AVOSETTA RIGA MEETING

27-28 May 2016

Topic: "Permit procedures for industrial installations and infrastructure projects: Assessing integration and speeding up"

Note these survey answers focus on permitting in England, as this is a good example of UK principles in this area and also where there has been interesting innovation in permitting requirements since 2007.

A. Baseline information

I. Industrial Installations[1]

1. Forms and scope of permits

In broad terms, what are the forms and scope of permits[2] necessary to construct and operate an industrial installation (e.g. an industrial installation in the sense of Annexes I or II of Directive 2011/92/EU?

- *planning permission and/or building permit*
- *special environmental decision[3]*
- *construction and operating permit,*
- *stepwise permitting,*
- *other types of permit (nature, water extraction…)*

An industrial installation will require 2-3 kinds of permits, depending on the nature of the installation:

- Planning permission: planning consent is required for all 'developments' under the Town and Country Planning Act 1990. Within the planning process, an EIA process will be conducted, as will an appropriate assessment under the Habitats Directive if required. If the proposed installation is to be constructed in (unlikely) or near to to a Site of Special Scientific Interest (UK-based designation for nature conservation purposes),[4] then Natural England's[5] advice will be particularly influential in the planning decision-making process.

[1] We start here from the hypothesis that the construction and the operation will take place in an area in which, according planning law or nature protection law, there is, *prima facie*, no legal obstacle to do this (e.g. in an industrial area not in the vicinity of a *Natura 2000* site, etc..)

[2] Or similar acts such as mandatory favourable opinions.

[3] For instance, in Poland, the investment process begins with the decision on the environmental conditions. In context of proceedings for adoption of that decision EIA is carried out. This decision provides environmental conditions and is binding for future decisions issued in the investment process.

[4] SSSIs are designated under the Wildlife and Countryside Act 1981 for land that is of special interest 'by reason of any of its flora, fauna, or geological or physiographical features'. All EU protected areas (SPAs, SACs, SCIs) are designated as SSSIs.

- Environmental permits: permits are required for regulated installations carrying out, inter alia, IPPC, waste management, and water discharge activities.[6] These permits are issued under a single permitting regime that incorporates all relevant EU permitting requirements, along with other national considerations relating to environmental permitting of industrial, waste and agricultural activities.
- Greenhouse gas ETS permit: these permits are issued separately for installations within the EU ETS, under The Greenhouse Gas Emissions Trading Scheme Regulations 2012.[7]

If a plurality of permits etc. are required, is there a sort of co-ordination mechanism between them? Are they delivered by the same or different authorities, on what level (central, regional)? Is the procedure similar or not (including public participation)? What is the relation between them? Do you feel that the various procedures, taken as a whole, assure a full and sufficient integrated assessment and control of the environmental impacts in the broad sense (nature, landscape, land use, climate, air, water, noise, soil, energy, mobility, safety…)?

The two primary forms of consent required – planning permission and an environmental permit – are issued by separate authorities. Planning permission is decided upon by local planning authorities (i.e. local government councils), unless the application is 'called in' by the Secretary of State for Communities and Local Government (part of the national government),[8] or if it qualifies as a 'nationally significant infrastructure development',[9] in

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[5] Natural England is the nature conservation regulator for England.

[6] 'Water discharge activities' are defined in Schedule 21 as:

(a) the discharge or entry to inland freshwaters, coastal waters or relevant territorial waters of any—

(i) poisonous, noxious or polluting matter,

(ii) waste matter, or

(iii) trade effluent or sewage effluent;

(b) the discharge from land through a pipe into the sea outside the seaward limits of relevant territorial waters of any trade effluent or sewage effluent;

(c) the removal from any part of the bottom, channel or bed of any inland freshwaters of a deposit accumulated by reason of any dam, weir or sluice holding back the waters, by causing it to be carried away in suspension in the waters, unless the activity is carried on in the exercise of a power conferred by or under any enactment relating to land drainage, flood prevention or navigation;

(d) the cutting or uprooting of a substantial amount of vegetation in any inland freshwaters or so near to any such waters that it falls into them and failure to take reasonable steps to remove the vegetation from these waters;

(e) an activity in respect of which a notice under paragraph 4 or 5 has been served and has taken effect.

[7] SI 2012/3038.

[8] This is usually if a proposed project is nationally significant or conflicts with national policy.

[9] 'Nationally significant infrastructure development' is defined in the Planning Act 2008 as:

(a) the construction or extension of a generating station;

(b) the installation of an electric line above ground;

(c) development relating to underground gas storage facilities;

(d) the construction or alteration of an LNG facility;

(e) the construction or alteration of a gas reception facility;

(f) the construction of a pipe-line by a gas transporter;

(g) the construction of a pipe-line other than by a gas transporter;

(h) highway-related development;

(i) airport-related development;

which case it will be considered by the national Infrastructure Planning Commission under a centralised planning regime.[10] Applications may also be made directly to the Secretary of State for 'major developments' where a local planning authority is 'under-performing' in its duties to deal with such developments efficiently.[11] Environmental permits for regulated installations or water discharge activities are issued by the environmental regulator for England, the Environment Agency, as are GHG ETS permits. Whilst both planning and environmental permitting procedures have some similarities – they are both application processes that involve public participation and decision-making by a public authority in relation to permissible operations on land – they are quite different processes in terms of the expertise and interests involved in making permitting decisions and in terms of what they are trying to achieve. The need to distinguish between the purposes of these planning processes has been explicitly addressed in planning policy:[12]

> [L]ocal planning authorities should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes. Local planning authorities should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.

This provision does not however provide entirely clear guidance. In an article co-written with Jonathan Robinson (Environment Agency) in 2013, we explain the complex relationship between planning and environmental permits for industrial installations:[13]

> A large industrial facility will often require both planning consent and an environmental permit to be established. Whilst some legislative provisions acknowledge this dual control,[14] and planning policy statements attempt to demarcate the respective roles of planning and regulatory authorities in these consenting processes,[15] there remains some uncertainty over the precise extent to which environmental protection concerns are the province of planning authorities or environmental regulators in deciding whether a proposed facility

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(j) the construction or alteration of harbour facilities;
(k) the construction or alteration of a railway;
(l) the construction or alteration of a rail freight interchange;
(m) the construction or alteration of a dam or reservoir;
(n) development relating to the transfer of water resources;
(o) the construction or alteration of a waste water treatment plant;
(p) the construction or alteration of a hazardous waste facility.

[10] Planning Act 2008.

[11] Growth and Infrastructure Development Act 2013, s 1. LPAs can be designated as under-performing if they fail to determine 30% or more of major applications within 13 weeks, or if more than 20% of major applications decisions are overturned on appeal.

[12] Department of Communities and Local Government, *National Planning Policy Framework* (2012) [122].

[13] Eloise Scotford & Jonathan Robinson, 'UK Environmental Legislation and Its Administration in 2013: Achievements, Challenges and Prospects' (2013) 25(3) JEL 383, 391.

[14] Environmental Permitting (England and Wales) Regulations 2010 (SI 2010/675), sch 9, para 3.

[15] See n 12.

should operate, and on what conditions. A body of case law on this issue has resulted, indicating that planning authorities can consider the amenity impacts of likely emissions in determining an application for a proposed facility, whilst generally leaving the control of polluting emissions to the regulator.[16] This approach involves cumulative but interrelated decision-making, which is highly fact-dependent, but which involves subtly distinct issues that are within the respective expertise of these different administrative bodies. However, the administrative integration of these overlapping processes between planning authorities and regulators is poor. Their timing is not generally synchronized and there are no universal mechanisms for sharing information.

Note that there is some coordination of the separate permitting and planning applications required for large developments where these pose considerable environmental risks, as discussed below.

Has there been a tendency to partially or fully integrate different types of permits? Is it an on-going process?

Yes.[17] The main achievement in integrating different types of permits was through the introduction of the Environmental Permitting Regulations 2007 (EPRs).[18] The EPRs replaced a plethora of statutory instruments and provisions, underlying a number of overlapping licensing regimes, with a single set of Regulations that set up a regime requiring operators to obtain only a single environmental permit. The main body of the Regulations deals with the key elements of the licensing regime through common provisions, concerning applications (including for variations), public participation provisions, determinations, appeals, enforcement and criminal offences. A number of Schedules set out specific licensing requirements for different types of activity. Many of these deal with requirements of particular European environmental directives, by direct reference to the terms of those directives. This huge exercise in simplification and consolidation has substantially improved the coherence of English environmental legislation.

How do you assess the plurality and integration of permits?

In thinking about integration of permits, an analytical distinction I have suggested in previous work is between the *substantive* integration of environmental obligations and requirements (such as environmental standards, liability rules and regulatory strategies), and the *administrative* integration of mechanisms employed for implementing environmental

[16] eg *Hopkins Developments Ltd v First Secretary of State* [2006] EWHC 2823 (Admin); *Harrison v The Secretary of State for Communities and Local Government* [2009] EWHC 3382 (Admin).

[17] Note that some of the text for this answer comes from a report previously written on the state of UK environmental legislation in 2011-12 in collaboration with the UK Environmental Law Association: see Interim Report, available at https://www.ukela.org/Aim5.

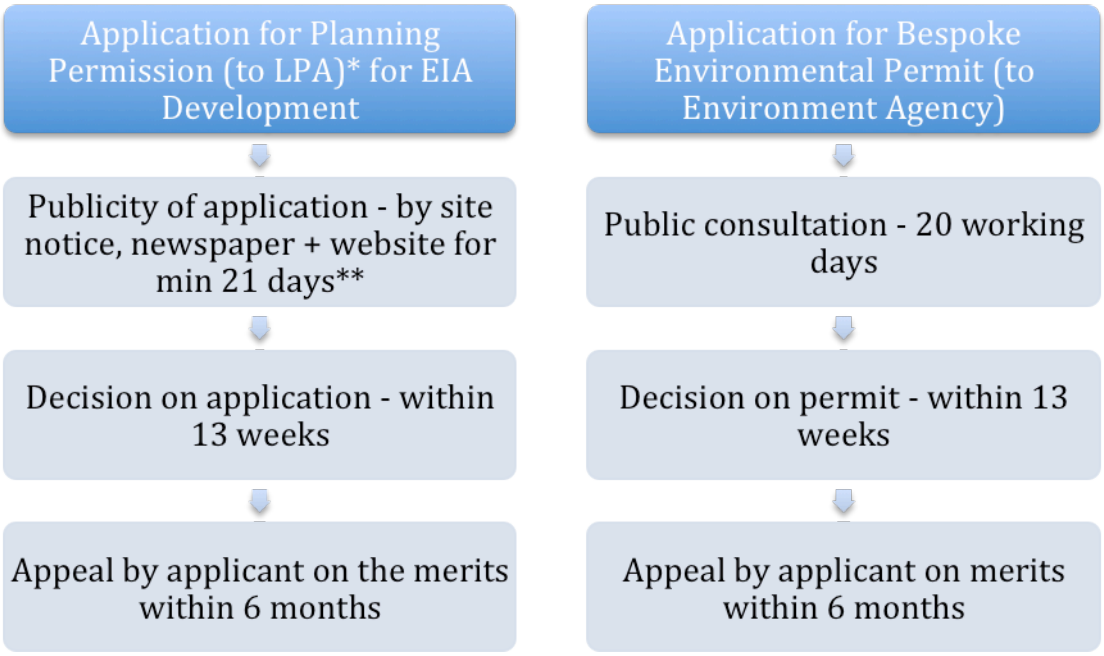
[18] The latest version is the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010/675).

regimes (such as permitting systems or enforcement provisions).[19] The EPRs discussed in answering the previous question are an example of the latter.

2. Procedures

2.1. Short case study: Can you present a simple flowchart of a permitting procedure for the following installation, indicating the (estimated) time frames of the various steps, key authorities involved, including EIA, and the total time needed to go through the whole procedure in case of administrative appeal?

"Waste disposal installations for the incineration or chemical treatment as defined in Annex I to Directive 2008/98/EC under heading D9 of non-hazardous waste with a capacity exceeding 100 tonnes per day" (Annex I, pt. 10 EIA Directive).



* Or to Secretary of State for Communities and Local Government if the relevant LPA is underperforming (see n 11 above).

** This will be amended to be 30 days to comply with Directive 2014/52/EU.

2.2 What are the main characteristics of the applicable permit procedure or procedures?

The questions are about the different permits if more than one permit is needed for an 'intended activity'.

Who is (are) the competent authority (authorities)?

- Planning permission: local planning authorities (LPAs), Secretary of State for Communities and Local Government, or Infrastructure Planning Commission (as outlined in A.I.1 above)

[19] Scotford & Robinson (n 13) 390.

- Environmental permit: Environment Agency
- GHG ETS permit: Environment Agency

Is EIA integrated in the permitting procedure or is it an autonomous procedure that precedes the introduction of an application for a permit (or for the various permits)? In the latter case, can EIA be carried out once more at the next stage of the development process (e.g. in the building or environmental permit procedure)?

- EIA is integrated into the planning process (not the environmental permitting process). This is done through The Town and Country (Environmental Impact Assessment) Regulations 2011[20] for general development, and through The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009[21] for nationally significant infrastructure development. EIA is integrated in one of two ways: when developers acknowledge that a development requires an EIA procedure at the outset, and when the planning authority decides through a screening procedure that a planning application relates to EIA development, thereby triggering an EIA procedure. In either ease, EIA planning processes have more stringent publicity and consultation requirements and put obligations on planning decision-makers to take into account EIA reports and any consultation.

Is there a differentiation between large, intermediate and smaller installations? Is a notification to the relevant public authority in some cases sufficient? Is there a possibility to exclude certain installations even from the notification requirement?

- In terms of planning consents, the main distinction is between general development and nationally significant infrastructure, as outlined above.
- For environmental permits, an environmental permit (if required) will always need to be applied for – notification will not be sufficient. However, more common operations have access to a simplified procedure ('standard rules permitting'). Unlike bespoke permits where conditions are set taking into account specific features of proposed activities or installations, an operator can pay a reduced fee for a permit on standard terms for certain common operations, which the Agency will grant if satisfied that the operator can comply.[22]

Are competent planning and environmental authorities consulted during the decision-making procedure or procedures, if more than one permit is needed? Within what time limit have they to give their opinion? Are these opinions binding or not? Do they have some weight in practice?

[20] SI 2011/1824. Note that these are to be updated in order to implement the 2014 amendments to Directive 2011/92/EU.
[21] SI 2009/2263.
[22] EPRs, regs 26-27. For all categories of standard rules permits, see https://www.gov.uk/government/collections/standard-rules-environmental-permitting (many of these are waste-related activities, but none relate to waste disposal).

In general, no – authorities considering other permits for the same operation are not consulted (see the answer to Part I above on the complex relationship between planning and environmental permits for industrial installations and how these are poorly coordinated). However, as discussed below, there is now 'parallel tracking' of some consent operations to minimise regulatory risks to operators, which involves ongoing consultation between the planning and permitting authorities on the parallel consenting processes. Furthermore, within the planning process, planning authorities are required to consult other statutory authorities where the facts warrant the consideration of their interest or expertise.[23]

Is there public participation in every case? At which stage of the development? Is it broadly announced and used? What time frames apply? Is the public participation on the application or on the draft decision?

- For planning applications, there are public participation processes for all planning applications, although the requirements differ according to the type of development involved. For all development, planning applications must be publicised to local interested parties (by serving notice on adjoining owners/occupiers or via a site notice) for a minimum of 21 days. Notice must also be posted on the local planning authority (LPA) website for at least 14 days. For major development,[24] newspaper publicity for at least 14 days is also required. EIA development requires more extensive publicity efforts again (although the English regulations are yet to adopt the new 30 day minimum required under the EIA Directive as amended in 2014). The LPA must, in determining an application for planning permission, take into account any representations made within these notice periods.[25] Failure to comply with correct public participation requirements can lead to a legal challenge. This will not always result in a planning decision being quashed,[26] except in the case of EIA development where public participation is seen to be a critical part of the EIA process.[27] For nationally significant infrastructure development, public participation

[23] The Town and Country Planning (Development Management Procedure) (England) Order 2015 SI2015/595 (reg 18 in particular).

[24] "major development" means development involving any one or more of the following—
(a) the winning and working of minerals or the use of land for mineral-working deposits;
(b) waste development;
(c) the provision of dwellinghouses where—
(i) the number of dwellinghouses to be provided is 10 or more; or
(ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
(d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
(e) development carried out on a site having an area of 1 hectare or more.

[25] All these requirements are found in The Town and Country Planning (Development Management Procedure) (England) Order 2015.

[26] *R (Gavin) v London Borough of Haringey and Anor* [2003] EWHC 2591.

[27] *Berkeley v Secretary of State for the Environment* [2001] 2 AC 603.

is mainly conducted through pre-application processes,[28] with enhanced measures if it is EIA development.[29] The application process itself takes into account interests of local communities through the involvement of local authorities,[30] although open hearings for certain interested parties (including those whose land might be subject to compulsory purchase) can also be held.[31]

- For environmental permits, there are public participation requirements when a permit is applied for or proposed to be varied substantially,[32] although the requirements do not apply for installations regulated as 'standard facilities' i.e. those with standard rules permits.[33] There is a 20-day consultation period that starts when a permit is applied for (or variation is proposed), in which public consultees are invited to make representations on the application or proposal.[34]

What time frame applies from the introduction of the application to the decision in first administrative instance (i.e. when a developer receives final decision allowing to start development, however, before possible appeal to a higher authority)?

- For planning applications, time frames vary. The statutory time limits are usually 13 weeks for applications for major development and eight weeks for all other types of development (unless an application is subject to an Environmental Impact Assessment, in which case a 16 week limit applies).[35] These statutory time limits can be extended up to 26 weeks. For nationally significant infrastructure projects, the timeframes are longer, and there are timeframes of approximately 9 months from the date that the initial issues in an application are considered.[36]
- Environmental permits should be decided within 13 weeks, although this may be extended.

Is there an administrative appeal against a decision on a permit or the various needed permits? What is the competent authority (or authorities) to whom an appeal can be lodged? Who can lodge the appeal (only parties of the proceeding, NGO, everybody),

[28] There is a duty to consult the local community and to publicise generally, and take into account any relevant responses before submitting application: Planning Act 2008, pt 5, ch 2.
[29] The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.
[30] Planning Act 2008, s 60.
[31] Ibid, ch 4.
[32] 'Substantial change' is defined as a change in operation of an installation which in the regulator's opinion may have significant negative effects on human beings or the environment: EPRs, sch 5, para 5. See the EA's Public Participation Statement for full details: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/309632/Working_together_PPS_v2.0__1_.pdf.
[33] For standard rules, there is public consultation when the rules are drawn up or amended.
[34] For examples of publicized applications open for comment, see https://www.gov.uk/government/collections/environmental-permitting-notices-of-applications-made.
[35] The Town and Country Planning (Development Management Procedure) (England) Order 2015, reg 34.
[36] From that point, the examining authority has up to 6 months to examine the case, and then up to 3 months to decide it, although there are variations possible to these timings.

within what time? What time frame applies to reach a decision on appeal? What if the time frames are not respected?

- Planning decisions can be appealed on the merits by the applicant only, within a 6-month time frame.[37] The appeal will generally be decided by the Planning Inspectorate, on behalf of the Secretary of State for Communities and Local Government. The Planning Inspectorate endeavours 'to determine every appeal as efficiently as possible, and will aim to do so in line with performance targets'. The targets depend on the type of appeal, and range from 8 weeks for fast-track householder appeals, to 22 weeks for large inquiries. Interested parties, such as neighbours, have the opportunties to make representations in many planning appeals, except when they relate to small scale development.[38]

- For environmental permits, appeals on the merits can be brought by an applicant who is aggrieved by a permitting decision. Again, appeals are decided by the Planning Inspecotrate on behalf of the Secretary of State. The time limits for lodging appeals vary depending on what kind of decision is being appealed, but the outer time limit is 6 months.[39] The time frames for deciding appeals vary depending on the procedure adopted for their resolution (written procedure, inquiry procedure with oral representations, whether an expert assessor is required etc).

II. Infrastructural Projects

Here we would like to investigate how according to environmental and planning law a project that is not as such provided for in the land use plans can be realized.

We can take as an example the construction of a highway of the type indicated in Annex I, point 7(b), of the EIA Directive.

1. Is there a need to draw up a plan or to review a plan in the sense of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment?

Technically, no. However, the Planning Act 2008 (the legislation that deals with planning for nationally significant UK infrastructure development) sets up a scheme for 'national policy statements' (NPS) to be prepared on all major areas of infrastructure, including highway-related development, which guide infrastructure development decisions. The Secretary of

[37] Town and Country Planning Act 1990 (TCPA) s 78. Some forms of appeal have shorter time frames in which to notify an appeal. This question takes 'administrative appeal' to be an appeal on the merits. Different procedures apply for appeals on matters of law, which can be brought by a wider range of parties but need to be lodged in a shorter time frame (6 weeks). Legal challenges to planning decisions can be brought either under s 288 TCPA or as a common law judicial review claim.

[38] See further http://planningguidance.communities.gov.uk/blog/guidance/appeals/appeals-against-refusal-of-planning-permission/.

[39] For guidance on permitting appeals, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471594/environmental_permitting_guidance_notes.pdf.

State for Transport 'may' issue a NPS in any area, and every NPS must be subject to a sustainability appraisal and meet public consultation and participation requirements.[40]

The UK Supreme Court case of *Walton v Scottish Ministers* also considered the issue of whether a major road proposal itself required an assessment under Directive 2001/42/EC, and decided that the construction of a discrete project like the proposed building of a major road was a 'project' covered by Directive 2011/92/EU (EIA Directive), rather than a plan or programme for the purposes of the SEA Directive.[41]

2. Would there be a need to obtain one or more permits to construct and operate the highway mentioned under point II? Is an EIA necessary? Is there a coordination mechanism integrating the substance and procedure of the permits? If appropriate and available, a flow chart could be attached. What are the characteristics of the procedures?

You may refer, when the occasion arises, to what has been said under part I of the questionnaire.

Only planning permission would be required, under the Planning Act 2008 as the highway would constitute nationally significant infrastructure development (NSID). An environmental permit is not required as a highway is not a regulated facility. An EIA would certainly be necessary and would be incorporated into the NSID planning process as outlined above. Note that some major UK infrastructure projects are decided upon by Parliament,[42] in which case the EIA process would work differently (notably not requiring public consultation),[43] and the SEA Directive would not apply to previous associated plans.[44]

B. Describing and evaluating integration and speed up legislation

Have there been initiatives in your legal order to introduce specific legislation to integrate and speed up decision making for infrastructure projects/industrial installations?

If so:

(a) When was this done?
(b) What was the general justification?

[40] Planning Act 2008, s 5. The current relevant NPS for highways is available here: https://www.gov.uk/government/speeches/national-networks-national-policy-statement. Note also recent changes under the Infrastructure Act 2015, establishing 'strategic highway companies' who are to oversee 'road investment strategies'.
[41] [2012] UKSC 44.
[42] 'Hybrid Bills' are often used in Parliament to propose works of national importance but in a specific area of the UK (they are a mix of public and private bills). Hybrid bills have been used for the Channel Tunnel Bills in the 1970s and 1980s, the Crossrail Bill to build a new east to west rail link through central London in 2008, and is currently being employed for 'High Speed 2', a high speed rail link from London to the north of England/Scotland.
[43] EIA Directive, art 2(5).
[44] *R (HS2 Action Alliance Limited) v SS for Transport* [2014] UKSC 3.

(c) *What types of projects does it apply to?*

(d) *What key aspects of procedure are speeded up? (public participation, greater integration of criteria and procedures to avoid duplication, notification instead of permit requirement, consent by time lapse, stepwise permitting etc.)*

(e) *Have there been any legal challenges to the changes? (e.g. non-compliance with EU environmental law, Aarhus etc.)*

(f) *Has there been any evaluation of previous situations and/or the impact of speeding up?*

The integrated permitting system introduced by the EPRs in 2007, which integrated the administrative processes for applications and decision-making for a wide range of environmental permits, is outlined above. The general justification was to rationalise a complex and fragmented legislative landscape relating to environmental permitting. A critical evaluation of the EPRs was undertaken in 2011-12 by the UK Environmental Law Association and King's College London: *The State of UK Environmental Law in 2011-2012: Is There a Case For Legislative Reform?*. Whilst supporting the increased coherence and administrative integration of the EPRs, the report also criticised them for lacking transparency in that they are hard to navigate and understand. This is partly a consequence of the Regulations covering so many different types of activities (and dealing with the myriad requirements of European Directives) within a single set of Regulations. The reader (or prospective permit applicant) wanting to determine and understand the regulatory position for a particular activity must look out for specific qualifications to the general licensing provisions, and identify the relevantly applicable Schedules. It is also a consequence of the referential drafting approach taken in the Schedules to transposing relevant European Directives. To address this issue, the Regulations are supported by a range of guidance documents explaining the regime and elaborating on the meaning of these kinds of cross-referential provisions (and other terms).[45]

More recently, the government has conducted a number of exercises in seeking to improve the quality of environmental legislation, often combined with initiatives to 'cut red tape'.[46] One such review – 'Cutting Red Tape' in relation to the waste sector in March 2016[47] – addressed some concerns with the current environmental permitting system under the EPRs (in relation to waste in particular). These included: the length of time taken to obtain a permit, inconsistency in how permits are assessed, and concerns about the use of standard rules permits. Current plans by Defra (not the Environment Agency) to improve environmental permitting through its 'Transformation Programme' include: publishing revised guidance for the EPR regime, 'working with business' to clarify the specific concerns and identify 'root causes', developing an action plan to address problems with the permitting process.

[45] See http://www.environment-agency.gov.uk/business/topics/permitting/32320.aspx.
[46] HM Government 'Red Tape Challenge' (2013-14); Defra, 'Smarter Environmental Regulation Review' (2013).
[47] https://cutting-red-tape.cabinetoffice.gov.uk/waste/.

Another relevant 'speeding up' initiative is the Environment Agency's efforts to expedite the process for installations that require both environmental permits and planning permission, where there is a risk that an environmental permit might not be granted. This process of 'parallel tracking' of planning and permitting applications applies to high-risk installations (ie regulated facilities that constitute major or complex planning applications and pose significant environmental risk). This process is implemented through guidance,[48] and allows planning decision-makers to consider the results of permitting assessments during the planning process, and permitting requirements to be fed into the design of a development before planning permission is granted. Design requirements will be required for the plant, equipment and buildings of high-risk regulated operations, in order for them to obtain and comply with an environmental permit so as to protect people and the environment from pollution. To determine whether applications should be subject to parallel tracking (or whether they are likely to be refused an environmental permit at all – this is rare), applicants should obtain pre-application advice from the Environment Agency before submitting their planning or permit applications. This advice is subject to a charging scheme.

What is your own assessment of integration and speeding up measures?

Efforts to integrate English permitting processes, particularly in coordinating their administration, have been largely constructive to date, although they have also caused other problems, such as those relating to transparency outlined above. However, in Scotford and Robinson (2013), we sounded a note of caution in relation to integration initiatives. This is because separate processes for environmental permits and planning applications can in some case be advantageous for developers/operators, providing them with flexibility, so that integrating permitting processes might not always be advantageous for the applicant. Furthermore this allows fostering of institutional expertise on the part of the respective consenting/permitting authorities:[49]

> [L]egislative disconnections can have practical benefits and reinforces the need for separate institutions. The current separation of planning and environmental permitting enables developers to sequence the separate applications: there may be little point in committing resources to a comprehensive application for a permit under the EPRs, for example, if there is a risk that the development will not secure planning permission. Furthermore, there is a concentration and fostering of expertise, as well as economic efficiency, in brigading similar complex environmental permitting decisions across the country in one specialised environmental regulator, rather than requiring the expertise to be duplicated in each local authority. If this approach is taken, a land use planning regime that considers issues of amenity leads inevitably to scope for argument at the boundary about the extent to which environmental protection issues should

[48] Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/297009/LIT_7260_bba627.pdf.

[49] Scotford & Robinson (n 13) 391.

be left to the specialised regulator, or be relevant factors in determining planning decisions.

C. Locus standi for a local government within the permitting procedure

Under what conditions (and whether at all) a local government may file a complaint against an environmental permit for an installation or infrastructure project.[50]

In terms of LPAs being able to challenge environmental permits, they have no standing to bring an administrative appeal under the EPRs (see above).

Furthermore, the planning and environmental permitting systems in English law are separate but complementary, as outlined above. Local government authorities primarily have a role in relation to planning decisions, not environmental permitting decisions. Their decision-making role in the planning system involves taking into account planning and local amenity considerations in relation to the construction of any regulated facility in a particular area, and to assume that environmental regulators will regulate any pollution according to regulatory standards and requirements. Local planning authorities can thus prevent installations going ahead through the planning system, if they will impact negatively on the amenity of the area in accordance with planning law decision-making principles (including any non-compliance with the relevant local planning document). They could only challenge an environmental permit if there was en error of law in the permitting process, in relation to which they would be likely to have relevant standing to bring a judicial review claim (if the project were being developed in their local government area). Note also the 'parallel tracking' process for high-risk installations outlined above, in which local planning authorities and environmental regulators can be involved in a constructive dialogue with the applicant (and each other) throughout their respective consenting processes.

[50] Right now this is topical issue in Latvia as well as locus standi for municipality was recently intesively discussed before the Aarhus Convention Compliance Committee in connection with admissibility of the case from a local government of Germany.