

To interested parties

25 February 2009

Dear Sir/Madam

CONSULTATION ON REGULATION OF ENERGY EFFICIENCY UNDER THE POLLUTION PREVENTION AND CONTROL (SCOTLAND) REGULATIONS 2000

I am writing to invite comments on the above consultation paper about the Scottish Government's plans to provide additional powers to the Scottish Environment Protection Agency (SEPA) to regulate energy efficiency at industrial installations under the Pollution Prevention and Control (Scotland) Regulations 2000 (PPC).

The Scottish Government has previously concluded that regulations are necessary to achieve this objective and appropriate powers have been transferred from the UK Government to the Scottish Ministers. The purpose of this consultation is to seek views on the impact of the proposed regulations and content of the associated Regulatory Impact Assessment.

The practical effect of the regulations is that SEPA will be able to include energy efficiency conditions in new PPC permits and vary, if necessary, existing permits to ensure that installations comply fully with the requirements of the Integrated Pollution Prevention and Control (IPPC) European Directive.

The consultation paper comprises:

- Background to the proposals
- Transfer of Functions Order
- Draft regulations (The Pollution Prevention and Control (Scotland) Amendment Regulations 2009)
- Draft partial Regulatory Impact Assessment

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

A list of the organisations consulted is at the back of the consultation paper. If you are aware of other organisations, businesses or individuals you think should be consulted, please let me know. It would also be helpful if you could confirm if you, or your organisation, no longer wish to be consulted on proposals concerning the PPC regulatory regime.

Comments are welcome on any part of the consultation paper. Written responses are invited by 22 May 2009. Please send your response with the completed Respondent Information Form (see "Handling your response" below) to:

SEPAteam@scotland.gsi.gov.uk

or

Richard Robertson
Waste and Pollution Reduction Division
Environmental Quality Directorate
Scottish Government
Area 1-J(North)
Victoria Quay
Edinburgh
EH6 6QQ

If you have any queries please contact Richard Robertson on 0131 244 0179.

The Scottish Government now has an email alert system for consultations ([SEconsult](http://www.scotland.gov.uk/consultations/seconsult.aspx): <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. If you are responding to this consultation, it is important that you complete and **enclose a Respondent Information Form with your response**. This will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly. **A Respondent Information Form is attached.**

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244

4565). You can make arrangements to view responses by contacting the Library. Responses can be copied and sent to you, but a charge may be made for this service.

Following the closing date for the consultation, all responses will be analysed and considered along with any other available evidence before the regulations and Regulatory Impact Assessment are finalised.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to either of the contacts above.

The Scottish Government Consultation Process

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses. The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence.

If you have any comments about how this consultation has been conducted, please send them to the above e-mail or postal address.

Yours faithfully

Richard Robertson

RICHARD ROBERTSON

Please Note That This Form **Must** Be Returned With Your Response To Ensure That We Handle Your Response Appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Forename

2. Postal Address

Postcode	Phone	Email

3. Permissions

I am responding as...

Individual

/

Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

**CONSULTATION ON THE REGULATION OF
ENERGY EFFICIENCY UNDER THE
POLLUTION PREVENTION AND CONTROL
(SCOTLAND) REGULATIONS 2000**

FEBRUARY 2009



Contents

	Page number
Background to proposals	1
The proposed regulations	1
Impact on industry	2
Summary	3
Annex A - Transfer of Functions Order	4
Annex B - Draft regulations	7
Annex C - Draft partial Regulatory Impact Assessment	9
Annex D - List of consultees	17

CONSULTATION ON REGULATION OF ENERGY EFFICIENCY UNDER THE POLLUTION PREVENTION AND CONTROL (SCOTLAND) REGULATIONS 2000

1. Background to proposals

The Integrated Pollution Prevention and Control (IPPC) European Directive (96/61/EC) introduced an integrated approach to controlling emissions from industrial installations falling within the scope of the Directive. Directive 96/61/EC was replaced by Directive 2008/1/EC, a consolidated version. Directive 2008/1/EC can be found at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:024:0008:0029:EN:PDF>

An industrial installation falls within the scope of the IPPC Directive if it carries out one or more of the activities listed in Annex 1 to the Directive. In Scotland, around 500 industrial installations, covering a wide range of sectors, fall within the scope of the Directive.

The IPPC Directive's integrated approach is achieved through a permitting system that requires operators to take an overall view of the potential for their installation to pollute. Operators are required to adopt measures to prevent pollution and improve the environmental performance of their installation. **This includes specific requirements for installations to be operated in such a way that energy is used efficiently.**

The IPPC Directive has been transposed in Scotland through the Pollution Prevention and Control (Scotland) Regulations 2000, commonly known as the **PPC Regulations**. These Regulations are implemented by the Scottish Environment Protection Agency (SEPA).

Since devolution, the Scottish Ministers have been able to confer powers on SEPA by regulations, so long as those powers relate to matters that are within devolved competence. While the bulk of what SEPA is required to do to fulfil the UK's obligations under the IPPC Directive falls within devolved competence, the Scottish Government concluded that a reservation in the Scotland Act 1998 (Section D5 of Schedule 5) meant that SEPA lacked the necessary powers to include energy efficiency conditions within PPC permits.

To resolve this situation, an order under section 63 of the Scotland Act – *The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2008* – was made to transfer certain functions under the Pollution Prevention and Control Act 1999 and Environment Act 1995 to the Scottish Ministers to enable them to implement fully European Community obligations concerning energy efficiency. A copy of the section 63 order is at **Annex A**.

2. The proposed regulations

The functions transferred under the section 63 order enable the Scottish Ministers to

empower SEPA fully to regulate energy efficiency at industrial installations in Scotland, in compliance with the IPPC Directive. It is proposed to achieve this by making the regulations at **Annex B**. These are very short but, nevertheless, important from legal and environmental points of view.

Regulation 2(2) of the draft regulations amends the PPC Regulations by inserting a new interpretation provision which provides that in relation to anything done, or any event occurring, on or after the date of coming into force of the amendment regulations, the PPC Regulations are to be interpreted as extending to certain matters relating to energy efficiency. These matters relate to the functions transferred to the Scottish Ministers under the section 63 order.

The practical effect of the proposed regulations is that SEPA will be able to:

- **include energy efficiency conditions in new PPC permits to ensure that installations comply fully with the requirements of the IPPC Directive;**
- **review and, if necessary, vary existing permits; and**
- **take enforcement action, as appropriate, to ensure compliance with the energy efficiency conditions in all PPC permits.**

The proposed regulations only affect installations falling within the scope of the IPPC Directive. Under the PPC Regulations, these are generally taken to mean “Part A installations”. PPC “Part B installations” are unaffected by the proposals.

3. Impact on industry

Many of the industrial processes falling within the scope of the IPPC Directive tend to be energy-intensive in nature. Energy efficiency is a key element of the climate change agenda and is an integral component of the Scottish Government’s strategy to create a strong, sustainable economy.

The draft partial Regulatory Impact Assessment at **Annex C** reviews the likely effect of the proposed regulations on businesses.

Question 1: We would welcome comments on the assumptions, costs and benefits set out in the draft Impact Assessment.

The proposed regulations will enable SEPA to regulate a wide range of energy efficiency measures. For example, SEPA will be able to require an operator:

- to have an energy efficiency plan in place or an energy audit;
- to switch off machinery or use variable speed electric drives at certain times;
or
- to maintain records about energy consumed.

The proposed regulations will not impose any additional burden on Scottish industry compared with the rest of the UK or European Union. They merely put Scotland on an equal footing by allowing SEPA to take the same regulatory approach already being pursued in the rest of the UK and EU.

Overall, the Scottish Government has concluded that the new regulations will not make any significant difference to the overall impact of the IPPC Directive on businesses.

Question 2: Do you agree with this conclusion and, if not, why not?

For many businesses, the introduction of energy efficiency measures can provide real opportunities to improve profitably and competitiveness, especially at a time of high energy prices.

Question 3: We would welcome any examples of actual cost savings to businesses after introducing energy efficiency measures (which might then be referred to in the final Regulatory Impact Assessment).

4. Summary

Scotland has no option other than to ensure that industrial installations falling within the scope of the IPPC Directive fully meet the energy efficiency requirements of the Directive. The proposed regulations put Scotland on a par with the rest of the United Kingdom by allowing SEPA to include the same range of energy efficiency conditions in PPC permits as other UK and EU regulators.

In summary, the proposed regulations will:

- ensure that Scotland fully implements its obligations to implement the energy efficiency requirements of the IPPC Directive; and
- enable SEPA to regulate fully IPPC's energy efficiency requirements at industrial installations in Scotland, thereby potentially
 - reducing energy costs within installations;
 - making a significant contribution to pollution reduction and the global impact of industrial emissions; and
 - reducing depletion of non-renewable resources and the use of raw materials.

Collectively these measures will bring environmental and human health benefits.

S T A T U T O R Y I N S T R U M E N T S

2008 No. 1776

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

ENVIRONMENTAL PROTECTION

**The Scotland Act 1998 (Transfer of Functions
to the Scottish Ministers etc.) Order 2008**

Made

9th July 2008

Coming into force in accordance with article 1

At the Court at Buckingham Palace, the 9th day of July 2008

Present,

The Queen's Most Excellent Majesty in Council

This Order is made by Her Majesty in Council in exercise of the powers conferred upon Her by sections 63(1)(b), 113(3) and (4), and 124(2) of the Scotland Act 1998(1).

In accordance with section 115 of, and paragraphs 1 and 2 of Schedule 7 to, that Act a draft of this Order was—

- (a) laid before and approved by a resolution of each House of Parliament; and
- (b) laid before and approved by a resolution of the Scottish Parliament.

Accordingly, Her Majesty, by and with the advice of Her Privy Council, makes the following Order.

Citation, commencement, interpretation and extent

1.—(1) This Order may be cited as the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2008 and comes into force on the day after the day on which it is made.

(2) In this Order, “the 1998 Act” means the Scotland Act 1998.

(3) This Order does not extend to Northern Ireland.

Functions shared by the Scottish Ministers and a Minister of the Crown

2. The functions which are conferred on a Minister of the Crown by the enactments specified in column 1 of the Schedule to this Order shall—

(a) so far as they are exercisable by that Minister in or as regards Scotland by virtue of the reservation at Section D5 of Schedule 5 to the 1998 Act; and

(b) subject to any restriction in the corresponding entry in column 2 of the Schedule to this Order,

be exercisable by the Scottish Ministers concurrently with the Minister of the Crown.

General modifications of enactments

3.—(1) Sections 117 and 118 (general modification of enactments) of the 1998 Act shall apply in relation to the exercise of functions by the Scottish Ministers by virtue of article 2 of this Order as they apply in relation to the exercise of functions by the Scottish Ministers within devolved competence.

(2) In the application of those sections by virtue of this article, any reference in them to a pre commencement enactment is to be read as if it were a reference to any enactment.

Judith Simpson
Clerk of the Privy Council

SCHEDULE

Article 2

ENACTMENTS CONFERRING FUNCTIONS EXERCISABLE CONCURRENTLY BY THE SCOTTISH MINISTERS AND A MINISTER OF THE CROWN

<i>Column 1</i>	<i>Column 2</i>
<i>Enactment</i>	<i>Restrictions or requirement</i>
The Environment Act 1995 (c. 25), sections 31(guidance on sustainable development)(2), 40 (Ministerial directions)(3), 41(10) (charging schemes)(4) and 42 (approval of charging schemes)(5).	Only so far as the functions are exercisable in relation to the implementation of any Community obligation concerning energy efficiency.
The Pollution Prevention and Control Act 1999 (c. 24), section 2 (regulation of polluting activities) and paragraph 20(2)(c) of Schedule 1 (designation of directives).	Only so far as the functions are exercisable in relation to the implementation of any Community obligation concerning energy efficiency.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made under the Scotland Act 1998 provides for certain functions of a Minister of the Crown, so far as they are exercisable in or as regards Scotland, to be exercisable by the Scottish Ministers concurrently with the Minister concerned.

Article 2 provides that the functions which are conferred on a Minister of the Crown by the enactments which are specified in the Schedule to this Order shall, so far as exercisable in or as regards Scotland by virtue of the reservation at Section D5 of Schedule 5 to the Scotland Act 1998, be exercisable by the Scottish Ministers concurrently with a Minister of the Crown. The transfer of functions to the Scottish Ministers is subject to the restrictions specified in the Schedule.

Article 3 provides for the general modification of enactments in connection with provision made by this Order.

(1)

[1998 c. 46. Back \[1\]](#)

(2)

Section 31 was amended by S.I. 1999/1820, article 4 and Schedule 2, paragraph 120(2). [Back \[2\]](#)

(3)

There are amendments to section 40 in S.I. 1999/1746, article 5(2) which are not relevant to this Order. See section 37(1) for the meaning of “a new Agency”. In Scotland, the new Agency is the Scottish Environment Protection Agency. See section 56 for the definition of “the appropriate Minister”. In the case of the Scottish Environment Protection Agency, the appropriate Minister is the Secretary of State. [Back \[3\]](#)

(4)

Section 41 was amended by S.I. 2007/1711, regulation 46(1); by S.I. 2007/3106, regulation 9; and by S.S.I. 2003/235, regulation 21 and Schedule 6, paragraph 1. [Back \[4\]](#)

(5)

Section 42 was amended by the Food Standards Act [1999 \(c. 28\)](#), section 40 and Schedule 5, paragraph 44; and by S.I. 1999/1820, article 4 and Schedule 2, paragraph 120(3). [Back \[5\]](#)

DRAFT REGULATIONS

SCOTTISH STATUTORY INSTRUMENTS

2009 No.

ENVIRONMENTAL PROTECTION

The Pollution Prevention and Control (Scotland) Amendment Regulations 2009

*Made
Laid before the Scottish Parliament
Coming into force*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2 of the Pollution Prevention and Control Act 1999⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 2(4) of that Act, they have consulted with the Scottish Environment Protection Agency, such bodies or persons appearing to them to be representative of the interests of local government, industry, agriculture and small businesses respectively as they consider appropriate, and such other bodies or persons as they consider appropriate.

Citation and commencement

1. These Regulations may be cited as the Pollution Prevention and Control (Scotland) Amendment Regulations 2009 and come into force on [].

Amendment of the Pollution Prevention and Control (Scotland) Regulations 2000

2.____(1) The Pollution Prevention and Control (Scotland) Regulations 2000⁽²⁾ are amended as follows.

(2) After regulation 1 insert –

“Interpretation: transferred functions

1A. In relation to any thing done or event occurring on or after [], these Regulations are to be read as if the Scotland Act 1998 (Transfer of Functions to the

⁽¹⁾ 1999 c. 24. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46), as read with section 5(3) of the 1999 Act, and by S.I. 2008/1776.

⁽²⁾ S.S.I. 2000/323. The 2000 Regulations were amended by: the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) schedule 2 Part 2 paragraph 7; by S.S.I. 2002/493; 2003/146; 2003/170; 2003/221; 2003/235; 2004/26; 2004/110; 2004/512; 2005/101; 2005/340; 2005/510 and 2006/127 and by S.I. 2007/2325 Schedule 2 paragraph 2.

Scottish Ministers etc.) Order 2008⁽³⁾ had been in force on the date when these Regulations were made.”.

[Authorised to sign by the Scottish Ministers]

St Andrew's House
Edinburgh
[] 2009

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Pollution Prevention and Control (Scotland) Regulations 2000 (“the Principal Regulations”).

They do so by providing that, in relation to any thing done or event occurring after they come into force, the principal Regulations are to be interpreted as extending to certain matters relating to energy efficiency. Those are the matters in relation to which functions were transferred from the Secretary of State to the Scottish Ministers under the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2008.

A Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Environmental Quality Directorate, Victoria Quay, Edinburgh EH6 6QQ.

⁽³⁾ S.I. 2008/1776.

THE REGULATION OF ENERGY EFFICIENCY AT IPPC INSTALLATIONS
DRAFT PARTIAL REGULATORY IMPACT ASSESSMENT

1. Title of proposal

The Regulation of Energy Efficiency at IPPC installations.

2. Purpose and intended effect

Objective

This draft partial Regulatory Impact Assessment reviews the likely effect of regulations (“**the proposed regulations**”) to enable the Scottish Environment Protection Agency (“**SEPA**”) to regulate energy efficiency measures at industrial installations falling within the scope of the Integrated Pollution Prevention and Control Directive (2008/1/EC) (“**the IPPC Directive**”) in Scotland. Directive 2008/1/EC, a consolidation, has replaced Directive 96/61/EC. The IPPC Directive defines an installation as a stationary technical unit where one or more activities listed in Annex I to the Directive are carried out.

The proposed regulations follow the transfer of relevant functions to the Scottish Ministers from the UK Government by an order made under section 63 of the Scotland Act 1998 (“**the Order**”). This Order - the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2008 - came into force on 10 July 2008.

The functions in question, previously exercisable solely by a Minister of the Crown, fall within the scope of Section D5 (energy conservation) of Schedule 5 to the Scotland Act and are, consequently, reserved. They relate to the regulation of energy conservation and consequently to the subject matter of the Energy Act 1976 (other than section 9).

The functions are transferred only so far as they are exercisable in relation to the implementation of Scotland’s obligations to comply with European Community law relating to energy efficiency. This transfer enables the Scottish Ministers to empower SEPA fully to regulate energy efficiency at IPPC installations.

Background

The IPPC Directive introduced a regulatory system that uses an integrated approach to environmental protection by controlling emissions to air, water and land from those industrial activities falling within the scope of the Directive. Each installation must comply with the Directive’s requirements and regulators are responsible for exercising appropriate pollution controls by issuing permits containing conditions designed to protect the environment. The regulatory authority in Scotland is SEPA.

The IPPC Directive includes specific requirements for installations to be operated in such a way that *energy is used efficiently* (Article 3(1)(d) of the IPPC Directive) and that “Best Available Techniques (BAT)” are used. The aim of BAT is to prevent or reduce pollution to air, water and land from industrial activities and seeks to achieve this by balancing the cost to the operator against benefits to the environment. BAT considerations include the need to take account of energy efficiency involved in the consumption of raw materials (Articles 2(12)

and 3(1)(a) and Annex IV in IPPC). The aim of these requirements is to minimise pollution arising from the consumption of energy in industrial processes and associated environmental impacts. The use of fossil fuels to generate energy can result in the release of large amounts of carbon dioxide, a greenhouse gas that is a major contributor to global warming and climate change. Businesses, including those in sectors covered by the IPPC Directive, are currently responsible for about half of all the UK's carbon emissions. SEPA's regulation of industry has helped to reduce emissions of greenhouse gases by over 40% since 1990. There are important linkages, therefore, between the energy efficiency requirements of the IPPC Directive and the Government's climate change agenda.

The IPPC Directive was transposed in Scotland through the Pollution Prevention and Control (Scotland) Regulations 2000, SSI 2000 No 323 (“**the PPC Regulations**”), made under section 2 of the Pollution Prevention and Control Act 1999. The PPC Regulations establish a system of pollution control which is implemented by SEPA. However, insofar as it requires the regulation of energy efficiency, the Directive also touches on the subject-matter of the Energy Act 1976, a reserved area. The Order, therefore, transfers certain functions under the Pollution Prevention and Control Act 1999 and Environment Act 1995 to the Scottish Ministers, to be exercised concurrently with the Minister of the Crown, to ensure that Scottish Ministers are able to empower SEPA fully to regulate matters relating to energy efficiency at IPPC installations in Scotland.

Rationale for government intervention

SEPA, a Non Departmental Public Body, is responsible for implementing and enforcing environmental protection legislation in Scotland. This includes the PPC Regulations. Since devolution, the Scottish Ministers have been able to use regulation-making powers to confer functions on SEPA within devolved competence. While the bulk of what SEPA is required to do to fulfil the UK's obligations under the IPPC Directive falls squarely within devolved competence, the Scottish Government concluded that the reservation in Section D5 of Schedule 5 to the Scotland Act meant that SEPA lacked the necessary powers to include energy efficiency conditions within PPC permits.

While there is a specific exception to the reservation in Section D5 in Schedule 5 to the Scotland Act covering “the encouragement of energy efficiency other than by prohibition or regulation”, the Scottish Government believes it is insufficient to rely on operators merely to respond to encouragement by SEPA. SEPA needs to be able to set and enforce specific permit conditions. Although on the face of the PPC Regulations SEPA already has the power to include energy efficiency conditions in PPC permits, the Scottish Government concluded that this was not the case, because at the time the PPC Regulations were made the Scottish Ministers did not have the competence to give SEPA that power.

The UK Government introduced the Climate Change Levy in 2001 to help the UK meet its Kyoto treaty obligations to reduce greenhouse gas emissions. Most industrial plants are liable to pay the levy unless they are participating in a Climate Change Agreement (CCA) under which operators are required to meet energy efficiency targets. Most industries falling within the scope of the IPPC Directive will be participating in a CCA and overall energy efficiency requirements of the Directive are expected to be achieved by that means. However, participation in a CCA is voluntary and not backed by fiscal enforcement. Individual installations may, in addition, fall short of specific IPPC energy efficiency requirements.

To resolve these issues, the section 63 Order was made to enable the Scottish Ministers to make the proposed regulations. The regulations will, in turn, provide SEPA with powers to include, and enforce, energy efficiency conditions in PPC permits, in compliance with the IPPC Directive. Under the PPC Regulations, IPPC installations are generally taken to mean

“Part A installations”. The PPC Regulations also cover “Part B installations” (generally smaller plants with emissions only to air) which fall outside the scope of the IPPC Directive and are unaffected by the proposed regulations.

3. Consultation

Before making the Order, the following organisations were consulted:

- Department for Business, Enterprise and Regulatory Reform
- Department for Environment, Food and Rural Affairs
- Scotland Office
- Office of the Advocate General for Scotland
- Scottish Environment Protection Agency

Before the proposed regulations are made representative organisations of affected industrial sectors will also be consulted.

4. Options

Non-implementation of the energy efficiency requirements of the IPPC Directive is not a realistic option since failure to implement the Directive fully would carry the risk of infraction proceedings by the European Commission, with the ultimate possibility of fines.

The Scottish Government has considered whether SEPA could simply go ahead and include energy efficiency conditions in permits for IPPC installations where necessary. However, legal advice indicates this would be ultra vires and that SEPA would have no mechanism by which to enforce those conditions. If SEPA were to include energy efficiency conditions in these permits, or attempt to enforce compliance with such conditions, it would leave itself open to challenge either through an appeal to the Scottish Ministers or the sheriff, or judicial review.

SEPA were invited to say whether it could achieve the energy efficiency objectives of the IPPC Directive other than through PPC permit conditions relating to energy efficiency, that is to say whether energy efficiency could result from other conditions not specifically about energy efficiency. SEPA were also asked how practicable it would be to rely on simply encouraging operators to adopt energy efficiency measures. It is clear that neither option would guarantee the requirements of the Directive being met.

The Scottish Government explored options for addressing this issue other than through the Order and proposed regulations, for example whether it would be appropriate for the UK Government to confer these functions on SEPA. However, whilst the UK Government has powers to do this, the Scottish Government believed it would be more appropriate for Scottish Ministers to legislate in subject areas that would generally be devolved but for the application of a particular reservation in the Scotland Act on energy conservation. The subject matter covered by the IPPC Directive is otherwise almost entirely devolved and it seemed appropriate that the energy efficiency provisions in the Directive were regulated by SEPA through the existing provisions of the PPC Regulations made by the Scottish Ministers. It would be administratively cumbersome for businesses to deal with regulations concerning energy efficiency at IPPC installations and with separate regulations for all other IPPC requirements. There would also be different appeal arrangements.

The Scottish Government concluded that the optimum solution would be to obtain the transfer of the relevant functions to the Scottish Ministers and then to empower SEPA to

implement and enforce IPPC's energy efficiency requirements at IPPC installations in Scotland.

5. Costs and benefits

Sectors and groups affected

The IPPC Directive introduced pollution controls in a wide range of industrial sectors, including:

- Fuel production and combustion;
- Metal production and processing;
- Mineral industries;
- The chemical industry;
- Waste management (mainly landfill and incineration);
- Pulp and paper manufacture;
- Pre-treatment of dyeing of textiles;
- Tanning of hides and skins;
- Slaughterhouses;
- Food and drink processing;
- Disposal or recycling of animal carcasses;
- Surface treatment;
- Intensive pig and poultry farming.

In a number of sectors, capacity thresholds apply. Only those installations with operating capacities above the relevant threshold fall within the scope of the Directive. Thresholds are set out in the Directive itself. Some 500 installations in Scotland are covered by IPPC and, therefore, liable to comply with the energy efficiency requirements of the Directive. The installations affected are in both the private and public sectors, including local authorities.

Benefits

The implementation of cost-effective, technically proven energy efficiency measures offers the potential to make a significant contribution to reduce pollution and its global impacts. Other benefits are reduced depletion of non-renewable resources and potential reductions in the use of other raw materials. Collectively these measures would bring environmental and human health benefits.

The introduction of energy efficiency measures can bring about substantial savings and have a direct effect on the bottom-line profitability and competitiveness of a business. Examples of savings are shown below.

(a) A dairy identified that they could make energy savings of around £38,000 per year (equivalent to savings of around 500 tonnes of carbon dioxide per year). Some of these savings (about £7,200 or 160 tonnes of CO₂) could be achieved with zero capital cost, with a further £2,410 (equivalent to 32 tonnes of CO₂) of savings achievable by capital expenditure which could be recouped within 1 year. The remaining savings would payback over a five year period.

(b) A paper mill identified £15,000 of savings per annum that could be realised from its compressed air systems through attending to leaks. This more than covered the PPC application fee.

(c) A drill cuttings plant submitted information that indicated it could save about 2% of its energy usage (equivalent to 23 tonnes of CO₂ per annum) at no extra cost.

(d) A horticulturalist undertook to service its 2 boilers twice a year instead of once and lag the heating pipes leading from the boilers. These measures led to a 20% reduction in the amount of gas consumed and significant cost savings.

It is considered likely that similar savings could be achieved across most of the industrial installations regulated under the PPC Regulations. Collectively this would bring environmental and human health benefits. However, this could only be achieved fully by empowering SEPA to enforce energy efficiency, as the PPC Regulations intended. As the above examples show, many of the costs of implementing energy efficiency measures can be offset by the savings.

Costs

The IPPC Directive specifically requires that installations falling within the scope of the Directive should be operated in such a way that energy is used efficiently. Operators are required to demonstrate that they have systematically developed proposals to apply BAT. Energy efficiency is one of several considerations to be taken into account when determining BAT. The cost of complying with energy efficiency requirements can vary significantly, depending on the BAT requirements for a particular sector or individual installation taking account of local circumstances, and the extent to which an operator has already introduced energy efficiency techniques in a plant.

Techniques for optimising energy efficiency range from simple measures, involving no or minimal capital costs, such as good housekeeping, insulation or motor controls, to more complex measures such as process integrated heat recovery. There are organisations that will provide an energy audit and advice on energy savings free of charge. It is only where the cost of introducing energy efficiency measures have a long payback period that investment in such measures may be less attractive to businesses.

The above examples demonstrate that many of the costs involved in deploying energy efficiency measures or procedures can be offset by savings. Nevertheless, if a company is unwilling to invest in the initial cost of introducing energy efficiency measures SEPA is, at the present time, unable to require operators to introduce such measures. The proposed regulations will provide SEPA with the powers to do so.

Administrative costs for operators involved in implementing IPPC energy efficiency provisions, e.g. the cost of preparing SEPA's permit applications, monitoring and reporting data, will vary widely depending on the sector and size of the installation. Any additional cost involved in including energy efficiency matters in these issues is likely to be minimal.

6. Small/Micro firms impact test

The IPPC Directive does not contain any "triviality" provision. This means that where there is no relevant threshold, any business, irrespective of its size, operating in a sector falling within the scope of the IPPC Directive may potentially have to comply with the Directive, including its energy efficiency provisions. However, IPPC applies capacity thresholds for a range of industrial activities; small-scale businesses operating in these sectors will, therefore, be unaffected by the proposed regulations. Many small industrial activities are likely to be regulated as PPC Part B installations which do not need to comply with IPPC requirements.

Energy efficiency measures introduced by small businesses can make good business sense. In some instances cost savings following the introduction of energy efficiency measures could be achieved within a relatively short payback period. When SEPA determines whether an activity is BAT compliant or not, it has to take into account the likely costs and benefits of a measure by assessing whether the measure is technically and economically viable. The practical effect of this is that SEPA is required to take a proportionate approach to regulation. This includes an assessment of whether an activity meets the criteria for low impact installations, which involves simpler regulation and lower regulatory charges.

7. Legal Aid impact test

The PPC Regulations already provide that operators can appeal to the sheriff following a decision by Scottish Ministers in pursuance of an appeal against a regulatory decision by SEPA. The regulations also provide access to justice provisions to enable non-governmental organisations promoting environmental protection to have the legality of SEPA's regulatory decisions reviewed by the courts. These are in addition to the established domestic judicial review procedures. Any new power given to SEPA to include energy efficiency conditions in PPC permits will increase the opportunity for appeals to be taken to the sheriff or for judicial reviews, although, in practice, it is likely to make minimal difference. This could potentially increase the use of legal processes, although it is not expected there will be any significant impact on the legal aid fund in Scotland.

8. Test run of business forms

SEPA's current application and other forms already cover the energy efficiency requirements of IPPC. Forms have been "test run" with industry and SEPA will continue to review its forms on a regular basis.

9. Competition assessment

In general, competitive advantage relates to the cost base of companies as well as the ability to grow and access new markets. As with any regulation, there is a potential cost implication in complying with the PPC Regulations. The introduction of the proposed regulations covering energy efficiency measures is not expected to make any significant difference to the overall impact of IPPC on businesses or their ability to compete in the market. As noted above, the introduction of energy efficiency measures can result in a net cost saving over time. Energy savings can, therefore, have a direct impact on the competitiveness of businesses. By demonstrating a commitment to reducing carbon emissions, businesses are likely to increase their appeal in the market place, thereby attracting a wider customer base.

10. Enforcement, sanctions and monitoring

The proposed regulations should not give rise to any new enforcement or sanction provisions. Compliance with energy efficiency conditions in PPC permits would be enforced by SEPA using the existing enforcement and offence provisions in the PPC Regulations. These enable SEPA to issue enforcement notices, suspension notices and revocation notices and require operators to take steps to prevent or remedy pollution.

The PPC Regulations already provide sanctions in relation to the application process. If applicants fail to meet the requirements which the application process places upon them, operators will find that the process takes longer or, in the extreme, that their application has been refused. If SEPA fails to meet deadlines without the agreement of the applicant, the application is deemed refused and SEPA may find itself confronted with an appeal. An appeal may also be triggered if an operator is dissatisfied with the outcome of their

application. These sanctions would remain unchanged following the making of the proposed regulations.

The implementation of the PPC Regulations is monitored on an ongoing basis. This is being achieved by various means, e.g. by SEPA itself in the light of experience of operating the PPC Regulations; through Scottish and UK stakeholder groups; and by the European Commission under EU-wide reports on IPPC implementation.

11. Implementation and delivery plan

The issue identified in this RIA – the means by which Scottish Ministers can ensure implementation of the energy efficiency requirements of the IPPC Directive – have been addressed by making an order under section 63 of the Scotland Act to transfer relevant functions from the UK Government to Scottish Ministers (i.e. executive devolution). It is now proposed to make regulations to give SEPA powers to include, and enforce, energy efficiency conditions (in compliance with the IPPC Directive) in permits for IPPC installations. A summary of the key steps to deliver this objective is as follows:

- 10 July 2008 – section 63 Order comes into force transferring relevant functions to the Scottish Ministers.
- February to April 2009 – consultation on proposed regulations.
- May 2009 – lay regulations in Scottish Parliament.
- June 2009 – regulations come into force.

12. Post-implementation review

The IPPC Directive is currently being reviewed by the European Commission. A replacement Industrial Emissions Directive is expected to come into force during 2010. It is considered inappropriate to undertake any formal review of the energy efficiency provisions in the IPPC Directive whilst this process is underway. However, the practical effect of all regulatory powers given to SEPA is kept under ongoing review. This takes into account evidence derived from operators' and SEPA's experience in complying with the PPC Regulations and whether the provisions could be implemented more effectively or efficiently, or achieved in a manner that reduces the regulatory burden on businesses.

13. Summary and recommendation

The energy efficiency provisions of the IPPC Directive are mandatory at all industrial installations falling within the scope of the Directive. Scotland does not have the option to opt out of this obligation. Executive devolution of these functions puts Scotland on a par with the rest of the United Kingdom by allowing SEPA to include the same range of energy efficiency conditions in PPC permits as other UK regulators. Following the making of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2008, the proposed regulations will enable SEPA to regulate energy efficiency at industrial installations for the purpose of implementing the IPPC Directive in Scotland.

The cost of complying with the energy efficiency requirements of the IPPC Directive can vary significantly, depending on the industrial sector within which an installation lies, local circumstances, and the extent to which an installation has already introduced energy efficiency measures. The implementation of energy efficiency techniques offers the potential

to make a significant contribution to the reduction of pollution and its global impacts; reduced depletion of non-renewable resources; and potential reductions in the use of other raw materials. Collectively these measures would bring environmental and human health benefits. Energy efficiency measures will result in a net cost saving over the life of the measure to businesses themselves.

Taking into account the obligation on Scotland to implement the energy efficiency requirements of the IPPC Directive; and having regard to the available options discussed in section 4 of this Regulatory Impact Assessment, it is recommended that the proposed regulations are introduced to allow SEPA to implement energy efficiency at IPPC installations.

14. Declaration and publication

I have read this Regulatory Impact Assessment and am satisfied that the benefits justify the costs.

Signed.....

Date.....

Richard Lochhead
Cabinet Secretary for Rural Affairs and the Environment
The Scottish Government

CONSULTEES

Aberdeen City Council
Aberdeenshire Council
Adhesive Tape Manufacturers Association
Advisor to Soil Association
Advisory Committee on Consumer Products and the Environment
AEA Energy & Environment
Aggregate Industries UK
Agricultural Engineers Association
Agricultural Industries Confederation
Agricultural Industries Commission
Aluminium Finishing Association
Angus Council
Argyll & Bute Council
Asbestos Information Centre
Associated Parliamentary Renewable and Sustainable Energy Group
Association for the Conservation of Energy
Association for Instrumentation, Control, Automation
Association for the Protection of Rural Scotland
Association of Electricity Producers
Association of Environmental Consultancies
Association of Manufacturers of Domestic Appliances
Association of Manufacturers of Domestic Electrical Appliances
Association of Master Upholsterers
Association of National Park Authorities
Association of Port Health Authorities
Association of Private Crematoria & Cemeteries
Association of Private Pet Crematoria
Association for the Protection of Rural Scotland
Association of the British Pharmaceutical Industry
Association of Train Operating Companies
Aviation Environment Federation
BIFFA Waste Services Ltd
Blue Circle
BOC Industrial
British Aerosol Manufacturers Association
British Aggregates Association
British Aerosol Manufacturers Association
British Air Transport Association
British Association for Bio Fuels and Oils
British Association for the Advancement of Science

British Association for Chemical Specialities
British Box and Packaging Association
British Cement Association
British Ceramic Confederation
British Chambers of Commerce

ANNEX D

British Chemical Distributors and Traders Assoc
British Coatings Federation
British Ecological Society
British Energy
British Footwear Manufacturers Association

British Furniture Manufacturers
British Geological Survey
British Glass Manufacturers Federation
British Gypsum Isover Ltd
British Hardware and Housewares Manufacturers' Association
British Hardware Federation
British Institute of Funeral Directors
British Leather Confederation
British Lime Association
British Meat Federation

British Meat Processing Association
British Medical Association (Scotland)

British Nuclear Fuels Plc
British Packaging Association
British Plastics Federation
British Poultry Meat Federation

British Precast Concrete Federation Ltd

British Printing Industries Federation
British Rubber Manufacturers Association
British Metals Recycling association
British Soil Science Society
British Surface Treatment Suppliers Association
British Water
British Waterways
British Wind Energy Association
British Wood Preserving & Damp Proofing Assoc
British Wood Turners Association
British Woodworking Federation
Business Council for Sustainable Development
Business Council for Sustainable Energy UK
Business in the Community
Carbon Trust
Carpet Foundation
Cast Metal Federation
Castings Technology International

Central Science Laboratory
Centre for Alternative Technology
Centre for Corporate Social Responsibility
Centre for Ecology & Hydrology

Centre for Social & Economic Research on the Global Environment	Energy Cost Management Ltd
Centre for Sustainable Consumption	Energy Efficiency Partnership for Homes
Centre for Sustainable Energy	Energy for Sustainable Development
Chamber of Commerce	Energy Intensive Users Group
Chartered Institute of Environmental Health	Energy Management Ltd
Chartered Institute of Waste Management	Energy Network Association
Chartered Institute of Water & Env Management	Energy Retail Association
Chemical Industries Association (CIA Scotland)	Energy Saving Trust
City of Edinburgh Council	Energy Systems Trade Association
Civil Engineering Contractors Association	EnergyWatch
Clackmannanshire Council	Engineering Employers Federation
Clearaway	Entec Environmental and Engineering Consultants
Coal Authority	Enviros
Combined Heat and Power Association	Envirowise
Combustion, Energy & Steam Specialists Ltd	Environment Agency
Comhairle Nan Eilean Siar	Environmental Council
Commission for Integrated Transport	Environmental Consultants Group
Commission for Racial Equality (Scotland)	Environmental Industries Commission
Community Repaint	Environmental Services Association
Composting Association	European Liquid Roofing Association
CBI Scotland	Falkirk Council
Confederation of British Industry	Farming & Wildlife Advisory Group
Confederation of British Metal Forming	Federation of British Cremation Authorities
Confederation of British Wool and Textile Manufacturers	Federation of Oils, Seeds & Fats Assoc
Confederation of Paper Industries	Federation of Petroleum Supplies
Confederation of UK Coal Producers	Federation of Small Businesses
Construction Confederation	Federation of Small Businesses (Scotland)
Convention of Scottish Local Authorities (COSLA)	Fife Council
Consilience Energy Advisory Group Limited	Food & Drink Federation
Construction Industry Council	Food Standards Agency Scotland
Construction Industry Research and Information Association	Forest Industries
Construction Products Association	Forestry Commission Scotland
Cosmetic Toiletry & Perfumery Association	Forward Scotland
Consumer Council for Water	Freight Transport Association
Convention of Scottish Local Authorities	Friends of the Earth (Scotland)
Corus Group	Funeral Furnishing Manufacturers Association
Crofters Commission	Furniture Industry Research Association
DEFRA	Galvanisers Association
Department of Environment (NI)	Garage Equipment Association
Disabilities Rights Commission (Scotland)	Glasgow City Council
Dumfries & Galloway Council	Greenspace Scotland
Dundee City Council	Heating and Ventilating Contactors Association
East Ayrshire Council	Health & Safety Executive
East Dunbartonshire Council	Highlands & Islands Enterprise
East Lothian Council	Highland Council
East Renfrewshire Council	Historic Scotland
Electric Heating & Ventilation Association	Industrial Packaging Association
Electrical Distributors Association	Ineos
Energy Action Scotland	Institute of Chemical Engineers
ENER-G Combined Power Ltd	Institution of Civil Engineers
Institute of Diesel & Gas Turbine Engineers	Network of International Development Organisations

Institute of Directors	Newspaper Publishers Association
Institute of Domestic Heating & Environmental Engineers	Newspaper society
Institute of Electrical Engineers	Nobel Energetics
Institute of Energy and Sustainable Development	Non-Ferrous Alliance
Institute of Environmental Management	Non-Ferrous Metals
Institute of European Environmental Policy	North Ayrshire Council
Institute of Machine Woodworking Technology	North British Distillery Co. Ltd.
Institute of Mechanical Engineers	North Lanarkshire Council
Institute of Metal Finishing	Northern Incinerators (GB) Ltd
Institute of Metal Finishing and Surface Engineering	Office of Gas & Electricity Markets
Institute of Packaging	Oil Recycling Association
Institute of Waste Management	Oil Technics Specialist Cleaning Products
Institute of Water & Environment, Cranfield University	Orkney Islands Council
International Association of Oil and Gas Producers	OSS Group Ltd
International Chamber of Commerce	Packaging & Industrial Films Association
International Institute for Environment and Development	Packaging Federation
Inverclyde Council	Pan European Forest Certification (UK)
International Power plc	Periodical Publishers Association
Joint Nature Conservation Committee	Perth & Kinross Council
Keep Scotland Beautiful	Petroleum Retailers Assoc
Law Society of Scotland	Quarry Products Association
Laundering and CleaningToday	Refined Bitumen Association Ltd
Lead Development Association International	Renewable Power Association
Less Carbon Ltd	Renfrewshire Council
Licensed Animal Slaughterers & Salvage Association	Retail Motor Industry Federation
Mastic Asphalt Council	Retread Manufacturers Association
Metal Packaging Manufacturers Association	Royal Environmental Health Institute of Scotland
Midlothian Council	Scottish and Southern Energy
Moray Council	Scottish Civic Trust
Motor Industry Research Association (MIRA)	Scottish Disability Equality Forum
National Association of Funeral Directors	Scottish Engineering
National Association of Waste Disposal Contractors	Scottish Enterprise
National Expert Group on Transboundary Air Pollution	Scottish Environment Link
National Energy Foundation	Scottish Environment Protection Agency
National Environmental Trust	Scottish Environmental Industries Association
National Farmers Union	Scottish Environmental Services Association
National Farmers Union Scotland	Scottish Food & Drink Federation
National Federation of Demolition Contractors	Scottish Institute of Sustainable Technology
National Grid	Scottish Landowners' Federation
National Packaging Council	Scottish Law Commission
National Pig Association	Scottish Motor Trade Association
National Sheep Association	Scottish Native Woods
National Society for Clean Air	Scottish Natural Heritage
National Trust for Scotland	Scottish Power
Natural Environment Research Council	Scottish Print Employers Federation

Scottish Retail Consortium
Scottish and Southern Energy
Scottish Rural Property and Business Association
Scottish Society of Directors of Planning
Scottish Universities Environmental Research Centre
Scottish Vintage Vehicle Federation
Scottish Water
Scotch Whisky Association
Seed Crushers and Oil Processors Association
Shanks Waste Services
Shell UK & Exploration Production
Shetland Islands Council
Shipbuilders and Ship Repairers Association
SIS Chemicals
Society for Motor Manufacturers and Traders
Society of British Aerospace Companies
Society of British Gas Industries
Society of Chemical Industry
Soil Association Scotland
Solid Fuel Association
Solvents Industry Association
South Ayrshire Council
South Lanarkshire Council
Spraybooth Technology Ltd
Stirling Council
Surface Engineering Association
Sustainable Development Commission
Sustainable Development Research Network
Sustainable Scotland Network
Syngenta
Textile Services Association
Timber Packaging & Pallet Confederation
Timber Research and Development Association
Timber Trade Federation
Tobacco Manufacturers Association
UK Cleaning Products Industry Association
UK Coal Mining Limited
UK Energy Research Centre
UK Off-shore Operators Association
UK Renderers Association
UK Steel Association
UKAEA
United Kingdom Renderers Association
Vehicle Builders and Repairers Association
Wallcovering Manufacturers Association
Waste Recycling Group
West Dunbartonshire Council
West Lothian Council
Wood Panelling Industries Federation
Woodland Trust Scotland
Woodworking Machinery Suppliers Association
WRAP
WWF Scotland