

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

POLLUTION PREVENTION AND CONTROL ACT 1999

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes refer to the Pollution Prevention and Control Act 1999, which received Royal Assent on 27 July 1999. They have been prepared by the Department of the Environment, Transport and the Regions in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. [Sections 1 and 2](#) of the Act confer on the Secretary of State power to make regulations providing for a new pollution control system to meet the requirements of European Council Directive [96/61/EC](#) on Integrated Pollution Prevention and Control (the "IPPC Directive") and for other measures to prevent and control pollution. It is intended that, generally, these regulation making powers will be transferred to the National Assembly for Wales in so far as they are exercisable in relation to Wales, and to the Scottish Executive in so far as exercisable in or as regards Scotland.
4. [Section 3](#) of the Act enables the Secretary of State to make regulations conferring powers to prevent pollution following an accident involving an offshore installation. [Section 4](#) addresses a problem arising under the transitional provisions in Part II of the Environmental Protection Act 1990 (the "1990 Act") by removing time limits applying to waste disposal licences inherited from the regime under the Control of Pollution Act 1974. Amongst other things, this means that holders of such licences will not be able to walk away from their waste disposal sites until it is shown that the site is unlikely to cause pollution of the environment or harm to human health.

BACKGROUND

5. Part I of the 1990 Act contains the Integrated Pollution Control (IPC) regime and Local Air Pollution Control (LAPC) regime. Both are concerned with regulating pollution from industrial processes. The first is concerned with preventing or minimising pollution of the environment due to the release of substances into the air, water or land. The second is concerned with preventing or minimising air pollution and applies to those industrial processes which are not considered to give rise to significant pollution of water or land. Central to both regimes is the requirement that the "Best Available Techniques Not Entailing Excessive Costs" should be used to prevent or minimise pollution. In addition to these regimes, Part II of the 1990 Act contains the Waste Management Licensing system, which is concerned with regulating the deposit, disposal or recovery of waste.

6. The UK must implement the IPPC Directive by 31st October 1999. It requires a range of industrial installations to be regulated by a system of integrated pollution control (i.e. a system in which emissions to air, water and land, plus other environmental effects, are considered together and conditions set so as to achieve a high level of protection for the environment as a whole). Permit conditions must be based on the use of the "Best Available Techniques", which is a very similar concept to "Best Available Techniques Not Entailing Excessive Cost" in Part I of the 1990 Act. Both concepts are designed to provide for a flexible, case by case approach to regulation which balances cost with environmental benefit. Around 7,000 installations in the UK will be covered by the Directive including most of those regulated at present under the IPC regime in Part I of the 1990 Act; some 1,500 of the 13,000 regulated at present under the LAPC regime in Part I of that Act; over 1,000 of the installations regulated under the Waste Management Licensing regime contained in Part II of that Act; and significant numbers of installations which are at present unregulated by either Part I or Part II of the 1990 Act. This latter category mainly comprises large, intensive pig and poultry installations, plus large installations for the manufacture of food and drink products.
7. The main purpose of *sections 1 and 2 and the Schedules* to the Act is to enable a single, coherent pollution control system to be set up by regulations which will apply to all of the installations to which the IPPC Directive applies and to those installations currently regulated under Part I of the 1990 Act but to which the Directive does not apply (the whole of Part I of the 1990 Act will, in due course, be repealed by this Act, subject to what is said below in relation to Northern Ireland). Section 2 and Schedule 1 also provide for regulations to be made under the Act to cover various ancillary matters connected with the prevention or control of pollution. An example would be the collection of information about emissions, energy and waste for inclusion in a pollution inventory.
8. The Government's proposals for the implementation of the IPPC Directive have been the subject of three consultation papers, "UK Implementation of EC Directive 96/61 on Integrated Pollution Prevention and Control: Consultation Paper" issued in July 1997, "UK Implementation of EC Directive 96/61 on Integrated Pollution Prevention and Control: Second Consultation Paper" issued in January 1998 and "Third Consultation Paper on the Implementation of the IPPC Directive" issued in December 1998. A fourth consultation paper, including a draft of the regulations which the Secretary of State proposes to make under the Act, is due to be published in August 1999.
9. The IPPC Directive also applies to large combustion plant on offshore installations. The Government intends to use the Act not only to implement this part of the Directive but also to improve other aspects of the offshore environmental regime, including implementing the Oslo and Paris Commission's (OSPAR) decision 96/3 on the use and discharge of chemicals offshore. In addition *section 3* of the Act will enable the Government to implement the recommendation in Lord Donaldson's report on the Sea Empress disaster that the Secretary of State should have powers to direct operations following a pollution incident. The Department of Trade and Industry published in March 1999 "A consultation paper on the implementation of the IPPC Directive for Combustion Units on Offshore Oil and Gas facilities and other aspects of the offshore oil and gas environmental regime".
10. Part II of the 1990 Act, which replaced the waste disposal licence regime in the Control of Pollution Act 1974, rectified a deficiency in the 1974 Act regime whereby holders of disposal licences could hand in their licences and absolve themselves of further responsibility for landfills and other waste facilities. Under Part II of the 1990 Act, a waste management licence remains in force unless it is revoked by the Environment Agencies or its surrender is accepted by the Agencies (who must be satisfied that environmental pollution or harm to human health is unlikely to be caused).
11. Licences under the 1974 Act were converted into waste management licences under Part II of the 1990 Act. However, a number of the converted licences were issued

subject to time limits which in some cases have expired without either the Agency or the licence holder being aware of the fact. Such time limits allow a licence to expire (and thus licence holders to absolve themselves of further responsibility) without the environmental and health safeguards provided by Part II of the 1990 Act in relation to revocations and surrenders. **Section 4** of the Act addresses this problem by removing the time limits applying to these converted 1974 Act licences.

COMMENTARY

Section 1

12. **Section 1** of the Act sets out the general purpose for which regulations may be made under section 2 of the Act, including, in particular, implementing the IPPC Directive. The new system will need to incorporate the concepts and principles used in the Directive (such as Best Available Techniques and the general principles concerning energy efficiency, the control of waste production and site restoration) in so far as the installations covered by the Directive are concerned. The Directive's requirements will, however, where appropriate, be modified or disapplied for the purposes of applying the new control regime to installations not covered by the Directive.

Section 2 and Schedule 1

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

Licensing system). The Regulations will need to apply such requirements to all installations covered by the IPPC Directive to allow the implementation of the Directive's requirement that appropriate remedial activity takes place following closure of an installation.

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

[Section 3](#)

21. [Section 3](#) of the Act enables the Government to make regulations enabling it to respond to the threat of significant pollution following an accident involving an offshore installation in the same way as it can respond under the Merchant Shipping Act 1995 to such a threat from a shipping casualty. The Government intends that if an accident occurs involving an offshore installation which gives rise to a threat of significant pollution to the UK's pollution control zone, territorial waters or coastline, operational control of the installation will pass to the Secretary of State's appointed representative.
22. [Section 3\(1\)](#) enables the Secretary of State to make regulations conferring powers in relation to offshore installations which correspond or are similar to those for ships contained in sections 137 to 140 of the Merchant Shipping Act 1995. [Section 3\(2\)](#) applies the provision to installations which are located in UK territorial waters or the continental shelf and which are used for the exploration, development or production of petroleum (which includes natural gas).
23. [Section 3\(3\)](#) ensures that any regulations can be tailored to the particular circumstances and various types of offshore installations and can sit well with existing provisions. [Section 3\(4\) to \(6\)](#) ensures that consultation takes place with statutory bodies, industry and others prior to the introduction of regulations and that these be subject to the affirmative parliamentary procedure.

Section 4

24. **Section 4** applies to time limited disposal licences issued under Part I of the Control of Pollution Act 1974, whether converted into time limited waste management licences under Part II of the 1990 Act or having expired before they could be converted.
25. **Section 4(1) to (3)** provides that, where certain conditions are fulfilled, 1974 Act disposal licences authorising activities to be carried on in England and Wales which have expired are to be deemed not to have expired but to continue in force until revoked or surrendered under Part II of the 1990 Act. Similarly, section 4(4) provides that, where certain conditions are fulfilled, extant 1974 Act time limited disposal licences (including those authorising activities to be carried out in Scotland) shall be deemed to have become non-time limited licences which continue in force until revoked or surrendered. These provisions only apply to licences which have been relied upon within the 12 month period before the Act was passed (27th July 1999).
26. Where expired licences are revived, section 4 retrospectively validates things done in reliance upon the expired licence during the period between its expiry and revival. This means that the licence holder will not be subject to criminal prosecution for carrying out activities during this period without an extant licence and that third parties who transferred waste to the licence holder in the belief that the licence was still in force are protected. The section also validates the receipt of any fees paid to the Agencies under the licence and any variation notices, modification, revocation, suspension or transfer of a licence or acceptance of its surrender when it was not in force. These matters are set out in section 4(6) which contains an illustrative list of the effects of section 4(1) and (3).
27. **Section 4(7)** ensures that activities which were not criminal when they were carried out are not criminalised. Under section 4(9) the Environment Agencies are under a duty to notify licence holders affected by the section of the fact that the licence is affected and how it is affected.

Section 5

28. **Section 5(1) and (2)** enables a transfer order under the Government of Wales Act 1998 to follow the negative resolution parliamentary procedure rather than the affirmative procedure. Section 5(3) provides for the automatic transfer of functions under the Act to the Scottish Executive so far as they are functions exercisable within “devolved competence” (as defined in section 54 of the Scotland Act 1998).

Section 6 and Schedules 2 and 3

29. The Act provides for the repeal of Part I of the 1990 Act (subject to what is said below in relation to Northern Ireland), which will be superseded by the new pollution control regime set up under section 2 of the Act, and for a number of consequential and minor amendments and repeals to other legislation to take account of the replacement of the Part I regimes by the new regime. These include an amendment to section 8 of the 1990 Act to enable one regulator to recover its costs from charges imposed by another regulator during the 8-year transitional period before the repeal of Part I of the 1990 Act. (Some consequential amendments are being left to be made under the regulations made under section 2 because their precise terms will turn on what is in the regulations.) The amendments in the Prevention of Oil Pollution Act 1971 and the Merchant Shipping Act 1995 take account of the consolidation effected by the 1995 Act, and the amendment in section 77 of the 1990 Act is consequential on section 4 of the Act.

Section 7

30. **Section 7** provides that sections 3 and 5 of the Act apply to the whole of the United Kingdom. The rest of the Act generally only applies to Great Britain. Part I of the 1990 Act also generally only applies to Great Britain but section 3(5) to (7) in that Part

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also applies to Northern Ireland. The repeal of Part I of the 1990 Act will not affect section 3(5) to (7) in so far as it applies to Northern Ireland.

31. **Section 7(9)** will enable regulations under the Act to apply to installations under the jurisdiction of the United Kingdom but beyond its territorial waters. This will enable, for example, the regulation of large combustion installations on oil rigs whether or not they are in territorial waters.

COMMENCEMENT DATE

32. The powers in the Act to make regulations, and section 4 (time limited waste licences) came into force on Royal Assent (27th July 1999). The consequential amendments and repeals in Schedules 2 and 3 will be brought into force by commencement order.

The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
House of Lords		
Introduction	26 November 1998	Vol. 595 (no. 3) Col. 133
Motion for Approval	21 January 1999	Vol. 596 (no. 23) Col. 700
Second Reading	7 December 1998	Vol. 595 (no.8) Cols. 778–789
Committee	15 February 1999	Vol. 597 (no. 36) Cols. 465–485 & 497–530
Motion for Recommitment	13 April 1999	Vol. 599 (no. 64) Col. 632
Motion for Approval	14 April 1999	Vol. 599 (no. 65) Col. 774
Committee on Recommitment	19 April 1999	Vol. 599 (no. 67) Cols. 945–982
Report	13 May 1999	Vol. 600 (no. 82) Cols. 1376–1394
Third Reading	20 May 1999	Vol. 601 (no. 86) Cols. 415–438
House of Commons		
Introduction	20 May 1999	
Second Reading	8 June 1999	Vol. 332 (no. 98) Cols. 496–541
Money Resolution		
Ways and Means Resolution		
Committee	15 June 1999 (am)	Standing Committee A Hansard
	17 June 1999 (am, pm)	
	22 June 1999 (am, pm)	
Report and Third Reading	14 July 1999	Vol. 335 (no. 123) Cols. 419–446
House of Lords		

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<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
Consideration of Commons Amendments	26 July 1999	Vol. 604 (no.126) Cols.1343–1362
Royal Assent – 27 July 1999		House of Lords Hansard Vol. 604(no.127) Col. 1422
		House of Commons Hansard Vol.336 (no.132) Col. 152