

# IED-PPC-TG4 - Pollution Prevention and Control (PPC) Technical Guidance: A practical guide for Part A activities

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## Introduction

The Pollution Prevention and Control (PPC) (Scotland) Regulations 2012 SSI 2012/360 (“[PPC 2012](#)”) implement the European Union (EU) Directive 2010/75/EU on Industrial Emissions ([IED](#)). Chapter II of the IED, and PPC 2012 apply an integrated environmental approach to the regulation of certain industrial activities. This means emissions to air, water (including discharges to sewer) and land, plus a range of other environmental effects, must be considered together. Regulators must set permit conditions to achieve a high level of protection for the environment as a whole, based on the use of the best available techniques (BAT), which balances the costs to the operator against the benefits to the environment.

SEPA is the designated regulator responsible for enforcing the regime within Scotland. Separate regulations are in force for the application of IED to activities in England and Wales, Northern Ireland and the offshore oil and gas industries, each with different regulators.

This document provides an introduction to PPC 2012 and aims to give an overview of the scope and requirements of the Regulations. More detailed technical and procedural guidance on various aspects of PPC is provided in a range of documents, published by SEPA and other agencies. These documents are referred to throughout this guide. Therefore, the original reference source should always be checked for the latest revisions and releases.

Please also note this guide refers to the regulation of PPC Part A activities as defined in Schedule 1 to PPC 2012. Regulation of PPC Part B activities as defined in Schedule 1 to PPC 2012 focuses on control of emissions to air, and is covered by a separate Part B practical guide. Solvent activities are now defined in Schedule 2 to PPC 2012, and separate guidance is available.

For this guide to be useful it needs to be updated regularly and maintained with the latest information; so, if you are aware of any other information which may be of use and suitable for the guide or you believe that some of the information in the guide is incorrect or outdated, please let us know ([ppc@sepa.org.uk](mailto:ppc@sepa.org.uk)).

The website of the European Commission contains [general background information on the IED](#). Guidance from the Commission on the [interpretation and implementation of the integrated pollution prevention and control \(IPPC\) Directive](#) is also on its website and remains relevant to Chapter II of the IED until such time as it is updated.

## The Requirement to Hold a Permit

PPC regulates activities that are prescribed in Schedule 1 to PPC 2012 (transposed from Annex I to the IED) carried on at installations. The activities carried on at an installation will comprise one or more activities listed by PPC 2012, plus any directly associated activities. Therefore, identifying an activity listed in Schedule 1 to PPC 2012 is an essential pre-requisite to determining the extent of the installation, and for which operator(s) must obtain permits under the regime. Schedule 1 also lists Part B activities, which are not covered by this guide.

### Definition of an Installation

The regulated unit in PPC is the installation. The existence of an installation or a mobile plant is dependent on there being one or more listed activities carried on there. Each operator needs to identify the constituent parts of their installation. PPC 2012 define an installation as:

- (i) a stationary technical unit where one or more activities listed in Schedule 1 or 2 are carried on;
- (ii) any other location on the same site where any other directly associated activities are carried on.

An installation may therefore comprise a number of activities prescribed by PPC 2012, and a number

of activities that are directly associated. The [European Commission published guidance on the meaning of installation](#) for the purposes of the IPPC Directive which is still relevant. The guidance includes useful advice on the meaning of a number of the elements of both limb (i) and limb (ii) of the definition. These include the meaning of:

- stationary;
- technical unit;
- directly associated activity;
- technical connection;
- site; and
- “could have an effect on emissions and pollution”.

There are certain general exclusions from the activity descriptions. These are set out in Schedule 1, Part 2, paragraph 3. An example is an activity carried on at an installation solely used for research, development or testing of new products and processes.

Annex II to this guide provides advice and worked examples of the above.

## Capacity

In some cases, the question of whether an activity falls within a particular activity description will depend on its capacity. It is for the operator to determine the relevant production capacity. Production capacity is not determined by actual output, but by potential output which is only limited by technical or legal restrictions. An example of a technical restriction would be by volume of a reactor vessel, an example of a legal restriction would be a limitation on operating hours by planning consent which prevents the installation from running over a 24 hour time period.

When the operator carries out several activities of the same description in different parts of the same technical unit or in different technical units on the same site, the production capacities must be added together. An operation that exceeds the capacity on which a permit has been based could constitute an offence. SEPA may also assess whether an operator’s assessment of capacity set out in an application is reasonable. This may involve considering if, for example, the installation could be run properly at that rate, or alternatively looking at the design capacity. See also SEPA guidance on the interpretation of capacity, and [European Commission capacity guidance](#).

## Directly associated activities (DAA)

Directly associated activities include all other activities carried on at the site that have a technical connection and could have an effect on pollution. Examples of possible DAA include some waste water treatment plants that are below the capacity thresholds, additional production stages not included in the prescribed activity description (eg dyeing and finishing of leather associated with a tanning process); and combustion plant below listed thresholds.

## Regime objectives

The main aim of PPC is to achieve a high level of protection of the environment taken as a whole by measures designed to prevent or, where that is not practicable, reduce emissions to air, water and land. PPC requires an integrated approach to the operation of the installation using the BAT for the whole installation, rather than assessing individual emissions or unit operations in isolation. For the purpose of Part A activities, PPC 2012 define emission as meaning the direct or indirect release of a substance, a vibration, heat or noise from individual or diffuse sources in an installation into the air, water or land.

Within this overall aim, PPC has a number of specific objectives:

- that no significant pollution is caused.

- to prevent or reduce emissions from installations by applying BAT;
- to encourage the development of emerging techniques;
- to minimise waste generated and overall emissions, whether solid, liquid or gaseous, with the emphasis on developing clean technologies rather than relying on end-of-pipe solutions;
- to minimise energy and raw material (including water) consumption;
- to prevent accidents that could have an environmental impact and minimise the consequences of any accidents that do occur; and
- ensure that on cessation of the activity the site is returned to satisfactory state.

The determination of BAT should consider costs and advantages of different solutions to environmental problems, balancing a range of environmental factors across the entire life of industrial installations. It should consider both the technologies used and the way in which the installation is designed, built, commissioned, maintained, operated and decommissioned. There is a strong emphasis, therefore, on appropriate and effective systems of management of installations to ensure a high level of environmental protection. BAT reference notes which are referred as BRef notes are published by the European Commission to support the definition of BAT for each industry sector to which the regime applies, and from these BAT conclusions are drawn that include BAT-AEL for the sector.

PPC places the onus on operators to take responsibility for finding solutions to potential environmental problems. When an operator applies for a permit, they must include an assessment of the environmental impact of the installation, as well as details of the measures the operator plans to implement to prevent or minimise any adverse effects, and the measures considered but not implemented as inferior techniques.

Environmental quality standards (EQSs) will be considered, and may demand operational performance beyond the normal standards of BAT to ensure an EQS is not breached. PPC provides for slightly different treatment of EQSs agreed at the EU level, compared with those that apply in the UK or Scotland only.

The regime promotes techniques that reduce the amount of waste and releases overall, whether solid, liquid or gaseous. Thus PPC should move the control of pollution from industrial sources away from end-of-pipe solutions and towards developing clean technologies. Where waste production cannot be avoided, PPC reflects the general principle of the waste hierarchy that preparation for re-use, recycling or recovery (in that order) should take precedence over disposal, unless that is technically and economically impossible.

The regime allows for and encourages the development of emerging techniques, which are defined as novel techniques that, if commercially developed, could when compared to existing BAT provide: (a) a higher level of protection of the environment, or (b) at least the same level of protection of the environment and lower cost.

The regime streamlines and strengthens the regulatory system, clarifying the roles and responsibilities of the regulator and the regulated. It increases public confidence by providing a regulatory system that is accessible and understandable and clear in operation and in the results of its application. It provides a flexible framework capable of responding both to changing pollution prevention and control techniques and to new knowledge of the effects of pollutants. Additionally, the PPC regime provides a means to support fulfilment of certain international and EU obligations relating to environmental protection.

## Best Available Techniques

The PPC Regulations require installations to be operated using the best available techniques (commonly known as BAT). PPC requires an integrated approach to the operation of the installation using BAT for the whole installation, rather than assessing individual emissions or unit operations in

isolation. This principle applies in all situations (eg designing a process for manufacturing an industrial product, developing operating procedures, or identifying and undertaking the maintenance of a process – with each designed and operated to minimise the environmental impact from an installation). The PPC Regulations require an operator to consider all available options for preventing or minimising emissions in the design, operation and maintenance of the activity, and to justify that the options selected are the best available to achieve a high level of protection of the environment taken as a whole.

BAT is defined in PPC 2012 as the “most effective and advanced stage in the development of activities and their methods of operation, which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole”, where:

<b>B</b>	<ul style="list-style-type: none"> <li>• <b>best</b> in relation to techniques, means most effective in achieving a high general level of protection of the environment as a whole.</li> </ul>
<b>A</b>	<ul style="list-style-type: none"> <li>• <b>available techniques</b> means those techniques which have been developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the UK, as long as they are reasonably accessible to the operator.</li> </ul>
<b>T</b>	<ul style="list-style-type: none"> <li>• <b>techniques</b> includes both the technology used and the way in which an installation is designed, built, maintained, operated and decommissioned.</li> </ul>

When assessing BAT, an operator should use a risk-based approach, focusing on significant environmental impacts and the major advantages and disadvantages of techniques to prevent or minimise those impacts. “Techniques” is both the technology, and its operation and maintenance.

### BAT guidance

Article 14(3) to the IED requires that “BAT conclusions shall be the reference for setting permit conditions”. BAT conclusions (BATc) will be adopted for each of the sectors covered by a BAT reference document (BRef). However, there are a few sectors for which there is no BRef. SEPA has developed a matrix to match every activity prescribed in Annex I to the IED with the corresponding BRef, and also to match the PPC Schedule 1 activities to the BRefs.

The European IPPC Bureau hosts an exchange of information between Member States of the EU to assess BAT for prescribed activities. The results are published by the European Commission as ‘BAT reference documents’ (BRef). These documents give an EU-wide view on BAT within each sector and identify the “Best Available Techniques Associated Emission Levels” (the BAT-AEL) for the emissions for the activity. The BRef documents also include the BATc.

The process of adopting BATc, begun in late 2011, is likely to take several years. BATc are adopted through an EU regulatory procedure leading to the publication of the BATc in each Member State’s official language. Once the BATc for the main activity at an installation are published, Member States have four years to ensure all permit conditions are reconsidered and updated to the requirements of the IED and the installation is compliant with those conditions (see Permit review).

BRef documents and BATc are available on the [Joint Research Centre's website](#).

UK interpretational guidance of the BATc for individual sectors is being prepared as each BRef is published. The guidance draws on information contained in the BRef notes, and contains clear, indicative standards for both new and existing installations (including upgrading timetables for the latter). These indicative requirements set out a clear view of what is expected to be BAT in normal circumstances.

## BAT determination

In determining an application or reviewing a permit, SEPA will need to be satisfied that the installation will be operated according to BAT. Further guidance on how to assess BAT is being developed.

## Emission Limit Values (ELVs)

All installations need to employ BAT, and the emissions that result from the use of BAT would generally be expected to be within the BAT-AEL range for that parameter. SEPA will include ELVs in the permit to reflect the emissions from that installation during normal operation that are achieved when employing BAT. See also Derogation.

Where BAT-AELs have not been set by BATc for a sector, or there are no BATc for an activity, ELVs must be determined by giving consideration to Schedule 3 of PPC 2012. Such ELVs must ensure a level of environmental protection equivalent to the techniques described in the BATc. Operators may find previously developed guidance useful in these circumstances.

## Environmental quality standards

Environmental quality standards are set within other EU and domestic legislation. Where it is necessary to prevent an EU environmental quality standard (EQS) being breached, permit conditions stricter than BAT must be set.

In setting permit conditions, SEPA must consider whether any EU EQS is being or may be breached. If so, SEPA will have to set ELVs, based on how much the installation is responsible for the breach and the likelihood of remedial action elsewhere. This may require ELVs that are tighter than those required to implement BAT.

Many domestic environmental quality standards are the same as those for the European Commission, and should be treated in exactly the same way. However, some UK or Scottish standards are stricter, or additional to, the Commission's. Examples include the standards and objectives established in connection with the Air Quality Strategy under the Environment Act 1995. EQSs set at a UK or Scottish level do not have the same legal status as EU EQSs, since they are not explicitly referred to in PPC 2012. Hence there is no absolute legal obligation under PPC 2012 to impose any stricter conditions beyond BAT where this would be required to comply with a UK or Scottish EQS only. Nevertheless, UK or Scottish standards should still be considered as a major factor in determining emission limits and BAT for an installation, following the basic principle of using EQSs as a reference level for harm. Under the Environment Act 1995 SEPA is required to have regard to the Air Quality Strategy, and hence any UK or Scottish EQS, in exercising its pollution control functions, including PPC. The main difference is that exceedance of an EC EQS gives rise to an additional, explicit legal obligation, whereas the exceedance of a UK or Scottish EQS is a factor, albeit a major one, that is taken into account when determining BAT.

Therefore, UK or Scottish EQSs should inform a judgement on whether the installation should be permitted and, if so, what control options should be selected based on the balance of costs and advantages. Any significant contribution to the breach of a UK or Scottish EQS should normally be judged unacceptable in terms of harmful effects. However, this will need to be considered on a case-by-case basis, taking account of the costs and advantages of measures to reduce or prevent the breach.

## The general BAT condition

Under PPC 2012, there is a general duty on the operator to use BAT to prevent or, where that is not practicable, reduce emissions from an installation, which are not otherwise covered by specific permit conditions. As these techniques can change with advances in technology or improved knowledge of the environment, operators must review developments throughout the life of the permit to determine if they are still using BAT.

## Derogation

In accordance with Article 15(4) to the IED, SEPA may, in specific circumstances, set less strict emission limit values than those laid out in the BATc if an assessment shows the process is designed, built, operated and maintained utilising BAT, but the emissions under normal operating conditions are higher than the BAT-AEL range. However, the value set cannot exceed the emission limit values set out in Annexes V, VI, VII and VIII to the IED, and must ensure that no significant pollution is caused and that a high level of protection of the environment as a whole is achieved. Derogation only applies to the BAT-AEL ranges. SEPA has developed a methodology and guidance for derogations.

It should be noted that:

- (i) derogations from BAT AELs will be reviewed periodically and at least when new BATc are published (at which point either the BAT-AEL must be met or justification for further derogation provided); and
- (ii) derogation would be required to allow an improvement programme where compliance with the BAT-AEL would not be achieved within four years of the date from which the BATc had been published.

To consider derogation, SEPA must assess that although the emissions are higher than the BAT-AEL range the installation employs BAT, and that meeting the BAT-AEL would lead to disproportionately higher costs compared to the environmental benefits due to:

- a. the geographical location of the installation;
- b. the local environmental conditions of the installation or;
- c. the technical characteristics of the installation.

To justify the disproportionate costs the operator must justify the extra costs in a transparent and systematic manner.

The geographical location of the installation may have a bearing on costs: for example, construction or energy supply costs may be higher than would normally be encountered if the installation is in a remote location. The local environmental conditions may also influence the costs: for example, there may be added costs if the installation is in a built-up location.

Technical characteristics of particular relevance may include:

- the recent history of pollution control investment in the installation in respect of the pollutant(s) for which the derogation is being assessed;
- the general investment cycle for a particular type of installation;
- the configuration of the plant on a given site, making it more technically difficult and costly to comply;
- the practicability (particularly bearing in mind health and safety and other relevant legal obligations) of interrupting the activity so as to install improved emission control upon the pollutant(s);
- the effect of reducing the excess emission(s) upon other pollutant emissions, energy efficiency, water use or waste arising from the installation as a whole; and
- the intended remaining operational lifetime of the installation as a whole or of the part giving rise to the emission of the pollutant(s), where the operator is prepared to commit to a timetable for closure.

Operators should attempt to place a monetary value on the environmental benefits which would result from preventing the excess emission. It will therefore be for operators to assess the effect of the excess emission on the levels of the pollutant already in, or discharged to, air, water and land in the locality. For air pollutants, this will involve consideration of concentrations in ambient air; for



water pollutants the effect upon receiving waters – perhaps after passage through a wastewater treatment works – will need to be considered. In all cases, the results of monitoring undertaken at all relevant sites in the locality must be taken into account.

It is then for SEPA to assess whether derogation is appropriate and, if so, with what conditions. In reaching its decision, SEPA will take account of its duty, under PPC 2012, to 'ensure that no significant pollution is caused and that a high level of protection of the environment is achieved'.

Where derogation is used, SEPA will still have to consider the ELVs and associated monitoring and compliance assessment conditions to be included in the permit. SEPA may attach conditions requiring immediate reduction or cessation of the relevant activity at the installation if environmental monitoring at designated points in the locality shows pollutant levels above stated limits. The derogation may also be conditional upon the completion by the specified date of improvements, or upon closure by a specified date of the installation as a whole or the part of it which gives rise to the need for the derogation.

The reasons for derogation from the BAT-AEL range will be set out in an annex to the permit, including the results of the BAT assessment and justification of the resulting permit conditions. The derogation must be re-assessed at the time of any periodic review.

## Overview of the Regulatory Process

This section provides an overview of the regulatory process for an operator to obtain a permit, and surrender that permit when it is no longer required, with more detailed guidance set out in later chapters. Operators should contact their local SEPA office at the earliest opportunity to start pre-application discussions to ensure the application contains all the required information to allow efficient determination of that application.

### Application

The procedure begins with the operator preparing and submitting a formal application to SEPA. The application must address various issues and should be sufficient to enable determination in accordance with PPC 2012 (Schedule 4 Part 1). SEPA will check that the application is duly made. If it is not, the application is returned to the operator highlighting the areas that need to be addressed before the application can proceed.

### Consultation

If the application is duly made SEPA will circulate copies to consultees for review and comment. PPC 2012 also requires the operator to advertise the application for public consultation, however, SEPA may choose to undertake additional non-statutory consultation. SEPA must place a copy of the application on a public register, once any claims by the operator for exclusions on the grounds of commercial confidentiality or national security have been determined.

### Determination

SEPA then determines the application by deciding if the operator's proposals will meet the requirements of the regime. Additional information necessary for the determination may be required from the operator. If this information is not received within the time specified, the application may be treated as having been withdrawn. When SEPA is satisfied the information supplied is complete, the overall application is considered alongside representations from the consultees and other relevant factors to determine whether a permit should be granted to the operator, or the application refused.

If a permit is to be granted, the permit is then drafted containing conditions that ensure the installation complies with the requirements of PPC 2012. The draft permit is then subject to further public consultation. The precise permitting procedure may vary; however, there is no provision for any

installation covered by PPC 2012 to be exempted from control.

## Compliance with the Permit

Operators must operate the installation in accordance with the conditions in the permit.

Permits generally require operators to carry out monitoring of releases to the environment, and to supply this monitoring information to SEPA. In addition, SEPA will also carry out monitoring and inspections, with a range of powers to enforce compliance with permit conditions.

Over time, a permit may need to be changed to reflect changes in the installation (for example a change to the product range at the site), the way the process is operated, or for other reasons; this may be instigated by the operator or SEPA. The procedure for modifying, varying, transferring or surrendering a permit is laid out in PPC 2012.

Operators are required to pay a fee with the PPC permit, variation, transfer or surrender application, and an annual subsistence charge for regulation once a permit has been granted.

## Surrender

Where an operator ceases the carrying on of any prescribed activities at the installation, the permit for a Part A installation should be surrendered and an application must be made to SEPA. The application must contain a closure report describing the condition of the site, in particular any changes in condition since the application for the permit was made. The application must also describe the steps taken to avoid any pollution risk and to return the site to a satisfactory state and remove, control, contain or reduce any relevant hazardous substance in soil and groundwater. Where only some of the activities at an installation are ceased, an operator may choose to apply to surrender the part of the installation previously occupied by the ceased activities.

## Appeal

If an operator is dissatisfied with any decision made by SEPA, the operator may appeal to the Scottish Ministers. There is a further right of appeal to a Sheriff a decision made by the Scottish Ministers.

# New Permit Applications

## Making an application for a PPC permit

Any new installation or mobile plant carrying on an activity prescribed in PPC 2012 must obtain a permit before it begins to operate. It is an offence to operate a prescribed activity without a permit (Regulation 11(2)).

For more detailed guidance on preparing and making an application, see the *Guide for applicants*.

PPC 2012 places the onus on an operator to assess the impacts of the activity, explore options for improvement and make proposals for SEPA's consideration. To receive a permit, an operator should submit an application that sufficiently demonstrates how the operation of the installations will meet the requirements of PPC 2012.

PPC 2012 requires a site report and, where an activity involves the use, production or release of a relevant hazardous substance, a baseline report to be submitted with an application for a permit to operate a Part A installation. The main purpose of the site and baseline reports is to provide a documented record of the condition of the site prior to operation under PPC. For further guidance on site reports, refer to [PPC Technical Guidance Note TG02 Content & Scope of Site Reports](#).

Failure to submit sufficient information may result in the application being returned (with the fee, less

any costs incurred by SEPA). Even where SEPA accepts an application as being duly made, the application may still be refused or further information required to determine the application. This may result in delays to the determination, as the statutory time period for determining applications is extended by the amount of time it takes to obtain further information.

The application must be accompanied by a fee for the type of installation as specified in the charging scheme. If the fee is not submitted with the application, it is not 'duly made' and will be return to the applicant. To find out more about the charging scheme, see SEPA's [website](#).

PPC 2012 requires the operator to use the application forms for Part A installations [application forms for Part A installations](#). There is one form for the majority of industrial sites, but landfills and intensive agriculture installations have separate forms.

PPC 2012 also allows the application to be submitted in an electronic format on a CD/DVD in Acrobat (PDF) or similar format. However, SEPA requires at least three paper copies, including one containing original signatures. The applicant should discuss with the site officer the required number of hard copies necessary before the application is submitted.

### Pre-application discussions

Formal applications may be preceded by discussions between the operator and SEPA (and other parties if appropriate). Neither the operator nor SEPA is under any legal obligation to participate in such discussions, however, it is in the interests of both parties to have early discussions to minimise the time required to determine the application and the costs associated with revisions to the information in the application. For example, early discussions may clarify whether or not a permit is actually required. SEPA may also use pre-application discussions to give general advice to operators on how to prepare their applications and to direct operators to relevant guidance.

### Meaning of operation

New installations may not start operating until a PPC permit has been granted. "Operation" involves first introduction of raw materials or potentially polluting substances to the installation, and this may be significantly before operation for beneficial production. It generally includes all commissioning other than functional testing. As a guide, the following are some examples of installations coming into operation:

- a large combustion plant – when any fuel is first fed and burned in the main combustion unit;
- a chemical works – when a prescribed chemical that is a subject of the permit is first charged to the reactor system, ie first wet trials;
- a landfill site – when the first waste is deposited into the landfill;
- a lime works – when limestone is first fed to the kiln;
- an intensive livestock installation – when livestock is first introduced.

### Timetable

PPC 2012 does not prevent the operator from proceeding with construction before a permit has been granted or even applied for, however, operation cannot begin without a permit. For new installations, application should be made when the design has progressed sufficiently to enable determination that BAT will be employed and the appropriate permit conditions to be drafted (but before construction commences).

### Consultation on new permit applications

There can be up to four types of consultation in respect of applications for new permits. Two of these public consultation and statutory consultee consultation will always be required. The other two, consultation with other Member States and with third parties whose land may be affected, depend on the circumstances of the application and any determination. The purpose of consultation is to:

- inform the public that an application has been made and provide access to the application;
- provide SEPA with facts and views to inform the determination.

SEPA will consider any representations made by consultees during the specified time periods. However, this does not preclude the consideration of representations received after the formal deadline, and as a matter of good practice whenever practicable and when the representations are pertinent to the application these will be considered.

## Public consultation

Public consultation is required for all new permit applications. This enables the public to raise local or wider issues or concerns that SEPA may not be aware of.

PPC 2012 requires SEPA to maintain a public register. A copy of each permit application (less any information excluded on grounds of national security or commercial confidentiality) must be placed on these registers for public examination. SEPA always aims to put the application on the public register before it is advertised by the applicant. PPC 2012 requires the applicant to advertise an application in one or more local newspapers, and in the Edinburgh Gazette. The advertisement must be placed within a period of 28 days, beginning 14 days after the application is submitted, which allows time for us to check whether the application is duly made. However, in cases where there is a claim commercial confidentiality or matters in the application may have national security implications, the 28 day period begins 14 days after the claims are finally determined. The consultation period lasts 28 days from the time the advertisement is placed.

The advertisement must include details of the applicant, the address of the installation, the activities to be carried out, the register where the application can be examined, and the procedure and timeframe for making representations. Suggested wording for the advertisement, covering all the required details will be sent to applicants following receipt of a duly made application.

## Public participation

The IED requires additional public consultation on SEPA's draft determination of:

- a permit for a new installation;
- a variation notice for a substantially changed installation;
- a change to an emission limit value (ELV) due to significant pollution; or
- an ELV to be include in a permit that derogates from the BAT-AEL for that parameter in the BATc.

This additional consultation is not generally required for variation determinations where no substantial change is involved.

When the public participation requirements apply, it introduces a further 28 day period of public consultation on SEPA's draft determination (permit), prior to the issue of the final document and additional specified information in the initial press adverts. The draft determination must be placed on SEPA's website, along with a record of the decisions made to reach that determination (this is called the draft decision document) and these are subject to public and operator comment. This extends the statutory determination time available and places strict timescales on the process. The final permit and decision document will also be placed on the website.

[Guidance on the implications of public participation.](#)

## Statutory consultation

PPC 2012 requires SEPA to send copies of the application to the following consultees:

- Health and Safety Executive, in respect of installations on a site where a nuclear site licence

is required under Nuclear Installations Act 1965 or the site includes an establishment under the Control of Major Accident Hazards Regulations 2015;

- relevant health board;
- local authority;
- Scottish Natural Heritage, where the installation may affect a Site of Special Scientific Interest (SSSI) or a European site within the meaning of the Conservation (Natural Habitats, &c.) Regulations 1994;
- Food Standards Agency;
- Scottish Water, where there may be a release into a sewer vested in Scottish Water;
- harbour authority, where there may be a release into a harbour;
- such other persons as the Scottish Ministers may direct.

If there is any doubt as to whether an installation could give rise to any matters relevant to a particular statutory consultee, the application will normally be provided to the consultee anyway.

Normally SEPA must provide copies of applications to statutory consultees within 14 days of receipt of a duly made application. However, if an application contains a claim for protection of data due to commercial confidentiality, or matters in the application may have national security implications, the copies should be provided within a period of 14 days, beginning 14 days after those claims are determined. Commercially confidential information must be given to the Health and Safety Executive, health boards, local authorities and the Food Standards Agency. It may also be given to other consultees if it is directly relevant to their area of interest, although SEPA will try and limit the circulation of commercially confidential information. Information with national security implications can only be given to statutory consultees at the direction of the Scottish Ministers.

Statutory consultees have 28 days, from notification of an application, to make representations. The purpose of statutory consultation is to access expertise in particular fields outwith SEPA's remit. Statutory consultees may provide appropriate advice for determining the application and setting any permit conditions. This may relate to:

- the sensitivity of a particular part of the environment in which a statutory consultee has an interest;
- other local issues including previous experience with the applicant;
- requirements imposed on the installation under other regulatory regimes, which may impact upon the PPC determination; or
- specialist advice on impacts, such as the possible effects of releases on health.

When a statutory consultee offers relevant advice within its field of expertise, SEPA will normally take account of this and should not normally adopt a different position based on its own judgement. SEPA will also need to weigh and balance the comments of different statutory consultees, other consultees and their technical assessments, and may depart from the advice of individual statutory consultees in light of this, although it should be able to justify such departures.

### Off-site consultation

PPC 2012 states that a permit may include an 'off-site' condition that requires an operator to carry out works or to do other things in relation to land that does not form part of the installation (eg monitoring of stack emission concentrations at ground level). Such land may be owned by a third party, so the operator would not, in normal circumstances, be entitled to carry out works. Therefore, PPC 2012 provides that any person whose consent is required must grant the rights needed to enable the operator to comply with the permit condition. PPC 2012 provides that the person granting these rights may be entitled to compensation from the operator.

Before SEPA grants a permit containing an off-site condition, it must consult with the owner, lessee or occupier of the land concerned, or any other person who may need to grant rights in relation to the land.

### **Transboundary consultation**

Applications for installations that may affect the territory of other EU Member States are subject to provisions for transboundary consultation. When a new proposed Part A PPC installation is likely to have a significant negative transboundary effect, PPC 2012 requires the Scottish Ministers to send a copy of the application to the relevant Member State. The Scottish Ministers may act independently or upon our advice in this respect. Alternatively, another Member State may request a copy of the application. The application should be provided to the other Member State at the same time as it is advertised for domestic consultation, or as soon as possible thereafter.

### **Non-statutory consultees**

There is the potential to consult with other bodies than those listed (eg Animal Health vets, community councils, the Royal Society for the Protection of Birds, etc), where it is anticipated that they may have an interest in a specific application. Additionally, it is possible to consult with statutory consultees even where there is not a mandatory requirement for consultation.

### **Determining an application - determination period**

Normally an application that is duly made should be determined, and a draft decision on whether to grant a permit and the conditions of that permit, or to refused the application, within four months of submission. This does not include the time taken by the operator to respond to any formal request from us for additional information, or where national security issues are being determined by the Scottish Ministers.

An extension period may be agreed between SEPA and the operator. If the operator does not agree to an extension and the four months pass without a draft determination, the operator may notify SEPA that it is treating this as a deemed refusal. The operator may appeal against this; however, if the operator does not treat it as a deemed refusal, the determination period simply continues until a decision is reached.

### **Determining an application - determination considerations**

In determining an application SEPA must take account of the following factors:

- the operator's application;
- the operator's management systems and competence;
- representations from consultees;
- any special arrangements established for certain types of installations, eg standard rules or low impact criteria;
- in relation to the environmental performance requirements of PPC 2012, the need to impose permit conditions and an appropriate monitoring programme.

In the case of 'specified waste management activities' PPC 2012 provides two further pre-requisites for the granting of a permit. These are that:

- the applicant satisfies the requirements for fit and proper person;
- if required, the proposed activities must have planning consent under the Town and Country Planning (Scotland) Act 1997 (a certificate of lawful use or development or an established use certificate will be treated as planning consent in this respect).

## Competence

PPC 2012 places a strong emphasis on appropriate and effective systems of management for installations to ensure a high level of environmental protection. SEPA will consider the competence of the operator and other aspects of the management of the installation in the determination of applications and permit conditions. Each system must be fit for purpose and be site specific.

## Fit and proper person

PPC Regulation 18 requires SEPA to determine whether a person is a 'fit and proper person' (FAPP) to carry out a specified waste management activity (SWMA). A permit cannot be granted unless SEPA is satisfied that the applicant is a FAPP. PPC Regulation 18 specifies that a person shall not be regarded as a FAPP if it appears that:

- a) the person or another relevant person has been convicted of a relevant offence; the person has not made adequate financial provision (by way of security or an equivalent arrangement) to ensure that:
  - (i) obligations (including after-care provisions) arising from the permit in relation to the activity are met; and
  - (ii) any closure procedures required under the permit in relation to that activity are followed;
- c) the person and all staff engaged in carrying out such an activity will not be provided with adequate professional technical development and training; or
- d) the management of such an activity will not be in the hands of a technically competent person.

If SEPA considers the operator of a SWMA has ceased to be a FAPP by reason of the operator having been convicted of a relevant offence, or operations at the site are no longer in the hands of a technically competent person, the permit will be revoked, entirely or in part (ie stop certain operations / parts of operations at the installation).

## Grant of permit, with conditions

SEPA will grant a permit unless the application is refused or withdrawn. When determining the permit conditions, SEPA will take account of the following general principles:

- all the appropriate preventative measures are taken against pollution, in particular through the application of BAT;
- no significant pollution is caused;
- waste generation is prevented, and where waste is produced it is, in order of priority and in accordance with the Waste Framework Directive prepared for re-use, recycled, recovered or, where that is technically and economically impossible, disposed of while avoiding or reducing any impact on the environment;
- energy is used efficiently;
- efficient use and consumption of raw materials;
- the necessary measures are taken to prevent accidents and limit their consequences;
- upon definitive cessation of activities in the installation, the necessary measures are taken to avoid any pollution risk and to return the site of the installation to a satisfactory state.

PPC 2012 sets out the specific requirements for the contents of permits. The inclusion of conditions on certain issues is mandatory. SEPA will impose those conditions that it believes to be appropriate, based on BAT, taking into account the characteristics of the installation and the local environment. Permits must:

- include emission limit values for individual pollutants or groups of pollutants likely to be emitted in significant quantities, in particular those listed in the relevant BAT conclusions for the sector and Schedule 5 of PPC 2012:

- be aimed at minimising long distance and transboundary pollution;
- ensure protection of soil and groundwater and include, where necessary, requirements for regular maintenance and surveillance of measures taken to prevent emissions to soil and groundwater, including periodic monitoring of soil and groundwater;
- ensure appropriate monitoring and management of waste;
- avoid risks to the environment during periods when the installation is not operating normally, for example during start up and shut down, malfunction, leaks or temporary stoppages;
- include appropriate steps to be taken prior to operation; these may include controls on the adequacy of construction before the installation begins operating, such as via independent quality assurance of parts of the installation which become inaccessible, like landfill site liners;
- include appropriate steps to be taken on definitive cessation of operations that may include remediation and post-cessation monitoring conditions;
- set out and specify the methodology, frequency and evaluation procedures for monitoring of emissions or other data to verify compliance with the permit; a task which should be undertaken by the operator
- require the operator to submit reports at least annually that are adequate to check compliance with the permit, and where ELVs have been set at a different value, period of time or reference conditions from the BAT-AEL, ensure that the results of emissions monitoring are available for the same period of time and for the same reference conditions as for the BAT-AEL;
- require operators to inform us without delay of any incident or accident that may cause pollution.

Additional conditions can be imposed at SEPA's discretion:

- off-site requirements (the setting of which will give rise to special consultation requirements);
- limits on the amount or composition of any substance produced or utilised in the installation, or any other supplemental or incidental conditions (such conditions should be relevant to the objectives of PPC);
- any conditions needed to reflect the requirements of other pieces of legislation;
- all permits also contain a general BAT condition.

The operator has the right to appeal to the Scottish Ministers if the operator is dissatisfied with the conditions imposed.

## Permit refusal

SEPA must refuse a permit in the following circumstances:

- where SEPA considers the applicant will not be the person who will have control over the operation of the installation concerned after the grant of the permit;
- where SEPA considers the operator will not comply with the permit conditions, this might be the case where:
  - there are inadequate management systems or competence to run the installation according to the application or with any other permit conditions that SEPA would impose;
  - the proposed standards of performance outlined by the operator do not fulfil the requirements of PPC 2012 or published indicative standards;
  - the environmental impact will be unacceptable, for example, a new installation could be proposed close to an extremely sensitive and valued environment but with no known way to provide adequate control.



The operator has the right to appeal to the Scottish Ministers if the permit is refused (including deemed refusals).

### Determination by the Scottish Ministers

Scottish Ministers may direct SEPA to send any particular application or class of application to them for determination. The operator must be informed if this is the case. Once Scottish Ministers have determined the application, SEPA will be given directions to refuse or grant a permit, and the conditions a permit should contain. In addition, Scottish Ministers may give SEPA directions as described in PPC 2012. These may specify conditions to be included in all permits, or permits of specified description (for example, across a particular sector), or any particular permit.

## Permit Variation

Once an operator has obtained a permit, it must advise SEPA whenever it proposes to make a change in the operation. A change in this context is defined by PPC 2012 as a change in the nature or functioning of the installation, or an extension of the installation or mobile plant that may have consequences for the environment. The operator can tell SEPA about an intended change in one of two ways: a notification; or by an application to vary the conditions in the permit. A notification may also result in a variation in the permit conditions if SEPA decides this is appropriate.

### Notification by the operator of changes in operation

Operators are required to notify SEPA of changes in operation where the change has a consequence for the environment but the operator believes the change does not require an amendment of the permit.

Notifications should be used for positive and negative changes in the operation. In most cases, judgement as to the significance of the consequence will be required to decide if a formal notification is appropriate. In doubt, the operator should contact the SEPA site officer to discuss the proposed course of action beforehand.

If an operator is required to notify a change, the notification must be **received** by SEPA at least 14 days before it intends to make any changes. SEPA will acknowledge receipt of such a notification. Unless SEPA take steps to prevent it, after 14 days from receipt, the operator may go ahead with the change, with or without SEPA's acknowledgement and/or agreement, provided this will not cause a breach of any permit conditions (including the general condition to employ BAT).

It is the operator's responsibility to ensure that permit conditions are not breached if the change is made. However, if SEPA believes the change might breach the existing permit conditions, or should be subject to a formal variation, a SEPA officer will contact the operator to advise of this opinion.

It is up to the operator to operate within the law, so if SEPA inspects the site and finds that the operator has not employed the best available techniques, and/or that it has breached a specific permit condition, appropriate enforcement action may be taken.

### Variations by the operator

If a proposed change by an operator requires an amendment to the PPC permit, a variation to the permit conditions will be required. The operator should use the relevant form to apply to SEPA for a variation. If SEPA decides to vary the conditions, a 'variation notice' will be served, specifying the variations and the date(s) on which they will take effect.

SEPA does not need to accept the operator's proposals; SEPA must ensure that sufficient regulatory conditions are imposed. SEPA should only do this if they relate directly to the proposed change and the operator can comply with the conditions. If the operator cannot comply with the new condition, the application should be refused.

If SEPA refuses the application to vary any part of the permit conditions, it must notify the operator of this decision. The operator may appeal against this decision. The operator may also appeal against any condition that may be imposed where SEPA has decided a variation may be made.

If a proposed change may have a significant negative environmental impact or it is otherwise likely to be regarded as a substantial change, it must be subject to consultation with the public and statutory consultees, including public participation requirements. In addition, if the draft determination includes derogation from BAT-AELs, public participation arrangements must be followed.

It is the operator's responsibility to justify whether a proposed change in the operation of the installation is substantial or not, although it is for SEPA to make the determination on substantiality. In the event of SEPA deciding a proposed change is substantial, the operator will be notified of that determination. A consultation process, similar to that for a new permit application, will commence.

The procedures for consultation may also be followed in cases other than those concerning substantial changes. SEPA may determine that this is appropriate for some other reason, eg if the installation is located in a particularly sensitive area.

### Variations by SEPA

SEPA may decide to vary the conditions of the permit at any time, even if the operator has not requested this. Likely reasons for this are:

- following a permit review;
- within 4 years of publication of BAT conclusions relating to the main activity of the installation;
- the adoption of a new environmental quality standard;
- where pollution caused by the installation is of such significance that the ELVs in the permit require to be revised or new ELVs need to be included;
- if operational safety of the activities carried out at the installation require other techniques to be used; or
- development of BAT where BAT conclusions do not exist.

Where SEPA decides to vary the condition of a permit, it will serve a variation notice and, in certain circumstances, may require the operator to pay a fee. Consultation on a proposed variation notice will be required or may be undertaken in much the same way as in the case of a variation requested by the operator.

### Other amendments

The [Regulations](#) make provision for variations which do not affect the permit conditions. For example, where the name of the operator changes but the operation of the installation does not change hands, or the map or plan which must accompany the permit is amended.

SEPA is also able to replace a permit with a consolidated permit, without varying the conditions. This may be appropriate if a permit has been amended several times, making it desirable for clarity to issue a single consolidated version.

## Permit review

The purpose of a permit review is to check whether the permit conditions reflect appropriate standards, in the light of new information on environmental effects, available techniques or other relevant issues. If a review reveals the need for new or modified permit conditions, these would be determined by the variation procedure. See also SEPA's guidance and procedure for permit reviews.

## Mandatory permit reviews

PPC 2012 requires a permit review when one of the following triggers occurs:

- publication of BAT conclusions relating to the relevant sector for the main activity of the permitted activities;
- where it is necessary to comply with a new or revised EQS;
- pollution caused by the installation is of such significance that existing emission level values (ELVs) need to be changed or supplemented (eg when new information comes to light about the effects of pollutants from the installation);
- where an permitted activity is not covered by any BAT conclusions, however changes in BAT make it possible to reduce emissions significantly without excessive costs; or
- where a permit condition leads to a health and safety risk.

If SEPA decides to vary a permit, as a result of a review triggered by significant pollution, or where a BATc review requires derogation then the variation would be subject to the public participation requirements.

## Periodic permit reviews

Even where none of the trigger factors outlined above arise, PPC 2012 requires SEPA to review permits periodically. This is intended to provide a check on the adequacy of the permit conditions. It should prevent permits becoming gradually obsolete, as techniques develop progressively but without any major developments that would obviously trigger a mandatory permit review.

PPC 2012 does not define specific periods for permit reviews. Rather, the expectation is that guidance notes will set out the normal review periods appropriate for reviewing permits in each sector. It will be for SEPA to determine when to carry out reviews, referring to the guidance and any other relevant information.

## Transfer of a permit

Ownership of PPC installations may change hands through normal business transactions. PPC 2012 makes provision for permit transfers and aims to ensure that new operators have adequate management systems and sufficient competence to run the installation properly.

A transfer is required if the legal entity (person or company) operating the permitted activities is to be changed, not where a company or person remains the same but changes its name.

### Applying for a transfer

The operator of an installation wishing to transfer the whole or part of a permit to another person must make a joint application with the proposed transferee. The permit and any relevant fee must be submitted to SEPA along with contact details for the original operator and the proposed transferee. For a partial transfer, where the original operator intends to retain part of the permit, a map or plan identifying those parts of the site and installation) that will be transferred must accompany the application.

The PPC Regulations stipulate that SEPA must approve an application for transfer unless it considers that the proposed transferee will not comply with the conditions of the transferred permit, and/or for a permit covering a specified waste management activity, if it is not satisfied that the proposed transferee is a fit and proper person. These requirements match provisions relevant to new applications and are applied in the same way.

Permit transfer applications are required to be determined within a two month period, although SEPA

may agree a longer period with the applicants. If SEPA has neither effected the transfer nor rejected the applications within the time allowed or agreed, the applicants may notify SEPA that they are treating this as a refusal. The applicants may then appeal against this decision to the Scottish Ministers.

PPC 2012 allows SEPA to transfer all or part of a permit to a new permit holder where the proposed holder consents to the transfer. This would normally occur where the previous permit holder cannot be found eg in the event of the business being wound up, or put into liquidation, or due to the death/disappearance of a permit holder.

### Effecting transfers

Where SEPA effects the transfer of the whole permit, it will endorse the permit with the particulars of the new operator.

In the case of partial transfer, SEPA will issue a new permit to the transferee covering all parts of the operation which have been transferred. This will contain the same conditions as the original permit in so far as they are relevant. At the same time, SEPA must return the old permit to the original operator, indicating the extent of the transfer and the parts of the permit which remain applicable. SEPA needs to consider whether the division of an installation following a partial transfer requires any new or modified permit conditions. For example, conditions may become necessary upon shared operation, to ensure that any inter-reliance needed for proper control of the installation as a whole is maintained.

### Permit surrender

Where a permit for a Part A installation is to be surrendered, a surrender application should be made to SEPA, together with the applicable fee. The application must contain contact details for the operator and, in the case of partial surrender, a plan identifying the part of the site used for operation of the surrender unit. The surrender application should also be accompanied by a closure report describing the condition of the site and, in particular, any changes in the condition during operation under PPC. It should also describe the steps taken to avoid any pollution risk and/or to return the site to a satisfactory state and remove, control, contain or reduce any relevant hazardous substance in soil or groundwater. For further information on site, baseline and closure reports, refer to our technical guidance note [TG02](#).

A surrender application can be made prior to operations ceasing or after they have ceased. Provided the operator has engaged in pre-application discussions with SEPA, it is preferable that the application is made after all the steps have been taken to restore the site to a satisfactory state.

### Enforcement

The purpose of enforcement is to ensure that preventative or remedial action is taken to protect the environment and secure compliance with the regulatory system. The need for enforcement may stem from a non-permitted 'incident', a breach of the conditions of a permit, or operation of an installation without a permit. SEPA expects full and voluntary compliance with PPC 2012 and permit conditions, but will use enforcement powers where necessary.

SEPA has a [formal enforcement policy](#) and all enforcement actions taken must adhere to the its principles.

#### Enforcement of permit conditions

PPC 2012 allows an enforcement notice to be served if SEPA believes an operator has contravened, is contravening or is likely to contravene any permit condition(s). The enforcement notice will specify the steps required to remedy the problem and the timescale in which they must be taken.

## Suspension of permit

If SEPA believes the operation of an installation involves a risk of serious pollution, an immediate danger to public health or threatens to create an immediate significant adverse effect upon the environment, it must serve a 'suspension notice' on the operator. This provision applies whether or not there is a breach of a permit condition. As required by the 'fit and proper person' provision, a suspension notice may also be served if a 'specified waste management activity' ceases to be in the hands of a technically competent person. When such a notice is served, it may provide that the permit ceases to authorise the operation of the entire installation or specified activities, until the notice is withdrawn. SEPA will withdraw the notice when the remedial steps specified have been taken.

## Revocation

SEPA can revoke a permit at any time, in whole or in part, by serving a 'revocation notice' on the operator. This ceases to authorise the operation of the installation or any activity within it to the extent specified in the notice. In situations involving Part A installations, the notice may also specify steps to return the site to a satisfactory state and to avoid any pollution risk. Revocation may be used in any case where SEPA considers it appropriate, eg where exhaustive use of other enforcement tools has failed to secure proper environmental protection. A permit may also be revoked when an operator consistently fails to pay their subsistence fees.

## SEPA's powers to prevent or remedy pollution

If SEPA believes the operation of an installation involves an imminent risk of serious pollution, it may arrange for steps to be taken to remedy the pollution, and may subsequently recover the costs, unless the operator can show that there was no imminent risk of serious pollution requiring the steps to be taken or costs were incurred unnecessarily.

## Prosecution

Where a criminal offence has been committed SEPA may refer the matter to the Procurator Fiscal, who may consider prosecution or issue a warning. The use of the criminal process is an important part of enforcement; it aims to punish wrongdoing, to avoid a recurrence, and to act as a deterrent to others. It may be appropriate to use prosecution in conjunction with other available enforcement tools, for example a suspension notice, where site operation is stopped until certain requirements are met.

Circumstances in which we may refer an operator for prosecution include:

- incidents or breaches that cause, or have the potential to cause, significant consequences for the environment;
- operations undertaken without a permit;
- excessive or persistent breaches of regulatory requirements in relation to the same permit or installation;
- failure to comply, or to comply adequately, with formal remedial requirements;
- reckless disregard for management or quality standards; or
- failure to supply information without a reasonable excuse, or knowingly or recklessly supplying false or misleading information.

In making a referral for prosecution SEPA will also review any part played in the offence by all members of the company or partnership, including directors, partners' managers and the company secretary. Under PPC 2012, action may be taken against such officers (as well as the company or partnership) where the offence was attributable to consent, connivance or any neglect on their part.

In some instances, offences carry the possibility of a fine for summary conviction of up to £40,000

and/or up to 12 months imprisonment, or, following conviction on indictment, an unlimited fine and/or up to five years imprisonment.

One specific basis for a prosecution is failure to comply with an enforcement notice or a suspension notice. However, if SEPA believes such a prosecution would be ineffective, it may take other court proceedings to ensure compliance.

### Application of PPC to the Crown

The Crown (and those people in the public service of the Crown) is bound by PPC 2012. However, contravention of PPC 2012 does not make the Crown criminally liable, and SEPA cannot refer for prosecution if the Crown fails to comply with enforcement or a suspension notice. An application may be made to the Court of Session to have an action or omission of the Crown declared unlawful if it contravenes PPC 2012.

## Appeals

Appeals are governed by Regulations 58. The operator may appeal to the Scottish Ministers in the following situations:

- there has been a refusal to grant a permit, or a permit has been granted but the operator disagrees with the conditions;
- an application to vary the conditions of a permit has been refused, or SEPA has served a notice varying the conditions of a permit and the operator disagrees with the conditions;
- a revocation, enforcement or suspension notice has been served;
- an application to transfer a permit has been refused;
- an application to surrender a permit has been refused; or
- there has been a refusal to grant commercial confidentiality to information supplied by the operator.

If SEPA treats an application as withdrawn because the operator has not provided further information requested in the time allowed, there is no right of appeal. In this case, the operator will have to make a fresh application.

Time limits for appeals vary according to the basis for the appeal.

The Scottish Ministers have the power to extend the limits specified, but are likely to consider doing so in the most compelling circumstances only.

The Scottish Ministers have power to:

- affirm the decision made by SEPA;
- quash any notice or conditions contained in a permit, or
- give directions to SEPA, eg specify the conditions that should be included in a permit.

If a revocation notice is appealed, the revocation does not take effect until the appeal has been determined or withdrawn. If, the appeal is against a variation, enforcement, or suspension notice, then the notice must be obeyed pending the outcome of the appeal.

Appeals must be made to Scottish Ministers in writing, enclosing the documents specified and the number of copies specified in Schedule 8 to PPC 2012. Upon notification of an appeal, SEPA must notify certain parties with a particular interest in the subject matter of the appeal, giving information required by PPC 2012.

An operator (appellant) can request the appeal to be either by written representations, or a hearing.

PPC 2012 gives details as to how an appeal by written representation will be conducted. The Scottish Ministers will designate an 'appointed person' to hold a hearing, and must do this if requested by the appellant or SEPA. In this case, it is up to the appointed person to decide to what extent the hearing should be public or private. The appellant and SEPA are entitled to at least 28 days' notice of the date of the appeal hearing.

In the case of a public hearing, the public will also be notified. The appellant, SEPA, and other parties with a particular interest in the subject matter of the appeal (as notified by SEPA) are entitled to be heard during the hearing, although the appointed person should not unreasonably withhold permission for others to be heard. After the hearing, the appointed person will report to Scottish Ministers, giving conclusions and recommendations.

Once parties have been notified of the Scottish Ministers' decision, in some circumstances an application to the Court of Session for judicial review, and possible setting aside of the decision may be justified. One outcome could be the decision being quashed and the matter sent back to Scottish Ministers for reconsideration. Further representations may be invited and the hearing may be reopened.

An appeal may be withdrawn by the appellant at any time by giving written notice to the Scottish Ministers, with a copy to SEPA. SEPA will then inform anyone with an interest in the appeal.

Further information on the procedure for appeals to the Scottish Ministers is available on the [Scottish Government's website](#).

## Charges

SEPA is required to recover most of its costs for PPC operations from permit holders. This is consistent with the Scottish Ministers' policy and ensures a fair allocation of costs to the beneficiaries of public services. It also promotes the polluter pays principle.

The charges payable within schemes are set annually. For further details on charges payable, visit our [website](#).

### Application charges

A charge is payable on submission of the permit application. SEPA must receive this before the application can be considered duly made. A limited amount of pre-application advice to operators may be provided free of direct charge; as the charging schemes incorporate an average cost for advice.

Charges are also payable on permit variation, transfer and partial or complete surrender.

### Subsistence

Subsistence charges reflect SEPA's ongoing costs of permit maintenance, eg checking monitoring data or carrying out inspections. Failure to pay a subsistence charge may lead to revocation of the permit. Self-monitoring is carried out at the operator's expense. Any additional monitoring undertaken by contractors acting on SEPA's behalf will only be chargeable separately to an operator (in addition to subsistence) where it is directly and solely attributable to a specific installation.

### Remedial or preventative action costs

Under PPC 2012, SEPA has powers to arrange for steps to be taken to prevent serious pollution, or to remedy any pollution caused. These costs may be recovered from the operator. This is separate to any costs or fines payable as a result of prosecution in relation to any offence, although the same

costs will not be recovered twice.

### Financial provision for site aftercare

Operators of 'specified waste management activities' sites are required to make financial provision for site aftercare. Further information is provided on our website for [landfills](#).

## Information and public registers

The PPC regime is designed to encourage public involvement in the regulatory process. This includes making information relating to applications and permits readily available to the public, through a network of registers, and the maintenance of an inventory of emissions.

### Public registers

Registers of PPC information are available, at all reasonable times, for inspection by the public free of charge. Copies of any entry on a register are available to any member of the public (in paper and/or electronic form) on payment of a reasonable charge.

The registers contain the information set out in PPC 2012. This includes details of:

- all permit applications and applications for variations, transfer or surrender, including SEPA's requests for further information and operators' responses, advertisements and comments from all consultees and how they were taken into account in the decision;
- any permit granted by SEPA and the reasons on which the decision was based;
- any variation, transfer, surrender or revocation of any permit;
- any enforcement or suspension notice issued by SEPA;
- any appeal, including representations from the applicant, ourselves or any other person, and the Scottish Ministers' determination of the appeal;
- any conviction of any person for an offence under PPC 2012, including the person's name, date of conviction, and penalty imposed;
- any monitoring information relating to an installation obtained by SEPA as a result of its own monitoring, or furnished in writing by virtue of a condition of the permit, or any report published by SEPA relating to an assessment of the environmental consequences of an installation;
- site visit reports;
- any other information furnished to SEPA in compliance with a condition of a permit, a variation notice, an enforcement notice or a suspension notice; and
- any direction, other than one relating to national security, given to us by the Scottish Ministers under PPC 2012.

### National security

The PPC Regulations allow information to be kept from public registers for reasons of national security. This requires a determination by the Secretary of State or Scottish Ministers that placing the information on the register would be contrary to the national interest. The operator must notify SEPA that such a determination has been sought, but must not exclude the information from any required submission (for example a permit application). The Scottish Ministers will direct SEPA on the information to be excluded from the public register. This information will not normally be sent to statutory consultees.



## Commercial confidentiality

PPC 2012 allows commercially confidential information to be withheld from the public registers. Any person may apply to SEPA to have this type of information protected in this way. SEPA must give notice of its determination within 28 days, or the information shall be treated as non-confidential. If information is accepted as confidential, the Scottish Ministers may still require it to be put on the register for public interest. If SEPA judges that the information is not confidential, the applicant has 21 days to appeal to Scottish Ministers. If there is no appeal, the information will be placed on the register.

Under PPC 2012, information is commercially confidential if placing it on the public register would prejudice (to an unreasonable degree) the commercial interest of any person. Operators claiming confidentiality must clearly explain how such prejudice would arise. It is not sufficient to state a general concern over public opposition, or to assert commercial prejudice without substantiation. Operators should also ensure any confidentiality claims are complete in the first instance. SEPA may only determine claims from the information presented. If an application does not clearly demonstrate that information may legitimately be protected, SEPA must determine that it is not confidential.

Confidentiality may be granted for up to four years, although a shorter period may be specified. A person may re-apply for continued protection before the period ends. Where commercially confidential information is protected, the PPC Regulations require a statement to this effect to be put on the register. If monitoring data is withheld, PPC 2012 also requires a statement in the register indicating whether or not the permit conditions have been complied with.

SEPA limits the circulation of commercially confidential and nationally secure information. However, PPC 2012 requires that both commercially confidential and nationally secure information must be given to statutory consultees such as the health boards, local authorities and the Food Standards Agency. The only exception to this is the presumption that commercially confidential and nationally secure information will not be given to Scottish Natural Heritage/Natural England, Scottish Water or the harbour authority unless it directly related to their area of interest.

## Other exclusions

Representation by third parties (eg on applications), must be put on the register, unless a person making representation requests otherwise. SEPA shall include a statement on the register indicating that such representations have been made, without identifying their source.

## Withdrawing information

If an application for a permit or variation is withdrawn before being determined, all references to it will be taken off the register between two to three months after the withdrawal. No further information relating to the application will be included in the register. Similarly, if an installation ceases to fall under PPC due to amendments to PPC 2012, the information will be removed from the register between two to three months after the amendment is made. Monitoring information and other information relating to the installation, which is superseded by new information, may be withdrawn from the register after four years.

## Scottish Pollutant Release Inventory

The Scottish Pollutant Release Inventory (SPRI) is a database of the annual mass releases of specified pollutants to air, land and water from regulated industrial sites in Scotland. It also provides information on off-site transfers of hazardous and non-hazardous waste from these sites.

Site operators provide emission values and waste transfers when they are over the reporting thresholds or can indicate if a site releases a pollutant below the reporting threshold. Details of the individual pollutants, the sites that returned data for an individual year and background information are available on our [website](#).

The list of potentially reportable substances is available from the [SPRI schedule](#).

The information that is collected through SPRI is reported to the [European Pollutant Release and Transfer Register](#) (previously the European Pollutant Emission Register).

## Relationship with other Legislation

This section describes the relationship between the Pollution Prevention and Control (Scotland) Regulations 2012 and other legislation.

### IED Chapters III, IV, V and VI

Part A installations and mobile plant may also be subject to other European Directives or to additional requirements within the IED. Replacing separate Directives, the IED includes provisions relating to large combustion plants (IED Chapter III), waste incineration (Chapter IV), solvent emissions (Chapter V) and titanium dioxide production (Chapter VI).

With one exception<sup>1</sup>, all Part A **combustion activities** with a rated thermal input >50MW are subject also to the requirements in **Chapter III** of the IED. Chapter III requires ELVs for nitrogen oxides, sulphur dioxide and dusts must be at least as stringent as those set out Annex V of the IED, although application of the BAT-based Chapter II (IPPC) requirements in the BATc may require more stringent ELVs to be set in particular cases.

All Part A **waste incineration or co-incineration** activities will be subject to the requirements in **Chapter IV** of the IED, unless they involve the incineration or co-incineration of only the wastes listed in Article 42(2)<sup>2</sup>. Chapter IV requires that ELVs for a range of substances emitted to air and water must be at least as stringent as those set out Annex VI, although application of the BAT-based Chapter II (IPPC) requirements may require more stringent ELVs to be set in particular cases. Chapter IV also has the effect of requiring certain operating conditions to be set in permits (eg temperature set point).

Part A activities may involve using **solvents**, the use of which are covered by **Chapter V** of the IED. Those activities are set out in Part 1 of Annex VII of the Directive and are subject to at least the emission limit values set out in Part 2 of that Annex, although the application of BAT-based Chapter II (IPPC) requirements may require more stringent ELVs to be set. These activity descriptions are set out in Schedule 2 to the PPC Regulations.

**Chapter VI** of the IED refers to installations producing **titanium dioxide**. There are no such installations in Scotland. Any installations producing TiO<sub>2</sub> would be subject to Chapter II as chemical production activities and the minimum requirements set out in Annex VIII of the IED would apply.

Additional guidance on the interface between Chapter II activities and the requirements of Chapters III, IV, V and VI is being prepared.

### Waste Management Licensing (Scotland) Regulations 2011

Any waste management licences previously granted to an installation will cease to apply once a PPC permit has been granted for that installation. However, provisions for a 'fit and proper person' have been carried over from equivalent provisions introduced in relation to waste management licensing by Part II of the Environmental Protection Act 1990 and the Waste Management Licensing (Scotland)

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<sup>1</sup> The exception may arise if an installation, although above 50MW rated thermal input when all the combustion units are aggregated, is less than that figure when individual units of less than 15MW are not considered, as required by the aggregation rule for Chapter III in Article 29(3).

<sup>2</sup> Chapter IV does not apply to plants (a) treating only the following wastes: (i) ; (ii) radioactive waste; (iii) animal carcasses; (iv) wastes from exploration/exploitation off-shore oil and gas resources and incinerated on board installation; (b) experimental plants for R&D and testing and are <50 tpa.

Regulations 2011.

Activities prescribed under PPC involving the disposal or recovery of waste, such as the operation of a landfill or incinerator, are also covered by the Waste Framework Directive 2008/98/EC. In the case of such activities, this means PPC must be applied in a way that delivers Article 13 of the Waste Framework Directive. Specifically, Member states must take the necessary measures to ensure that waste management is carried out without endangering human health or harming the environment, and in particular, without:

- risk to water, air, soil, plant or animals;
- causing nuisance through noise or odours;
- adversely affecting the countryside or places of special interest’.

### Environmental Protection Act 1990 Part IIA

The PPC Regulations control future land, water and air contamination arising from installations. However, PPC does not include land contamination arising from processes prior to them being permitted under PPC. In certain circumstances, the contaminated land provisions of Part IIA of the Environmental Protection Act may apply, particularly where the current use of land is causing, or has the potential to cause, significant harm or pollution of controlled waters. Part IIA seeks to address historical contamination and adopts a site-specific risk-based approach based on the intended end-use of the site. This is considerably different to the ‘no degradation’ approach under PPC.

### Environmental Protection Act 1990 Part III – statutory nuisance

Local authorities regulate Part III of the Environmental Protection Act (EPA) 1990 concerning ‘statutory nuisance’. Unless the Scottish Ministers have granted consent, a local authority may not introduce summary proceedings in respect of a nuisance where proceedings can instead be brought under the PPC regime. This is to avoid ‘double jeopardy’ for PPC operators, and is consistent with the previous arrangements under the Integrated Pollution Control (IPC) regime. However, activities on PPC installation sites not covered by PPC (ie, not part of the installation) may be regulated under the statutory nuisance provisions.

For example, a dog barking or a burglar alarm would not be covered by the PPC, and instead would be regulated as a statutory nuisance by the local authority. The PPC Regulations also do not restrict the scope of aggrieved persons to take action under Section 82 of the EPA 1990. Members of the public will still be able to use summary proceedings under that section.

### Air quality strategy and EU directives for environmental quality standards

The PPC Regulations require that, where protection of an EU environmental quality standard (EQS) requires stricter permit conditions, that those achievable by the use of BAT the permit must include additional measures or stricter emission limit values. Legislation laying out EQSs is described below.

Directive	Subject	Notes
87/217/EEC	Asbestos	
2000/60/EC	Water Framework Directive (WFD)	Currently does not contain EQSs, but provides framework for the management for surface waters and groundwaters.
2006/7/EC	Bathing Water Directive	
2006/118/EC	Groundwater Directive	A WFD Daughter Directive, limits in ground water will be set as resource protection values based on human health. Any impact on surface waters will need to comply with EQSs.
2008/50/EC	Ambient Air Quality Directive	Consolidates Air Quality Framework Directive & three of its Daughter Directives
2008/105/EC	Priority Substances Directive	A WFD Daughter Directive contains EQSs for priority substances and priority hazardous substances.

Although not explicitly implemented by PPC 2012, there are domestic EQSs on the [Scottish Government website](#).

### **Control of Major Accident Hazards Regulations 2015**

In relation to accidents, for some installations the requirements of PPC will have an element of overlap with the provisions of the Control of Major Accident Hazards Regulations 2015 (COMAH). Applications for PPC permits can therefore use material prepared under the COMAH Regulations for a safety report or otherwise submitted to the COMAH Competent Authority (and vice versa), bearing in mind that COMAH covers the risks of major accidents, while PPC requires the consideration of **all** accidents that have the potential to cause environmental harm.

Guidance supporting the COMAH Regulations may also be of help to PPC operators (whether or not they are covered by the COMAH regime) in considering the ways to identify and reduce risks and mitigate the consequences of an accident. Further details can be found [SEPA's website COMAH information pages](#), or on the [Health and Safety Executive website](#).

### **Registration, Evaluation, Authorisation and Restriction of Chemicals – EC Regulation no. 1907/2006**

Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) replaces the previously complicated array of regulations relating to chemical manufacture and use with a single piece of legislation. Through the REACH Enforcement Regulations 2008, where the subject matter of enforcement is primarily concerned with protection of the environment, SEPA is the lead enforcing authority for REACH in Scotland.

Its principal objective is to ensure a high level of protection for human health and the environment from hazardous chemical substances. To achieve this, manufacturers and importers must register chemicals with a central EU agency, which assesses the chemical's potential to cause harm.

REACH also covers the downstream usage of chemicals and is therefore likely to apply to some extent to all PPC sites (most of the sites that SEPA regulates). The formal requirements of REACH are very separate from those for PPC, but officers undertaking PPC inspections will require some knowledge and consideration of REACH and its implications. In particular, substances may be restricted for certain purposes or have specific safety instructions for usage. Health and safety data sheets should be available for all substances used on a site and should provide assistance in any compliance assessment. Further details can be found on the [Health and Safety Executive's website](#).

### **Water Environment (Controlled Activities) (Scotland) Regulations 2011**

The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (otherwise known as 'CAR'), require authorisations for:

- all discharges to groundwater and surface waters; and
- disposals to land.

The requirements of the Groundwater Directive (80/68/EEC), which were previously enacted by the Groundwater Regulations, are now fulfilled by CAR.

Under paragraph 18(c)(iii) of Schedule 10 to the CAR Regulations, a permit issued under PPC is deemed to be a CAR authorisation, eg if discharges and disposals to land are covered by a PPC permit, then there is no requirement for a separate authorisation under CAR.

New PPC permits must include such conditions as are necessary to ensure compliance with the Groundwater Directive. Existing PPC permits will be reviewed and, if necessary, revised to incorporate such conditions.

If, however, other activities such as water abstractions, impoundments (dams and weirs) or

engineering works in inland waters and wetlands are associated with a PPC installation, then a separate CAR authorisation will be needed. Further details can be found on SEPA's [website](#).

### **Landfill (Scotland) Regulations 2003**

The Landfill (Scotland) Regulations 2003 implement the requirements of the Landfill Directive (1999/31/EC, OJ L18, 16.7.99) in Scotland. The regulations introduce controls that are applicable to individual landfills, as well as to overall limits on the amount of biodegradable waste that may be disposed of to landfill.

Guidance for landfills can be found in the [Landfill](#) section of SEPA's website.

### **Conservation (Natural Habitats, &c.) Regulations 1994**

The Conservation (Natural Habitats, &c.) Regulations 1994 (otherwise known as the Habitats Regulations) implement EC Directive (92/43/EEC) on the conservation of natural habitats and of wild fauna and flora. 'Special Areas of Conservation' and 'Special Protection Areas' are designated and protected under these regulations. The regulations require SEPA to carry out an 'appropriate assessment' for PPC installations that may have a significant effect on a European site. The methodologies SEPA uses to undertake these appropriate assessments vary according to the PPC activity undertaken. Further guidance is currently under development.

### **Radioactive Substances Act 1993 and Nuclear Installations Act 1965**

PPC is not designed to cover the keeping, use or disposal of radioactive substances that are the subject of the Radioactive Substances Act 1993 (RSA 1993). Because of the very distinct nature of these substances, a PPC activity involving the keeping, use or disposal of radioactive substances will continue to require registration or authorisation under that act. In certain circumstances, a PPC permit may also be required.

Further details can be found on SEPA's [Radioactive Substances website pages](#).

### **Fluorinated Greenhouse Gases Regulations 2009**

The Fluorinated Greenhouse Gases Regulations 2009 (known as 'F-gas Regulations') implement Directive EC 842/2006 on certain fluorinated greenhouse gases. This statutory instrument puts in place offences and penalties applicable to issues around leakage checking, record keeping, gas recovery and existing qualifications for personnel working on equipment.

SEPA promotes and ensures compliance with the regulations for fluorinated gas that apply to sites covered by Part A permits. Other industrial sites, commercial and retail businesses are regulated by local authorities. Offshore oil and gas installations are regulated by the Department for Business, Energy and Industrial Strategy (BEIS).

### **Regulations for Ozone Depleting Substances**

The Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2011 (and the Ozone Depleting Substances (Qualifications) Regulations 2009 (known as 'ODS Regulations') implement the Directive EC 2037/2000 on substances that deplete the ozone layer. These regulations provide for a system that controls the production, marketing, use of, and trade in emissions of certain substances that deplete the ozone layer.

The Ozone Depleting Substances (Qualifications) Regulations 2009 (as amended) relate to minimum qualifications for those working on the recovery, recycling, reclamation or destruction of controlled substances and the prevention and minimising of leakages of controlled substances.

SEPA promotes and ensures compliance with the regulations for ozone depleting substances that apply to sites covered by Part A permits. Other industrial sites, commercial and retail businesses are regulated by local authorities. Offshore oil and gas installations are regulated by the Department for

Business, Energy and Industrial Strategy (BEIS).

### **Emissions Trading Scheme Regulations 2012**

The [EU Greenhouse Gas Emissions Trading System](#) covers emissions of greenhouse gases from a number of industries specified in the EU Emissions Trading Directive.

### **Urban Waste Water Treatment Directive**

The activity descriptions in paragraphs 5.3(a) and (b) and 6.11 of Annex I to the IED each exclude activities covered by the Urban Waste Water Treatment Directive (UWWTD, 91/271/EEC). SEPA is of the view that this excludes all activities conducted at sewage works for the treatment of 'domestic waste water, or the mixture of domestic waste water with industrial waste water and/or run-off rain water' and 'residual sludge, whether treated or untreated, from urban waste water treatment plants' provided the plant is dedicated to that treatment. Anaerobic digestion plants used for sludge treatment at sewage works will therefore be excluded, unless those plants also treat other waste material not derived from the sewage treatment process.

However, the European Commission has been asked to provide a definition of the exclusion identified above. Should the EC decide that the UWWTD does not apply to sludge treatment sites then these sites would need to apply for PPC permit. Until such time as the EU provides a definition these sites will remain outwith PPC and will not require a permit.

Waste water treatment and anaerobic digestion of waste water streams or waste at industrial sites (eg WWTP at a milk processing plant or AD of a waste water stream at a chemical site), are not excluded from PPC regulation if the capacity of the plant is above the appropriate threshold.

# Annex 1 Guidance notes

## BAT reference documents

[BRef documents](#) encompass most of the main industrial sectors covered by PPC and also a number of cross-sector activities such as cooling systems, wastewater and waste gas equipment. SEPA has developed a matrix to show the links, this will be made available on SEPA's PPC webpages.

## SEPA's PPC guidance notes

We provide the following guidance documents:

- Site report guidance (TG02)
- Guidance on substantial change (TG03)
- Guidance for applicants
- Guidance on low impact installations
- Guidance on control of noise at PPC sites
- Summary guidance on PPC Noise
- Notification of change (Regulations 12 and 13) (PG 03 01)

They can all be downloaded from SEPA's [PPC guidance webpages](#)

## UK PPC technical sector guidance notes

These can be accessed on SEPA's [PPC guidance webpages](#)

Also check the [Environment Agency website](#) for latest versions.

## UK PPC horizontal guidance notes

UK horizontal guidance notes can be found on SEPA's [PPC guidance webpages](#). Please note: the noise guidance note and site report guidance note are not applicable in Scotland. SEPA has separate guidance for these subjects.

## DEFRA Part A(2) technical guidance notes and Part B process guidance notes

[DEFRA policy and procedures](#), including sector guidance notes for Part A(2) activities (some Part A activities in Scotland) and process guidance notes for Part B activities.

## Annex 2 Interpretation of installation and worked examples

### Interpretation

Regulation 2(1) defines an ‘**installation**’ as:

- (i) a stationary technical unit where one or more activities listed in Schedules 1 or 2 are carried out, and
- (ii) any other location on the same site where any other directly associated activities are carried out.

Regulation 2(1) defines ‘**directly associated activity**’ as:

- (a) in relation to an activity carried out in a stationary technical unit and falling within any description in Part 1 of Schedule 1, any directly associated activity which has a technical connection with the activity carried out in the unit and which could have an effect on pollution; and
- (b) in relation to a solvent emission activity, any directly associated activity which has a technical connection with the solvent emission activity carried out on the same site and which could have an effect on any discharge of volatile organic compounds into the environment.

To satisfy (i) of the definition of an **installation**, the plant, machinery or disposal site must satisfy two criteria:

- (1A) the plant or machinery must be a ‘technical unit’ where one or more activities listed in Part 1 of Schedule 1 to the PPC Regulations (‘listed activities’) are carried out;
- (1B) the unit must be stationary.

For the purpose of (1A), ‘technical unit’ can be taken to mean something that is functionally self-contained in the sense that the unit, which may consist of one component or a number of components functioning together, can carry out the Part A activity or activities on its own.

However, where there are two or more such units on the same site, which are technically connected with each other, those units should be regarded as a single technical unit for the following purposes, if:

- they carry out successive steps in one integrated industrial activity;
- one of the listed activities is a directly associated activity of the other; or
- both units are served by the same directly associated activity limb (ii) of the definition.

An installation consists of the stationary technical unit identified under limb (i) of the definition, plus any location on the same site where activities which satisfy limb (ii) are carried out.

For an associated activity to satisfy limb (ii), and thus be a **directly associated activity** and part of the installation, three criteria must be satisfied:

- (2A) the activity must be directly associated with the stationary technical unit;
- (2B) the activity must have a technical connection with the listed activities carried out in the stationary technical unit; and
- (2C) the activity must be capable of having an effect on pollution.

Criterion (2A) requires that the activity is carried out on the same site as the stationary technical unit and that the activity serves that stationary technical unit (ie there is an asymmetrical relationship whereby the activity serves the stationary technical unit but not *vice versa*). If an activity (eg landfill) serves a stationary technical unit carrying out a listed activity on the same site and some other industrial unit, or units on a different site are carrying out non-listed activities, then the activity will only be directly associated with the stationary technical unit if that unit is the principal user of the activity.



Criterion (2B) gives rise to four types of directly associated activities that may be said to have a technical connection with a stationary technical unit:

- a) input activities concerned with the storage and treatment of inputs into the stationary technical unit;
- b) intermediate activities concerned with the storage and treatment of intermediate products during the carrying on of the listed activities, this might apply particularly where the stationary technical unit consists of a number of sub-units, with the product of one sub-unit being stored or treated prior to being passed on to the next sub-unit in the production chain;
- c) output activities concerned with the treatment of waste (or other emissions, like manure) from the stationary technical unit;
- d) output activities concerned with the finishing, packaging and storage of the product from the stationary technical unit.

These activities have a technical connection in the sense that they are integral parts of the overall industrial activity. Often, there will also be a physical connection, such as a conveyor belt or pipeline, but this does not have to be the case.

The need for input, intermediate and output activities to be an integral part of a listed activity before it is caught by limb (ii) is presented as part of criterion (2B). However, please note that the requirement for associated activities to be 'directly' associated in criterion (2A) also emphasises the need for associated activities to be an integral part of a listed activity *before* they are treated as part of an installation.

Criterion (2C) covers both activities that have an effect on emissions and pollution from the listed activities with which they are associated, and activities that have such an effect in their own right.

These criteria are applicable for installations with a single operator, and for installations where there are a number of operators, for example a production facility operated by one operator, with a waste water treatment plant operated by another and a combustion plant operated by a third operator. Each will operate part of the installation and require a separate permit. That permit may be for a prescribed activity, or for a DAA depending on the capacity of the WWTP and combustion plant.

### Worked examples

The following examples illustrate the application of these criteria:

#### Example 1: Two chemical plants served by the same effluent treatment works

Limb (i): Each chemical plant is functionally self-contained, given that they can both produce chemicals without being attached to an effluent treatment works (criterion (1A)) (as opposed to, say, two combustion plants which have to operate with a stack). They will therefore generally be treated as two separate stationary technical units. If, however, the two chemical plants and the effluent treatment works are on the same site then the two chemical installations may be treated as one (integrated) stationary technical unit. That unit (plus the treatment works) will form the installation.

Limb (ii): If the effluent treatment works is not on the same site as either of the chemical installations it will not satisfy limb (ii) because of criterion (2A). It will therefore not be part of the installation.

If the effluent treatment works is on the same site as only one of the installations it will satisfy limb (ii) in relation to that installation if that installation is the principal user of the works.

#### Example 2: A power station (with a capacity above the PPC threshold) served by its own landfill (with a capacity above the PPC threshold also) on the same site

Limb (i): This constitutes one single technical unit.

Limb (ii): Any associated activities such as stockpiling and recovering coal, handling ash and treating

and releasing cooling water which are directly associated with the stationary technical unit will also be part of the installation.

### **Example 3: A power station where coal is stored on site**

Limb (i) The power station is the stationary technical unit.

Limb (ii) The storage of coal will satisfy limb (ii) and will thus be a directly associated activity and the storage area will therefore be part of the installation along with the stationary technical unit.

### **Example 4: An integrated oil refinery**

Limb (i) If the oil refinery carries out a number of listed activities using plant that carry out successive steps in one integrated industrial activity limb (i) will dictate that the whole collection is one stationary technical unit.

### **Example 5: Combined heat and power plant (with a capacity above the PPC threshold) serving a light industrial estate engaged in non-listed activities**

Limb (i): The combined heat and power (CHP) plant is the stationary technical unit.

Limb (ii): None of the units on the industrial estate will be directly associated activities because they do not meet criterion (2A) in that they do not serve the CHP plant; it is the CHP plant which serves them.

### **Example 6: A PPC installation for the intensive rearing of pigs or poultry, where manure from the installation is spread on adjacent fields**

Limb (i): The building or buildings in which the animals are housed will be the stationary technical units. The fields are not part of the stationary technical unit.

Please note: all animal houses which are on the same site in which PPC activities are carried out by the same operator, count towards the threshold.

Limb (ii): Directly associated activities such as a slurry handling system will be part of the installation.

Please note: conditions will be attached to the permit for these installations governing the handling of manure, but these will not apply to third parties who might take the manure.

## Annex 3 Emerging Techniques

PPC 2012 allow for and encourage the development of emerging techniques, which are defined as novel techniques that, if commercially developed, could when compared to existing BAT provide: (a) a higher level of protection of the environment, or (b) at least the same level of protection of the environment and lower cost.

### Background

BRef documents contain a list of current emerging techniques, and Article 25 of the IED encourages the development and application of the techniques identified, however this list is not definitive and it is expected that as sectors mature, other techniques and technologies will become available that will allow operators to meet or improve on defined BAT in a manner that gives some commercial advantage.

### Defining BAT

In determining BAT, regulators must also give special consideration to the criteria listed in Annex III of the Directive, which include the following.

*Consumption and nature of raw materials.* Consideration should be given to options that use fewer resources, or those that use materials that are less likely to produce hazards or pollution risks. For example, the use of a purer raw material could lead to lower releases of contaminants. Water is also a raw material, and the assessment should consider how much each option needs, where appropriate, and the environmental consequences of any abstraction.

*Energy efficiency.* Consideration should be given to the effect different options would have on energy consumption and efficiency. Care should be taken that pollution abatement systems do not use excessive energy compared with the emission reductions they achieve, but there may have to be trade-offs between direct or indirect emissions of carbon dioxide and other pollutants in the interests of overall environmental protection.

*Waste issues.* The assessment of options should cover the quantity of waste produced and the possibility of preventing waste, recovering it or disposing of it safely. It may be preferable to permit a slightly higher level of releases if this greatly reduces the volume of waste, especially if the waste is particularly hazardous. However, this should not simply transfer pollution from one medium to another, which is precisely what the IED is meant to avoid. The main goal should be to identify techniques that minimise all types of waste and releases at source.

*Accidents.* Consideration should be given to the environmental hazards posed by possible accidents and their associated consequences. This should include the practicality of measures to reduce risks and hazards and to respond to any accidents. In comparing the effectiveness of techniques to prevent emissions, consideration should not be limited to looking at normal operations, but also at the possibility of unintentional releases.

*Site restoration.* Consideration should be given to whether options risk polluting the site. This should include planning ahead for decommissioning and restoring the site upon closure. For example, installing pipelines and storage tanks above-ground rather than underground would make leaks easier to detect and removal of pollution risks more straightforward.

Where there is a choice, the technique that is best overall at providing protection to the environment as a whole will be BAT unless it is not an available technique. There are two key aspects to the availability test:

- *what is the balance of costs and advantages?* This means that a technique may be rejected as BAT if its costs would far outweigh its environmental benefits; and
- *can the operator obtain the technique?* This does not mean that the technique has to be in

general use. It would only need to have been developed or proven as a pilot, provided that the industry could then confidently introduce it. Nor does there need to be a competitive market for it. It does not matter whether the technique is from outside the UK or the EU.

### **Derogation for Emerging Techniques**

Regulators may also grant a temporary derogation under Article 15(3) in relation to the testing and use of emerging techniques. The derogation must not last longer than 9 months and the BAT AELs must be met after that time if the activity is allowed to continue. This means derogation under Article 15(3) is effectively to allow sufficient data to be collected for the technique to be demonstrated as BAT.

## Annex 4 Interpretation of ‘research, development and testing’

Under the provisions of PPC 2012, companies operating installations (or parts thereof) whose stationary technical unit comprises of an activity(s) described in Schedule 1, will not require a permit if they are undertaking research, development or the testing of new products or processes (R&D and testing activity) at an installation, or part of an installation, used solely for that purpose.

### Background

Where an activity meets the requirements of Paragraph 3(d) in Part 2 of Schedule 1, it is not taken to be an activity described in Part 1 and, therefore, it is not subject to the requirements of the PPC Regulations. In this sense, the activity that could have been described in Part 1 of Schedule 1 is excluded.

Given the wording of the PPC Regulations there are four ‘tests’ that must be met:

- a) The activity or activities concerned must be regarded as being research activities, development activities, or the testing of new products and/or processes.
- b) The R&D and/or testing activity(s) must be an activity that would otherwise be an activity described in Part 1.
- c) The R&D and/or testing activity(s) must be carried out at the installation (or part of) being considered for exemption.
- d) The R&D and/or testing activity(s) must be carried out at an installation (or part of) that is being used **solely** for that purpose.

### What is research, development and testing, and to which activities should it be applied?

Although the PPC Regulations exclude activities that may fall under the banner of R&D and/or testing activity, they do not define what is meant by the terms. This means the regulator needs to form a view on what they think is reasonable to regard as being R&D and/or testing activity.

A range of possible interpretations can be found, such as: ‘Basic and applied research in the sciences and engineering and the design and development of prototypes and processes, excluding quality control and routine product testing.’

In essence, if the operator is undertaking activities that are concerned with the development of new products or new processes then it is likely that they are undertaking a R&D and/or testing activity. If, having developed those new products or processes, they wish to test them to ensure their safety and/or efficacy then this is also likely to fall under the banner of R&D and/or testing activity. Quality control is not, however, generally regarded as an R&D or testing activity. If you are in doubt as to whether an activity is an R&D and testing activity then you can seek advice from SEPA ([ppc@sepa.org.uk](mailto:ppc@sepa.org.uk)).

### To which activities within Schedule 1 could a research, development and testing exemption apply?

The R&D and testing activity exclusion only applies to activities that are described in Part 1 of Schedule 1 of the PPC Regulations.

It is not possible, therefore, to seek a R&D and testing activity exclusion for any activity that may be described as a solvent emission activity in Schedule 2. However, since the solvent emissions provisions in Schedule 2 have thresholds, any research, development and/or testing activity(s) may be below the qualifying thresholds due to their scale. For example, a R&D facility in the pharmaceutical sector would fall out with the scope of PPC 2012 if it did not exceed the 50 tonne consumption threshold.

Although a permit may not be required under Schedule 1 to PPC because SEPA regarded the activity

as being R&D and testing, a permit would be needed if the activity is considered to meet the requirements applying to a solvent emissions activity.

### **Where is the R&D activity being carried out?**

The R&D and testing activity(s) must be carried out at the installation concerned. It is not possible, therefore, to exclude an R&D or testing activity that is on the installation but is actually being conducted elsewhere, or by someone else, elsewhere.

### **Is the installation (or part thereof) used solely for the purposes of R&D and testing?**

The installation (or part thereof) containing the R&D and testing activity must be used solely for that purpose. It follows therefore that if the installation (or part of) is used at any other time for activities that are described in Part 1 of Schedule 1, then the R&D and testing activity exclusion does not apply. This does not mean necessarily that the activity concerned may not be essentially a R&D and testing activity; it simply means that the specific criteria set by the PPC Regulations for exclusion are not met.

### **Is production for clinical trials in the pharmaceutical sector by a toll-manufacturer excluded?**

It should be noted that production of pharmaceutical products to furnish the clinical trials of a third party's drug programme is not excluded from PPC on the basis that:

- (1) the material being produced by the toll-manufacturer is being produced under contract for a third party to furnish the third party's R&D and testing programme, not the toll-manufacturer's, and this must be, by definition, a commercial enterprise;
- (2) the material is not usually being produced for a R&D or testing activity at the installation concerned;
- (3) the material being produced is more often than not being produced at an installation (or part thereof) which is not used solely for the purposes of R&D and testing.

## Annex 5 Indicative list of pollutants

Schedule 5 to PPC 2012 (and Annex II to the IED) lists of the main polluting substances that must be taken into account if they are relevant for fixing emission limit values.

- (a) in respect of releases into air:
- (i) sulphur dioxide and other sulphur compounds;
  - (ii) oxides of nitrogen and other nitrogen compounds;
  - (iii) carbon monoxide;
  - (iv) volatile organic compounds;
  - (v) metals and their compounds;
  - (vi) dust, including fine particulate matter;
  - (vii) asbestos (suspended particulates, fibres);
  - (viii) chlorine and its compounds;
  - (ix) fluorine and its compounds;
  - (x) arsenic and its compounds;
  - (xi) cyanides;
  - (xii) substances and mixtures which have been proved to possess carcinogenic or mutagenic properties or properties which may affect reproduction via the air;
  - (xiii) polychlorinated dibenzodioxins and polychlorinated dibenzofurans, and
- (b) in respect of releases into water:
- (i) organohalogen compounds and substances which may form such compounds in the aquatic environment;
  - (ii) organophosphorus compounds;
  - (iii) organotin compounds;
  - (iv) substances and preparations which have been proved to possess carcinogenic or mutagenic properties or properties which may affect reproduction in or via the aquatic environment;
  - (v) persistent hydrocarbons and persistent and bioaccumulable organic toxic substances;
  - (vi) cyanides;
  - (vii) metals and their compounds;
  - (viii) arsenic and its compounds;
  - (ix) biocides and plant health products;
  - (x) materials in suspension;
  - (xi) substances which contribute to eutrophication (in particular, nitrates and phosphates);
  - (xii) substances which have an unfavourable influence on the oxygen balance (and can be measured using parameters such as BOD, COD, etc.);
  - (xiii) substances listed in Annex X to Directive 2000/60/EC (the Water Framework Directive).

## Annex 6 Acronyms

<b>BAT</b>	“best available techniques”, as defined in Article 3(10) to the IED
<b>BAT-AEL</b>	“emission levels associated with the best available techniques”, as defined in Article 3(13) to the IED
<b>BATc</b>	BAT conclusions, as defined in Article 3(12) to the IED
<b>BRef</b>	BAT reference document, as defined in Article 3(11) to the IED
<b>CAR</b>	The Water Environment (Controlled Activities) Regulations 2011 – that transposes Water Framework Directive (2000/60/EC) into Scots Law
<b>COMAH</b>	Control of Major Accident Hazards Regulations 2015 – applicable to industrial sites, some of which will also fall under PPC, that hold specified quantities of specified materials, transposes the Seveso III Directive ( <a href="#">2012/18/EU</a> ) for Great Britain
<b>DEFRA</b>	Department of the Environment, Food and Rural Affairs
<b>EU</b>	European Union
<b>EIA</b>	Environmental impact assessment
<b>ELV</b>	Emission limit value – the mass, concentration or level of an emission which may not be exceeded over a given period
<b>EMAS</b>	Eco-Management and Audit Scheme – a specific EMS standard introduced by an EC regulation
<b>EMS</b>	Environmental Management System – a systematic management system applied to achieve certain environmental objectives, which may support compliance with PPC requirements
<b>EPA 1990</b>	Environmental Protection Act 1990
<b>E-PRTR</b>	The European Pollutant Releases and Transfers Register (replaced EPER in 2007)
<b>EQS</b>	Environmental quality standard – the meaning, depending on the context is either: <ul style="list-style-type: none"><li>• as defined by the regulations, a requirement which must be fulfilled at a given time by a given environment as set out in EU legislation; or</li><li>• a domestic requirement or objective which may be relevant in the determination of BAT.</li></ul>
<b>IED</b>	Industrial Emissions Directive ( <a href="#">2010/75/EU</a> ), transposed into Scots Law by The Pollution Prevention and Control (Scotland) Regulations 2012
<b>IPC</b>	Integrated Pollution Control, as introduced under Part I of the EPA 1990
<b>IPPC</b>	Integrated Pollution Prevention and Control – a multi-media philosophy towards pollution policy which has formed the basis for the IPPC Directive
<b>IPPCD</b>	Integrated Pollution Prevention and Control Directive (96/61/EC or 2008/1/EC)
<b>LAPC</b>	Local Air Pollution Control – a regime introduced under Part I of the EPA 1990, alongside IPC, for smaller, less complex activities, (now covered by PPC Part B)
<b>LCPD</b>	Large Combustion Plant Directive (Directive 2001/80/EC) – now incorporated into the IED (Chapter III, Articles 28 to 41, and Annex V)



<b>PPC 2012</b>	<a href="#">The Pollution Prevention and Control (Scotland) Regulations 2012</a>
<b>PPD</b>	The Public Participation Directive – the relevant provisions of which are now incorporated in the IED (Articles 24 and 25), and transposed into Scots Law by PPC
<b>SED</b>	Solvent Emissions Directive (1999/13/EC) – now incorporated into the IED (Chapter V, Articles 56 to 65, and Annex VII)
<b>SNH</b>	Scottish Natural Heritage – the public body in Scotland responsible for the protection of natural heritage
<b>SPRI</b>	Scottish Pollutant Release Inventory (including E-PRTR)
<b>SSSI</b>	Site of Special Scientific Interest
<b>TiO<sub>2</sub> Directives</b>	Directives 78/176/EEC, 82/883/EEC and 92/112/EEC concerning waste from the titanium dioxide industry, surveillance and monitoring of environments concerned by that waste, and reduction and eventual elimination of pollution caused by that waste – now incorporated into the IED (Chapter VI, Articles 66 to 70, and Annex VIII)
<b>WID</b>	Waste Incineration Directive (Directive 2000/67/EC on the incineration of hazardous waste), now incorporated into the IED (Chapter IV, Articles 42 to 55, and Annex VI)
<b>WML</b>	Waste management licence/licensing and the Waste Management Licensing (Scotland) Regulations 2011