#

**SEPA guidance: A practical guide for Schedule 20 and Schedule 26 Activities**

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**This guidance has been updated to meet accessibility standards and to replace certain references to legislation with references to the Environmental Authorisations (Scotland) Regulations 2018. It has not been reviewed beyond this. We are aware that sections of this guidance may need to be updated, and this work will be completed in due course.**

If you would like this document in an accessible format, such as large print, audio recording or braille, please contact SEPA by emailing equalities@sepa.org.uk

# Introduction

The Environmental Authorisation (Scotland) Regulations 2018 (EASR) revoke the Pollution Prevention and Control (Scotland) Regulations 2012 SSI 2012/360 (“PPC 2012”), which implemented the European Union (EU) Directive 2010/75/EU on Industrial Emissions (IED). Chapter II of the IED, and PPC 2012 applied an integrated environmental approach to the regulation of certain industrial activities, which is now applied to schedule 20 emissions activities under EASR. This means emissions to air, water (including discharges to sewer) and land, plus a range of other environmental effects, must be considered together.

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

This document provides an introduction to EASR and aims to give an overview of the scope and requirements of the Regulations in relation to schedules 20 and 26. More detailed technical and procedural guidance on various aspects of EASR is provided in a range of documents, published by SEPA and other agencies. These documents are referred to throughout this guide. Therefore, the original reference source should always be checked for the latest revisions and releases.

Please also note this guide refers to the regulation of Schedule 20 emissions activities as listed in Part 4 of schedule 20. However, it will also apply to a number of other emissions activities listed in Part 3 of schedule 26 of EASR (previously listed as PPC Schedule 1, Part A activities despite not being included in IED Annex I). Regulation of other emissions activities (those listed in Part 3 of schedule 26, operating a medium combustion plant and petrol vapour recovery activities) is covered by separate guidance. Organic solvent emissions activities are now defined in schedule 23 of EASR, separate guidance is available.

For this guide to be useful it needs to be updated regularly and maintained with the latest information; so, if you are aware of any other information which may be of use and suitable for the guide or you believe that some of the information in the guide is incorrect or outdated, please let us know (ppcpermitting@sepa.org.uk). The website of the European Commission contains [general background information on the IED](https://environment.ec.europa.eu/topics/industrial-emissions-and-safety/industrial-and-livestock-rearing-emissions-directive-ied-20_en).

# The Requirement to Hold a Permit

Regulation 7 of EASR provides that a person must not carry on a regulated activity except in so far as it is authorised under EASR, and carried on in accordance with, and to the extent authorised by, that authorisation. Regulated activities include industrial emissions activities, which are defined in Regulation 4 to mean an activity listed in Part 4 of schedule 20 (“a schedule 20 emissions activity”), operating a large combustion plant, incineration and co-incineration of liquid and solid waste at a waste incineration plant or waste co-incineration plant, an organic solvent emissions activity, and a titanium dioxide activity (transposed from Annex I to the IED) carried on at installations. The activities carried on at an installation will comprise one or more schedule 20 activities or schedule 23 organic solvent activities, plus any directly associated activities. Therefore, identifying an activity listed in Schedule 20 or 23 to EASR is an essential pre-requisite to determining the extent of the installation, and for which operator(s) must obtain an authorisation under EASR. A schedule 20 emissions activity may only be authorised by a permit.

## Definition of an Installation

The authorised place in EASR is the place at which the regulated activity is authorised and may be a geographical area. The regulated unit for industrial emissions activities is the installation, but there may be multiple installation operated by the same authorised person on the same site. The existence of an installation is dependent on there being one or more schedule 20 or organic solvent activities carried on there. Each operator needs to identify the constituent parts of their installation. EASR defines in schedule 19 an installation as:

“installation” means a stationary technical unit where one or more schedule 20 activities or organic solvents activities are carried out and any other directly associated activities on the same site, and references to an installation include references to part of an installation.

An installation may therefore comprise a number of industrial emissions activities prescribed by EASR and a number of activities that are directly associated. The European Commission published guidance on the meaning of installation for the purposes of the IPPC Directive which is still relevant. The guidance includes useful advice on the meaning of a number of the elements of both limb (i) and limb (ii) of the definition.

These include the meaning of:

* Stationary.
* Technical unit.
* Directly associated activity.
* Technical connection.
* Site and
* “could have an effect on emissions and pollution”.

There are certain general exclusions from the activity descriptions. An industrial emissions activity does not include an activity carried on at an installation solely used for research, development or testing of new products and processes.

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

## Capacity

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

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

## Directly associated activities (DAA)

Directly associated activities include all other activities carried on at the site that have a technical connection and in relation to a schedule 20 emissions activity could have an effect on emissions and pollution, or in relation to a solvent emissions activity could have an effect on any discharge of volatile organic compounds into the environment. Examples of possible DAAs include some wastewater treatment plants that are below the capacity thresholds, additional production stages not included in the prescribed activity description (e.g. dyeing and finishing of leather associated with a tanning process); and combustion plant below listed thresholds.

## General aims

EASR places a duty on SEPA to take the general aims into account when carrying out a relevant function. “The general aims are that all appropriate measures are taken -

1. to prevent or, where that is not practicable, to minimise environmental harm;
2. to prevent and to limit the consequences of accidents which could have an impact on the environment; and
3. to use resources in a sustainable way,

in the carrying on, and decommissioning, of regulated activities and following cessation of the carrying on of the regulated activity.”

Environmental harm is defined in the Regulatory Reform (Scotland) Act 2014 and means –

1. harm to the health of human beings or other living organisms,
2. harm to the quality of the environment, including –
	1. harm to the quality of the environment taken as a whole,
	2. harm to the quality of air, water or land, and
	3. other impairment of, or interference with, ecosystems,
3. offence to the senses of human beings,
4. damage to property, or
5. impairment of, or interference with, amenities or other legitimate uses of the environment.

For industrial emissions activities, it is a general principle that SEPA must where applicable set permit conditions in accordance with a number of principles relevant to BAT, including that best available techniques are applied as appropriate. When carrying out a relevant function related to other emissions activities SEPA may have regard to any applicable Scottish, UK or EU guidance on the best available techniques for preventing or where that is not practicable, reducing emissions from an activity when taking into account the general aims.

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

Aligned to the general aims, EASR has a number of specific objectives:

* That no significant environmental harm is caused.
* To prevent or reduce emissions from installations by applying BAT.
* To encourage the development of emerging techniques.
* To minimise waste generated and overall emissions, whether solid, liquid or gaseous, with the emphasis on developing clean technologies rather than relying on end-of-pipe solutions.
* To minimise energy and raw material (including water) consumption.
* To prevent accidents that could have an environmental impact and minimise the consequences of any accidents that do occur and
* Ensure that on cessation of the activity the site is returned to satisfactory state.

The determination of BAT should consider costs and advantages of different solutions to environmental problems, balancing a range of environmental factors across the entire life of industrial installations. It should consider both the technologies used and the way in which the installation is designed, built, commissioned, maintained, operated and decommissioned. There is a strong emphasis, therefore, on appropriate and effective systems of management of installations to ensure a high level of environmental protection.

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

Environmental quality standards (EQSs) will be considered and may demand operational performance beyond the normal standards of BAT to ensure an EQS is not breached

The regime promotes techniques that reduce energy use, the amount of waste and releases overall, whether solid, liquid or gaseous. Thus, EASR should move the control of pollution from industrial sources away from end-of-pipe solutions and towards developing clean technologies. Where waste production cannot be avoided, EASR requires that SEPA must take the waste hierarchy aim into account when specifying permit conditions or determining and revising standard conditions in relation to a schedule 20 emissions activity. The waste hierarchy aim is that all appropriate measures are taken to apply waste prevention, preparing for re­use, recycling, other recovery, including energy recovery (in that order) should take precedence over disposal. The waste hierarchy is to be applied in a way which delivers the best overall environmental outcome and takes account of the principles of precaution and sustainability, technical feasibility, economic viability, the protection of resources and the overall environmental, human health and social impacts.

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

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

## Best Available Techniques

EASR requires installations to be operated using the best available techniques (commonly known as BAT). EASR requires an integrated approach to the operation of the installation using BAT for the whole installation, rather than assessing individual emissions or unit operations in isolation. This principle applies in all situations (e.g. designing a process for manufacturing an industrial product, developing operating procedures, or identifying and undertaking the maintenance of a process – with each designed and operated to minimise the environmental impact from an installation). EASR requires an operator to consider all available options for preventing or minimising emissions in the design, operation and maintenance of the activity, and to justify that the options selected are the best available to achieve a high level of protection of the environment taken as a whole*.*

BAT is defined in Regulation 2A of EASR as the “most effective and advanced stage in the development of activities and their methods of operation, which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole”, where:

|  |  |  |
| --- | --- | --- |
| **B** |  | **best** in relation to techniques, means most effective in achieving a high general level of protection of the environment as a whole. |
| **A** |  | **available techniques** means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced within the UK, as long as they are reasonably accessible to the operator. |
| **T** |  | **techniques** includes both the technology used and the way in which an installation is designed, built, maintained, operated and decommissioned. |

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

## BAT guidance

Paragraph 4(c) of schedule 20 of EASR provides that “BAT conclusions are the reference point for setting permit conditions”.

Previously under the IED, implementing powers were conferred on the European Commission to adopt guidance on the collection of data and to organise an exchange of information under Article 13 of the IED to enable ‘BAT reference documents’ (BRef) to be drawn up, and in accordance with Article 13(5) of the IED to adopt decisions on BAT conclusions (BATc). The European IPPC Bureau hosted an exchange of information between Member States of the EU to assess BAT for prescribed activities. The results were published by the European Commission as BRef. These documents give an EU-wide view on BAT within each sector and identified the “Best Available Techniques Associated Emission Levels” (the BAT-*AEL*) for the emissions for the activity. The BRef documents also included the BATc, which contained those parts of a BRef laying down the conclusions on BAT, their description, information to assess their applicability, the BAT-AELs, and associated monitoring. BATc would be adopted for each of the sectors covered by a BRef. However, there were a few sectors for which there was no BRef.

The development of future BATc separately from the EU will be based on the common origin of the legislation to ensure BAT continues to be based on the same principles. The definition of BAT in UK law remains unchanged following EU Exit and forms part of our retained EU law alongside all existing BATc that were developed at the EU level (largely on a sector-by-sector basis).

The development of BATc now rests independently with the UK Government, Scottish Government, Welsh Government, Department for Agriculture, Environment and Rural Affairs (Defra) and Northern Ireland (DAERA) who have executive power to adopt BATc. The BAT process will operate using a transparent, collaborative, flexible, data and evidence led process, that safeguards and builds on the high levels of environmental protection already in place across the UK.

Technical Working Groups (TWG) are formed for each sector under review. They work in a collaborative forum to discuss and develop BATc) for the sector in the UK. The BATc are based on the collected evidence for the sector and through benchmarking of the techniques and BAT-AELs against internationally sourced evidence. The BATc will comprise of a short description of each best available technique identified, its applicability and where appropriate, an associated emission, consumption or performance level. A formal draft UK BATc will be published for comment and public consultation. When approved they will be published as a Statutory Instrument and used as a basis for setting environmental permit conditions.

The UK process consists of three separate tranches as follows –

* Tranche 1 consists of UK Guidance notes covering sectors where the UK had fully contributed to the development of the relevant EU BRef and consequently had completed data assessment which included UK sites.
* Tranche 2 consists of the remaining IED sectors to be reviewed to complete the BRef series. These UK BAT Guidance notes will require data collection and assessment to facilitate the determination of UK BAT.
* Tranche 3 will be the start of a new series of UK BAT Guidance notes which will replace the EU BRef note series in full.

The definition of “BAT conclusions” in paragraph 3(1) of schedule 19 of EASR is:

* + 1. a document annexed to a Decision establishing best available techniques which has been amended by the Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018,
		2. a document specified in regulations made in exercise of the power in regulation 9 of the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019

laying down the conclusions on best available techniques, their description, information to assess their applicability, the emission levels associated with the best available techniques, associated monitoring, associated consumption levels and, where appropriate, relevant site remediation measures.”

There are therefore two sources for BATc. All BATc that were published in the Official Journal of the EU prior to EU Exit, and amended by EU Exit legislation are retained direct EU legislation. Thereafter, UK BAT Guidance notes are published in Regulations made by the UK government and will apply to sectors as published after EU Exit. BATc conclusions that are retained direct EU legislation will continue to apply until such times as Regulations specifying UK BATc supersedes them.

Once the BATc for the main activity at an installation are published, SEPA has four years to ensure all permit conditions are reconsidered and updated to the requirements of EASR and the BATc and the installation is compliant with those conditions (see Permit review).

BRef documents and BATc are available on the [Joint Research Centre's website](https://commission.europa.eu/about/departments-and-executive-agencies/joint-research-centre_en).

## BAT determination

The following criteria are to be considered by SEPA in determining best available techniques—

(a) The use of low-waste technology.

(b) The use of less hazardous substances.

(c) The furthering of recovery and recycling of substances generated and used in the process and of waste, where appropriate.

(d) Comparable processes, facilities or methods of operation which have been tried with success on an industrial scale.

(e) Technological advances and changes in scientific knowledge and understanding.

(f) The nature, effects and volume of the emissions concerned.

(g) The commissioning dates for new or existing installations.

(h) The length of time needed to introduce the best available technique.

(i) The consumption and nature of raw materials (including water) used in the process and energy efficiency.

(j) The need to prevent or reduce to a minimum the overall impact of the emissions on the environment and the risks to it.

(k) The need to prevent accidents and to minimise the consequences for the environment.

(l) Information published by public international organisations.

## Emission Limit Values (ELVs)

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

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

## Environmental quality standards (EQS)

Environmental quality standards are set within EU and domestic legislation. However, EASR defines “environmental quality standard” as the set of requirements which must be complied with at any given time, in respect of a particular environment as set out in domestic law, therefore applying UK or Scottish standards. Where achieving an environmental quality standard (EQS) requires stricter conditions than those achievable by the use of BAT, SEPA must include additional measures in the permit and may take into account other measures which may be taken in relation to achieving an EQS.

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

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

## General principles: BAT

For schedule 20 emissions activities, “SEPA must where applicable set permit conditions in accordance with the following principles relevant to BAT—

* 1. best available techniques are applied as appropriate,
	2. the relevant BAT applicable to an activity is as determined by SEPA,
	3. BAT conclusions are the reference point for setting permit conditions,
	4. stricter permit conditions than those achievable by the use of best available techniques as described in relevant BAT conclusions may be set,
	5. emission limit values and equivalent parameters and technical measures as required by paragraph 10 of this schedule must be based on best available techniques, without prescribing the use of any technique or specific technology,
	6. where permit conditions are set on the basis of a best available technique not described in any of the relevant BAT conclusions, the technique must be— (i) determined by giving special consideration to the criteria listed in paragraph 5 of Schedule 20 of EASR, and (ii) in compliance with paragraphs 10 and 11 of Schedule 20 of EASR,
	7. where an activity or type of production process carried out at an installation is not covered by any of the BAT conclusions, or where those BAT conclusions do not address all of the potential environmental effects of the activity or process, SEPA must— (i) engage with the authorised person, (ii) set, after the engagement in head (i), the permit conditions, including emission limit values under paragraph 11 of Schedule 20 of EASR, on the basis of the best available techniques that SEPA has determined for those activities or processes by giving special consideration to the criteria listed in paragraph 5 of Schedule 20 of EASR,
	8. where monitoring is required by paragraph 10 of Schedule 20 of EASR, monitoring requirements are to be, where applicable, based on the conclusions on monitoring as described in the BAT conclusions, (i) where achieving an environmental quality standard requires stricter conditions than those achievable by the use of best available techniques, SEPA— (i) must include additional measures in the permit, (ii) may take into account other measures which may be taken in to relation to achieving an environmental quality standard.”

For other emissions activities (EASR schedules 26, 27 and 28), SEPA may when carrying out a relevant function have regard to any applicable Scottish, UK or EU guidance on the best available techniques for preventing, or where that is not practicable, reducing emissions from an activity when taking into account the general aims set out above.

## Derogation

In accordance with paragraph 10(7) of schedule 20 of EASR, SEPA may, in specific circumstances, grant a derogation to the emission limit values laid out in the BATc if an assessment shows the process is designed, built, operated and maintained utilising BAT, but the emissions under normal operating conditions are higher than the BAT-AEL range. However, the value set cannot exceed the emission limit values set out in schedules 21 to 24 for a particular industrial emissions activity, and must ensure that no significant pollution is caused and that a high level of protection of the environment as a whole is achieved. Derogation only applies to the BAT-AEL ranges. SEPA has developed a methodology and guidance for derogations.

It should be noted that:

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

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

1. The geographical location of the installation.
2. The local environmental conditions of the installation or
3. The technical characteristics of the installation.

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

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

Technical characteristics of particular relevance may include:

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

Operators should attempt to place a monetary value on the environmental benefits which would result from preventing the excess emission. It will therefore be for operators to assess the effect of the excess emission on the levels of the pollutant already in, or discharged to, air, water and land in the locality. For air pollutants, this will involve consideration of concentrations in ambient air; for water pollutants the effect upon receiving waters – perhaps after passage through a wastewater treatment works – will need to be considered. In all cases, the results of monitoring undertaken at all relevant sites in the locality must be taken into account.

It is then for SEPA to assess whether derogation is appropriate and, if so, with what conditions. In reaching its decision, SEPA will take account of the general aims under EASR, to take all appropriate measures to ‘prevent or, where that is not practicable, to minimise environmental harm’. ‘

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

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

# Overview of the Regulatory Process

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

## Application

The procedure begins with the operator preparing and submitting a formal application to SEPA. An application for a permit must be made in accordance with schedule 1 of EASR. In addition, the application must address various issues and must include the items in schedule 20 paragraph 8(1) or (2) as applicable. SEPA will check that the application is duly made. If it is not, the application is returned to the operator highlighting the areas that need to be addressed before the application can proceed.

Please see individual activity webpages for information on whether pre-application community engagement is required for your activity/activities. You can also find out more on SEPA’s public participation statement webpage.

## Public Consultation

Public consultation in accordance with paragraph 8 of schedule 1 is required in relation to an application for a permit for a schedule 20 emissions activity. SEPA must ensure that the application is publicised in such manner as SEPA thinks fit and public consultees (incudes statutory bodies whom SEPA thinks fit to consult) are invited to make representations within a period of at least 28 days. Additional requirements for public consultation are set out in schedule 20, paragraph 17. SEPA must place a copy of an application for a permit on the register, once any claims by the operator for exclusions on the grounds of commercial confidentiality or national security have been determined.

## Determination

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

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

## Compliance with the Permit

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

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

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

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

## Surrender

Where an operator ceases the carrying on of any regulated activities at the installation, the permit for should (in whole or in part) be surrendered and an application must be made to SEPA. An application for surrender must also be made where it is intended that the geographical extent of the authorised place will be reduced or the authorised person is no longer the person who has control over the activity and has not made an application for transfer.

In considering the impact on the environment resulting from the carrying on, and cessation of a schedule 20 emissions activity in accordance with paragraph 14(1) of schedule 1, SEPA must consider the condition of the soil and groundwater affected by the activity including at the site of the installation, and any changes from the condition of the site as described in the site report, and where applicable the baseline report. The application must contain a closure report describing the condition of the site, in particular any changes in condition since the application for the permit was made. The application must also describe the steps taken to avoid any pollution risk and to return the site to a satisfactory state and remove, control, contain or reduce any relevant hazardous substance in soil and groundwater. Where only some of the activities at an installation are ceased, an operator may choose to apply to surrender the part of the installation previously occupied by the ceased activities.

## Appeal

If an operator is dissatisfied with certain decisions or determinations made by SEPA, including the refusal of the grant of a permit or where aggrieved by the conditions attached to a permit, the operator may appeal to the Scottish Ministers.

# New Permit Applications

## Making an application for an EASR permit

Any new installation carrying on a schedule 20 emissions activity must obtain a permit before it begins to operate. It is an offence to contravene regulation 7 (Regulation 69(1)(a)) which requires that a person must not carry on a regulated activity except in so far as it is authorised under EASR.

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

EASR requires a site report and, where an activity involves the use, production or release of a relevant hazardous substance, a baseline report to be submitted with an application for a schedule 20 emissions activity. The main purpose of the site and baseline reports is to provide a documented record of the condition of the site prior to operation. For further guidance on site reports, refer to SEPA Guidance on Content and scope of site reports and baseline reports (reference number IND-G-012).

Failure to submit sufficient information may result in SEPA declining to accept the application (with the fee, or part of the fee as is specified in the charging scheme. Even where SEPA accepts an application as being duly made, the application may still be refused or further information required to determine the application. This may result in delays to the determination, as the statutory time period for determining applications is extended by the amount of time it takes to obtain further information.

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

EASR requires the operator to use the application forms for Schedule 20 emissions activities. Each activity page on the SEPA website includes a link to the corresponding application form(s).

## Pre-application discussions with SEPA

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

## Meaning of operation

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

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

## Timetable

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

## Public consultation on new permit applications

Public consultation in accordance with paragraph 8 of schedule 1 is required in relation to an application for a permit for a schedule 20 emissions activity. SEPA must ensure that the application is publicised in such manner as SEPA thinks fit and public consultees (incudes statutory bodies whom SEPA thinks fit to consult) are invited to make representations within a period of at least 28 days. Additional requirements for public consultation are set out in schedule 20, paragraph 17.

The purpose of consultation is to:

* Inform the public that an application has been made and provide access to the application.
* Provide SEPA with facts and views to inform the determination.

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

## Public consultation on other applications

Public consultation in accordance with paragraph 8 of schedule 1 is also required for the following:

1. An application to vary a permit for a schedule 20 emissions activity where the application is as a result of a substantial change.
2. An application to vary a permit for a schedule 20 emissions activity where the grant of the application would set less strict emission level values.
3. A SEPA-initiated variation to a permit for a schedule 20 emissions activity where—
4. The variation would set less strict emission level values or
5. The proposed variation is as a result of a review of permit conditions.

Where public consultation is required SEPA must publicise the application and must identify the following:-

1. Where applicable, a decision by SEPA is subject to an environmental impact assessment.
2. Where applicable, a decision by SEPA is subject to consultations with neighbouring states.
3. Where applicable, the details of the proposal for a SEPA-initiated variation.

To ensure clarity in consultation SEPA must provide the following supporting information:

The nature of possible decisions, or where one exists, the draft decision, alongside copies of the following—

1. The main reports and advice issued to SEPA or, where applicable, issued to the Scottish Ministers and provided to SEPA, at the time when the public concerned were informed about the relevant application or SEPA initiated variation.
2. Any relevant information obtained, or conclusion arrived at in relation to an environmental impact assessment relevant to the determination of the application or SEPA initiated variation.

EASR requires SEPA to maintain a register containing the information described in Table 1 of schedule 3. A copy of each permit application (less any information excluded on grounds of national security or commercial confidentiality) must be placed on these registers for public examination.

## Off-site consultation

EASR Regulation 22(3)(b) provides that SEPA may impose an ‘off-site’ condition that requires an operator to carry out works or to do other things in relation to land that does not form part of the installation (e.g. monitoring of stack emission concentrations at ground level). Such land may be owned by a third party, so the operator would not, in normal circumstances, be entitled to carry out works. Therefore, EASR provides that any person whose consent is required must grant the rights needed to enable the operator to comply with the permit condition. EASR schedule 2, Part 2 provides that the person granting these rights may be entitled to compensation from the operator.

Before SEPA grants a permit containing an off-site condition, it must (so far as is reasonably practicable) give notice to an owner, tenant or occupier of land or property concerned, where rights will have to be granted by that person to enable the authorised person to comply with the proposed off-site condition. A person notified will 28 days in which to make representations to SEPA and SEPA must consider any representations made before imposing an off-site condition.

## Transboundary consultation

Any application or a proposal for a SEPA-initiated variation of a permit for a schedule 20 emissions activity which is likely to have significant negative effects on the environment of a neighbouring state are subject to provisions for transboundary consultation set out in schedule 20, Part 3. When a new proposed schedule 20 emissions activity is likely to have a significant negative transboundary effect, EASR requires the Scottish Ministers to send the particulars of the application to the neighbouring state. The Scottish Ministers may act independently or upon our advice in this respect. Alternatively, a neighbouring state may request information. The particulars of the application should be provided to the neighbouring state as soon as reasonably practicable.

## Determining an application - determination period

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

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

## Determining an application - determination considerations

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

* The operator’s application.
* The operator’s management systems and competence.
* Representations from consultees.
* Any special arrangements established for certain types of installations, e.g. standard rules.
* In relation to the environmental performance requirements of EASR, the need to impose permit conditions and an appropriate monitoring programme.

EASR provides two further pre-requisites for the granting of a permit. These are that:

* The applicant is the person who has, or will have, control over the regulated activity and
* The applicant satisfies the requirements for fit and proper person.

## Competence

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

## Fit and proper person

 EASR requires SEPA to determine whether a person is a ‘fit and proper person’ (FAPP) to be in control of a regulated activity. A permit cannot be granted unless SEPA is satisfied that the applicant is a FAPP. SEPA has published guidance under EASR Regulation 66(1)(e) on the criteria which SEPA will apply in determining whether a person is a FAPP.

If SEPA considers the operator has ceased to be a FAPP by reason of the operator having been convicted of a relevant offence, or operations at the site are no longer in the hands of a technically competent person, enforcement action may be taken, including the service of a regulatory notice or SEPA may consider revoking the permit, entirely or in part (i.e. stop certain operations / parts of operations at the installation).

## Grant of permit, with conditions

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

* All the appropriate measures are taken to prevent or, where that is not practicable, to minimise environmental harm.
* No significant pollution is caused.
* Waste generation is prevented, and where waste is produced it is, in order of priority and in accordance with the Waste Framework Directive prepared for re-use, recycled, recovered or, where that is technically and economically impossible, disposed of while avoiding or reducing any impact on the environment.
* Energy is used efficiently.
* Efficient use and consumption of raw materials.
* The necessary measures are taken to prevent accidents and limit their consequences.
* Upon definitive cessation of activities in the installation, the necessary measures are taken to avoid any pollution risk and to return the site of the installation to a satisfactory state.

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

Permits must:

* + Include emission limit values for individual pollutants or groups of pollutants likely to be emitted in significant quantities, in particular those listed in the relevant BAT conclusions for the sector and schedule 20, paragraph 2 of EASR.
	+ Be aimed at minimising long distance and transboundary pollution.
	+ Ensure protection of soil and groundwater and include, where necessary, requirements for regular maintenance and surveillance of measures taken to prevent emissions to soil and groundwater, including periodic monitoring of soil and groundwater.
	+ Ensure appropriate monitoring and management of waste.
	+ Avoid risks to the environment during periods when the installation is not operating normally, for example during start up and shut down, malfunction, leaks or temporary stoppages.
	+ Include appropriate steps to be taken prior to operation; these may include controls on the adequacy of construction before the installation begins operating, such as via independent quality assurance of parts of the installation which become inaccessible, like landfill site liners.
	+ Include appropriate steps to be taken on definitive cessation of operations that may include remediation and post-cessation monitoring conditions.
	+ Set out and specify the methodology, frequency and evaluation procedures for monitoring of emissions or other data to verify compliance with the permit; a task which should be undertaken by the operator.
	+ Require the operator to submit reports at least annually that are adequate to check compliance with the permit, and where ELVs have been set at a different value, period of time or reference conditions from the BAT-AEL, ensure that the results of emissions monitoring are available for the same period of time and for the same reference conditions as for the BAT-AEL.
	+ Require operators to inform us without delay of any incident or accident that may cause pollution.

Additional conditions can be imposed at SEPA’s discretion:

* Off-site requirements (the setting of which will give rise to special consultation requirements).
* Limits on the amount or composition of any substance produced or utilised in the installation, or any other supplemental or incidental conditions (such conditions should be relevant to the objectives of EASR).
* Any conditions needed to reflect the requirements of other pieces of legislation.

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

**Permit refusal**

SEPA must refuse a permit in the following circumstances:

* Where SEPA considers the applicant will not be the person who will have control over the operation of the installation concerned after the grant of the permit.
* Where SEPA considers the applicant is not a fit and proper person to be in control of the activity.

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

# Permit Variation

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

## Notification by the operator of changes in operation

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

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

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

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

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

## Variations by the operator

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

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

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

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

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

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

## Variations by SEPA

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

* Following a permit review.
* Within 4 years of publication of BAT conclusions relating to the main activity of the installation.
* The adoption of a new environmental quality standard.
* Where pollution caused by the installation is of such significance that the ELVs in the permit require to be revised or new ELVs need to be included.
* If operational safety of the activities carried out at the installation require other techniques to be used or
* Development of BAT where BAT conclusions do not exist.

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

## Other amendments

For variations which do not affect the permit conditions, for example, where the name of the operator changes but the operation of the installation does not change hands, or the map or plan which must accompany the permit is amended.

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

# Permit review

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

## Mandatory permit reviews

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

* Within 4 years of the publication of BAT conclusions relating to the relevant sector for the main activity of the installation.
* When it is necessary to comply with a new or revised EQS.
* Pollution caused by the installation is of such significance that existing emission level values (ELVs) need to be changed or supplemented (eg when new information comes to light about the effects of pollutants from the installation) or new ELVs need to be included.
* When the regulated activity is not covered by any BAT conclusions, however changes in BAT make it possible to reduce emissions significantly.
* When the operational safety of the activities require that other techniques be used or
* When considered appropriate by SEPA.

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

## Periodic permit reviews

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

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

# Transfer of a permit

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

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

## Applying for a transfer

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

SEPA must not grant an application for transfer unless it is satisfied that the proposed transferee has or will have control over the regulated activity and is a fit and proper person to be in control of the activity. These requirements match provisions relevant to new applications and are applied in the same way.

Permit transfer applications are required to be determined within a two-month period, although SEPA may agree a longer period with the applicants. If SEPA has neither affected the transfer nor rejected the applications within the time allowed or agreed, the applicants may notify SEPA that they are treating this as a refusal. The applicants may then appeal against this decision to the Scottish Ministers.

EASR allows SEPA to transfer all or part of a permit to a new permit holder on application of the proposed transferee where the proposed transferee has demonstrated to SEPA’s satisfaction that no authorised person can be found.

# Permit surrender

Where a permit for an installation or authorised place is to be surrendered, a surrender application should be made to SEPA, together with the applicable fee. The application must contain contact details for the operator and, in the case of partial surrender, a plan identifying the part of the site used for operation of the surrender unit. The surrender application should also be accompanied by a closure report describing the condition of the site and, in particular, any changes in the condition during operation under PPC and EASR. It should also describe the steps taken to avoid any pollution risk and/or to return the site to a satisfactory state and remove, control, contain or reduce any relevant hazardous substance in soil or groundwater. For further information on site, baseline and closure reports, refer to SEPA Guidance on Content and scope of site reports and baseline reports (document reference IND-G-012).

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

# Enforcement

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

SEPA has a formal enforcement policy and all enforcement actions taken must adhere to its principles.

## Enforcement of permit conditions

EASR allows a regulatory notice to be served if SEPA believes a person has contravened, is contravening or is likely to contravene a condition, or other provision, of a permit. The regulatory notice will specify the steps to be taken by the person which SEPA considers to be necessary or appropriate to comply with a condition, or other provision, of a permit and the timescale in which they must be taken.

## Cessation of an activity

If SEPA believes steps are required to be taken to prevent or mitigate environmental harm caused, being caused or likely to be caused by the regulated activity, or steps are required to be taken to restore the environment affected or likely to be affected by the regulated activity, it may serve a regulatory notice under EASR Regulation 46 which may include the cessation of the carrying on of the activity for such period as SEPA considers necessary or appropriate. This provision applies whether or not there is a breach of a permit condition. A regulatory notice may also be served if the person ceases to be a fit and proper person as well as other circumstances. When such a regulatory notice is served, it may provide that the permit ceases to authorise the operation of the entire installation or specified activities, until the notice is withdrawn. SEPA will withdraw the notice when it is satisfied that the steps required by the notice have been taken.

## Revocation

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

## SEPA’s powers to remove or reduce a risk of significant environmental harm

If SEPA believes the operation of an installation involves a risk of significant environmental harm, it may take steps or arrange for steps to be taken to remove or reduce that risk and may subsequently recover the costs.

## Prosecution

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

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

* Incidents or breaches that cause, or have the potential to cause, significant consequences for the environment.
* Operations undertaken without a permit.
* Excessive or persistent breaches of regulatory requirements in relation to the same permit or installation.
* Failure to comply, or to comply adequately, with formal remedial requirements.
* Reckless disregard for management or quality standards or
* Failure to supply information without a reasonable excuse, or knowingly or recklessly supplying false or misleading information.

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

In some instances, offences carry the possibility of a fine for summary conviction of up to £40,000 and/or up to 12 months imprisonment, or, following conviction on indictment, an unlimited fine and/or up to five years imprisonment.

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

**Application of EASR to the Crown**

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

# Appeals

Appeals are governed by Regulation 55 and schedule 4 of EASR. The operator may appeal to the Scottish Ministers in the following situations, amongst others:

* There has been a refusal to grant a permit, or a permit has been granted but the operator disagrees with the conditions.
* An application to vary the conditions of a permit has been refused, or SEPA has served a notice varying the conditions of a permit and the operator disagrees with the conditions.
* A revocation, information, regulatory, or costs recovery notice has been served.
* An application to transfer a permit has been refused.
* An application to surrender a permit has been refused; or there has been a refusal to grant commercial confidentiality to information supplied by the operator.

If SEPA treats an application as withdrawn because the operator has not provided further information requested in the time allowed, there is a right of appeal under Regulation 55(1)(c).

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

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

The Scottish Ministers have power to:

* Affirm the decision made by SEPA, or any part of it.
* Give directions to SEPA, eg to grant an authorization or the form of authorization or specify the conditions that should be included in a permit.
* Direct SEPA to effect a transfer or accept surrender of an authorisation.
* Direct SEPA to withdraw or vary a notice or affirm the notice in its original form.

An appeal does not have the effect of suspending a decision of SEPA, a notice, the operation of any conditions attached to an authorization or the refusal (or deemed refusal) of an application. However, where certain notices are appealed, the notice does not take effect until the day following the day the appeal has been finally determined and service of the notice is affirmed (with or without modifications) or withdrawn.

Appeals must be made to Scottish Ministers in writing, enclosing the documents specified in schedule 4 Part 1 to EASR. Upon notification of an appeal, SEPA must notify certain parties with a particular interest in the subject matter of the appeal, giving information required by EASR.

An appeal may be determined on the basis of written representations between the parties, or a hearing may also take place.

EASR gives details as to how an appeal by written representation will be conducted. The Scottish Ministers will designate an ‘appointed person’ to hold a hearing. It is up to the appointed person to decide to what extent the hearing should be public or private. The appellant and SEPA are entitled to at least 28 days’ notice of the date of the appeal hearing.

In the case of a public hearing, the public will also be notified. The appellant and SEPA are entitled to be heard during the hearing, although the appointed person should not unreasonably withhold permission for others to be heard. After the hearing, the appointed person will report to Scottish Ministers, giving conclusions and recommendations. A determination of an appeal by the Scottish Ministers is final.

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

Further information on the procedure for appeals to the Scottish Ministers is available on the Scottish Government's website.

# Charges

SEPA is required to recover most, if not all, of its costs for carrying out its functions under EASR. This is consistent with the Scottish Ministers’ policy and ensures a fair allocation of costs to the beneficiaries of public services. It also promotes the polluter pays principle.

The charges payable within schemes are set annually. For further details on charges payable, visit our website.

## Application charges

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

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

## Subsistence

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

## Remedial or preventative action costs

Under EASR, SEPA has powers to arrange for steps to be taken to prevent serious pollution, or to remedy any pollution caused. These costs may be recovered from the operator. This is separate to any costs or fines payable as a result of prosecution in relation to any offence, although the same costs will not be recovered twice.

## Financial provision for site aftercare

Operators of certain regulated activities, e.g., landfill activities are required to make financial provision for site aftercare. Further information is provided on our website for landfill activities.

# Information and public registers

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

## Public registers

Registers of EASR information are available, at all reasonable times, for inspection by the public free of charge.

The registers contain the information set out in Table 1 of schedule 3 of EASR. This includes details of:

* All permit applications and applications for variations, transfer or surrender, including SEPA’s requests for further information and operators’ responses, any consultation carried out by SEPA and comments from all consultees and how they were taken into account in the decision.
* Any permit granted by SEPA.
* Any variation, transfer, surrender or revocation of any permit.
* Any regulatory notice issued by SEPA.
* Any appeal, including representations from the applicant, ourselves or any other person, and the Scottish Ministers’ determination of the appeal.
* Penalties imposed on any person for an offence under EASR.
* Any monitoring of emissions or other parameters relating to an installation obtained by SEPA as a result of its own monitoring, or provided to SEPA by virtue of a condition of the permit, or any information held by SEPA relating to emissions from a regulated activity or the impact on the environment from a regulated activity.
* Site visit reports.
* Any other information furnished to SEPA in compliance with a condition of a permit, or a notice and
* Any direction, other than one relating to national security, given to us by the Scottish Ministers under EASR.

## National security

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

## Commercial confidentiality

EASR allows commercially confidential information to be withheld from the public registers. The person providing the information may apply to SEPA to have this type of information protected in this way. SEPA must give notice of its determination within 28 days, or the information shall be treated as commercially confidential. If SEPA judges that the information is not confidential, the applicant has 28 days to appeal to Scottish Ministers. If there is no appeal, the information will be placed on the register.

Under EASR, information is commercially confidential to the extent that its disclosure would, or would be likely to, prejudice substantially the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest. Operators claiming confidentiality must clearly explain how such prejudice would arise. It is not sufficient to state a general concern over public opposition, or to assert commercial prejudice without substantiation. Operators should also ensure any confidentiality claims are complete in the first instance. SEPA may only determine claims from the information presented. If an application does not clearly demonstrate that information may legitimately be protected, SEPA must determine that it is not confidential.

## Other exclusions

Representation by third parties (e.g. on applications), must be put on the register, unless a person making representation requests otherwise.

## Withdrawing information

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

## Scottish Pollutant Release Inventory

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

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

The list of potentially reportable substances is available from the SPRI schedule also on our website.

The information that is collected through SPRI is reported to the [European Pollutant Release and Transfer Register](https://www.eea.europa.eu/en/datahub/datahubitem-view/9405f714-8015-4b5b-a63c-280b82861b3d#:~:text=This%20dataset%20contains%20the%20location%20and%20administrative%20data,for%20large%20combustion%20plants%20%28reported%20under%20IED%20Art.72%29.) (previously the European Pollutant Emission Register).

# Relationship with other Legislation

This section describes the relationship between EASR other legislation.

## IED Chapters III, IV, V and VI

The IED includes provisions relating to large combustion plants (IED Chapter III), waste incineration (Chapter IV), solvent emissions (Chapter V) and titanium dioxide production (Chapter VI). The requirements of these Chapters are now transposed by the schedules 21, 22, 23 and 24 of EASR.

With one exception1, all **combustion activities** with a rated thermal input >50MW are subject also to the requirements in **Chapter III** of the IED. Chapter III requires ELVs for nitrogen oxides, sulphur dioxide and dusts must be at least as stringent as those set out Annex V of the IED, although application of the BAT-based Chapter II (IPPC) requirements in the BATc may require more stringent ELVs to be set in particular cases.

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

Regulated activities may involve using **solvents**, the use of which are covered by **Chapter V** of the IED. Those activities are set out in Part 1 of Annex VII of the Directive and are subject to at least the emission limit values set out in Part 2 of that Annex, although the application of BAT-based Chapter II (IPPC) requirements may require more stringent ELVs to be set. These activity descriptions are set out in schedule 23 of EASR.

**Chapter VI** of the IED refers to installations producing **titanium dioxide**. There are no such installations in Scotland. Any installations producing TiO2 would be subject to Chapter II as chemical production activities and the minimum requirements set out in Annex VIII of the IED would apply.

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

## Waste Framework Directive 2008/98/EC

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

Chapter IV does not apply to plants:

1. Treating only the following wastes:
2. Radioactive waste.
3. Animal carcasses.
4. Wastes from exploration/exploitation of offshore oil and gas resources and incinerated on board installation.
5. Experimental plants for R&D and testing and are <50 tepa.

Activities prescribed under schedule 20 of EASR involving the waste management activities, such as the operation of a landfill or incinerator, are also covered by the Waste Framework Directive 2008/98/EC. In the case of such activities, this means EASR must be applied in a way that delivers Article 13 of the Waste Framework Directive. Specifically, Member states must take the necessary measures to ensure that waste management is carried out without endangering human health or harming the environment, and in particular, without:

* Risk to water, air, soil, plant or animals.
* Causing nuisance through noise or odours.
* Adversely affecting the countryside or places of special interest.

EASR requires that SEPA must take the waste hierarchy aim into account when specifying permit conditions or determining and revising standard conditions in relation to a schedule 20 emissions activity. The waste hierarchy aim is that all appropriate measures are taken to apply waste prevention, preparing for re­use, recycling, other recovery, including energy recovery (in that order) with precedence over disposal. The waste hierarchy is to be applied in a way which delivers the best overall environmental outcome and takes account of the principles of precaution and sustainability, technical feasibility, economic viability, the protection of resources and the overall environmental, human health and social impacts.

## Environmental Protection Act 1990 Part IIA

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

## Environmental Protection Act 1990 Part III – statutory nuisance

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

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

EASR now defines EQS by reference to domestic law. There are domestic EQSs on the Scottish Government website.

Please see overleaf for Table 1 showing the relevant air quality strategy and EU directives for environmental quality standards.

**Table 1 Air quality strategy and EU directives for environmental quality standards**

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

## Control of Major Accident Hazards Regulations 2015

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

Guidance supporting the COMAH Regulations may also be of help to EASR operators (whether or not they are covered by the COMAH regime) in considering the ways to identify and reduce risks and mitigate the consequences of an accident. Further details can be found in our COMAH activity webpages on our website, or on the Health and Safety Executive website.

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

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

Its principal objective is to ensure a high level of protection for human health and the environment from hazardous chemical substances. To achieve this, manufacturers and importers must register chemicals with the Health and Safety Executive (HSE), which assesses the chemical’s potential to cause harm.

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

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

The Conservation (Natural Habitats, &c.) Regulations 1994 (otherwise known as the Habitats Regulations) implement EC Directive (92/43/EEC) on the conservation of natural habitats and of wild fauna and flora. ‘Special Areas of Conservation’ and ‘Special Protection Areas’ are designated and protected under these regulations. The regulations require SEPA to carry out an ‘appropriate assessment’ in relation to the grant of a permit or registration, the variation of a permit or registration and the determination of any appeal relating to a decision on the grant or variation of a permit or registration under EASR that may have a significant effect on a European site. The methodologies SEPA uses to undertake these appropriate assessments vary according to the regulated activity undertaken. Further guidance is currently under development.

## The Fluorinated Greenhouse Gases Regulations 2015

The Fluorinated Greenhouse Gases Regulations 2015 (known as ‘F-gas Regulations’) implement EU Regulation No 517/2014 and aims to mitigate climate change and protect the environment by reducing emissions of F-gases. This statutory instrument puts in place offences and penalties applicable to issues around leakage checking, record keeping, gas recovery and existing qualifications for personnel working on equipment.

SEPA promotes and ensures compliance with the regulations for fluorinated gas that apply to regulated activities under EASR. Other industrial sites, commercial and retail businesses are regulated by local authorities and SEPA. Offshore oil and gas installations in Scotland are regulated by the Scottish Ministers.

The Ozone-Depleting Substances Regulations 2015

The Ozone-Depleting Substances Regulations 2015 (known as ‘ODS Regulations’) implement EU Regulation (EC) No 1005/2009 on substances that deplete the ozone layer. These regulations provide for a system that controls the production, marketing, use of, and trade in emissions of certain substances that deplete the ozone layer.

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

SEPA promotes and ensures compliance with the regulations for ozone depleting substances that apply to regulated activities under EASR. Other industrial sites, commercial and retail businesses are regulated by local authorities. Offshore oil and gas installations in Scotland are regulated by Scottish Ministers.

## UK Emissions Trading Scheme (UK ETS)

The UK Emissions Trading Scheme (UK ETS), came into force on January 1, 2021, replacing the UK's participation in the EU Emissions Trading System (EU ETS) following the UK's departure from the EU. The scheme is designed to cap and reduce greenhouse gas emissions from various sectors, including power, industry, and aviation.

The UK ETS operates on a cap-and-trade principle, setting a cap on the total amount of certain greenhouse gases that can be emitted by sectors covered by the scheme. Participants must obtain and surrender allowances to cover their annual emissions, which can be purchased at auction or traded among participants.

SEPA regulates installations and aircraft operators based in Scotland to ensure they comply with the requirements of the UK ETS. We also provide guidance and support to operators to help them understand and meet their obligations under the UK ETS.

## Urban Waste Water Treatment Directive

Waste water treatment and anaerobic digestion of wastewater streams or waste at industrial sites (e.g. WWTP at a milk processing plant or AD of a wastewater stream at a chemical site), are not excluded from a schedule 20 emissions activity if the capacity of the plant is above the appropriate threshold.

# Annex 1 Guidance notes

## BAT reference documents

BRef documents encompass most of the main industrial sectors covered by the IED and also a number of cross-sector activities such as cooling systems, wastewater and waste gas equipment. [You can find all currents BAT Reference document at this European Commission website](https://eippcb.jrc.ec.europa.eu/reference/).

## SEPA’s guidance notes

You can find the following relevant guidance on the SEPA website:

* SEPA Guidance on Content and scope of site reports and baseline reports (IND-G-012).
* Identifying a Substantial Change for Industrial Activities (IND-G-020).
* Individual activity webpages.
* SEPA’s air emissions and quality webpage (with air emissions risk assessment)
* [Guidance on control of noise at EASR Industrial Activity sites](https://www.sepa.org.uk/media/591420/guidance-noise-and-vibration-management-environmental-permits-july-2021.pdf)

## UK PPC technical sector guidance notes

These can be accessed on the Environment Agency website.

## DEFRA process guidance notes

You can still find the DEFRA process guidance notes (BAT for schedule 26 non-former Domestic PPC Part A activities) at the DEFRA website or see BAT for each activity on the individual activity webpages.

# Annex 2 Interpretation of installation and worked examples

## Interpretation

**“installation” means a stationary technical unit where one or more schedule 20 activities or organic solvents activities are carried out and any other directly associated activities on the same site, and references to an installation include references to part of an installation,**

**“directly associated activity”—**

**(a) in relation to a schedule 20 emissions activity, means an activity which—**

**(i) has a technical connection with the schedule 20 emissions activity,**

**(ii) is carried on at the same site, (iii) could have an effect on emissions and pollution,**

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

1. The plant or machinery must be a ‘technical unit’ where one or more activities listed in Part 4 of schedule 20 or schedule 23 of EASR (‘listed activities’) are carried out.
2. The unit must be stationary.

For the purpose of (1A), ‘technical unit’ can be taken to mean something that is functionally self-contained in the sense that the unit, which may consist of one component or a number of components functioning together, can carry out the schedule 20 emissions activity or organic solvent emissions activity or activities on its own.

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

* They carry out successive steps in one integrated industrial activity.
* One of the listed activities is a directly associated activity of the other or
* Both units are served by the same directly associated activity limb (ii) of the definition.

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

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

1. The activity must be directly associated with the stationary technical unit.
2. The activity must have a technical connection with the listed activities carried out in the stationary technical unit and
3. The activity must be capable of having an effect on emissions and pollution.

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

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

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

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

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

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

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

## Worked examples

The following examples illustrate the application of these criteria.

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

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

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

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

## Example 2: A power station (with a capacity above the schedule 20 emissions activity threshold) served by its own landfill (with a capacity above the schedule 20 emissions activity threshold also) on the same site

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

Limb (ii): Any associated activities such as stockpiling and recovering coal, handling ash and treating and releasing cooling water which are directly associated with the stationary technical unit will also be part of the installation.

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

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

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

## Example 4: An integrated oil refinery

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

## Example 5: Combined heat and power plant (with a capacity above the schedule 20 emissions activity threshold) serving a light industrial estate engaged in non-listed activities

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

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

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

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

Please note: all animal houses which are on the same site in which schedule 20 emissions activities are carried out by the same operator, count towards the threshold.

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

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

# Annex 3 Emerging Techniques

EASR schedule 19 requires that SEPA must, where appropriate exercise its functions so as to encourage the development and application of emerging techniques, in particular for any technique identified in BRef or BATc. “Emerging techniques” are defined a novel technique for an industrial activity that, if commercially developed, could when compared to existing BAT provide: (a) a higher general level of protection of the environment, or (b) at least the same level of protection of the environment and higher cost savings.

## Background

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

## Defining BAT

In determining BAT, regulators must also give special consideration to the criteria listed in Annex III of the Directive (EASR schedule 20, paragraph 5), which include the following.

* + Consumption and nature of raw materials. Consideration should be given to options that use fewer resources, or those that use materials that are less likely to produce hazards or pollution risks. For example, the use of a purer raw material could lead to lower releases of contaminants. Water is also a raw material, and the assessment should consider how much each option needs, where appropriate, and the environmental consequences of any abstraction.
	+ Energy efficiency. Consideration should be given to the effect different options would have on energy consumption and efficiency. Care should be taken that pollution abatement systems do not use excessive energy compared with the emission reductions they achieve, but there may have to be trade-offs between direct or indirect emissions of carbon dioxide and other pollutants in the interests of overall environmental protection.
	+ Waste issues. The assessment of options should cover the quantity of waste produced and the possibility of preventing waste, recovering it or disposing of it safely. It may be preferable to permit a slightly higher level of releases if this greatly reduces the volume of waste, especially if the waste is particularly hazardous. However, this should not simply transfer pollution from one medium to another, which is precisely what the IED is meant to avoid. The main goal should be to identify techniques that minimise all types of waste and releases at source.
	+ Accidents. Consideration should be given to the environmental hazards posed by possible accidents and their associated consequences. This should include the practicality of measures to reduce risks and hazards and to respond to any accidents. In comparing the effectiveness of techniques to prevent emissions, consideration should not be limited to looking at normal operations, but also at the possibility of unintentional releases.
	+ Site restoration. Consideration should be given to whether options risk polluting the site. This should include planning ahead for decommissioning and restoring the site upon closure. For example, installing pipelines and storage tanks above-ground rather than underground would make leaks easier to detect and removal of pollution risks more straightforward.

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

* What is the balance of costs and advantages? This means that a technique may be rejected as BAT if its costs would far outweigh its environmental benefits; and
* Can the operator obtain the technique? This does not mean that the technique has to be in general use. It would only need to have been developed or proven as a pilot, provided that the industry could then confidently introduce it. Nor does there need to be a competitive market for it. It does not matter whether the technique is from outside the UK or the EU.

## Derogation for Emerging Techniques

SEPA may also grant a temporary derogation under schedule 20, paragraph 11 of EASR in relation to the testing and use of emerging techniques. The derogation must not last longer than 9 months and the BAT AELs must be met after that time if the activity is allowed to continue. This means derogation for the testing and use of emerging techniques is effectively to allow sufficient data to be collected for the technique to be demonstrated as BAT.

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

Research, development and testing does not form a regulated activity under the following provisions of EASR:

* + Schedule 19 provides that an ‘industrial emissions activity’ does not include research activities, development activities, or the testing of new products and processes.
	+ incineration and co-incineration of solid and liquid waste at a waste incineration plant or waste co-incineration plants under schedule 22 does not include incineration at experimental plants used for research, development and testing in order to improve the incineration process and which treat less than 50 tonnes of waste per year and
	+ Schedule 26 provides that ‘other emissions activity’ does not include an activity carried out a place used solely for research activities, development activities, or the testing of new products and processes.

## What is research, development and testing

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

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

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

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

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

## Is the place used solely for the purposes of R&D and testing?

In the case of other emissions activity under schedule 26 of EASR, the place at which the R&D and testing activity is carried out must be used solely for that purpose. It follows therefore that if the place is used at any other time for any other regulated activity, then the R&D and testing activity exclusion does not apply. This does not mean necessarily that the activity concerned may not be essentially a R&D and testing activity; it simply means that the specific criteria set by schedule 26 of EASR for exclusion from an ‘other emissions activity’ are not met.

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

It should be noted that production of pharmaceutical products to furnish the clinical trials of a third party’s drug programme is not excluded from being an industrial emissions activity under EASR on the basis that:

* + The material being produced by the toll-manufacturer is being produced under contract for a third party to furnish the third party’s R&D and testing programme, not the toll-manufacturer’s, and this must be, by definition, a commercial enterprise.
	+ The material is not usually being produced for a R&D or testing activity at the installation concerned.

# Annex 5 Indicative list of pollutants

Schedule 20, paragraph 2 to EASR (and Annex II to the IED) lists the main polluting substances that must be taken into account if they are relevant for fixing emission limit values.

(2) Polluting substances in air:

1. Sulphur dioxide and other sulphur compounds.
2. Oxides of nitrogen and other nitrogen compounds.
3. Carbon monoxide.
4. Volatile organic compounds.
5. Metals and their compounds.
6. Dust including fine particular matter.
7. Asbestos (suspended particulates and fibres).
8. Chlorine and its compounds.
9. Fluorine and its compounds.
10. Arsenic and its compounds.
11. Cyanides.
12. Substances and mixtures which have been proved to possess carcinogenic or mutagenic properties or properties which may affect reproduction via the air.
13. Polychlorinated dibenzodioxins and polychlorinated dibenzofurans.

(b) Polluting substances in water:

1. Organo-halogen compounds and substances which may form such compounds in the aquatic environment.
2. Organo-phosphorus compounds.
3. Organotin compounds.
4. Substances and preparations, or the breakdown products of such, which have been proved to possess carcinogenic or mutagenic properties or properties which may affect steroidogenic, thyroid, reproduction or other endocrine-related functions in or via the aquatic environment.
5. Persistent hydrocarbons and persistent and bio-accumulable organic toxic substances.
6. Cyanides.
7. Metals and their compounds.
8. Arsenic and its compounds.
9. Biocides and plant protection products.
10. Materials in suspension.
11. Substances which contribute to eutrophication (in particular, nitrates and phosphates).
12. Substances which have an unfavourable influence on the oxygen balance (and can be measured using parameters such as BOD, COD, etc.).
13. Substances listed in Annex X to Directive 2000/60/EC (the Water Framework Directive).

# Annex 6 Acronyms

**BAT** “best available techniques”, as defined in Regulation 2A of EASR

**BAT-AEL** “emission levels associated with the best available techniques”, as defined in schedule 19, paragraph 3(1) of EASR

**BATc** BAT conclusions, as defined in schedule 19, paragraph 3(1) of EASR

**BRef** BAT reference document, as defined in schedule 19, paragraph 3(1) EASR

**DEFRA** Department of the Environment, Food and Rural Affairs

**EASR** Environmental Authorisations (Scotland) Regulations 2018

**EU** European Union

**EIA** Environmental impact assessment

**ELV** Emission limit value, as defined in Regulation 2(1) of EASR

**EQS** Environmental quality standard, defined in schedule 19, paragraph 3(1) of EASR

**IED** Industrial Emissions Directive (2010/75/EU), transposed into Scots Law by EASR

**IPC** Integrated Pollution Control, as introduced under Part I of the EPA 1990

**IPPC** Integrated Pollution Prevention and Control – a multi-media philosophy towards pollution policy which has formed the basis for the IPPC Directive

**IPPCD** Integrated Pollution Prevention and Control Directive (96/61/EC or 2008/1/EC)

**PPC 2012** The Pollution Prevention and Control (Scotland) Regulations 2012

If you would like this document in an accessible format, such as large print, audio recording or braille, please contact SEPA by emailing equalities@sepa.org.uk

**This guidance has been updated to meet accessibility standards and to replace certain references to legislation with references to the Environmental Authorisations (Scotland) Regulations 2018. It has not been reviewed beyond this. We are aware that sections of this guidance may need to be updated, and this work will be completed in due course.**

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