

POLLUTION PREVENTION AND CONTROL ACT 1999

EXPLANATORY NOTES

COMMENTARY

Section 2 and Schedule 1

13. **Section 2** of the Act confers on the Secretary of State power to make regulations creating a regime of pollution control, for the purpose set out in section 1 and to the extent provided for in Schedule 1. The first sets of regulations made under the Act will be subject to the affirmative parliamentary procedure. Any subsequent amendments to the regulations which create an offence or increase a penalty for an existing offence or which amend or repeal any provision of an Act, will also be subject to the affirmative procedure. For other amendments, the Secretary of State has a choice of negative or affirmative procedure. Section 2 also specifies those persons who must be consulted before any regulations are made.
14. **Schedule 1** lists the specific purposes for which the power in section 2 may be used. The power will enable the procedural requirements of the new pollution control system to parallel closely those in Part I of the 1990 Act. Schedule 1 provides, for example, that the regulation making power in section 2 may be used to establish a system of pollution control requiring operators of specified installations or plants, or those carrying out specified activities, to hold permits (paragraph 4); for those permits to contain conditions (paragraph 6) which are to be reviewed by the regulator (paragraph 7); for publicity to be given to specified matters (for example, to applications for permits) and for information on emissions, energy and waste to be supplied (for inclusion, for example, in public registers, the Environment Agency's Pollution Inventory and any future European polluting emissions register) (paragraphs 11 & 12); for regulators to take enforcement action (paragraph 15); for the creation of offences (such as failure to comply with permit conditions) (paragraph 17); and for rights of appeal (paragraph 19).
15. **Section 2** and Schedule 1 will also enable the new pollution control system to include requirements similar to those in Part II of the 1990 Act. Thus, for example, paragraph 5 of Schedule 1 will allow provision to be made restricting the grant of permits to those who are fit and proper persons, a test which is applied under the Waste Management Licensing system. The power to make regulations in this area is necessary in order that "fit and proper person" provisions may continue to apply to those waste management installations currently regulated under Part II of the 1990 Act to which the IPPC Directive applies and which, in future, will be regulated under the new regime to be set up in the regulations made under section 2 rather than under Part II.
16. Similarly, paragraph 8 of Schedule 1 allows provision to be made regulating the transfer or surrender of permits (matters which are regulated under the Waste Management Licensing system). The Regulations will need to apply such requirements to all installations covered by the IPPC Directive to allow the implementation of the

*These notes refer to the Pollution Prevention and Control Act
1999 (c.24) which received Royal Assent on 27th July 1999*

Directive's requirement that appropriate remedial activity takes place following closure of an installation.

17. [Paragraph 2](#) of Schedule 1 will enable the Regulations to determine the authorities which will exercise the functions under the new pollution control system. As under Part I of the 1990 Act, it is intended that the role of granting and updating permits, taking enforcement action etc, will be divided between the Environment Agency and local authorities in England and Wales and carried out by the Scottish Environment Protection Agency in Scotland, save in relation to matters affecting offshore installations, which will be regulated by the Secretary of State for Trade and Industry.
18. As under the present regimes under Part I of the 1990 Act, fees will be payable to regulators in relation to the exercise of some of their functions (for example, in relation to the determining of applications for the grant of a permit and for the variation of the conditions of a permit). The fees payable to local authorities or the Secretary of State will be set out in charging schemes made under the regulations (paragraph 9 of Schedule 1) and those payable to the Agencies will be set out in schemes under section 41 of the Environment Act 1995. Paragraph 10 of Schedule 1 will allow fees to be charged for prior testing of substances in connection with granting or complying with permits.
19. [Paragraph 1](#) of Schedule 1 enables the Regulations to establish standards, objectives, requirements and limits and to allocate quotas in relation to emissions, (things currently provided for in section 3 of the 1990 Act). The paragraph specifically provides for the making of quota trading or transfer schemes in relation to quotas so allocated.
20. New installations and those undergoing substantial change will be regulated under the new regime set up under the Act from the date on which the new regime comes into force. Existing installations will be phased into the new regime, generally on a sectoral basis, before the 31 October 2007 deadline specified by the IPPC Directive.