

Title: The Environmental Permitting (England and Wales) Regulations 2016 ('the Regulations') PIR No: RPC-DEFRA-5005(2) Original IA No: SI 2007 No. 3538 Lead department or agency: Defra Other departments or agencies: Environment Agency Contact for enquiries: ENVRegs@defra.gov.uk	Post Implementation Review
	Date: 26/05/2023
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 06/04/2008
	Recommendation: Amend
	RPC Opinion: Green

1. What were the policy objectives of the measure? (Maximum 5 lines)

The Regulations are the latest version of a cross-cutting environmental permitting and compliance framework first introduced in 2008. It was anticipated that businesses would benefit from a single, streamlined permitting and compliance framework, which would be easier for both businesses and regulators to understand, and more efficient to use in practice. The Regulations also introduced a hierarchy of permitting which aimed to impose a proportionate regulatory burden on businesses, reducing the burden where possible, and freeing many from a requirement to have a permit altogether.

2. What evidence has informed the PIR? (Maximum 5 lines)

Defra has surveyed the Environment Agency's (EA's) Regulated Business Forum, gathered data and insights from the EA, and carried out desk-based analysis to estimate the costs and benefits to business of the regime which applies across England. It has also used available published materials on the Regulations, including explanatory memoranda, regulatory impact assessments and other relevant documents, EA annual reports and other reports, and discussions with EA staff.

3. To what extent have the policy objectives been achieved? (Maximum 5 lines)

This review finds that introduction of EPR has created business savings between £28m and £33m in total from 2009 to 2020. This is based on analysis of data on EPR permit and exemption applications to quantify the impact of EPR. It also finds the core principle of the framework, the so called "hierarchy of permitting", has delivered material benefits to business. However, it also finds that there is a perception among some customers that the EPRs have not been fully effective in reducing burdens, and that the system could be made more flexible.

Sign-off for Post Implementation Review: Economist and responsible Senior Civil Servant

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: **Sarah Swash**

Date: 26/05/2023

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?(Maximum 5 lines)

The Regulatory Impact Assessment (RIA) for the first phase of the Environmental Permitting Programme (EPP) predicted net benefits of £76m over ten years (from 2006/07 to the end of 2015/16). These included “wider industry benefits” estimated at £21.2m over ten years, as well as a reduction in the direct administrative burden of £55.2m. The RIA for the second phase of the EPP predicted benefits of £39.5m in England over ten years (from 2009/10 to the end of 2018/19). In 2016 flood defence consents were also incorporated. The RIA for this step anticipated benefits of nearly £19m over ten years (2015-2024) in England.

5. Were there any unintended consequences? (Maximum 5 lines)

The Regulations appear to be functioning effectively. We did not identify any areas where they are counter-productive or led to unintended consequences, although we did identify various areas for improvement, as above.

6. Has the evidence identified any opportunities for reducing the burden on business? (Maximum 5 lines)

There is a perception among some customers that EPR has not been fully effective in reducing burdens, and that the system could be made more flexible. Analysis of the responses to the structured survey suggests that this is not down to the fundamental design of the EPR framework, but rather is the result of other policy changes that were introduced after the EPRs, along with operational factors. We identify ways to further improve the framework to make it quicker to deal with applications and keep pace with latest developments across the sectors using it.

7. For EU measures, how does the UK’s implementation compare with that in other EU member states in terms of costs to business? (Maximum 5 lines)

England’s Environmental Permitting regime has attracted international interest as an innovative approach that applies a permitting hierarchy to where there is greatest environmental risk and in turn ensures the environment is protected in the most proportionate way. It has previously been held up as an example of best practice by the EU Commission.



Department
for Environment
Food & Rural Affairs

The Environmental Permitting (England and Wales) Regulations 2016 **A Post Implementation Review**

June 2023



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Executive summary

The Environmental Permitting (England and Wales) Regulations 2016 and previous versions (referred to as “EPR” or “the EPRs”) provide an integrated framework for the regulation of activities that could harm the environment or human health. They require operators of “regulated facilities” to obtain a permit or to register some activities, which would otherwise require permits, as “exempt facilities”. They cover six main areas of environmental activity: waste regulation, emissions to the environment from industrial processes (air, water and land), water discharges, radioactive substances, energy efficiency and flood risk activities.

This review concludes that the EPRs have reduced the regulatory burden on businesses. They are likely to have delivered some, and possibly most, of their anticipated benefits set out in the Impact Assessment accompanying the 2016 regulations. However, feedback from operators suggests that there may be scope to explore further operational streamlining and introduce more flexibility into the regime.

The EPRs are the latest version of a cross-cutting environmental permitting and compliance framework first introduced in 2008 as a Better Regulation initiative. Businesses previously had to comply with a number of separate environmental consenting regimes which had evolved independently over time. It was anticipated that businesses would benefit from a single, streamlined permitting and compliance framework, which would be easier for regulators and businesses to understand, and more efficient to use in practice. The EPRs introduced a hierarchy of permitting which aimed to impose a proportionate regulatory burden on businesses, reducing the burden where possible, and freeing many from a requirement to have a permit altogether. This is the qualitative baseline against which we have conducted this review.

Where businesses must have a permit, the EPRs introduced standardised and clearer processes, as well as new approaches, such as the concept of a single site permit, to make the system as flexible and responsive as possible. When first introduced, the EPRs covered only waste activities and industrial installations. The government aimed (once the framework had demonstrated its value) to expand their scope by bringing in other existing consenting regimes and to use the EPRs as the vehicle for transposing new EU Directive requirements. The government and regulators have also maintained an open dialogue with operators on the development and implementation of the regime.

To carry out this review, Defra engaged the Environment Agency’s Regulated Business Forum (representing the main EPR customers) using a structured survey to gain their perspectives on the expected benefits as set out in the 2016 Impact Assessment. Defra also gathered data and insights from the Environment Agency, as the main operator of the EPRs, and carried out desk-based analysis to estimate the costs and benefits to business of the regime. The key findings are:

- The introduction of the EPRs has created business savings between £28 million and £33 million in total from 2009 to 2020. This is based on analysis of data on EPR permit and exemption applications to quantify the impact of the EPRs. The “hierarchy of permitting” introduced by the EPRs has delivered material benefits to business. Businesses have registered tens of thousands of exemptions, while the Environment Agency has granted more than 4,000 Standard Rules Permits.
- There is a perception among some customers, however, that the EPRs have not been fully effective in reducing burdens, and that the system could be made more flexible. Analysis of the responses to the structured survey (see Annex 3) suggest reasons for this perception. In some cases, respondents focused on policy changes that have been introduced since the EPRs were introduced, rather than on the effectiveness of the framework itself. Respondents also highlighted delays in the processing of applications and variations and increases in fees and charges. In some cases, these result from operational factors (including delay arising from the Coronavirus pandemic) and a general move towards ensuring that operators contribute to the cost of regulation as appropriate, in line with Managing Public Money rules and the “polluter pays” principle.
- EPR customers support the use of exemptions as a mechanism to reduce burdens but have concerns about the consistency with which these are applied, and there are risks of increased non-compliance (including illegal activity) in some cases. Defra is addressing this issue: for example, through reform of the waste exemptions regime, focused on minimising opportunities for illegitimate operators to abuse the regime and cause environmental harm.¹
- The EPRs have worked as expected, that is, as a flexible regulatory regime capable of being applied across multiple areas of regulation. They have been expanded to bring other existing regimes (such as water discharge consents, groundwater authorisations, radioactive substances authorisations and flood defence consents) into the single permitting and compliance framework. The EPRs also efficiently delivered transposition of several new EU Directives either in whole or part, including the Batteries, End-of-Life Vehicles, Industrial Emissions and Medium Combustion Plant Directives. In each case, transposition has been effected without having to create separate new procedural provisions each time.
- Defra and the Environment Agency continue to streamline operational delivery of permitting, including by improving digital systems, and by investigating scope for reforms to improve flexibility.

¹ See [Government moves ahead with plans to crack down on illegal waste - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/government-moves-ahead-with-plans-to-crack-down-on-illegal-waste)

The review concludes that the EPR framework has been a success, but that further work could be done in the areas outlined immediately below. Therefore, we recommend **amending** the framework:

- In view of the identified benefits of the EPR framework, there may be further scope for expanding the regime. Water abstraction and impoundment licences were potential candidates for inclusion in 2010 and are in the process of being brought into the framework.² There may be scope to incorporate other regulatory regimes into the EPRs in future.
- There may be further scope for the Environment Agency to use Standard Rules Permits to deliver further business benefits. These have not been taken up as quickly as anticipated for some activities. It will be important for Defra and the Environment Agency to keep Standard Rules and exemptions under review, to ensure that burdens on business are minimised, while upholding environmental standards.
- Charges will need to be kept under review. A standardised EPR charging scheme across all participating regimes was introduced in 2018. Defra and the Environment Agency will need to keep this charging scheme under review to ensure that appropriate costs are recovered for regulatory services, in line with Managing Public Money rules. Ensuring appropriate financial resources are available will help to address some of the “operational” concerns highlighted by the Regulated Business Forum.
- The EPRs will need to be kept under review to ensure that they remain fit for purpose now that the UK has left the EU. The EPRs were used to implement 15 EU directives (see Annex 1). Now that the UK has left the EU, the government has stated that its intention is to amend retained EU law that is not right for the UK.³ Changes to environmental policy covered by the 15 relevant directives may require amendments to the EPR framework. As part of this process, there may also be opportunities to improve the flexibility of how the EPRs are operated, for example to streamline the process of implementing exemptions and standard rules. Although this review focuses on legislative (rather than operational) elements of the EPRs, there is an important interdependence between these two elements, which will need to be considered in future reforms. As noted above, Defra and the Environment Agency will need to continue to work closely to streamline operational delivery, including through the digital reform where appropriate.
- We are in favour of further regulatory reform to the framework. The hierarchy of permitting which underlies the framework has, we believe, been proven to work, and so

² See Defra, *Changes to the regulatory framework for abstraction and impounding licensing in England: Moving into the Environmental Permitting Regulations regime* (September 2021), available from www.gov.uk

³ See [The Retained EU Law \(Revocation and Reform\) Bill 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/bills-2022)

we would leave this as it is. However, there is scope to make the framework more responsive to changes on the ground and meet the needs of operators. For example, we could shift the process for creating exemptions and amending their conditions from a legislative one to a regulatory one. We predict this would reduce the time needed to create a new exempt activity from the multi-year process that is currently typical to one that is significantly shorter, whilst still maintaining appropriate oversight.

Introduction: what are the EPRs and what are their objectives?

The First Environmental Permitting Programme, or EPP1, led to the EPR 2007⁴. These Regulations introduced a single streamlined and risk-based environmental permitting and compliance system for England and Wales, which came into operation on 1 April 2008.

The EPRs take a “cradle-to-grave” approach to permitting. Regulation 12 provides that a person must not, except under and to the extent authorised by an Environmental Permit, operate a “regulated facility”⁵, or cause or knowingly permit a water discharge activity or a groundwater activity. Contravention of Regulation 12 is an offence⁶. This is therefore a critical means of controlling pollution and other environmental impacts from EPR-regulated facilities. Regulators and operators maintain a dialogue throughout the life of the permit, which may be varied at any time as appropriate (either by the regulator on its own initiative or following an application by the operator). Permits can be transferred between operators, usually with the regulator’s permission⁷. When an operator ceases its activities it must, in many cases, apply to surrender the permit⁸. In response to an application to surrender, the regulator may allow the surrender only if it is satisfied that the necessary measures have been taken to avoid a pollution risk from the operation of the regulated facility⁹, and to return the site of the regulated facility to a satisfactory state¹⁰. Regulators have powers of entry and inspection, and a range of civil and criminal sanctions to enforce compliance. So far as practical, the EPRs provide a common system for every substantive policy area they cover.

As the government’s business case for the second phase of the EPRs¹¹ explained:

⁴ The Environmental Permitting (England and Wales) Regulations 2007 (SI 2007 No 3538).

⁵ One of the types of activity listed in regulation 8 which are subject to the EPRs.

⁶ Regulation 12(1).

⁷ This ensures that incompetent or undesirable operators do not obtain permits through the back door.

⁸ In some cases the operator needs do not more than notify the regulator.

⁹ Paragraph 14(1)(a) of Part 1 of Schedule 5 to the EPR 2016. In the case of a flood risk activity, the operator must act in relation to the risks specified in paragraph 14(3).

¹⁰ Having regard to the state of the site before the facility was put into operation (paragraph 14(1)(b) of Part 1 of Schedule 5 to the EPR 2016.

¹¹ *Environmental Permitting Programme: Phase 2 – Business Case* (16 November 2007): paragraph 3.2.

“The EPP addresses inefficiency that derives from the fact existing permitting regimes have largely arisen in isolation. These have adopted, often for good reasons at the time, a variety of approaches to the same aspects of environmental regulation to achieve similar outcomes. This has led to an overall regulatory system that is often perceived and frequently experienced as too complex for industry and regulators.”

This complexity consisted of (by way of example):

- Separate legislation (often more than one set of Regulations and/or byelaws) for each regime. At its most basic, this meant businesses, which carried on activities that were subject to more than one regime, having to grapple with a number of Statutory Instruments, which frequently necessitated the inefficient use of resources on environmental consultants and lawyers in preparing applications. In some cases, the same word (such as “site”) was interpreted differently under each regime; in others, the same thing had a different title, such as “consent”, “authorisation” and “permit”. Furthermore, different regimes dealt differently with the requirements for making applications for consents, transferring permits to another operator, and surrendering permits. Businesses also had to keep abreast of amendments to all of this legislation, which, for SMEs especially, was a significant issue.
- A profusion of separate guidance documents, structured and written differently for different audiences.
- Different application forms and IT systems, often requiring precisely the same information to be submitted on two or more instances for the same site.
- Operators may have had to pay several separate and different fees (with little transparency as to why they were different) to cover activities on the same site. Separate consents for different activities on the same site, each of which had to be read and understood in conjunction with one another. For large, complex industrial activities, several consents might be required.
- More than one regulator for activities on the same site, levying separate charges and potentially carrying out multiple inspections.

The EPRs 2007 brought together the previously separate frameworks for waste management licences (WMLs) and pollution prevention and control (PPC) permits. These were the regimes with the greatest degree of overlap and were the obvious candidates to start with, and where a common system would deliver the most significant, immediate and demonstrable benefits. The government made clear, however, that EPP1 was a first-stage project, to demonstrate that the concept of the EPRs worked. The government also made it clear that its longer-term aim was to bring other consenting regimes into the EPRs.

Furthermore, the new system would change only **how** regulation was delivered, and not **who** was regulated, **what** standards were required or **by whom** operators would be regulated. The EPRs would not change:

- the objectives of existing regimes;
- existing standards of protection for the environment and human health;
- existing regulatory burdens (in substantive policy terms); or
- regulators.

EPP1 established a platform for the introduction of both new requirements and, in due course, the incorporation of other existing environmental consenting regimes.

A Second Environmental Permitting Programme (EPP2) quickly followed. The consultation document for this programme¹² noted that the implementation of EPP1 had “gone very well”; and that both “that experience and feedback from industry have informed the development of this consultation document.” This last point – active engagement with businesses - is one to which we return below.

EPP2 proposed the incorporation of a number of other consenting regimes, and led to the EPR 2010¹³. These Regulations consolidated and replaced the EPR 2007. They brought water discharge consents, groundwater authorisations and radioactive substances authorisations into the framework. EPP2 also reflected the fact that the EPR 2007 had already been amended on numerous occasions, including to transpose the EU Mining Waste Directive and the permitting elements of the new Batteries Directive. The government, in its business case for EPP2¹⁴, described it as “the next evolutionary phase of the Environmental Permitting Programme”: the clear implication being that further development was planned.¹⁵

Although the EPR 2010 were amended many times after 2010, the next principal developments came in 2016. First, flood defence consents were incorporated as “flood risk

¹² Paragraph 3.7 of *Environmental Permitting Programme Second Phase: Consultation on proposals to widen the Environmental Permitting Regime by incorporating Discharge Consenting, Groundwater Authorisation and Radioactive Substances Regulation* (Defra, February 2009).

¹³ The Environmental Permitting (England and Wales) Regulations 2010 (SI 2010 No 675).

¹⁴ *Environmental Permitting Programme: Phase 2 – Business Case* (16 November 2007).

¹⁵ EPP2 also proposed the incorporation, in a third phase of the Programme, of water abstraction and impoundment licences, fish pass approvals, and parts of the waste carriers and brokers regime. These proposals were not enacted at the time.

activities”¹⁶. The regulations were then consolidated in their current form as the EPR 2016. The EPR 2016 have subsequently been amended several times, sometimes substantially: for example, in 2018 to transpose the EU Medium Combustion Plant Directive and to introduce a new domestic regime for controlling emissions from specified generators¹⁷.

As a result of these developments the EPRs now cover industrial emissions, waste, water quality, radioactive substances regulation and flood risk. They are the principal vehicle for environmental permitting and compliance in England¹⁸.

To demonstrate the scope and scale of the EPR regime, since 2008 more than 100,000 environmental permits have been issued¹⁹ and more than 600,000 exemptions have been registered (mostly waste-related)²⁰. The following approximate numbers of Environment Agency-issued EPR permits are currently in force²¹:

- 4,000 industrial activities;
- 10,000 waste operations;
- 58,000 water discharges;
- 1,700 radioactive substances activities; and
- 9,000 flood risk activities²².

While the Environment Agency is the principal EPR regulator in England, local authorities also issue permits²³. Although we do not have exact figures, the Environment Agency’s

¹⁶ The Environmental Permitting (England and Wales) (Amendment) Regulations 2016 (SI 2016 No 475).

¹⁷ The Environmental Permitting (England and Wales) (Amendment) Regulations 2018 (SI 2018 No 110).

¹⁸ And Wales, but this review covers England alone. Annex 1 lists the directives that were transposed using EPR as a vehicle.

¹⁹ Page 7 of *Environment Agency Charge proposals from 2018* (consultation on changes to the EPR charging scheme, 2017).

²⁰ This does not mean that 600,000 exempt activities are being carried out, because many will have ceased operating, while others may have changed their activity so as to require a permit.

²¹ The numbers are rounded and are approximate, because the number of permits actually in force at any point fluctuates.

²² Source: Environment Agency. Flood risk activity permits tend to be issued for building works which, in one sense, are not ongoing activities once the works have been completed. The number of permits granted in any one period does not therefore necessarily reflect ongoing activities.

²³ For reasons explained below, this review has not considered local authority permitting.

Local Authority Unit surveyed local authorities to inform a 2018/19 Defra statistical survey and, while the response was less than 100%, broad figures are available:

- >300 Part A(2) installations;
- >9,000 Part B installations;
- 25 small waste incineration plants; and
- >3,200 solvent emission activities.

The Environment Agency has granted more than 4,000 Standard Rules Permits under the EPRs, the significance of which we explain further below.

This gives a very rough figure of nearly 100,000 environmental permits. The activities involved vary enormously in scale, but this is still a considerable figure. To this we would need to add registered exemptions, of which there are tens of thousands each year (see below), as well as non-registrable exemptions and excluded activities (explained below), which by their nature do not appear in the data.

In its Business Impact Target 2018 to 2019 reporting period, the Environment Agency (the principal regulator under the EPRs):

- made 16,284 permitting determinations, of which 2,161 were variations of permits to secure environmental outcomes required by the periodic review of water company permits;
- made 555 permitting determinations relating to radioactive substances activities; and
- registered 72,517 exempt activities, while de-registering 613²⁴.

The latest government initiative involves the launch of a Third Environmental Permitting Programme (EPP3) at the beginning of 2020. EPP3 aims to make further, cross-cutting changes to the EPRs. It will once again expand the EPRs; this time to include water abstraction and impoundment licences, as well as making other changes. At the same time, the government is aware of the need to review and update existing EPR guidance.

²⁴ Source: Environment Agency.

What were the key features and anticipated benefits of EPR?

We summarise the key features and anticipated benefits of the EPRs as follows²⁵:

Key features

a) Integration of previously separate systems

Removing previously separate systems, each with its own legislation, different terminology, procedures and requirements, and replacing them with one coherent and streamlined procedure for permit applications and determinations. This was expected to make permitting easier to understand and use, for both operators and regulators. Businesses would save effort and time in putting permit applications together (or expense where they employed consultants). As a result, regulators would receive better-quality applications, which they would be able to determine more efficiently, with less need to go back to applicants for further information or clarification. Regulators would also be able to train their permitting staff more easily on the single system, and those teams would be able to make determinations more consistently and efficiently.

b) Hierarchy of permitting and risk-based regulation

The EPRs operate on the basis of proportionate and risk-based regulation. Activities should be subject to no more regulatory intervention than appropriate. The EPR regime, at its core, consists of a risk-based hierarchy of permitting and aims to regulate activities at the lowest practicable level of that hierarchy.

At the top of the hierarchy sit the most complex “**bespoke**” permits. These are tailored for an individual activity. Even bespoke permits contain some standardised wording, so none are truly bespoke.

One example of a standardised condition is that requiring the operator to manage and operate its activities in accordance with a written environmental management system. Standard conditions have been carefully considered and are suitable for all permitted activities to which they apply, making their inclusion (and subsequent amendment across the existing permit stock) quicker and easier. They are of necessity high-level, as in the case of the management system condition. EPR guidance issued by the government and regulators is

²⁵ This summary draws on the principal EPR consultation documents and other relevant publications.

therefore vitally important in explaining how such standardised conditions are to be applied in practice.

In this way, the EPRs aim to enable regulators to deal with common issues in as standardised a way as possible, promoting greater efficiency and consistency both between different types of regulated facility, and within industry sectors. Nonetheless, bespoke permits ensure that site- or activity-specific issues are, where appropriate, properly reflected in the permit.

An alternative to bespoke permits is **Standard Rules Permits** (SRPs), a key EPR innovation. SRPs are available for activities that are sufficiently well-characterised²⁶ for a more standardised permitting approach to be suitable.

Regulation 26 of the EPRs provides for the development of standard rules. In drawing up a new set of rules (or amending existing rules), the Environment Agency must consult appropriately. Once the Environment Agency has published a set of rules, businesses may choose to apply for a SRP, provided that their activity satisfies specified pre-conditions (relating, for example, to materials being handled, capacity or location). Businesses can view the rule sets and the relevant pre-conditions online²⁷ before deciding whether to apply for a SRP, providing greater certainty and reducing the likelihood of unsuccessful applications. SRPs reduce costs to the applicant, both in terms of the amount of information they have to submit, and because they are simpler for the Environment Agency to determine. The Environment Agency normally needs to determine only whether the applicant satisfies the relevant criteria, and no site-specific assessment of risk is required²⁸. A successful applicant receives a one-page permit that refers to the relevant set of standard rules, which are then enforceable as conditions of the permit.

Because operators choose to apply for a SRP, there is no site-specific assessment and the rules are known already. There is no public consultation on SRP applications, no right of appeal against permit conditions, and no varying conditions (without making the permit bespoke). SRP applications are therefore intended to be much more efficient, quicker and cheaper.

²⁶ Not to be confused with lower-risk: some relatively high-risk activities are sufficiently well-characterised to be suitable for SRPs.

²⁷ At <https://www.gov.uk/government/collections/standard-rules-environmental-permitting>.

²⁸ Although for some permits a relatively recent statutory requirement is to submit fire prevention plans, which make applications and their determination a more substantial exercise.

Following appropriate consultation on any proposed revision, the Environment Agency can change a standard rule set, notifying affected permit-holders, and publishing the revised rules on gov.uk. The revised set of rules then becomes effective for all existing relevant SRPs, without a need to vary each one individually. Again, this aims to make permitting more efficient.

Since 2008 the Environment Agency has published over 100 standard rules sets and has granted more than 4,000 SRPs. Starting with waste operations, standard rules are now available for flood risk activities, industrial installations, medium combustion plant and specified generators, onshore oil and gas exploration and mining waste operations, radioactive substances activities for non-nuclear sites and water discharges.

The next level down consists not of permits, but of **exemptions** from the requirement to obtain a permit, where an operator must comply with relevant standards and limitations but does not need prior approval. Exemptions are an extremely important part of the permitting system. In most (but not all) cases exemptions must be registered with the Environment Agency.

The rationale for exemptions is twofold:

- First, exemptions presuppose that the activity would otherwise have to obtain a permit. Exemptions are carefully worded, so as to carve out from the permitting requirement only certain types of activity, carried out in a certain way. Any operator which does not, or ceases to, comply with the relevant criteria cannot be exempt and must obtain a permit.
- Second, the requirement to register an exemption allows regulators to monitor the situation²⁹, and to carry out inspections where appropriate. This provides some assurance for operators who do have to obtain a permit.

From the operator's perspective, having to do no more than work out which exemption applies, and then registering it online³⁰, free of charge, is far simpler, quicker and cheaper³¹ than having to apply for a permit. Exemptions also provide operators with a mechanism for flexibility and resilience in their activities. They are able to register something which may only be needed as a fall-back operation or use in emergencies, knowing that if the need arises, they

²⁹ Only a proportion of registered exempt activities may actually be operational at any one time.

³⁰ Not all registrations can be made online yet.

³¹ With one exception, it is currently free to register waste exemptions, which last three years before having to be renewed.

can do it straight away. If a business operates under an exemption for which it is ineligible, or operates in breach of the relevant criteria for that exemption, it is committing an offence under Regulation 12(1)³² and can be de-registered by the regulator, be subject to potential enforcement action and/or be required to obtain a permit.

Finally, there are activities which, subject again to certain criteria, are either completely **excluded** from the EPRs or are subject to **exemptions which do not need to be registered**. Since 2015 this latter category includes **General Binding Rules** (GBRs) for certain water quality activities³³. This system relieves some operators, whose activities otherwise constitute a “regulated facility”, from the burden of applying for permits, while ensuring that others obtain a permit where appropriate. Where an exempt activity is not required even to register, all formal permitting burdens are removed from operators.

The aim of this hierarchy is to allow the EPRs to operate flexibly and proportionately. The aim is to impose no more than the appropriate regulatory burden on any activity, keeping permitting costs to a minimum, while ensuring that the environment and human health are properly protected, and broadly allowing regulators to recover the costs of carrying out their functions. Risks are managed by effective monitoring, compliance and enforcement activities by regulators.

c) Simplification and flexibility

The EPRs aimed to simplify existing procedures, and to remove, so far as possible, the need for operators to obtain more than one consent for their activities, where those were carried out on the same site. A key concept for the EPRs is therefore the single site permit, containing conditions relating to both installations and waste activities in the EPR’s first incarnation, but now able to cover discharges to water, radioactive substances, flood risk and other types of “regulated facility”. The EPRs also allow the consolidation, of existing permits for activities carried on by the same operator on the same site, into one permit. It was anticipated that this would avoid the unnecessary duplication of generic aspects of the permitting application process, allow for the development and

³² See above.

³³ SI 2014 No 2852 introduced General Binding Rules for septic tanks and small sewage treatment plants for domestic wastewater systems (principally in rural areas). These replaced the existing registration scheme. with conditions that had to be met in order for the plant to be used without an environmental permit. The GBRs consist of both the conditions and the technical requirements specified by the Environment Agency in guidance to operators, compliance with which is part of the conditions.

monitoring of common management systems, simplify permit reporting requirements and lead to more efficient uses of operator time when the regulator carries out compliance assessment monitoring.

A single permit is not normally possible where there is more than one regulator³⁴. A frequent instance of this scenario is a Part A(2) or B installation³⁵ permit (granted by the local authority) to an operator who also carries on, on the same site, a waste operation (permitted by the Environment Agency). Regulation 33 allows the Secretary of State to reallocate one regulator's functions to the other where it would make sense to do so, either in a specific case or for classes of activity. All the activities on that site can then, in principle, be brought within a single permit. The Secretary of State has made a number of Directions under regulation 33, reallocating regulatory functions from the Environment Agency to a local authority, and vice versa. If the operator wishes, two permits can then be consolidated into one under Regulation 18.

The EPRs also introduced greater flexibility in relation to certain permitting applications. For example, before the EPRs, WML-holders who wished to transfer part of their WML to another operator had first to surrender the WML. Both operators then had to obtain a new permit. The EPRs allow the permit-holder to transfer part of its permit to the other operator: the other operator receives a new permit, while the transferor's permit is simply varied to the extent necessary to reflect the change.

The EPRs also introduced SRPs, and notifications of surrender for certain, lower-risk activities³⁶. These are simpler, quicker to prepare, and therefore less costly for businesses than a requirement to apply for permission to surrender.

Finally, when flood risk activities came into the EPRs, exemptions were also introduced for the first time for 27 classes of activity which formerly required consents. For those that require a permit, the Environment Agency has also provided a suite of SRPs.

d) Simplified and standardised guidance

³⁴ There are a few exceptions, for example where a Marine Licence issued by the Marine Management Organisation addresses all the requirements that would have been included in an Environment Agency flood risk activity permit.

³⁵ See: [Local authority environmental permits \(England and Wales\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/local-authority-environmental-permits)

³⁶ As opposed to a full surrender **application**, which requires a determination by the regulator and has no effect until the regulator agrees.

Instead of a range of differently-styled guidance under separate regimes, sometimes explaining similar concepts, but in confusingly different ways, it was anticipated that government and regulators would introduce a standardised and clearer suite of EPR guidance. This would be easier to understand and apply, both qualitatively and quantitatively.

The Defra series of EPR guidance is available to all on the gov.uk website. Documents in this series use the same standard template and make use of links, to avoid the same information being repeated in multiple places. The guidance is structured around specific user needs (for example, common tasks) and facilitates logical customer journeys through the content.

A good example is the waste permitting guidance³⁷. A business proposing to carry on a waste operation may realise that it may need an EPR permit. The guidance leads readers through the various options, starting with the most light-touch and aiming to help users find the cheapest and simplest option available for their activity (for example an exemption or, if not, a SRP). The focus is consistently on providing no more than the necessary information to complete a task (although more is available should readers be interested or require it).

In addition to this relatively high-level guidance, Defra has published a series of documents explaining in detail the government's position on legal and policy matters. These documents, while informative for all readers, are aimed primarily at operators and regulators, giving them the supporting information they need to understand, and apply the system in practice. This Defra guidance has also been referred to by tribunals determining statutory EPR appeals.

The central document in this series is the EPR Core Guidance, which provides information on cross-cutting issues, such as who will regulate what type of activity. The Core Guidance is complemented by a series of documents on specific regimes delivered through the EPRs.

By way of example, we have referred above to the standardised management system condition. The condition itself does not specify a particular kind of management system. The Core Guidance, however, explains the government's approach to management systems. Regulators also work with operators where appropriate to help them into compliance. EPR guidance therefore forms a key part of the regulatory package.

As further existing regimes and new requirements are brought into the EPRs, it is relatively straightforward to amend, or add to existing guidance, using this common framework. Users of more than one document are presented with a

³⁷ See: <https://www.gov.uk/guidance/waste-environmental-permits>.

familiar and consistent style. Users need familiarise themselves with core, cross-cutting issues only once, rather than having to learn the intricacies of separate regimes for each aspect of their activities.

e) Platform for expansion

A key feature of the EPRs is that they set out their procedural requirements in the main body of the Regulations. The substantive requirements of each of the policy areas delivered through EPR permits are then contained in Schedules to the EPRs, of which there are currently more than 20. This structure is reflected in the Defra EPR guidance, as explained above.

This approach makes it much easier to introduce new participant regimes, be they existing or entirely new ones; keeping cross-cutting procedural changes to a minimum, while bringing on board the substantive permitting requirements by including an additional Schedule. One of the government's principal aims was to use the EPRs as a convenient and efficient vehicle for both transposing new EU legislation and bringing in more existing consenting regimes over time. Where cross-cutting changes were required, making them by a single amendment to the core elements of the EPRs, rather than having to make multiple amendments to several separate sets of regulations, was bound to be more efficient; and as more regimes were brought into the EPRs, the benefits – including avoiding a proliferation of new regimes, as outlined above - would only grow.

Key benefits

The following are the key benefits/success criteria that the principal consultations on the EPRs anticipated:

- a) The effort (and therefore expense) for businesses involved in understanding separate regimes and preparing separate permitting applications, often including the same information more than once, should reduce.
- b) An easier-to-use system should in principle enable applicants to prepare better-quality applications. These would be easier and quicker for regulators to determine, not least because they would less frequently need to request further information or clarification from applicants. While true for bespoke permits, SRPs or exemptions would be even easier, quicker and cheaper to apply for or register.
- c) The amount of effort regulators have to put into determining applications should decrease. Exemptions involve no determination at all; SRPs are simple and easy to determine; and even bespoke applications could be made more quickly.

- d) Because of (b) and (c) above, regulators should in principle require less resource for many determinations, and these savings, it was anticipated, would in due course be reflected in lower permitting charges.
- e) Easier/more flexible processes (registrations, variations, transfers etc.) should reduce the risk that businesses would be put off making applications (including for variations and transfers).
- f) Regulators should progressively make more Standard Rule sets available to businesses.
- g) EPR would prove to be an easier vehicle for transposing new EU legislation, and its success would lead to other, existing regimes being brought within its framework. This would progressively expand the benefits under (a) above.
- h) User feedback should be positive.

EPP1

The Regulatory Impact Assessment (RIA) for EPP1³⁸ predicted net benefits of £76m over 10 years³⁹. These included “wider industry benefits” estimated at £21.2m over 10 years, as well as a reduction in the direct administrative burden of £55.2m.

It should be noted that the RIA explained that determining the 2007-08 baseline was quite difficult, because changes were being made at the same time to both the PPC and WML regimes.

EPP2

The RIA for EPP2⁴⁰ noted that an Environment Agency review of EPP1 had reported that the EPR were being implemented successfully and that SRPs were popular with business.

This RIA is somewhat complicated by including data relating to waste carriers and brokers, and water abstraction and impoundment: regimes which ultimately did not form part of EPP2. It predicted benefits of £39.5m in England over ten years. Of these, 37% would come from exemptions for small sewage treatment plants, 35% from streamlining

³⁸ Appended to the Explanatory Memorandum to the EPR 2007 (see: http://www.legislation.gov.uk/uksi/2007/3538/pdfs/uksiem_20073538_en.pdf).

³⁹ It is important to note that this prediction was for both England and Wales, so for England the net benefits would be less, albeit the majority.

⁴⁰ See http://www.legislation.gov.uk/ukia/2009/44/pdfs/ukia_20090044_en.pdf.

measures, 22% from the integration of previously separate regimes, 5% from SRPs and 1% from simplified guidance.

Flood risk activities

The next major expansion of the EPRs came in 2016 with the incorporation of flood defence consents⁴¹. Flood defence regulation was applied under several legislative provisions on main rivers, including the Water Resources Act 1991, regional byelaws and the Highways Act 1980. These various regimes had differing charges, application times, appeal mechanisms and other provisions leading to a complex position for someone trying to take forward a proposal and determine the requirements of the legislation. Moreover, much of the process, including charges, was enshrined in primary legislation (Acts), which made it difficult to amend the regime to reflect changing circumstances.

The RIA for this step anticipated benefits of nearly £19m over ten years in England. The RIA⁴² identified the principal benefits coming from exemptions (£11.4m), SRPs (£4.23m), simplified guidance (£1m) and the integration of regimes (£148,000). As a result of the EPRs, 27 flood risk activities⁴³ no longer needed a consent but instead could simply register an exemption. Since April 2016 the Environment Agency has registered 4,155 such exemptions⁴⁴. Twelve sets of Standard Rules were introduced for the first time for flood risk activities.

2011 PIR

Neither the EPR 2007 nor the EPR 2010 contained any review provision. However, the explanatory memorandum for the EPR 2010 stated that a PIR would be carried out:

“A post implementation review of the first phase of environmental permitting is being undertaken based on monitoring and will be published in April 2010. A similar post implementation review will also be in place for the EP Regulations 2010. The draft Regulations provide a common framework for environmental permitting and so the results and lessons learned from both post implementation reviews will be followed by appropriate changes to future Regulations or in Guidance.”

This first PIR was published in 2011⁴⁵.

⁴¹ The Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2016 (SI 2016 No 475).

⁴² See http://www.legislation.gov.uk/ukia/2016/97/pdfs/ukia_20160097_en.pdf.

⁴³ Generally determined by being small-scale and/or relatively simple. Larger or more complicated activities of the same type will require a permit.

⁴⁴ Source: Environment Agency 2019.

⁴⁵ *Summary: Post Implementation Review - Environmental Permitting (England and Wales) Regulations 2007* (Defra, February 2011).

Overall, the PIR estimated savings for the Environment Agency of £19.6m over 10 years, or **95% of the anticipated total in the RIA for EPP1**. Although this remained, at this point, largely a prediction, it was informed by initial data and feedback.

For industry no clear picture emerged, but the PIR suggested that the full estimated savings might not be achieved. This was, however, based on very limited data and industry feedback which made drawing conclusions particularly difficult at this early stage. At the same time, the PIR's qualitative findings indicated substantial support for the EPRs.

The PIR recognised its own limitations including:

- A number of other changes (both internal to the EPRs and external) were happening at the time, which complicated the picture considerably. For example, the Environment Agency's National Permitting Service (NPS) began operating in April 2007, not long before the EPRs came into effect. The centralisation of permitting that this represented was a major organisational change which was designed to bring about significant efficiencies but was not itself a direct result of the EPRs.
- The PIR was unable to quantify some important aspects such as costs and benefits to industry.
- The industry interviews carried out for the PIR were not necessarily representative, because of the heterogeneity of the businesses interviewed and the limited number of interviews. The data clearly related to the EPRs' "bedding-in" period, which was also not representative of "steady-state" operation. Effectively, the PIR had been carried out too early for a proper picture to be established. In addition, the costs of transitioning from the existing regimes to the EPRs would be one-off issues, while the day-to-day benefits of the EPRs would be ongoing.

The PIR therefore represented no more than a "best estimate". It concluded that total savings of £19.6m were anticipated to be made by the Environment Agency over 10 years. Most of this related to introduction of SRPs, and easier staff training with improved guidance as anticipated. Initial set-up costs had been far higher, while transitional costs were more or less as anticipated. Greater savings had been made on variations and transfers than expected, with more applications. On the other hand, there had been fewer surrenders than predicted. Nonetheless, these demonstrated quicker determination times than before EPR. Fewer SRP applications had been made, but the ratio of SRP to bespoke permits was as anticipated, and determination times for SRPs were as expected.

Our approach to this PIR

A Post Implementation Review (PIR) analyses an established policy to determine whether it is functioning as originally intended, to rate its success (or otherwise) and to use evidence to inform future policy development.

The government's guidance on PIRs⁴⁶ refers to the government's Principles of Regulation in terms of avoiding imposing "costs and obligations on business" unless a robust and compelling case for such burdens can be made⁴⁷.

Regulation 80 of the EPRs 2016 requires a periodic PIR. While the EPRs apply in both England and Wales, Regulation 80 requires a PIR in relation to England only. This is a complicating factor, not least because the Environment Agency, covered both England and Wales as principal EPR regulator between 2008 and 2013, when its functions in Wales were transferred to Natural Resources Wales. We have been careful therefore to ensure that we have used data for England alone, or to explain where that is not the case.

Regulation 80(3) requires the PIR, in particular, to:

- a) set out the objectives intended to be achieved by the regulatory provisions;
- b) assess the extent to which those objectives are achieved;
- c) assess whether those objectives remain appropriate, and;
- d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provisions.

This has implications for the PIR of the EPRs. The EPRs are an environmental permitting and compliance **framework** for the delivery of pre-existing or new substantive policy objectives. They are not a substantive policy in their own right, nor do they aim to change substantive requirements of policy areas. They aim to unify and streamline the **process** of permitting and, thereby, aim to reduce the regulatory burden on businesses.

For example, a policy to reduce emissions might be brought in through the EPRs. If the policy changes, and greater reductions are required, involving different and more expensive abatement equipment, it would be desirable at a later point to evaluate the success or failure of that policy. The change in policy, however, has nothing to do with the

⁴⁶ BEIS (July 2018) *Producing Post-Implementation Reviews: Principles of Best Practice*.

⁴⁷ Paragraph 1.10.

EPRs as a permitting and compliance framework. This PIR therefore concerns the “how” rather than the “what”.

To reinforce this point, the Impact Assessments for transposition of the Mining Waste Directive⁴⁸, and Petrol Vapour Recovery Directive⁴⁹ (both of which are transposed by the EPRs) committed to their own separate PIR of delivery of their substantive requirements⁵⁰.

This PIR therefore considers only how the establishment and development of the EPRs, as a **vehicle** for delivering substantive policy outcomes in a more efficient way, has worked.

The above issue has further implications for the scope of this PIR. The principal and explicit purpose of the EPRs was to **reduce** the burden of environmental regulation on businesses (including many small and medium-sized enterprises (SMEs)). They would do this by:

- removing separate environmental consenting regimes and replacing them with one system; and then,
- avoiding the creation of new, separate regimes.

These means that in neither case do we have a “control” experiment. Even where the EPRs replaced an existing regime, it is very difficult to establish how the alternative (non-EPR) approach would have developed over the years if left in place, given the number of variables involved. These have a tendency only to grow with time, making it increasingly difficult to identify cause and effect. Where the EPRs are used to transpose a new Directive, we have no “control” at all.

By way of example, let us assume that a problem arises in one sector permitted under the EPRs. In order to tackle this problem by prevention rather than cure, the law changes to require future applicants for permits to submit much more detail on certain aspects of their operation. The measure aims to prevent problems arising in the first place, by winnowing out unsuitable or incompetent operators at the permitting stage. It inevitably also makes applications more complicated, time-consuming and expensive to prepare and determine. If we consider raw permitting data as a means of determining the efficiency of the EPR permitting system, one would expect to see an increase in applicants’ costs, and longer determination times by regulators. Without the background information, this could be interpreted as a failure of the EPRs as a system, however any permitting system would have faced the same challenges.

⁴⁸ See Annex 2 to the Explanatory Memorandum for SI 2009 No 1799.

⁴⁹ Attached to the Explanatory Memorandum for SI 2011 No 2933.

⁵⁰ In the first case, in the second half of 2012; in the second, by February 2014.

We address these issues further below.

What evidence was used to inform the current PIR?

To assess the impact of the EPRs, we make use of a range of qualitative evidence gathered from stakeholders, as well as quantified evidence gathered from relevant existing RIAs and permit data from the EA.

The Environment Agency established a Regulated Business Forum (RBF) in 2010. The RBF does not represent all operators but does bring together the principal customers and stakeholders. The RBF's purpose is to facilitate a continual and direct dialogue between the regulator and businesses on issues relating to the implementation of legislation, with a view to identifying opportunities to develop and improve environmental regulation, including the EPRs.

There have also been numerous other consultations of stakeholders, both on the occasion of amending and/or consolidating the EPRs, and in the context of the government's Red Tape Challenge. To an extent therefore this PIR has been informed by what we know of industry views.

We undertook this PIR using principally:

- available published materials on the EPRs, including:
 - summaries of stakeholder responses to consultation documents and initiatives such as the Red Tape Challenge;
 - explanatory memoranda, regulatory impact assessments and other relevant documents, to the extent that they provide information on the EPRs in practice and stakeholders' views, and;
 - Environment Agency annual and other reports.
- permitting data provided by the Environment Agency and its National Permitting Service (NPS)⁵¹
- discussions with Environment Agency staff
- A fresh poll of the RBF membership, more information on which can be found below

⁵¹ Flood risk permits applications are determined by Area offices.

- EPR-related Business Impact Target Assessments produced by the Environment Agency and validated by the Regulatory Policy Committee.

This PIR covers the entire period between 2008 and the present day, during which time the EPRs has changed and expanded considerably. The 2011 PIR commented⁵² on the difficulty of separating the impact of background changes from the impact of the EPRs themselves: this remains true. A large number of external factors has complicated the process of isolating the impact of the EPRs. There is a need to contextualise and explain data from the NPS that in many places they are incapable of supporting definitive conclusions (see further below).

Taking the anticipated benefits outlined above, we have identified the following key criteria for analysing the success or failure of the EPRs:

- 1) Reduced complexity and duplication, and therefore **reduced effort and expense for businesses** in preparing good quality permitting applications.
- 2) Proportionality and flexibility of the EPR hierarchy leading to simpler applications (SRPs) or no application at all (registrations and notifications).
- 3) **Reduced regulator effort** and therefore quicker determinations (where determinations are required, as opposed to registration of exemptions by operators).
- 4) **Reflection of regulators' costs in application fees.**
- 5) **Increased numbers of applications** for easier/more flexible processes (variations, transfers etc.).
- 6) Increasing availability of **SRPs**.
- 7) **Expansion** of the EPRs from its original WML/PPC scope.
- 8) The EPRs being seen as a success/**positive user feedback**.

Of these, we have been able to quantify the impacts for 1, 4, 5 and 6.

⁵² Paragraph 6.

Data and other information, and analysis against the key success criteria

In this section we set out the information and data⁵³ which inform our conclusions, with our analysis.

The Counterfactual

For the purposes of the analysis assessing the impact of the changes to the EPRs, we have a clearly established baseline used as the counterfactual to the EPRs. The baseline is a scenario where the EPRs were not implemented in 2008 and any additional adjustments are not implemented in any way up to the present day. There is also an assumption that these adjustments in the EPRs are not introduced in any other different policy intervention in the years up to present day in the baseline scenario. This therefore means that under the baseline scenario, there are no Standard Rules Permits, no flood risk activities are changed from requiring a permit to requiring an exemption and that general standardisation of application process for the incorporated areas would not have occurred.

Reduced costs to applicants of preparing applications

Data

We can make use of bespoke data from a validated 2017 Business Impact Target Assessment from the Environment Agency on the introduction of standard rules permits for onshore oil & gas activities and extrapolate the referenced time savings from this to the EPR changes for waste, mining waste, radioactive substances and flood risk activities. This is due to the SRP process for these activities being effectively the same. For flood risk exemptions, we can also make use of a validated 2017 Business Impact Target Assessment from the Environment Agency on online waste exemptions, which included estimates on the average time to complete an exemption registration. Similarly, we assume that the time to make a flood risk exemption application is the same as an online waste exemption application, as the process is the same. In both cases, the exemption application involves completing a 20 minute online form setting out the terms and the applicant agreeing to them.

According to the oil & gas standard rules Assessment, the average time for an SRP application is **20 hours**. And from the online waste exemptions Assessment, the average time for an exemption registration is **22 minutes (or 0.36 hours)**. We can then make use

⁵³ Provided by the Environment Agency's National Permitting Service.

of the average hourly wage of staff making applications and registering activities, plus non-wage labour costs (i.e. NI and pension contributions, sick/maternity/paternity pay etc.) to estimate the hourly costs. For the hourly wage, we use the ONS UK mean hourly pay for Associate professional and technical occupations in 2020, which was **£18.23**. The non-wage labour cost uplift as referenced by Eurostat is **22%**.⁵⁴

Analysis

As a result of the EPRs many businesses no longer require a bespoke permit. They can instead apply for an SRP or register an exemption for free.

The Environment Agency has started digitally transforming its EPR registration, application, notification and data return processes, to reduce the impacts on business further. Whilst these are ancillary to the EPRs, they nevertheless make it simpler, quicker and easier for operators both to obtain the appropriate EPR provision and then to comply with it. Up to 2019 the Environment Agency had transformed waste exemptions, flood risk activities and waste SRPs. The Environment Agency aims to extend this transformation across all EPR processes within the next five years, which will in turn open the way to achieving a number of the anticipated benefits of the EPRs better, such as single site permits. Digital transformation would potentially be more complicated (and costly) to achieve if regulators were dealing with a number of separate regulatory regimes.

Using the application times for the Assessments referenced above in the data section, we estimate the cost savings for reduced application time for both waste SRPs and flood risk exemptions.

Waste SRPs

Since 2009/10 there have been **4,674**⁵⁵ waste SRP applications. The estimated time for a waste SRP application is **20 hours**, according to the oil & gas standard rules IA. In the same IA, it's referenced that moving from a bespoke permit to an SRP will lead to cost savings of around **40%**, as per the explanatory memorandum to The Environmental Permitting (England & Wales) Regulations 2007 (paragraph A5.14). Applying this 40% saving to the SRP application time, we estimate that the time for a waste bespoke permit application is **28 hours**. There is therefore an 8-hour time save per application. Using this, along with the hourly labour costs and number of applications, we estimate the total benefit.

Cost savings from reduced application times = reduced application time * (hourly wage * non-wage labour cost uplift) * number of waste SRP applications

⁵⁴ [Source](#)

⁵⁵ Source: Environment Agency

$$\text{Savings} = 8 * (\pounds 18.23 * 1.22) * 4,674 = \pounds 831,621$$

Radioactive substances activity - SRPs

The same methodology is used for radioactive substances activity SRPs, as they also benefit from a time save moving from bespoke permit applications to SRP applications. Since the introduction of radioactive substances regulations to the EPRs, there have been **283** SRP applications.

Mining waste and onshore oil and gas exploration – SRPs

Similar to waste and radioactive substances, the same methodology is used to estimate the benefit from saved time. Mining waste and onshore oil and gas applications

$$\text{Savings} = 8 * (\pounds 18.23 * 1.22) * 283 = \pounds 50,353$$

Flood Risk Exemptions

We use the same methodology for calculating the benefit from reduced application time for exemptions as we do for SRPs. The only changes are we use the average application time for exemptions as reference in the online waste exemptions IA and the number of flood risk exemption applications. Since the introduction of flood risk exemptions in 2016, there have been **4,155** exemption registrations. Therefore:

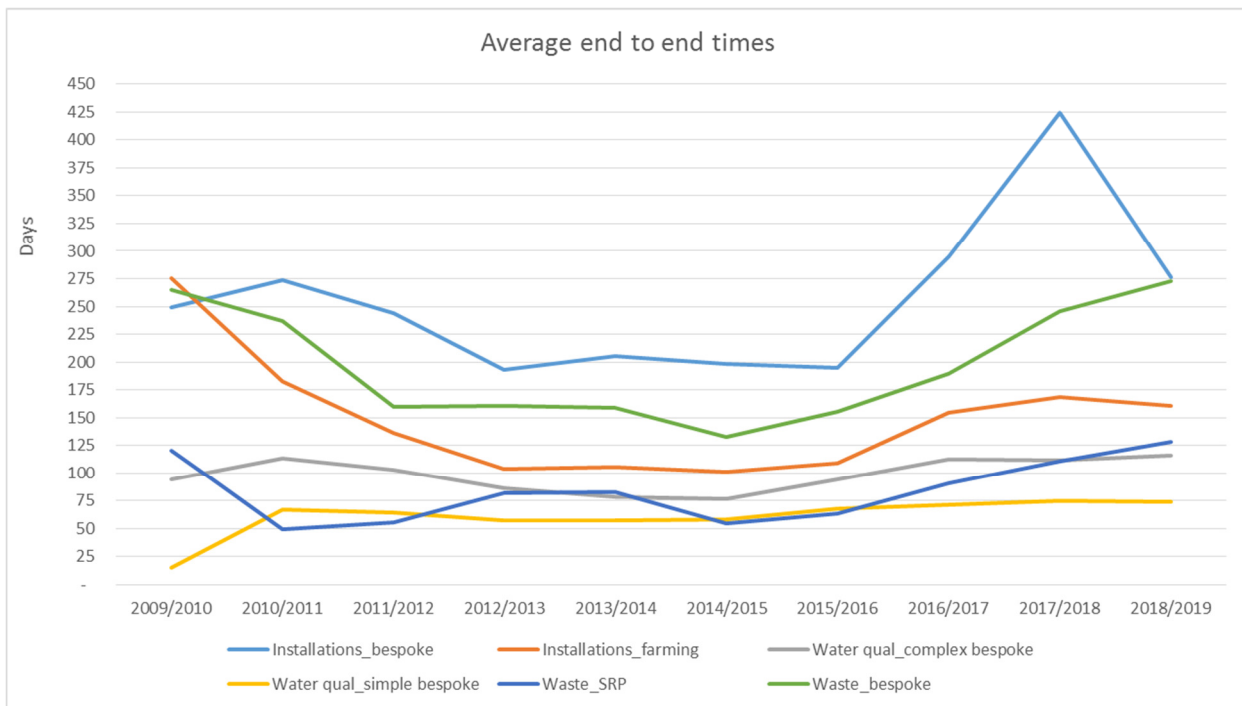
$$\text{Savings} = 27.64 * (\pounds 18.23 * 1.22) * 4,155 = \pounds 2,554,204$$

Reduced application determination times

Data

Figure 1: Average time (days) for the Environment Agency to determine certain permit applications⁵⁶

⁵⁶ The categories in Figure 1 were selected because they were ones for which the Environment Agency was able to provide statistically meaningful information; the terminology is the Environment Agency's. Farming installation data is collected in a discrete manner because the assessment process is subtly different from that for other types of installation. The data do not include, for example, flood risk activity permit applications.



Source: NPS, 2019

Determination times for SRPs and “simple bespoke” permit applications are in nearly all cases shorter than those for bespoke/complex bespoke permit applications of the same category⁵⁷.

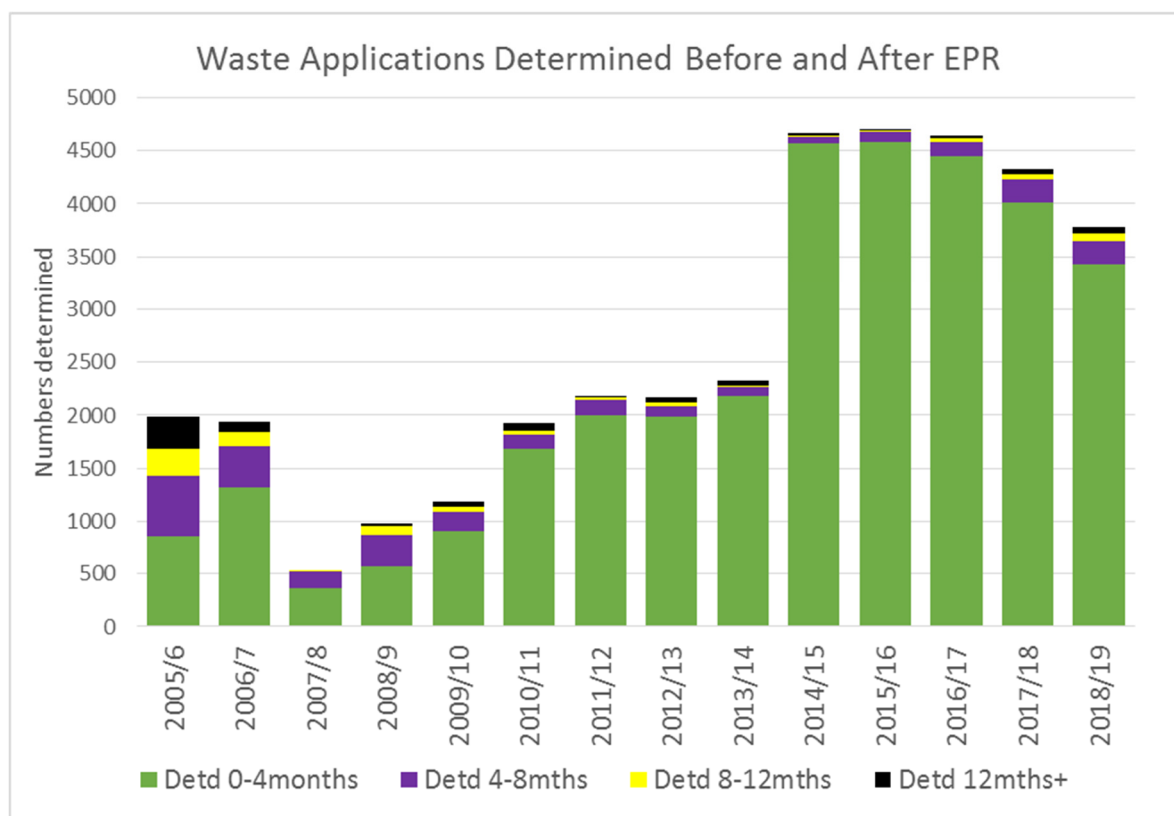
On average across all applications covered by the data the “end-to-end” time for the Environment Agency to determine a permit dipped to 103 days in 2014/15 but has since then returned almost exactly to the starting-point (171 days in 2009/10 to 170 days in 2018/19).

The average figures do not reflect trends within sectors. While end-to-end times for water quality permit determinations have remained fairly stable, those for installations and bespoke waste permits have varied considerably, initially falling then rising again from about 2015/16. The three types of permit identified above contribute 71% of the total end-to-end days logged.

Figure 2 below shows the time it has taken the Environment Agency to determine WML/waste permit applications. In this instance we have data for both the pre- and post-EPR periods.

⁵⁷ That is, comparing waste bespoke v waste SRP, water quality complex bespoke v water quality simple bespoke etc.

Figure 2: Time taken (months) by the Environment Agency to determine WML/waste permit applications pre- and post-EPRs



The data shows that:

- In 2005/06 the Environment Agency determined less than half the applications for WMLs (43%) within four months of receipt of a duly-made application. 30% of determinations took between four and eight months. It took the Environment Agency more than 12 months in 15% of cases.
- The introduction of the EPRs coincided with a clear and growing improvement. In 2018/19 the Environment Agency determined 90% of waste permit applications within four months, 6% between four and eight months, and just 2% took more than 12 months.
- The best performing year to date was 2014/15, when the Environment Agency determined 98% of waste permit applications within 4 months.

We also have data for customer feedback⁵⁸ on satisfaction with the time taken to determine permit applications (“timeliness”) for the past decade (that is, the percentage of customers who expressed satisfaction on this criterion):

Table 1: Environment Agency customer satisfaction (in %) with timeliness of permitting determinations

2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
39%	70%	74%	70%	60%	65%	70%	64%	45%	45%	46%

These data show considerable variation: a substantial initial rise in satisfaction, followed by an equally substantial recent decline, which is consistent with the data in Figure 1.

Overall, the satisfaction with timeliness data appear to indicate improvements to the middle of the decade, followed by deterioration, to return broadly to the starting-point, albeit slightly higher.

Analysis

The data from the Environment Agency show variations between sectors/permit types but, very broadly, a correlation between an initial speeding up of determinations and growing customer satisfaction, followed by a slowing down and declining satisfaction. This relationship is unsurprising. Another question is to what extent these patterns are a direct result of the EPR themselves.

As the 2011 PIR identified, the data can be affected by many “background” factors, particularly over such a length of time. In the case of the EPRs, these factors include:

- Establishment of the NPS a year before the EPRs came into effect, which should have increased permitting efficiency, independently of the introduction of the EPRs, **reducing** determination times at about the same time.
- Growing complexity of up-front permitting requirements in recent years. By way of example, some waste applications must now include fire prevention plans above. More effort is also now being put into determining whether applicants are competent to comply with permit conditions. These have nothing to do with the EPRs as a permitting framework, but are likely to have the effect of making applications more difficult to prepare and determine (including increasing the need for regulators to ask follow-up questions on complicated issues), **increasing** determination times and possibly

⁵⁸ In relation to waste, installation and water quality permitting only.

reducing the incentive to apply for SRPs where those are also subject to the same requirements.

- Introduction of a new category of activity, the characteristics of which has a distorting effect on the data. For example, the new Medium Combustion Plant Directive led to a bulge in the number of applications for new bespoke installation permits, because a new group of businesses had to obtain them in a relatively short space of time. While these were bespoke, they were in fact relatively straightforward to determine, which is reflected in the sudden and marked **fall** in determination times for bespoke installation permit applications in 2018/19.
- Nonetheless, we can be certain that:
 - operators who obtained SRPs saved both time and money. The data show that determination times for SRPs are consistently and, in many cases substantially shorter.
 - operators who were eligible for exemptions and GBRs saved both time and money. Even where they have to register an exemption, it costs nothing to do so. The EPRs introduced many of these.
 - The Environment Agency has told us that their website analytics show that it takes a customer, on average, only 22 minutes to register an exemption using its online service.

As an example of the relevance of these points, we refer to the Explanatory Memorandum for the amendments that brought flood risk activities into the EPRs in 2016⁵⁹. Before coming into the EPRs, all flood risk activities required a bespoke consent. At paragraph 10.3 the government explained that the changes meant there would be 30% fewer applications for flood risk activity permits, and a further 20% would undergo a simpler process to verify the application, rather than the bespoke determination process. That would be a dramatic and genuine reduction in the burden on industry, but it is not reflected in determination times for those businesses which still needed to obtain a permit.

We believe that it is reasonable to conclude that:

- Development of exemptions, General Binding Rules and exclusions means that many activities which previously might have required a permit now, at most, need no more than register. This is not comprehensively reflected in the data above; and
- SRPs have in almost every case substantially shorter determination times than bespoke permits;

⁵⁹ SI 2016 No 475.

- While it seems logical to conclude that the unification and streamlining of permitting systems has reduced the burden on businesses, the data for end-to-end determination times are influenced by such a range of factors that it is, in the context of this PIR, impossible to draw reliable conclusions.

Reduced regulator effort in determining permit applications

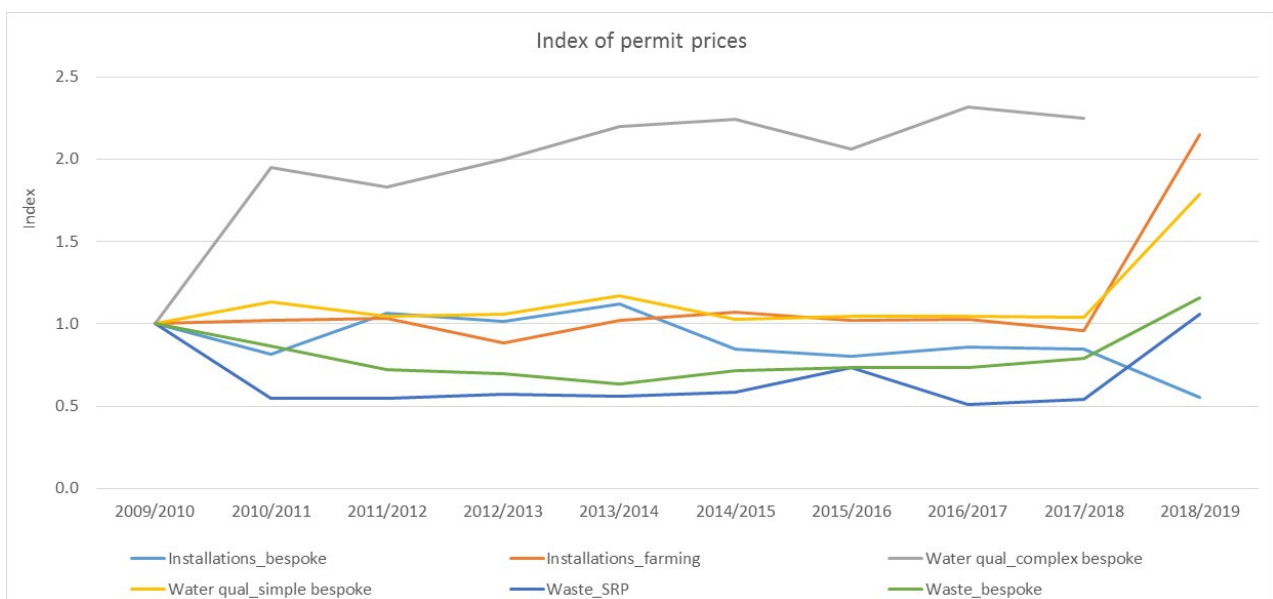
The same points that have been made above apply to any data relating to this issue. It was anticipated that the corollary of reduced effort would be reduced costs, which is addressed below.

Reduced permitting charges

Data

Figure 3 shows the average application fee for different types of new permit.

Figure 3: Average fee per application (index, 1.0=2009/10) ⁶⁰



Broadly, permit application charges for the types of permit covered have been fairly stable over the period until very recently, when most have increased significantly. It is important to note once again that we do not have data for all regulated facilities.

⁶⁰ The data for water quality bespoke permits for 2018/19 are not shown, because they were very high, and this renders the rest of the figure unreadable.

Analysis

Changes in permit charges are a function of multiple factors. This makes it difficult to identify the role EPR has played in changes to permit fees.

The Environment Agency's fees and charges are set in its statutory charging scheme(s) made under section 41 of the Environment Act 1995, with the approval of the Secretary of State and the consent of the Treasury. They cannot be varied at will and do not rise and fall in response to periodic changes in the Environment Agency's costs.

As the Environment Agency explained in 2018 in its response to the consultation on proposed new charging schemes⁶¹, its income from charges (across the board, not only the EPRs) rose only approximately 1.5% between 2011/12 and 2017/18, while cumulative inflation in the period was approximately 15%. In real terms there was therefore a substantial (>10%) reduction in permitting charges. This cannot however be said to be a direct result of the EPRs.

Of equal importance is the fact that the Environment Agency's costs of operating the EPRs do not operate in a vacuum. Where additional requirements or complexities are introduced into the system, so for example in relation to fire prevention plans or operator competence checks, as explained above, the Environment Agency's costs increase, but not as a result of the EPRs. Separating out all these factors would be extremely difficult, even if the charging scheme reflected costs perfectly.

Finally, the introduction of existing regimes into the EPRs was made as easy as possible. That included making no attempt to standardise charging schemes at the same time. This left an increasingly complex charging picture across the EPRs, including low-level fixed charges for some regimes, but some measure of operator risk appraisal in some areas.

It was not until 2017 that the Environment Agency carried out a Strategic Review of Charges, on which it consulted in November of that year. It then introduced a new scheme across the EPRs, which aims to simplify charging and make it more consistent and transparent, while also ensuring that, from 2018 onwards, charges reflect more accurately the Environment Agency's costs, in line with government principles for managing public money. While it aimed to be fairer, it also meant significantly increased charges for some types of permit application, which are reflected in the data in Figure 4 above.

⁶¹ Consultation response document: Charge proposals from 2018.

That does not, however, mean we cannot establish whether there have been savings for businesses through the EPRs. As we have indicated above, simpler permits such as SRPs involve significantly lower charges than for bespoke permits, while almost all exemptions can be registered free of charge. For those operators which previously would have had to obtain a bespoke permit, a good example of the change is that of the charges for new waste bespoke permits (average 2018/19 **£7,847**), as against waste SRPs (**£2,748**). A waste operator which can obtain a SRP saves on average more than £5,000. This links to the section below on uptake of SRPs, which contains data on the numbers of such permits.

Before flood risk activities came under the EPRs, a flood defence consent application cost no more than £50, no matter how complicated the application. From entry into the EPRs in 2016 until 2018, the Environment Agency maintained the principle of flat-rate charging for all permits (including SRPs), although the fee increased to £170. There were still no subsistence fees for flood risk activity permits. The Environment Agency then introduced subsistence charges for permits in April 2017, albeit only £70 a year. Finally, from 2018 the charging scheme made radical changes:

- the application charge for a SRP remained at £170, but bespoke permits now cost between £221 and £1,441;
- the subsistence charge is £68 a year for SRPs and some bespoke permits, but again it increases to £271 or £373 for more complex bespoke permits.

This not only allows the Environment Agency more fully to recover its costs in line with government principles for managing public money, but coincidentally creates a clearer incentive for operators to apply for SRPs. As previously mentioned, exemptions were introduced when flood risk activities were introduced to the EPRs in 2016. Before this introduction, flood risk activities required a bespoke permit. Since 2016 the Environment Agency has registered 4,155 flood risk activity exemptions, as a result of a number of flood risk activities no longer requiring a permit.

A breakdown in the reduction of fees credited to the introduction of SRPs and exemptions within the EPRs is below:

Flood risk – Exemptions

Prior to exemptions being introduced, flood risk activities required a bespoke permit. The fee for this ranged between **£221** and **£1,441**. We therefore have both an upper and lower bound estimate of the reduced fee impact. And as exemptions have no fee, the fee reduction is just what the original bespoke permit fee was. In total, **4,155** flood risk exemption applications were made.

- Reduced fee benefit (lower bound) = £221 * 4,155 = **£918,255**
- Reduced fee (upper bound) = £1,441 * 4,155 = **£5,987,355**

Multiple activity permits

The Environment Agency has confirmed that with few exceptions, multi-activity permits under the EPRs are for installation activities as the principal activity, and waste as the secondary activity.

As outlined previously, multi-activity permits merge two activities together that previously would have required two separate permit applications. The fee for the permit is made up of the bespoke fee for the primary activity and 50% of the fee for the secondary activity. As waste is the secondary activity, this therefore means that every installation/waste multi-activity permit application leads to a saving. In total, there have been **363** multi-activity permit applications since its introduction to the EPRs. Note that this is a significantly larger number of applications than the initial estimates made in the original regulatory impact assessment for the EPRs in 2007. Originally, it was estimated 5 such applications would be made annually. The average fee for a waste bespoke permit is **£7,847**.

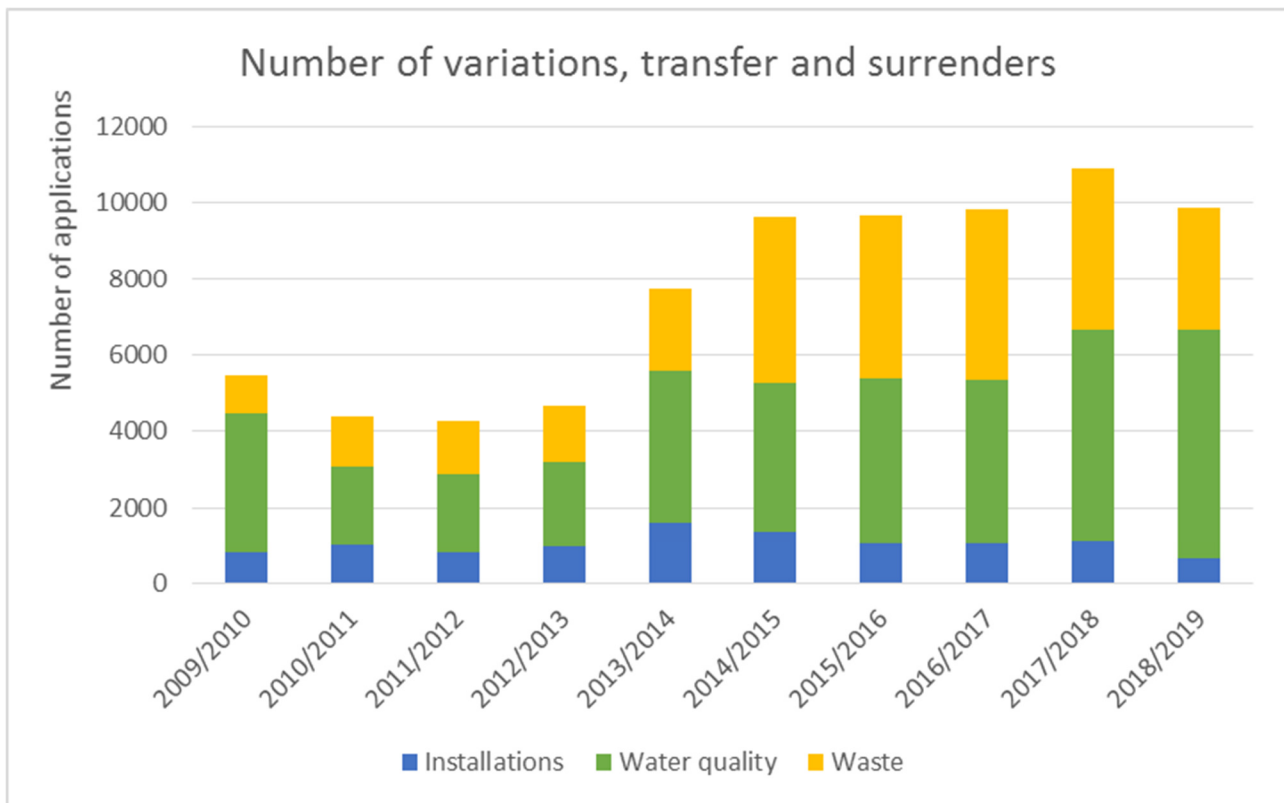
- Multi-activity permit fee savings = $(£7,847/0.5) * 363 = \mathbf{£1,424,231}$

Increased numbers of applications for easier/more flexible processes

Data

Figure 4 shows the numbers of applications to the Environment Agency for variations, transfers and surrenders of existing permits, rather than for new permits.

Figure 4: Number of applications to the Environment Agency for permit variations, transfers and surrenders



The numbers of applications shown relate to installations, water quality and waste sectors, the only ones for which the NPS was able to supply data. The data shows that numbers of applications have broadly doubled, from around 4,000 at the start of the decade, to 10,000 in recent years. For most years, the number of applications for variations, surrenders and transfers is highest for water quality permits, but also substantially increased for waste permits. In total the Environment Agency has received 76,433 applications.

Analysis

We would expect, if the system is more flexible and cheaper to operate, to see an increase in “churn” (applications for variations, transfers and surrenders), where they might otherwise be deterred. While we have to be careful not to ignore other “background” factors, (e.g. changes in the UK economy) the data does appear to indicate that this has been the case, with the numbers nearly doubling, especially for water quality and waste activities. The fact that partial transfers of waste permits no longer require the transferor to apply for a new licence is likely to have been one factor in encouraging more applications.

Increasing use of SRPs (as opposed to bespoke permits)

Data

The publication of standard rules sets is set out in Table 2 below:

Table 2: publication of standard rules by year and regulated facility type

<i>Sector/Year</i>	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	Total
Waste	26	4	15	4	11	1	0	22	0	0	0	0	83
Installations	0	2	0	0	0	0	0	1	0	0	9	0	12
Water quality	0	0	2	0	0	0	0	0	0	0	0	0	2
Radioactive substances	0	0	1	0	0	0	1	0	0	1	0	0	3
Flood risk	0	0	0	0	0	0	0	12	0	0	0	3	15
Combined total	26	6	18	4	11	1	1	35	0	1	9	3	115

Out of a total of 115, by far the greatest number of standard rule sets is for waste operations (83), followed by flood risk activities (15); installations (12), radioactive substances activities (3) and water quality (2). Waste was also, unsurprisingly, the first to publish standard rules (from 2008).

The data also show that the Environment Agency has continued to publish new rules for each type of regulated facility. As one might expect, the Environment Agency published a large number of standard rules for waste operations in 2008, yet have continued to issue more in subsequent years, including a significant number of new ones in 2015. A similar trend occurred with flood risk activities, 14 standard rule sets being published in anticipation of their entry into the EPRs in 2016, but more being published as recently as 2019.

It is one thing to publish standard rules, but regulators cannot compel businesses to apply for SRPs. Even where standard rules are published, if they have to be tightly-drawn, they may be of limited applicability. The numbers of applications⁶² for waste SRPs, compared with bespoke permits for that sector, is shown in Table 3 below⁶³.

⁶² Not all of these applications would necessarily have been successful, so we would expect total numbers to exceed the ca. 4,000 figure for waste SRPs used elsewhere in this report.

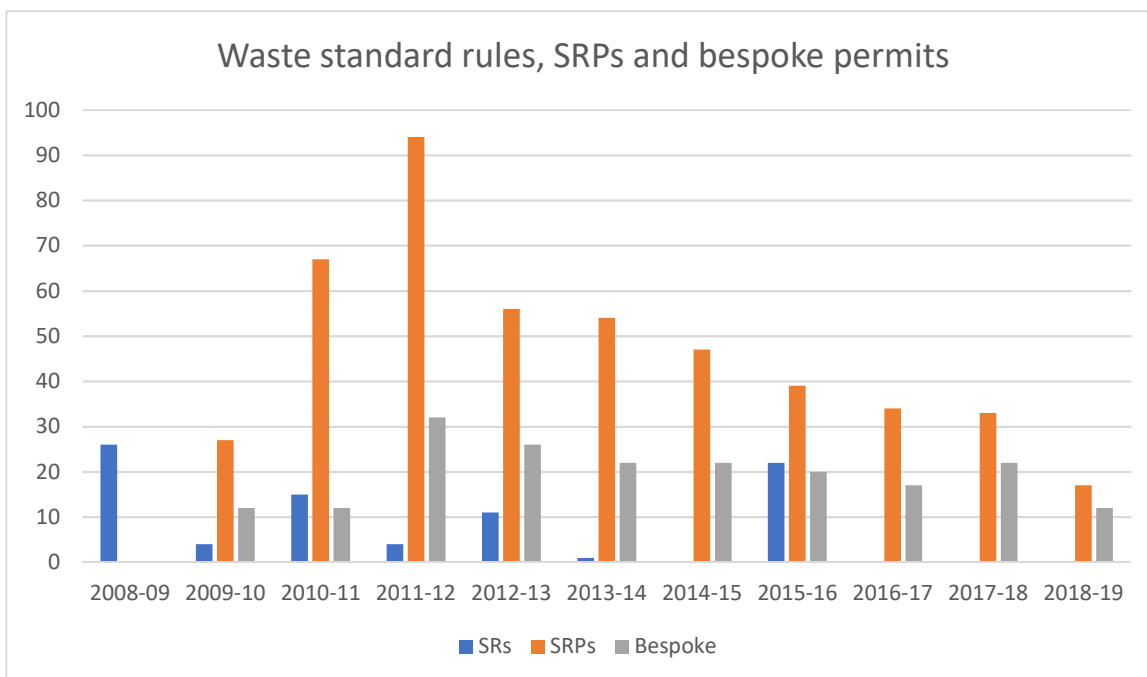
⁶³ The Environment Agency has also introduced SRPs for other classes of regulated facility, but the take-up of these to date has been relatively limited, compared with that of the waste sector.

Table 3: Numbers of applications for waste SRP and bespoke permits

Type/Year	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
SRP	273	669	935	555	543	466	393	342	333	165
Bespoke	123	122	317	260	220	215	204	174	217	116
Ratio SRP: bespoke (rounded to nearest whole number)	2:1	6:1	3:1	2:1	3:1	2:1	2:1	2:1	2:1	1:1

These data can be shown more graphically as in Figure 5 below.

Figure 5: numbers of waste Standard Rules, and SRP and bespoke permit applications



The numbers of SRP and bespoke permit applications are shown 10^{-1} to fit them in with the vastly smaller numbers of standard rule sets. It is clear that, following the initial publication of standard rules, there was a huge burst of applications for SRPs, which then declined from 2012, although more SRP than bespoke permit applications are made in every year.

The figures for flood risk activities are as follows:

- The total number of bespoke permits for flood risk activities issued since April 2016 is 8,684. The total for SRPs is 184, giving a total of flood risk activity permits of 8,868.
- The Impact Assessment for bringing flood risk activities into the EPRs estimated that 35% of applications would be eligible for standard permits. Even if that proportion is eligible, flood risk activity SRPs currently make up only 2% of the total.

Analysis

SRPs did not exist before the EPRs. We argue that any SRP is a positive development in providing simpler and cheaper permitting where appropriate. The growing number of standard rules, and number of applications, mainly for waste operations (**4,674** applications since 2009/10), are therefore in themselves very encouraging.

We note that this calculation is not only calculating the benefit from SRPs having a cheaper fee than bespoke permits, but also the increase in permit applications as a whole. We do not isolate these two impacts, as it would require us to identify the number of bespoke permit applications that would have occurred without the EPRs existing. This would be incredibly complex to calculate and disproportionate.

We indicated the average charges for waste bespoke and SR permits above. Using the figures for average bespoke and SRP permit application fees, which indicate a saving of £5,099 per application, and the total number of applications, we calculate the total estimated saving for the introduction of waste SRPs:

- Savings from introduction of waste SRPs = (fee for waste bespoke permit – fee for waste SRP) * number of waste SRP applications
- Savings = (£7,847 - £2,748) * 4,674 = **£23,832,726**

In addition to flood risk and waste permits, SRPs were also published for radioactive substances activities and mining waste operations. Similar to flood risk, there were no data available on the annual number of SRP applications for these activities, only the total number of permits issued since they were introduced into the EPRs.

Radioactive substances activities

In there were 3 separate types of standard rules permits introduced covering radioactive substances activities:

- SR 2010 No.1 - category 5 sealed radioactive sources standard rules
 - **222** SRPS issued. The standard permit application fee is **£853**. The equivalent bespoke permit application fee is **£1814**.
- SR 2014 No. 4 - NORM waste from oil and gas production

- **54** SRPs issued. The standard permit application fee is **£1,867**. The equivalent bespoke permit application fee is **£5,588**.
- SR 2017 No.1 - unintentional receipt of radioactive materials and radioactive waste by the operator of any facility which uses a radiation detection system
 - **7** issued. The standard permit application fee is **£1,867**. The equivalent bespoke permit application fee is **£5,588**.

SR2010 No.1 savings = $(£1,814 - £853) * 222 = £213,342$

SR2014 No.4 savings = $(£5,588 - £1,867) * 54 = £200,934$

SR2017 No.1 savings = $(£5,588 - £1,867) * 7 = £26,047$

Total savings = £440,323

Mining waste operations and onshore oil and gas exploration

For mining waste operations, the EPRs introduced two types of standard rules permits:

- SR 2015 No.1 - onshore oil exploration
 - **4** issued. The standard permit application fee is **£2,641**. The equivalent bespoke permit application fee is **£6,955**.
- SR 2009 No.8 - management of inert wastes and unpolluted soil at mines and quarries.
 - **184** issued. The standard permit application fee is **£2641**. The equivalent bespoke permit application fee is **£2767**.

SR2015 No.1 savings = $(£6,955 - £2,641) * 4 = £17,256$

SR2015 No.1 savings = $(£6,955 - £2,641) * 4 = £23,184$

Total savings = £40,440

It is, however, also a matter of concern that the ratio of SRPs to bespoke waste permits has declined from 2:1 to 1.5:1 in recent years, and that take-up of flood risk activity SRPs has been far below the anticipated level. But we are confident in stating that this has nothing to do with the principle of SRPs.

While regulators can make SRPs available, there is no way to compel businesses to apply for them. There needs to be an incentive, which for businesses will primarily be financial.

Growing legislative demands and frontloaded complexity in permitting, if they apply to SRPs as well as bespoke permits, make it less feasible or attractive for SRPs to be used. Under such circumstances SRPs become less “standard”. It may be that fire prevention plans and other requirements for waste operations, frontloading the permitting process, have had such an effect.

The Environment Agency has told us that flood risk activity SRPs are specific and limited, which may be why the Environment Agency has received relatively few applications for them.

As we explain above, until 2018 the application charge for a flood risk activity SRP was exactly the same as for a bespoke permit. Even after the Environment Agency’s Strategic Review of Charges the difference between the application fee for a flood risk activity SRP (£170) and the cheapest bespoke permit (£221) is not substantial. Subsistence charges for flood risk activity permits were introduced in 2017, but even now SRPs and some bespoke permits attract the same charge (£68 per year), while other bespoke permits are charged at only £271 or £373 per year. The saving from applying for a flood risk activity SRP is nowhere near as great as it is for waste activities. The Environment Agency has, however, told us that this is not the explanation for only 184 flood risk activity SRPs being in place. A more likely explanation is that the operator of a flood risk activity is usually constructing something, and will be reluctant or unable to change the design of that construction simply to qualify for a SRP.

In light of this, it is unwise to attempt to make comparisons between waste operation and flood risk activity SRPs. We can, nevertheless, definitely establish that the Environment Agency has progressively made more standard rules available and, with inherently shorter determination times and lower costs, they represent a clear example of Better Regulation. The fact that the Environment Agency has granted more than 4,000 SRPs means that there are thousands of activities that have, as a result of the EPRs, escaped the complexity, effort and cost of obtaining a bespoke permit.

Expansion of the EPRs from their original WML/PPC scope

Data

The EPRs have expanded dramatically, from initially covering PPC permits and WMLs only, to incorporating water quality, radioactive substances and flood risk permitting. The government also plans to expand the EPRs further, to incorporate water abstraction and impoundment licences, and other regimes.

When EPR 2007 was superseded by the EPR 2010, which also brought in three new consenting regimes, the government consulted over 1,000 stakeholders. Responses to the consultations and other forms of engagement indicated support for the proposal to extend

the scope of the EPRs, while efforts to reduce the administrative burden were “overwhelmingly welcomed”⁶⁴.

We have also reviewed summaries of responses to consultations on the transposition of new Directives via the EPRs. Each time the government has consulted on using the EPRs as the vehicle for transposing new Directives, there has been a substantial, and on most occasions overwhelming majority of respondents who supported the approach:

- 81% of respondents favoured transposition via the EPRs of the Mining Waste Directive⁶⁵
- No respondents objected to using the EPRs for transposition of the Petrol Vapour Recovery Directive⁶⁶
- Of 55 industry respondents to the consultation on transposing the Industrial Emissions Directive (which effectively re-transposed the seven Directives the IED replaced), none opposed using the EPRs⁶⁷
- Of 20 responses to the consultation on the transposition of the Energy Efficiency Directive, all supported use of the EPRs⁶⁸
- 112 responses were received to the consultation on transposition of the Medium Combustion Plant Directive, including 75 from industry, and these indicated “strong support” for transposition via the EPRs⁶⁹.

Analysis

It is clear that this aspect of the EPRs has been a success. EPR’s expansion has been dramatic and consistently welcomed by business.

We must also remember how the environmental regulatory landscape would look if the EPRs did not exist. Not only would it be significantly more complex and heterogeneous, but the effort and cost to government, regulators and businesses of designing, understanding and implementing separate regimes would have been considerably greater.

⁶⁴ Paragraph 8.3 of the Explanatory Memorandum to SI 2010 No 675 (the EPR 2010).

⁶⁵ SI 2009 No. 1799.

⁶⁶ SI 2011 No 2933.

⁶⁷ SI 2013 No 390.

⁶⁸ SI 2015 No 918.

⁶⁹ SI 2018 No 110.

What we have instead is just over 40 pages of cross-cutting procedural requirements in the body of the EPRs. These are essentially the same for all EPR regimes and require very little, if any amendment each time a further regime is incorporated. The Schedules to the EPRs mainly set out the substantive permitting requirements of each regime for which the EPRs are the permitting vehicle. These currently run to over 200 pages. It is a relatively straightforward exercise to create a new Schedule for a further EPR regime. It may be a rather crude point, but if all of these regimes had their own set of regulations, each of which would need to do the job performed by the body of the EPRs, there would be many more pages of legislation.

From the business perspective, once one has familiarised oneself with the EPRs' procedural aspects, they will apply consistently across all regimes, including new ones, and one avoids needing to learn an entirely new set of rules for each. It should be no wonder that businesses have generally supported using the EPRs to introduce new regulatory requirements, and why the Regulations proved useful as a transposition vehicle for new EU Directives prior to EU Exit.

We also note, however, that the Penfold Review in 2010 called for the early inclusion of other regimes, particularly water abstraction and impoundment, yet despite consideration under EPP2, some of this has yet to happen.

For as long as any business has to apply for more than one kind of environmental consent for activities carried out on the same site, the EPRs cannot be said to have succeeded totally. Nevertheless, it has demonstrably come a long way from its first incarnation.

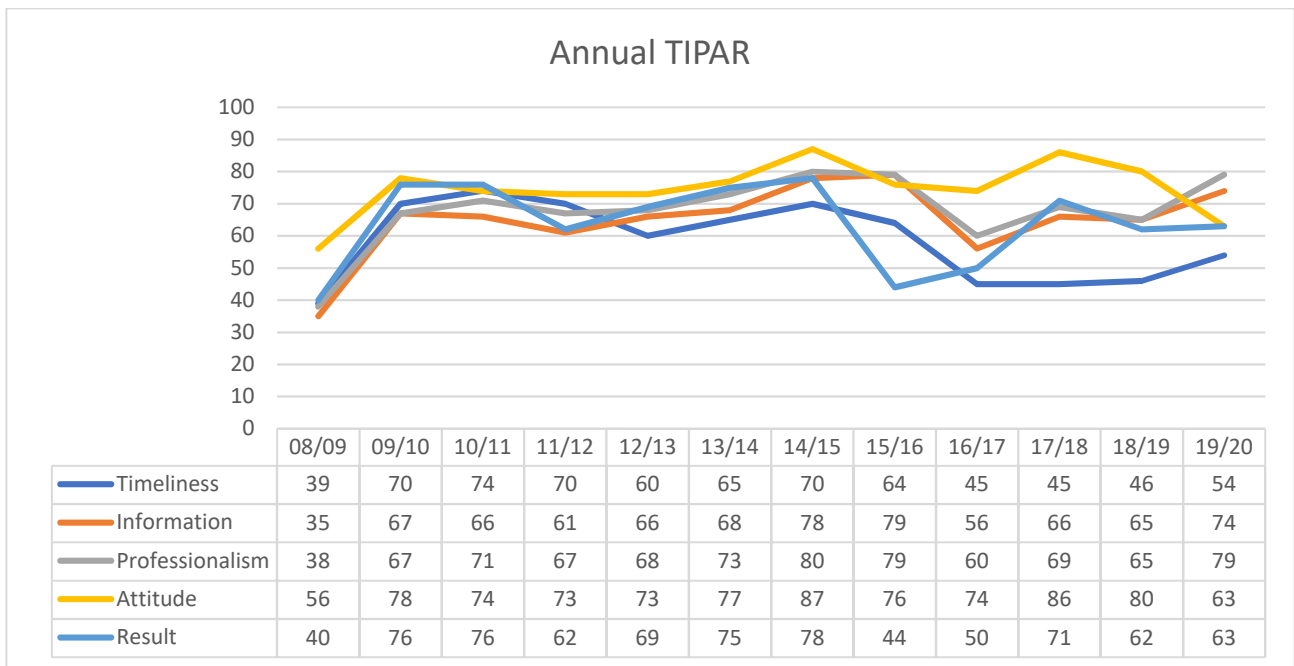
The EPRs should be seen as a success/user feedback should be positive

Data

The Environment Agency's NPS has collated customer satisfaction feedback in the form of TIPAR (timeliness, information, professionalism, attitude and result) since 2008/09, and these are shown in Figure 6 below.

Figure 6: TIPAR data⁷⁰

⁷⁰ The Environment Agency carries out customer feedback exercises on a roughly quarterly basis, which is why we have some data for 2019/20.



These data are for waste operations, installations and water quality activities only. They show some turbulence in recent years, but also a dramatic increase in customer ratings between 2008 and 2010, during the EPRs’ early years.

There have been a number of third-party reviews of the EPRs. The 2010 Penfold Review of non-planning consents⁷¹ singled out the EPRs as a model of Better Regulation and recommended their expansion to include water abstraction and impoundment “amongst others” “as soon as possible”. Penfold also recommended considering whether the EPR approach could be applied to other areas of policy.

Paragraph 3.16 of the Penfold final report stated:

“The Review strongly commends the programme especially for its risk-based approach, which ensures that activities having a low impact are subject to less stringent scrutiny than those whose impact is expected to be greater; the creation of a common administrative framework, to which future consents, if needed, can be added; and the reduction in and simplification of legislation and hence of related guidance.”

Responses to Defra consultations on EPP1 and EPP2, on bringing flood risk activities into the EPRs, and transposition of the Medium Combustion Plant Directive, and interviews with industry carried out for the purposes of the 2011 PIR were generally positive.

⁷¹ Penfold: Review of non-planning development consents (Final Report, June 2010). See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/31621/10-1027-penfold-review-final-report.pdf.

Responses to the first consultation on EPP1 “indicated that a common environmental permitting and compliance system under Waste Management and Pollution Prevention and Control legislation was broadly supported but that stakeholders wanted to see more detail on how it would work in practice”⁷². There was widespread agreement with the drivers for change identified by the government, whose vision for the EPRs was also widely agreed with, and supported by respondents. Respondents agreed with the proposed scope for EPP1 but also identified a number of other regimes that might be suitable for future inclusion. There was widespread agreement on the proposed features of the EPR regime. Respondents also agreed that the proposed benefits identified by the government were important.

The first consultation document for EPP2 explains how:

“The Environment, Food Rural Affairs committee welcomed EPP1 and encouraged government to expand EPR⁷³. The BERR guide on how to implement EU Directives⁷⁴ cited EPR as an example of good practice. Industry and regulators alike reported that there remained opportunities to further increase efficiency in the area of permitting and compliance. The Hampton Implementation review⁷⁵ highlighted the Environment Agency’s work with Defra to ensure that EPP is used to deliver “as many Directive requirements as possible, rather than imposing the need for multiple permits.” Implementation of EPP1 “has gone very well”⁷⁶. Both that experience and feedback from industry “have informed the development of this consultation document”.

The Explanatory Memorandum to the EPR 2010 then explains that Defra held four separate consultations on the EPP2 package, or specific aspects of it, involving a total of more than 1,000 stakeholders. In addition, Defra organised a programme of bilateral discussions and stakeholder meetings. The record from these meetings showed:

“Overall, respondents were supportive of the idea to extend the EP Regulations to other regimes. They supported the move to a more risk-based and proportionate system delivering increased consistency and clarity. Efforts to reduce the administrative burden were overwhelmingly welcomed. During policy development many stakeholders wanted to see more detail and provide feedback which is why the joint EP team has held a range of national stakeholder events over the last two years.

⁷² Summary of responses to the first consultation document.

⁷³ 2007 Report.

⁷⁴ Paragraph 3.5 of the consultation document.

⁷⁵ Paragraph 3.6 of the consultation document.

⁷⁶ Paragraph 3.7 of the consultation document.

The events and associated technical workshops ensured that stakeholder feedback on the project's initial ideas and policy proposals could shape and form the consultation ideas from the very start of the programme. Subsequent events helped to clarify and discuss technical details of both draft Regulations and guidance which in turn assisted in producing draft Regulations that work for all parties."

The PIR published in 2011 was based, partly, on 51 interviews with representatives of industry, and a limited number of trade organisations. Unfortunately these interviews did little to provide a firm conclusion.

"The outcome from interviews with industry representatives was highly varied with a consensus rarely shown. This lack of consensus has made it difficult to draw any firm conclusions about the impact of EPR on industry".

The government's response to the consultation on bringing flood risk activities into the EPRs in 2016 explained that 85% of respondents agreed with the proposals. Concerns that were raised all related to further assurance that the EPRs worked as proportionately and flexibly as possible.

We have also set out in the previous section indications of industry feedback via consultations on amendments to the EPRs. "Qualitatively, operators have communicated general content⁷⁷."

Another perspective is offered by the responses to the government's Red Tape Challenge (RTC)⁷⁸. This initiative challenged the public to help cut unnecessary regulation. The RTC's Environment theme opened in April 2011 and reported in March 2012. If anyone had negative views on the EPRs, this provided the opportunity to express them. The principal message was that the EPRs needed further streamlining, in response to which the government highlighted plans to include water abstraction and impoundment licences, fish pass approvals and flood defence⁷⁹ consents. Of these, the last were brought into the EPRs in 2016, while abstraction and impoundment licences are due to be incorporated in 2021.

Analysis

⁷⁷ Paragraph 25 of the Impact Assessment for the transposition of the Industrial Emissions Directive.

⁷⁸ *Red Tape Challenge - Environment Theme proposals* (Defra, March 2012). See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69584/pb13728-red-tape-environment.pdf.

⁷⁹ As they were termed at that time.

We have scarce hard data, beyond the Environment Agency's TIPAR information, to address this issue of lack of conclusive evidence on the impact. The TIPAR data are unfortunately ambiguous, but recent negative trends are likely to be the product of the factors we have explained in other sections above.

Feedback from consultations and the Red Tape Challenge, however, indicates strong and consistent support for the EPRs, including from businesses who have experience of being regulated under its predecessor regimes. There is no suggestion of which we are aware that operators want government to take a different approach: quite the opposite.

We should also draw attention to the Environment Agency's Regulated Business Forum. This was established in 2010 with a view to ensuring an ongoing dialogue with operators about environmental regulation. This group meets approximately three times each year and provides a mechanism for ensuring that industry voices are heard as regulation evolves. We take this as encouraging evidence that businesses are engaged in the process.

Summary of quantified benefits

Impacts of the introduction of the EPRs are shown covering the period from introduction of the EPRs in 2009 to 2020. Distributional impacts have not been identified, but general discussions with ALBs have indicated that there shouldn't be disproportionate geographic impacts or impacts on SMEs

The table below summarises all the total benefits we have estimated as a result of the EPRs:

Table 4

Description	Total benefit
Flood risk activity exemptions – reduced fee (lower bound)	£918,255
Flood risk activity – reduced fee (upper bound)	£5,987,355
Waste activity SRPs – reduced fee	£23,832,726
Radioactive substances SRPs – reduced fee	£440,323
Mining waste SRPs – reduced fee	£40,440
Multi-activity permits – reduced fee	£1,424,231
Flood risk activity – benefit from reduced application time	£2,554,204
Waste activity SRPs – benefit from reduced application time	£831,621
Radioactive substances – benefit from reduced application time	£50,353
Mining waste SRPs – benefit from reduced application time	£33,450

Therefore, the estimated total quantified benefit from the introduction of new permitting and exemption rules via the EPRs is **£30,125,602** for the lower bound and **£35,194,702** for the upper bound in total.

Net Present value

A complete net present value of the benefits from the introductions of SRPs, exemptions and multi-activity permits was not possible to calculate. This is due to counts of SRP/exemption/multi-activity permit applications annually not being available for all relevant sectors. However, as shown in table 3, we have data on the yearly number of waste SRP applications from 2009/10 to 2018/19. With this, we can calculate the net present value of benefits to business due to changes in waste activity regulations from the EPRs. Table 5 below shows the annual SRP applications for waste from 2009/10 to 2018/19 and the now annualised benefits. The benefits are split between the benefit from reduced application fees and reduced time cost for reference to the total benefits we previously calculated.

Table 5 – waste annual benefits

Year	SRP applications	Benefit from reduced application fee	Benefit from reduced time cost	Total benefit
2009/10	273	£1,392,027	£48,573	£1,440,600
2010/11	669	£3,411,231	£119,032	£3,530,263
2011/12	935	£4,767,565	£166,360	£4,933,925
2012/13	555	£2,829,945	£98,748	£2,928,693
2013/14	543	£2,768,757	£96,613	£2,865,370
2014/15	466	£2,376,134	£82,913	£2,459,047
2015/16	393	£2,003,907	£69,924	£2,073,831
2016/17	342	£1,743,858	£60,850	£1,804,708
2017/18	333	£1,697,967	£59,249	£1,757,216
2018/19	165	£841,335	£29,358	£870,693

Using the BEIS IA calculator⁸⁰, we input the annual total benefits into the calculator using a 2008 start year. Using this, we get an estimated NPV of **£21,745,175**. This net present

⁸⁰ <https://www.gov.uk/government/publications/impact-assessment-calculator--3>

value figure is smaller than the initial estimate in the first RIA for the EPRs in 2007, where NPV was predicted to be £28,670,000. The main reason for the discrepancy is the original RIA estimated a larger share of standard rules permits applications. The 2007 RIA estimated that 80% of new waste permit applications after the EPRs' introduction would be SRPs and that 40% of existing permits would convert to standard rules. But as shown in table 3, the actual share of waste SRPs is smaller. Adding up all waste permit applications from 2009/10 to 2018/19 only 70% of waste permit applications were SRPs. This coupled with the observed fall-off in permit applications from the mid-2010s onwards leads to the smaller net present value calculation.

What is the end-user feedback on the EPRs and does it align with the data?

Context and format of end-user engagement

As outlined above, the EPRs were explicitly introduced to lower the regulatory burden on businesses. The view of end users is therefore important to indicating the success or failure of the EPR framework.

The Environment Agency regularly convenes a Regulated Business Forum. In general terms, there has consistently been support from industry representatives for the further development and expansion of the EPRs, including from businesses which already hold EPR permits. However, the overall userbase has not been consistently polled.

The 2011 PIR team interviewed industry representatives but nevertheless recorded such a variety of views that they were unable to draw many useful conclusions, and further polls have not been executed since. With this in mind, we ran a fresh survey of the Environment Agency's Regulated Business Forum (RBF) to assess whether the EPRs are achieving the anticipated benefits to regulators and industry of having a single regulatory system.

RBF members were invited to send the survey link to individual businesses within their own memberships. We additionally sought survey responses from academic and practicing lawyers. In total, we received 72 separate responses to the survey, including one response from an academic lawyer and one from a practicing lawyer.

In the survey we explained to respondents that we were particularly interested in their experience of the EPR system of regulation in England (especially if they held permissions under predecessor regimes). Specifically:

- a. Whether the EPRs have made it easier and simpler to apply for permits and changes to permits (including Standard Rules Permits and Exemptions) and reduced administrative overheads
- b. Financial assessments (positive or negative) of the administrative impacts of the EPR system of regulation
- c. Whether the EPRs have delivered the intended benefits of "flexibility", such as single-site permits, Standard Rules Permits, exemptions, easier surrenders etc.
- d. Reasonable and proportionate improvements to EPR regulation which could be made in the future.

A systematic poll of the EPRs' users was not possible in the timeframe for conducting this review. As such, we have treated these results as indicative of more prominent user views of the EPRs, rather than necessarily representative or accurate to overall user concerns. Further limitations of the survey, where they are relevant to the conclusions we draw, are outlined below.

Key findings – satisfaction ratings

There were eight questions in the survey. All but Question 3B and Question 8 were in a “multiple choice” format with a further box for respondents to add comments. Question 3B simply requested a cost assessment. Question 8 was provided to give respondents the opportunity to provide any other comments or reflections on the EPR system of regulation that they would like to make.

The net satisfaction rating of the responses to Questions 1 to 7 are summarised below, and are laid out in full in Annex 3.

Question	Net Response
Q1 - Have the EPR been effective in clarifying and simplifying regulatory processes and requirements for industry?	Net “ineffective”
Q2 - Has the EPR system of regulation been effective in reducing administrative burdens on industry?	Net “ineffective”
Q3A - Has the EPR system been effective in reducing the administrative costs of regulation for industry?	Net “ineffective”
Q4 - Does EPR enable regulators and industry to better protect the environment?	Net “effective”
Q5 - Has the EPR system been an effective way to implement European legislation?	Net “effective”
Q6 - Has the EPR system of regulation benefitted small and micro businesses?	Net “disbenefit”
Q7 - Could improvements be made to EPR to make regulation more streamlined and reduce administration/system costs for operators?	Net “advising changes.”

Key findings – comments

By analysing the comments, we have drawn out what we believe to be the key recurring themes. These are developed in more detail in Annex 2.

- 1) The EPRs were effective in retaining and repurposing EU law during the period of the UK's membership.
- 2) The permitting process has not become less complex since the EPRs were introduced.
- 3) Many businesses believe the administrative burden of permit applications is too high.
- 4) Exemptions are good for compliant users, but are not fairly applied, and are too often used to cover illegal activities.
- 5) Standard rules are good for small businesses but hinder larger ones.
- 6) Permitting variations are time-consuming and hinder innovation
- 7) Some end users are still using pre-EPR permits.
- 8) The link between the framework and the outcomes it was designed to implement not transparent and/or not obvious.
- 9) Although it is felt that the EPRs have provided environmental benefit, the connection between the EPRs and how this benefit is realised is not clear.
- 10) Ancillary systems and processes have also been criticised.

Analysis of the RBF findings

In contrast to the other sources we have used for this PIR, the RBF feedback is negative overall. However, there is clear indication that much of the negative user experience of the EPRs stems from the operational aspects of regulation, namely how the framework is implemented, rather than the framework itself. This is despite asking respondents to differentiate between their view of the framework and their experience of the operation and implementation of the EPRs. This is generally unhelpful for answering whether the EPR framework has performed as expected, although it does provide useful context for concerns around the EPRs and can be used to guide plans on where to target our changes. It is also an understandable limitation of this kind of survey:

- From an end user's perspective it is not necessarily obvious where issues with their experience of regulation stem from the rules themselves or how those rules are implemented; nor is there a particular reason why this should be the case.
- Changes to both the operations (e.g. resourcing, reductions in funding to EA) and the framework itself have taken place concurrently along with wider shifts in the regulatory landscape (for example the UK's exit from the EU).

Contrasting the survey scores with the actual feedback we have received further underlines this point. The survey scored responses are widely negative, especially regarding the burden of the framework on businesses. However, the written feedback is weighted more evenly between positive and negative feedback. Furthermore, there are clear thematic trends. Substantiated feedback regarding the framework itself is largely positive, and where it was negative it mostly offered specific proposals for improvement. The majority of negative comments, especially those which were substantiated, focused on aspects which we know to be operational.

Have there been any unintended consequences?

Upon examination and interpretation of the data above, the EPRs appear to be functioning effectively, and we were unable to note any areas where they are counter-productive. It is inevitable that lighter-touch regulation (benefits to businesses) reduces contact between regulators and businesses (less information being exchanged, risk of hidden non-compliance). Should problems arise, we are encouraged by the existence of the Regulated Business Forum as a means of communicating business concerns to the regulator and government. As demonstrated in the previous section, feedback has broadly been that further expansion of the EPRs would be the best avenue for further reducing the burden of environmental permitting and compliance on operators.

This PIR has been a useful exercise. It has highlighted issues such as low take-up of SRPs in some respects, and the slower than anticipated expansion of the EPRs in some areas. This information will inform future policy development and comes at an opportune time, as the government develops its third EPP.

For EU measures, how does the UK's implementation compare with that in other EU member states in terms of cost to business?

The EPR system has attracted interest in a number of other countries, both within the EU and beyond. It was held up as an example of best practice by the EU.⁸¹ We are not aware of systems in EU Member States that offer solutions to permitting issues that are superior to the EPRs.

⁸¹ The EU best practice report of 2011 selected EPP1 as a best practice case study in merging processes and permits. See European Commission (2011), *Europe can do better: Report on best practice in Member States to implement EU legislation in the least burdensome way* (http://ec.europa.eu/smart-regulation/refit/admin_burden/best_practice_report/docs/bp_report_signature_en.pdf).

Conclusions

Regulation 80 requires us first to set out the objectives intended to be achieved by the regulatory provisions and assess the extent to which those objectives are achieved.

A number of issues have made assessing the success of the EPRs against the objectives set out below a complex and difficult exercise, including the nature of the EPRs, the limitations of this PIR, and problems with drawing conclusions from the data supplied by the Environment Agency.

1. Reduced costs for businesses of preparing applications for permits

We have little evidence, for the reasons we explain. However, we believe that the EPRs must be seen as a success:

- a. EPR removes the alternative, which is to say a confusing mix of separate regimes. While we cannot at this point quantify the benefits, when offered the alternative businesses have consistently opted for the expansion of the EPRs, which we consider important evidence.
- b. EPR allows more businesses to apply for SRPs, register exemptions or operate under non-registrable exemptions or GBRs which are, by definition, quicker, easier and therefore cheaper to deal with. With more than 4,000 SRPs and 600,000 registered exemptions since the introduction of the EPRs, many of which would, prior to the EPRs, have required bespoke permits, this represents substantial reductions in effort for businesses, and therefore costs.

2. Reduced determination times

We return to the points made above. Simpler and more flexible processes and a hierarchy of permits mean that many applications are easier to determine than before the EPRs (we have provided a rough estimate of savings for waste SRPs above). There are also many activities which, under the EPRs, no longer have to make a permit application at all, but can simply register an exemption, reducing previous determination times to virtually zero. And as shown in the data and other information and analysis against the key success criteria section, determination times for waste permits have been shown to have improved since the introduction of the EPRs, with 90% of waste applications being determined in 4 or less months in 2018/19. Based on this, we have determined this objective of lower applications and determination times has been met

3. Reduced effort for regulators in determining applications

We reiterate the points above.

4. Passing on of regulator savings in the form of reduced permitting charges

We have explained the nature of the Environment Agency's charging schemes above. We repeat the points above in saying that the EPRs have been at least a partial success.

5. Increased numbers of applications because of simpler/more flexible processes

The data here appear to be somewhat clearer. The number of applications for variations, transfers and surrenders has almost doubled, and especially in relation to water quality and waste activities. However, we should be careful before concluding that there has been a success, or that this is entirely due to the EPRs. As in other areas, the impact of other factors potentially affects the data.

6. Increased use of SRPs

The evidence shows that SRPs have been a significant success. It also shows that their take-up has not been as significant as anticipated in relation to flood risk activities and that they may favour small businesses but hinder larger ones. This is an issue government and regulators will investigate but, as explained, there may be reasons for the data which are beyond the control of either.

7. Expansion of the EPRs

This is a clear success story, but there is still work to be done to realise the full anticipated benefits. EPP3 will take us a step clearer, but we will also wish to monitor developments to avoid new, separate regimes being set up in future, where possible.

8. The EPRs seen as a success

The numerous consultations, the Red Tape Challenge and the Environment Agency's RBF provide businesses with ample and ongoing opportunity to raise concerns and criticisms, but support for the EPRs appears to have been consistently strong.

Regulation 80 then requires us to assess whether those objectives remain appropriate and, if they do, to assess the extent to which they could be achieved in another way which involves less onerous regulatory provisions.

The EPRs are a significant Better Regulation initiative, and their aims remain entirely relevant today. We have seen no evidence to the contrary. There have been many occasions on which alternatives to the EPRs have been considered, but stakeholders have consistently supported the continued use, and further expansion of the EPRs. As the principal aim of the EPRs is to reduce regulatory burdens, its further development and expansion seems the best way of achieving this.

We therefore believe these objectives remain appropriate and that there is no better method by which they could be achieved.

Further monitoring and evaluation

We will continue to monitor the EPRs. We will do this by requesting annual updates from the Environment Agency on key permitting metrics over the next five years:

- Numbers of new permit applications
- Numbers of applications for permit variations, transfers and surrenders
- End to end times for new permit applications
- Standard permit applications vs. bespoke
- Numbers of standard rules available for regulated facility types
- Numbers of multi-activity permits

The third Defra Environmental Permitting Programme is underway. This aims to expand the scope of the EPRs to incorporate the water abstraction and impoundment regime. This is a significant regime and baseline data will be available. As such, we propose to use water abstraction and impoundment to evaluate the success of the policy.

We will also survey the Environment Agency's Regulated Business Forum in five years' time, using the same questions so that we have a direct comparator.

Annex 1 – EU Directives transposed by the EPR 2016

The EPRs currently transpose 15 Directives, but the total could have been 22 (see footnotes).

1. The **Asbestos Directive** (Council Directive 87/217/EEC on the prevention and reduction of environmental pollution by asbestos)
2. The **Basic Safety Standards Directive** (Council Directive 2013/59/Euratom laying down basic safety standards for the protection against the dangers arising from exposure to ionising radiation)⁸²
3. The **Batteries Directive** (Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators)
4. The **End-of-Life Vehicles Directive** (Directive 2000/53/EC of the European Parliament and of the Council on end-of-life vehicles)
5. The **Energy Efficiency Directive** (Directive 2012/27/EU of the European Parliament and of the Council on energy efficiency)
6. The **Groundwater Directive** (Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration)
7. The **Industrial Emissions Directive** (Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions)⁸³
8. The **Landfill Directive** (Council Directive 1999/31/EC on the landfill of waste, as read with Council Decision 2003/33/EC establishing criteria and procedures for the acceptance of waste at landfills)
9. The **Medium Combustion Plant Directive** (Directive 2015/2193/EU of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from medium combustion plants)

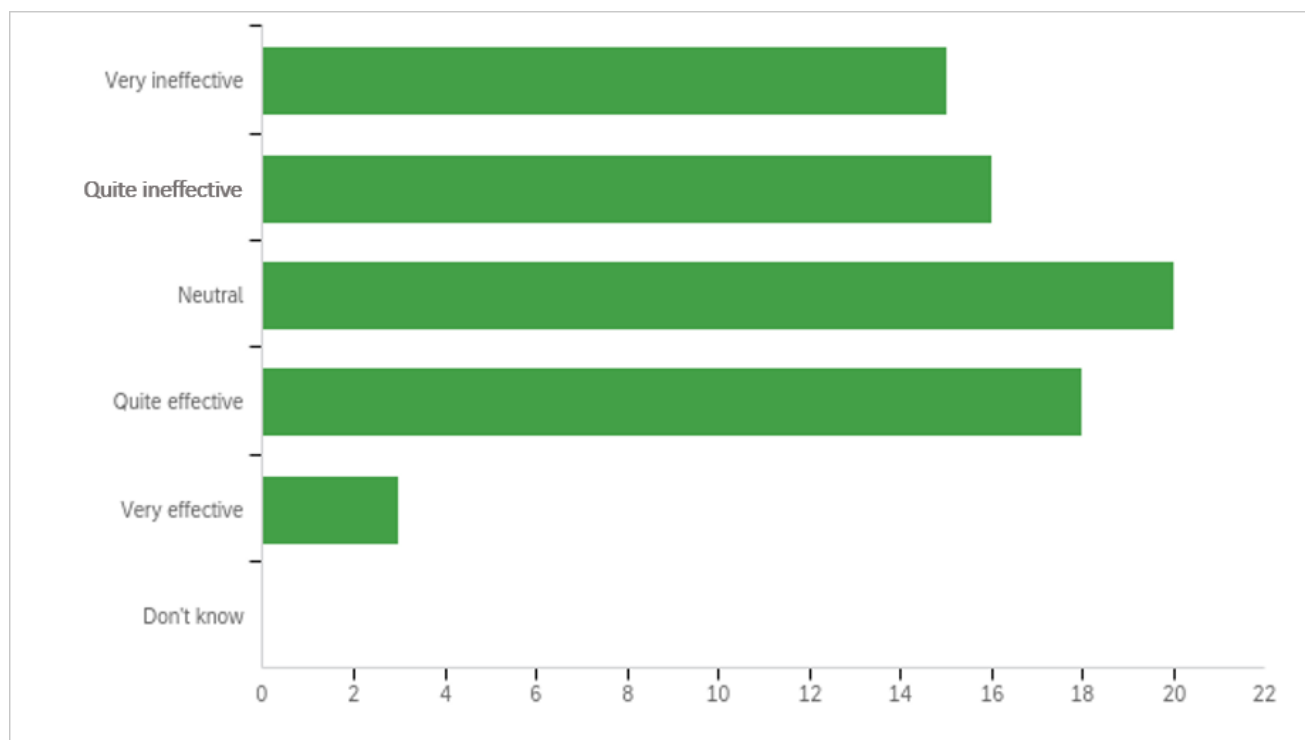
⁸² The EU updated the Basic Safety Standards Directive in 2013, consolidating (among others) both its predecessor and the High-Activity Sealed Sources Directive (Council Directive 2003/122/Euratom on the control of high-activity sealed radioactive sources and orphan sources), thereby replacing two Directives previously transposed by the EPRs into one.

⁸³ The IED brought together in one Directive and revoked seven previously separate Directives: the Integrated Pollution Prevention and Control Directive, the Large Combustion Plant Directive, the Waste Incineration Directive, the Solvent Emissions Directive, and three Directives relating to Titanium Dioxide.

10. The **Mining Waste Directive** (Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries)
11. **PVR I** (European Parliament and Council Directive 94/63/EC on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations)
12. **PVR II** (Directive 2009/126/EC of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations)
13. The **Waste Framework Directive** (Directive 2008/98/EC of the European Parliament and of the Council on waste)
14. The **Water Framework Directive** (Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy)
15. The **WEEE Directive** (Directive 2012/19/EU of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE))

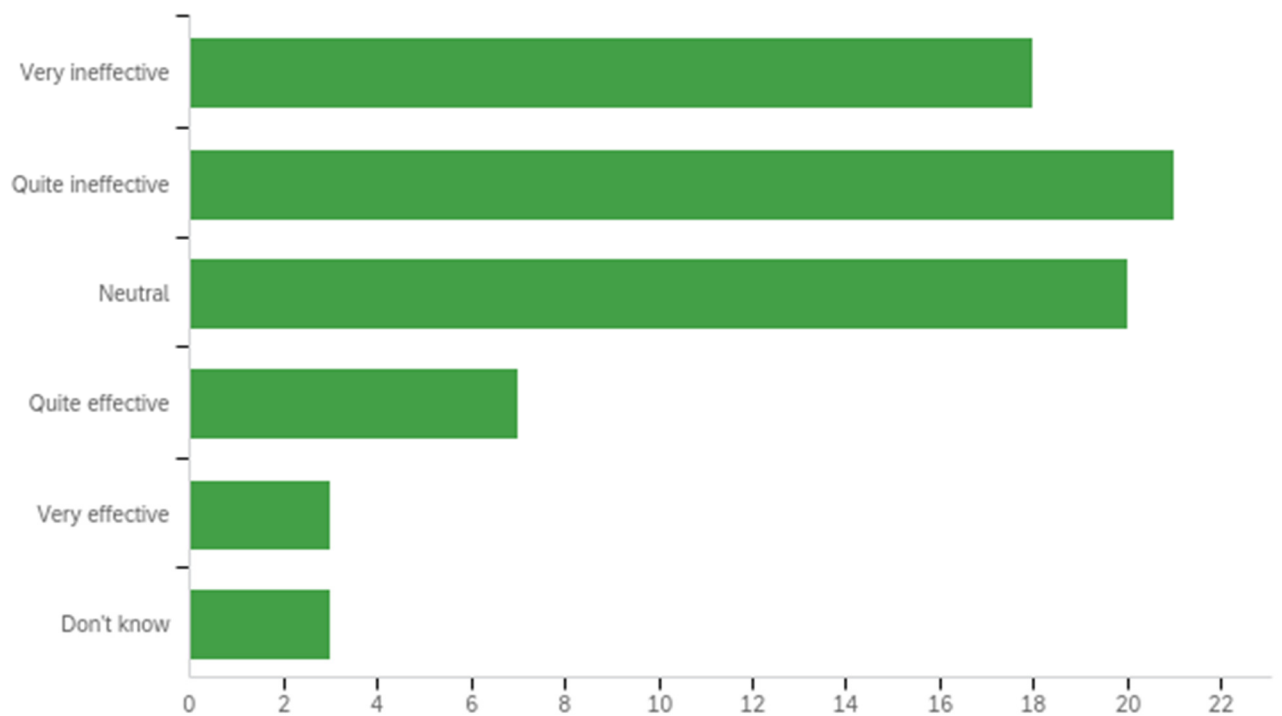
Annex 2 – Quantified user responses to RBF EPR Survey 2021

Q1 - Have the EPR been effective in clarifying and simplifying regulatory processes and requirements for industry?



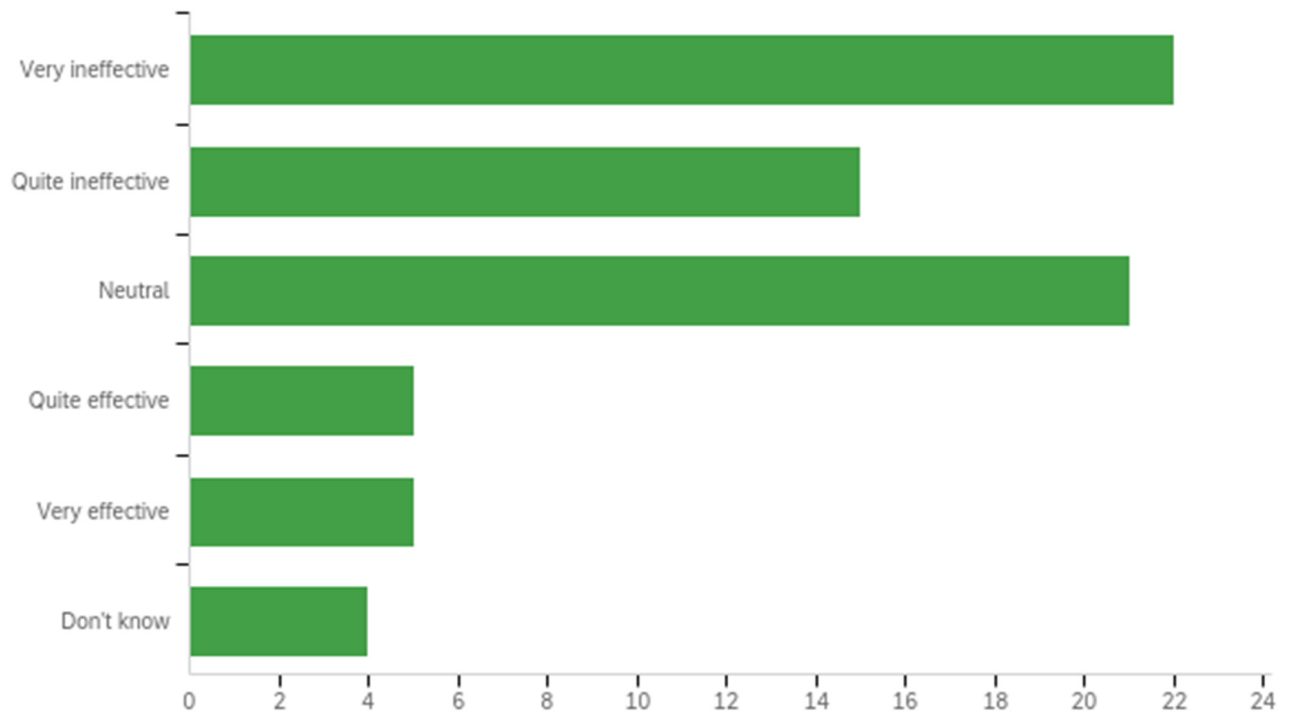
No.	Answer	%	Count
1	Very ineffective	20.83%	15
2	Quite ineffective	22.22%	16
3	Neutral	27.78%	20
4	Quite effective	25.00%	18
5	Very effective	4.17%	3
6	Don't know	0.00%	0
	Total	100%	72

Q2 - Has the EPR system of regulation been effective in reducing administrative burdens on industry?



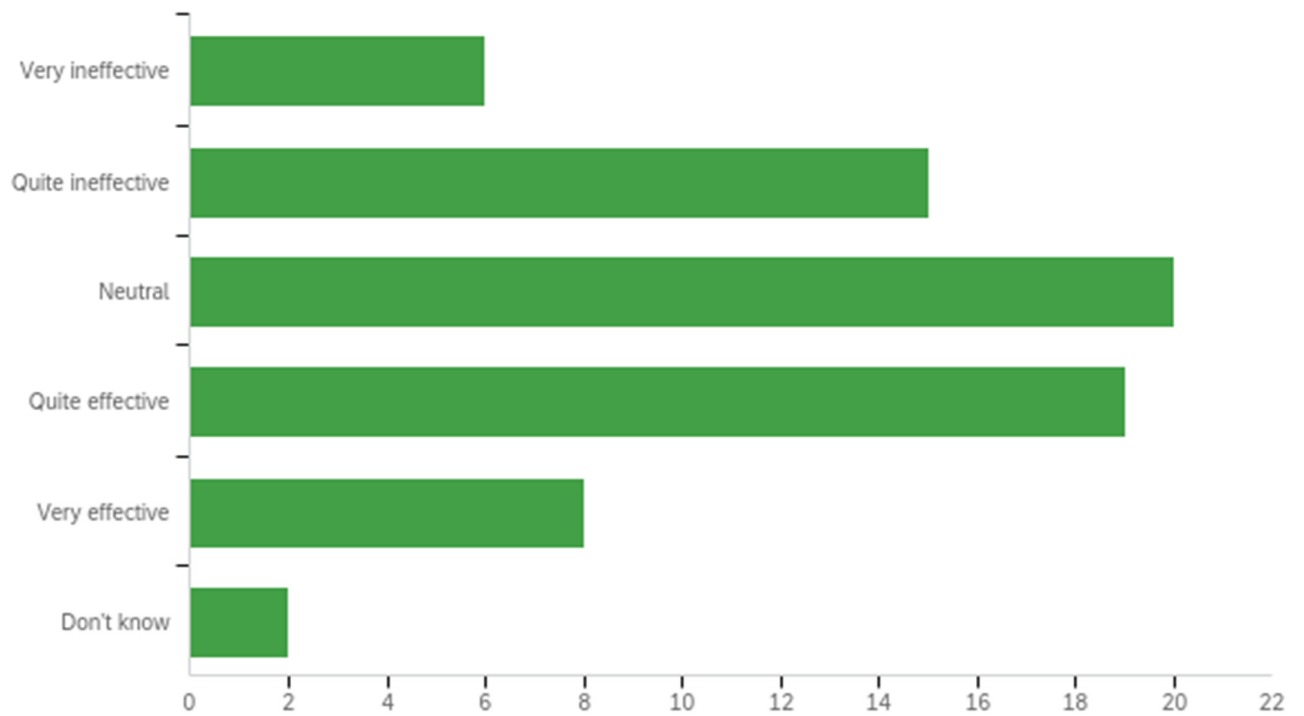
No.	Answer	%	Count
1	Very ineffective	25.00%	18
2	Quite ineffective	29.17%	21
3	Neutral	27.78%	20
4	Quite effective	9.72%	7
5	Very effective	4.17%	3
6	Don't know	4.17%	3
	Total	100%	72

Q3A - Has the EPR system been effective in reducing the administrative costs of regulation for industry?



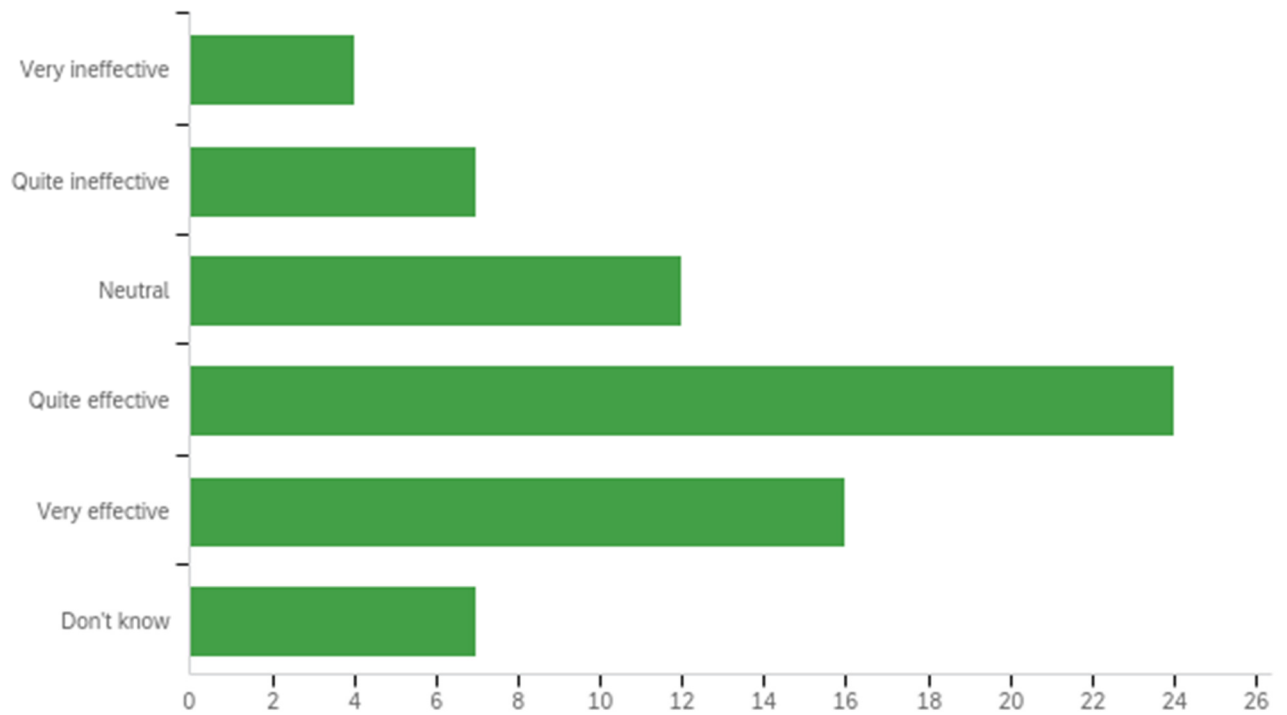
No.	Answer	%	Count
1	Very ineffective	30.56%	22
2	Quite ineffective	20.83%	15
3	Neutral	29.17%	21
4	Quite effective	6.94%	5
5	Very effective	6.94%	5
6	Don't know	5.56%	4
	Total	100%	72

Q4 - Does EPR enable regulators and industry to better protect the environment?



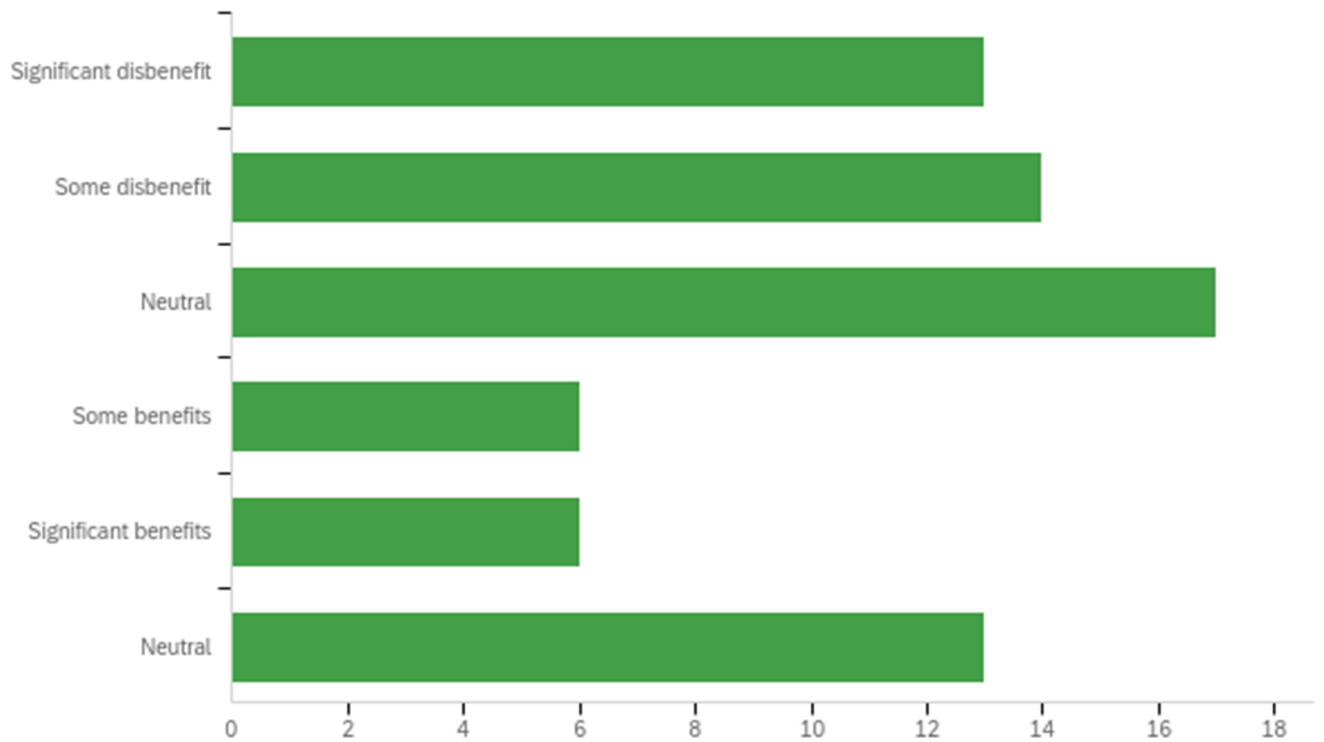
No.	Answer	%	Count
1	Very ineffective	8.57%	6
2	Quite ineffective	21.43%	15
3	Neutral	28.57%	20
4	Quite effective	27.14%	19
5	Very effective	11.43%	8
6	Don't know	2.86%	2
	Total	100%	70

Q5 - Has the EPR system been an effective way to implement European legislation?



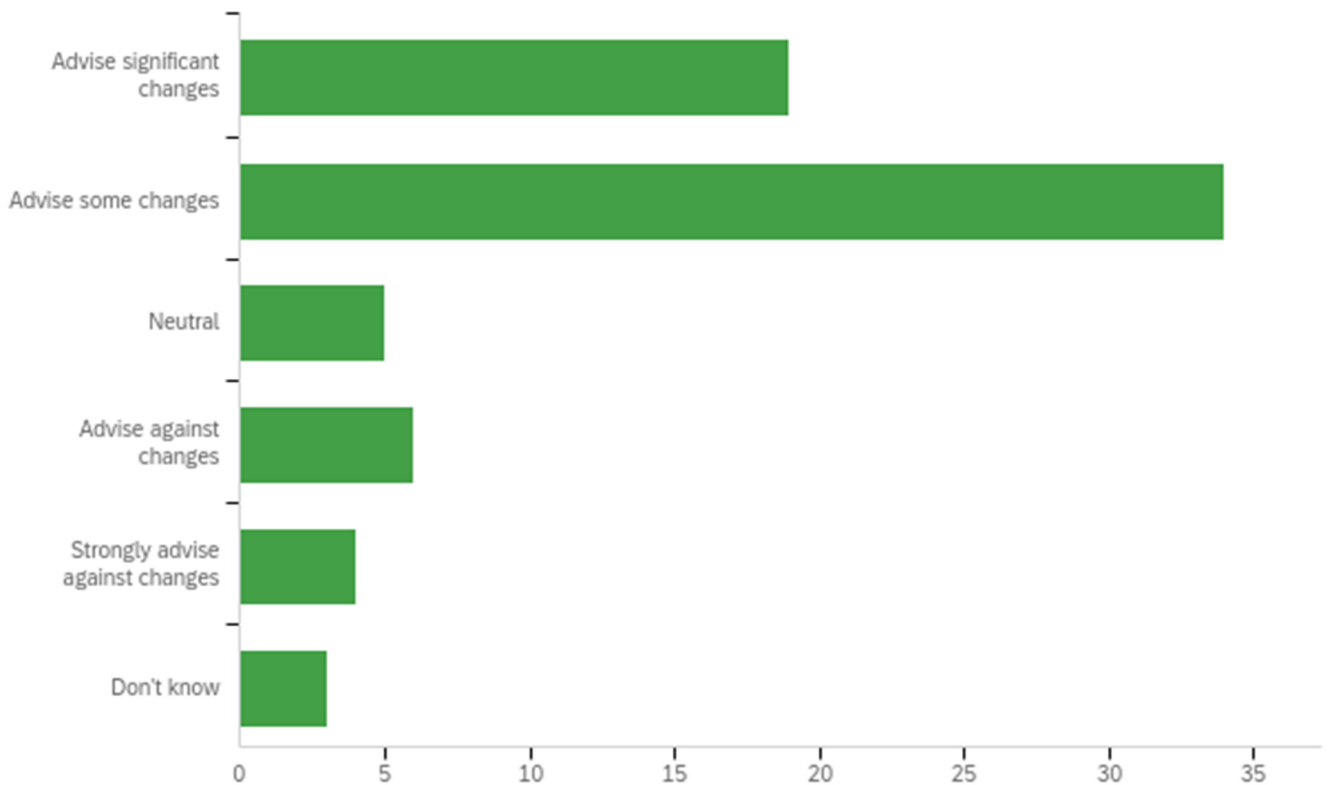
No.	Answer	%	Count
1	Very ineffective	5.71%	4
2	Quite ineffective	10.00%	7
3	Neutral	17.14%	12
4	Quite effective	34.29%	24
5	Very effective	22.86%	16
6	Don't know	10.00%	7
	Total	100%	70

**Q6 - Has the EPR system of regulation benefitted small and micro businesses?
Please explain your answer in the Comments section if possible.**



No.	Answer	%	Count
1	Significant disbenefit	18.84%	13
2	Some disbenefit	20.29%	14
3	Neutral	24.64%	17
4	Some benefits	8.70%	6
5	Significant benefits	8.70%	6
6	Neutral	18.84%	13
	Total	100%	69

Q7 - Could improvements be made to EPR to make regulation more streamlined and reduce administration/system costs for operators? Please explain your answer in the Comments section if possible.



No.	Answer	%	Count
1	Advise significant changes	26.76%	19
2	Advise some changes	47.89%	34
3	Neutral	7.04%	5
4	Advise against changes	8.45%	6
5	Strongly advise against changes	5.63%	4
6	Don't know	4.23%	3
	Total	100%	71

Annex 3 – qualitative aggregation of end-user responses to RBF EPR survey 2021

Feedback from the Environment Agency’s Regulated Business Forum (RBF) is that in general, the EPRs allowed for effective implementation of EU law. Respondents welcomed the “hierarchy of permitting” introduced by the EPRs and acknowledged the benefits to business of standard rules and exemptions, albeit arguing that these are unevenly felt. Respondents tended to the view that the EPRs had enabled regulators and industry to better protect the environment. However, respondents also highlighted areas for improvement and change in four main areas:

- there were mixed views about whether regulation has become simpler or more complex since the EPRs were introduced. There was a general view that administration of the EPRs is slow, and members highlighted increased fees and charges. There was no clear consensus view regarding the differential impacts of the EPRs on small and large businesses;
- respondents welcomed the provision in the EPRs for exemptions and agreed that they reduced cost for business. They expressed concern, however, about how consistently and fairly these are applied, and highlight the risk of abuse. Some respondents highlighted a specific issue that some users have been allowed to operate under old permits with lighter requirements;
- Respondents argued that there is a need for greater flexibility in the system, to support innovation; and
- there were mixed views about how effectively the environmental benefits of permitting are communicated, and some respondents suggested that Defra explore alternative approaches to regulation.

These themes are discussed in more detail below.

Implementation of EU law

RBF members generally concurred that the EPRs had been effective in retaining and repurposing EU law. Comments were largely positive about the role of the EPRs in implementing a wide body of EU legislation into one set of regulations, noting for example the incorporation of the Best Available Techniques Reference (BREF) standards.⁸⁴ Respondents welcomed the opportunity for industry to input throughout the stages of implementation from European to UK legislation, and indicated they would like to see this level of engagement to continue now that processes are UK-based. Comments from the practicing and academic lawyer emphasised the EPRs’ success in this area, especially the

⁸⁴ The BREFs are a series of reference documents covering EU air quality standards.

design of the system. However, some commented that the EPRs are still complex, with important obligations contained within the Schedules.

Simplification versus complexity

RBF respondents expressed mixed views about whether regulation has become simpler or more complex since the EPRs were introduced. On one hand, respondents welcomed the key elements of the EPR framework of exemptions and Standard Rules. Some respondents reported that the EPRs have improved the simplicity and/or clarity of regimes and their application processes by combining permissions, introducing online application processes and allowing permit boundaries to be amended. On the other hand, some respondents reported that some regimes within the EPRs have been made more complicated since being brought under the framework. The majority of these were administrative in nature, rather than relating to the framework itself: complexity was variously attributed to a lack of flexibility and resource, additional administrative requirements and over-emphasis on process rather than regulating outcomes.

Regulatory and administrative issues

Many RBF members expressed the view that administration of the EPRs is slow, and highlighted increased fees and charges. Some respondents noted that monitoring and reporting requirements have increased without a proportionate increase in perceived benefits (for example Resource Efficiency Metrics (REM) move from Pollution Inventory to Annual Report for permitting). Many respondents indicated that administrative burdens have increased under the EPRs, due to uncertainty and delays in obtaining permits or permit variations. Others highlighted the need to consolidate permits, increase in the number of forms and paperwork required, and the frequent need to provide detailed additional supporting information. Some noted that they have not seen benefits of the MyPermit online system. Some expressed the view that the increase in application fees have not led to an improvement in services. RBF members made a range of suggestions about the service could be improved, including the provision of additional advice and guidance from the regulator and the introduction of a unified system for invoicing. There was no consensus view regarding the differential impacts of the EPRs on small and large businesses. Several respondents considered the adaptability of the EPRs to favour smaller operators, through the use of exemptions and standard rules permits. Others, however, felt that larger businesses were advantaged by the new system of regulation as they were better prepared to deal with the administrative and cost burden, which was hard to manage for small and micro businesses.

Exemptions

RBF members welcomed the provision in the EPRs for exemptions and agreed that they reduced cost for business, but expressed concern about how consistently and fairly these are applied. Exemptions were recognised as an essential part of the EPRs. Respondents reportedly found exemptions useful and effective for lowering the cost and increasing the accessibility of the system, where used and regulated effectively. Responses also

highlighted that extending the general scope of exemptions within the EPRs (when compared to waste management licensing) has reportedly reduced the administrative burden for sites that do not have a permit.

However, there were some concerns expressed about consistency. For example, one piece of feedback noted that some sites regulated under standard permits claim to have similar emissions to regulated sites that are exempt and are therefore being treated much more stringently for the same output, which those sites naturally feel is unfair. There is a perception that very few exemptions are refused and that “over 50% of permitted sites don’t have a compliance check from one year to the next”, meaning criminal waste enterprises are being legitimised by claiming exemptions. In the area of waste, respondents noted the risk that exemption can be used to cover illegal activities

Flexibility

Respondents who commented generally welcomed Standard Rules as having reduced administrative burdens but argued that there is a need for greater flexibility to support innovation. This was cited as a particular issue for larger, more complex businesses, which fed back that Standard Rules permits are inflexible and can become a burden when business needs (or external factors) change and the permit no longer ‘fits’ the site. In these circumstances, it is necessary to apply for a variation or switch to a bespoke permit, both of which come with additional costs. Some respondents argued that permitting variations are excessively time-consuming, with one stating that applying for variations can take up to a year. This can be problematic for businesses wishing to trial new technologies, for example, undertaking short term pilots of decarbonisation technologies lasting several days and requiring permit variations.

Environmental benefits

A small majority of respondents took the view that the EPRs had enabled regulators to better protect the environment. There were mixed views about how effectively the environmental benefits of permitting are communicated, and some respondents suggested that Defra explore alternative approaches to regulation. Legal feedback in the survey acknowledges that having all permitted areas under one roof is structurally important for monitoring and evaluating environmental impact, and acknowledged that BEIS and Defra can use EPR as a unified vehicle for delivering policy. Some respondents noted that the EPRs simplify regulation, making the regulatory system more efficient and effective without changing standards of environmental protection. Others highlighted specific areas of the EPRs and their benefits, for example the introduction of Site Condition Reports requiring a baseline standard for activities, or the suspension notices under Regulation 37 and the surrender provisions in Schedule 5 being important aspects for promoting environmental protection.

Other respondents, however, expressed the view that alternative approaches to regulation could be more effective, and called for better communication about the environmental performance of the EPR framework. A number of respondents stated regulation of

installations focused too much on ‘end of pipe’ regulation which may not deliver best environmental outcome. An example given was that requiring investment driving down stack emissions of nitrous oxide, a pollutant, would be less effective than allowing companies to alternatively invest to address emissions from, for example, fleet vehicles. Some users noted that waste fires, illegal exports, and fly tipping are continuing despite ongoing regulation.

Pre-EPR permits

Some respondents highlighted a specific issue that some users have been allowed to operate under permits offered as far back as the 80s, with much lighter requirements, which is viewed as unfair.

Conclusions from RBF feedback

Overall, feedback from the RBF suggests that industry welcomes the core elements of the framework, and in particular the administrative cost savings delivered by standard rules and exemptions. However, there are clear concerns about processing times for permits and variations, and a clear desire to streamline the administration of permitting. This would enable the benefits of the EPR system to be more fully realised. There are also some concerns about the potential abuse of exemptions by unscrupulous operators. As part of the review, Defra engaged the Environment Agency, as the main operator of the EPRs to understand the wider context for the feedback about operational performance of permitting.

Regarding fees and charges, as RBF respondents state, fees for the EPRs have increased. Under Managing Public Money rules, and in line with the “polluter pays” principle, the Environment Agency is required to recover its permitting costs through fees and charges for permits. The Environment Agency regularly review their charges to make sure they reflect their costs. If they think that charges need to change, they consult with customers first. Then they publish the consultation responses to explain how they addressed customer comments when setting their new charges.⁸⁵ Over recent years, operators regulated under the EPRs have paid an increasing share of the cost of regulating their business. The increase in fees that customers report simply reflects the cost of maintaining the existing service.

Regarding administrative burden, there are a number of potential explanations for why RBF perceive this to have increased. In some cases, respondents to the survey were referring to new costs from regulatory policy changes that have been introduced since the EPRs were introduced rather than on the effectiveness the framework itself. For example, some waste EPR applications must now include fire prevention plans, which create some additional costs for EPR customers (and reduce risks to the public). These requirements

⁸⁵ See [Environment Agency fees and charges - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/environment-agency-fees-and-charges)

were implemented using the EPRs, but do not result from it (had the EPR framework not been in place, these requirements would have been implemented using another vehicle).

The Environment Agency is however, through its Regulatory Services Programme, continuing to invest in the IT infrastructure for permitting, which is expected to deliver a more streamlined experience for EPR customers. Perceptions of efficiency of permitting are likely to have been influenced by delays during 2020 and 2021. The National Permitting Service (NPS) had been experiencing significant delays throughout 2020 due to the impact of the Covid 19 pandemic and prior due to pressure on resources from additional requirements.

Regarding the risk of abuse of exemptions, this is a known issue which Defra is addressing. Reform of the waste exemptions regime, for example, which is underway, includes measures to minimise opportunities for illegitimate operators to abuse the waste exemptions regime and causing environmental harm.⁸⁶ It will be important for exemptions to be kept under review to ensure the right balance between regulatory stringency and easing the burden on business.

Defra will need to keep the EPRs under review as it considers the scope for reforming environmental law now that the UK is no longer bound by EU legislative requirements. Now that the UK has left the EU, the government has stated that its intention is to amend retained EU law that is not right for the UK. Changes to environmental policy covered by the 15 relevant directives may require amendments to the EPRs. There may also be opportunities remain to improve the flexibility of EPR operation, for example to streamline the process of implementing exemptions and standard rules. Although this review focuses on legislative (rather than operational) elements of EPR, there is an important interdependence between these two elements, which could be considered in future reforms.

⁸⁶ See [Serious and organised waste crime: 2018 review - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/reviews/serious-and-organised-waste-crime-2018-review)