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Consultation on the European Commission's proposed Directive on Industrial Emissions (Integrated Pollution Prevention and Control)(Recast) – Intensive Livestock Farming

May 2008



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



Department of
the Environment
www.environment.gov.uk



The Scottish
Government



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This document is also available on the Defra website at:

<http://www.defra.gov.uk/corporate/consult/emissions-intensivelivestock/>

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1. Introduction

- 1.1. This consultation document has been prepared by the Department for Environment, Food and Rural Affairs (Defra) in consultation with other Government departments, the Scottish Executive, the National Assembly for Wales, the Northern Ireland Administration, and their agencies.
- 1.2. The document requests information and comments from interested parties, including industry and non-governmental organisations (NGOs)¹, on three components of the European Commission's proposed Directive on industrial emission (integrated pollution prevention and control) (Recast)². Those components are:
 - applying the proposed Directive's requirements to installations having places for more than 40,000 broilers or 30,000 places for laying hens or 24,000 places for ducks or 11,500 places for turkeys, instead of the threshold in the current IPPC Directive of 40,000 places for poultry of any description;
 - applying the proposed Directive's requirements to installations containing poultry species other than chickens, ducks turkeys or pigs on the basis of equivalent nitrogen excretion rates; and
 - requiring the application of best available techniques (BAT) to the spreading of livestock manure and slurry outside the site of any livestock installation covered by the proposed Directive.
- 1.3. We are particularly interested in your views on the appropriateness and workability of the proposals. A number of specific questions are set out throughout the document and summarised at the end.
- 1.4. A consultancy report setting out what amounts to a Partial Impact Assessment (IA) examining the costs and benefits of these components accompanies this consultation paper.

How to respond to this consultation

- 1.5. The commencement date of this consultation is **29 May 2008**. Since this consultation will inform the position the UK takes when negotiation of the proposed Directive gets fully under way in September 2008, the closing date for responses is **25 July 2008**. Written responses to inform the Government on this proposal should be sent to:

David Demain
Industrial Pollution Control

¹ For a list of consultees see: <http://www.defra.gov.uk/corporate/consult/emissions-intensivelivestock/>

² See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0844:EN:NOT>

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- 1.6. When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

Outcome

- 1.7. Early responses would be most welcome. We aim to publish a summary of consultation responses by the end of 2008.

Confidentiality

- 1.8. In line with Defra's policy of openness, at the end of the consultation period copies of the responses we receive may be made publicly available through the Defra Information Resources Centre. The information they contain may also be published in a summary of responses.
- 1.9. If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in e-mail responses will not be treated as such a request.
- 1.10. You should also be aware that there may be circumstances in which Defra will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations.
- 1.11. The Information Resource Centre will supply copies of consultation responses to personal callers or in response to telephone or e-mail requests (tel: 020 7238 6575, [mailto: defra.library@defra.gsi.gov.uk](mailto:defra.library@defra.gsi.gov.uk)). Wherever possible, callers should give the library at least 24 hours notice of their requirements. An administrative charge will be made to cover photocopying and postage costs.
- 1.12. If you wish to make a complaint, or query the consultation process, please write to:

Marjorie Addo
Consultation Co-ordinator

Department for Environment, Food and Rural Affairs
Zone 7C, Nobel House
17 Smith Square
London SW1P 3JR

E-mail: consultation.coordinator@defra.gsi.gov.uk

Consultees

- 1.13. We are seeking information and comments from industry, other non-governmental organisations, consumer groups, trade associations, and any other interested parties³.
- 1.14. Please tell us if you know of others who would be interested in receiving this consultation document.
- 1.15. Hard copies are also available by request from Government - please contact David Demain (see paragraph 1.5). Additional copies of this document can be made without seeking permission.

Help with enquires

- 1.16. If you would like help with queries, or require further information about this consultation, please contact:

Muna Ahmad: muna.ahmad@defra.gsi.gov.uk (Tel.: 020 7238 1684)

Government Code on Consultations

- 1.17. A copy of the Government Code on Consultations has been published by the Cabinet Office. A copy can be obtained from:

<http://www.berr.gov.uk/bre/consultation%20guidance/page44459.html>

2. Background

- 2.1. Integrated Pollution Prevention and Control (IPPC) applies to about 45,000 industrial installations in the EU (about 4,000 in the UK), ranging from refineries to breweries and from intensive pig farms to cement works. It requires each installation to have a permit containing emission limit values and other conditions based on the application of best available technique (BAT) and set to minimise emissions of pollutants likely to be emitted in significant quantities to air, water or land. Permit conditions also have to address energy efficiency, waste minimisation, prevention of accidental emissions, and site restoration.
- 2.2. The Commission launched in November 2005 a review of the IPPC Directive. The general objective of the review was stated as `to

³ For a list of consultees see: <http://www.defra.gov.uk/corporate/consult/emissions-intensivelivestock/>

evaluate the scope to improve the functioning of the Directive and its interaction with other legislation, in particular related to industrial emissions, while not altering the main underlying principles and the level of ambition set in the Directive’.

- 2.3. The review culminated in the publication on 21 December 2007 of a Commission Communication⁴ accompanying the Commission’s proposal for a Directive `on industrial emissions (integrated pollution prevention and control)(recast), which in turn was accompanied by an impact assessment⁵.
- 2.4. The proposal caused some initial consternation because it is some 240 pages long and contains large amounts of text shown in grey shading, “strike out” or both. Several weeks after its appearance, the Commission placed on its web site a guidance document⁶ explaining the full significance of these markings. For present purposes, the following is the key feature:

‘A substantive amendment is any amendment *"which affects the substance of the earlier act as opposed to purely formal or editorial changes"*. This includes for instance creating a new legal obligation, restricting rights, making certain requirements more/less stringent or changing the scope of the act. The substantive changes (both additions and deletions) have to be grey shaded. These elements of the recast are discussed and agreed during the co-decision process subject to the rules presented under section 4(b) of this note’ [which says that] `in principle, the parts of the text concerned only by codification (i.e. which are not substantive amendments) are not open for discussion or amendment during the legislative process.’

- 2.5. In other words, only the grey-shaded text is regarded as material for the co-decision process. Whilst the UK does not necessarily agree that the limitation is as sharply defined as that, it is clear that the grey-shaded material will be the main focus of discussions.
- 2.6. There are three “substantive amendments” of particular interest to the intensive livestock rearing sector. These would:
 - apply the proposed Directive’s requirements to installations having places for more than 40,000 broilers or 30,000 places for laying hens or

⁴ COM(2007) 843 – *Towards an improved policy on industrial emissions*

⁵ All these documents are available at <http://ec.europa.eu/environment/air/pollutants/stationary/ippc/proposal.htm>

⁶ At <http://ec.europa.eu/environment/air/pollutants/stationary/ippc/pdf/recast/guidance.pdf>

24,000 places for ducks or 11,500 places for turkeys, instead of the threshold in the current IPPC Directive of 40,000 places for poultry of any description (see point 6.6(a) of Annex I on page 108 of the proposed recast Directive)⁷;

- apply the proposed Directive's requirements to installations containing poultry species other than chickens, ducks, turkeys or pigs on the basis of equivalent nitrogen excretion rates (see immediately after point 6.6(c) of Annex I on page 108 of the proposed recast Directive); and
- require the application of best available techniques (BAT) to the spreading of livestock manure and slurry outside the site of any livestock installation covered by the proposed Directive (see Article 16(4) on page 31 of the proposed recast Directive).

2.7. Defra commissioned the consulting firm ENTEC to assess the likely impacts of the three substantive amendments set out in paragraph 2.6. The finalised report of that work is at <http://www.defra.gov.uk/corporate/consult/emissions-intensivelivestock/>

2.8. Consultees are therefore asked to consider that report and to offer views on its findings together with any further quantitative information they may have.

2.9. Consultees are also asked for any other views they may have upon any of those three substantive amendments. All three need to be considered in the light of other relevant substantive amendments, in respect of which a separate consultation is in progress⁸. But of particular relevance are Articles 16(2) and 16(3). Consultees should also consider Article 15(5) which would have the effect of providing for coherence between BAT for the intensive livestock rearing sector and animal welfare legislation.

The substantive amendment in the last two lines of Article 16(2) would require that emission limit values set by the competent authority shall not exceed⁹ the BAT-associated emission levels ("BAT-AELs") set out in BAT reference documents. The first paragraph of Article 16(3) would

⁷ Page numbers throughout this consultation paper refer to the page numbers in the .pdf document at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0844:FIN:EN:PDF> .

⁸ Like this one, the "grey bits" consultation will be at <http://www.defra.gov.uk/corporate/consult/emissions-greybits/>

⁹ 'Exceed' is understood to mean here that an ELV must be set in such a way that compliance with it will not result in a release of the pollutant concerned greater than the highest emission level to which the relevant best available technique is deemed in the BAT reference document to be capable of reducing that pollutant.

provide a 'derogation' from Article 16(2).

- 2.10. The separate consultation paper sets out issues concerning Articles 16(2) and (3) in more detail. For the immediate purposes of this consultation paper, consultees should note that the current BREF on intensive livestock rearing¹⁰ does not contain any BAT-AELs. However, the European IPPC Bureau is about to commence a review of that BREF which could **possibly** result in a revised BREF containing BAT-AELs being finalised by the beginning of 2011. It would be open to the Bureau, at the instigation of the European Commission, to embark upon a further review at any time thereafter. And Article 22(3) of the proposed recast Directive would require the competent authority to reconsider and where necessary update existing permits within four years of the finalisation of any further revised BREF. It is already open to the competent authority to reconsider and if necessary update permits at any time. That too would remain the position under the proposed recast Directive (article 22).
- 2.11. Consultees' initial views are also particularly sought on how the Article 16(4) requirement for the application of BAT to livestock manure and slurry spreading outside the site of the installation could be implemented, noting that the Article itself provides for implementation other than through a permit. All options would appear to involve some form of contractual arrangement between the operator of the installation and the operator(s) of the eventual spreading operation.

3. Next steps

- 3.1. The deadline for responses to this consultation is **25 July 2008**. They will inform the development of a formal UK Government position for use as the co-decision process advances through the autumn and winter of 2008 and thereafter.
- 3.2. We will aim to publish a summary of consultation responses by the end of 2008.

Summary of questions

Question 1: Do you have any views on the ENTEC report on Phase 1 of the Impact Assessment of Proposals for a Revised IPPC Directive Part 2 Intensive livestock farming¹¹?

Question 2: Do you have any other views upon the any of the three substantive amendments:

¹⁰ Available through <http://eippcb.jrc.es/pages/FActivities.htm>

¹¹ At <http://www.defra.gov.uk/corporate/consult/emissions-intensivelivestock/>

- (i) apply the proposed Directive's requirements to installations having places for more than 40,000 broilers or 30,000 places for laying hens or 24,000 places for ducks or 11,500 places for turkeys?;
- (ii) apply the proposed Directive's requirements to installations containing poultry species other than chickens, ducks, turkeys or pigs on the basis of equivalent nitrogen excretion rates; and
- (iii) require the application of best available techniques (BAT) to the spreading of livestock manure and slurry outside the site of any livestock installation covered by the proposed Directive.

Question 3: How can the Article 16(4) requirement for the application of BAT to livestock manure and slurry spreading outside the site of the installation be implemented, noting that the Article itself provides for implementation other than through a permit?

Annex A – Glossary of terms and acronyms

Defra	Department for Environment, Food and Rural Affairs
IPPC	Integrated Pollution Prevention and Control
NGO	Non-Governmental Organisation
NIEHS	Northern Ireland Environment and Heritage Service
PPC	Pollution Prevention and Control
RIA	Regulatory Impact Assessment
SEPA	Scottish Environment Protection Agency
UK	United Kingdom
WAG	Welsh Assembly Government