  |              |       |                      | <b>11,091.67</b> |
|   |              |       |                      |                  |
| <u>6. Refused Permit appeals</u>                        |              |       |                      |                  |
| legal support (assumed same as EA)                      |              |       |                      | 1100             |
| 2 days admin time                                       | 1            | 15    | 13.33                | 200.00           |
| <b>Total</b>  |              |       |                      | <b>1300.00</b>   |