



Consultation response document: Charge proposals from 2018

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Published by:

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1. Introduction

In November 2017 the Environment Agency published its 'Consultation on charge proposals from 2018'. The changes were proposed to ensure that we have charges in place that work better for businesses and the environment, to reduce reliance on government income from the tax payer, and that we are financially sustainable.

1.1. Purpose of the document

The purpose of this document is to summarise the responses received, provide our reply to these responses, and confirm the final decisions. This document also describes how we carried out the consultation, and who we consulted with.

Responses to our navigation questions have not been reviewed as part of this response document as the consultation questions were focussed on shaping a future more detailed consultation. A separate navigation response document will be published in April 2018. However, where navigation respondents provided views on other questions these have been taken into account.

1.2. Background

The consultation set out proposals to make changes to a number of our charging schemes, setting our charges for the period from 1 April 2018. The charges proposed aim to: sustain and improve our customer services and regulatory activity; move to full cost recovery for our work; implement a simpler, fairer and more transparent charging scheme; and deal with elevated environmental risks.

The proposals covered the majority of our regulated regimes. We proposed:

- To significantly simplify the way customers work out their charges for regimes within the Environmental Permitting (England and Wales) Regulations 2016, including waste, water discharges and installations. Our current system is very complicated and done in a different way for different regulatory regimes. The new one will be much the same for everyone. In addition, to ensure we have a mechanism to recover the cost of activities over and above expected levels we proposed to make supplementary charges for this work, sometimes on a time and materials basis. We also proposed that customers wishing to receive additional services for advice and guidance are also charged on a time and material basis where appropriate. We are making sure everyone only pays for the service they receive and this will cause some changes in costs to businesses.
- Changes to charges for some other regimes including the Waste Electrical and Electronic Equipment (WEEE) Regulations, discretionary Planning Advice, Control of Major Accident Hazards (COMAH) Regulations and the EU Emissions Trading System (EU ETS). As with Environmental Permitting Regulations the proposals focussed on ensuring that charges cover the costs of our regulatory activities. This would lead to an increase in charges for some customers regulated within these regimes.

We also sought views on the principles we intend to follow when we fundamentally review our Navigation charges.

For abstraction charging, we set out our plans and aspirations for a future reform of our abstraction charging scheme that will accompany the forthcoming reform of the abstraction licensing regime. This was in addition to proposals to amend certain water abstraction charges from 1 April 2018.

1.3. How we ran the consultation

The consultation ran from 30 November 2017 to 26 January 2018. The consultation period was

originally due to end on 12 January 2018. This was extended by two weeks in response to customer feedback to allow more time for customers to understand and respond to the proposals.

Over 20,000 customers were contacted either by email or letter to alert them to the consultation. Consultees were able to respond on-line or by post, and a contact number and address were provided in the event of queries. We ran the consultation in accordance with the criteria set out in the Cabinet Office's 'Consultation Principles' guidelines.

We promoted the consultation locally with partners and stakeholders, and nationally with trade associations representing customers, trade press and used social media channels. In addition to the consultation and draft charging schemes, a suite of narrated presentations were available for most sectors to give customers more details about the proposals.

Throughout the development of the proposals and in the run up to the consultation our staff engaged informally with trade associations and some larger customers to introduce, explain and discuss the proposals in the context of their own sector or organisation. We also met regularly with the industry representative Charges Review Group to discuss the overarching principles and approach. We expanded the contacts in this group in September 2016 specifically to enable a fuller representation of the sectors involved in these changes. The feedback from early discussions helped us to shape and amend our proposals accordingly. We continued to engage to discuss the proposals and future working together in more detail during the consultation period. This included:

- Live webinars with customers e.g. water quality, flood and coastal risk management, Radioactive Substances Regulation customers
- Focus groups on key themes run by our National Permitting Service in December and January
- Environment Agency staff were encouraged to bring the consultation to the attention of any customers during their interactions with them throughout the consultation period
- Meetings with key stakeholders at sector level e.g. National Farmers Union, Mineral Products Association, Environmental Services Association.

Throughout the development of the proposals and in gaining approval from government we have consulted with Defra, BEIS, DfT, HMT and DCLG.

2. Key findings from the consultation

In total we received 813 responses before the deadline, 741 online responses and some 100 written responses that were not duplicates of an online response. Of these respondents there were organisations and trade associations representing many hundreds of interested parties and charge payers.

Over 400 responses were made on behalf of an organisation or group. 128 of these were from small and medium-sized enterprises. The list of organisations and groups that declared their participation in the consultation is provided in Annex 2. The responses were spread across sectors. A large number of responses were received from the farming sector, environmental NGOs and those with an interest in flood risk management and businesses affected by the Waste Electrical and Electronic Equipment Regulations.

3. Key themes from consultees and Environment Agency response and decisions

This section explains the main themes raised during consultation and the Environment Agency's response to each. We have provided responses under grouped themes here, rather than for each of the consultation questions individually. This is to allow a focus on the Environment Agency's final decisions and what has changed from the initial proposals. If you are interested in a particular consultation question, sector or charge type, and the response we have made to that, please see Annex 1.

We have not undertaken a review and set out proposals on this scale before. While some of our charges are relatively new, others have not been fundamentally reviewed in 25 years. As part of this review we have undertaken an assessment of our regulatory activities to understand how we can be more effective and provide a greater benefit to business. This includes getting the right balance across our regulatory activities including permitting, site-based compliance inspections and off-site assessment and support. We have followed HM Treasury's Managing Public Money and Classification of Receipts guidance when calculating the costs of our regulatory services and setting our charges. We structure our charges to balance simplicity of use with precision of charge level. Our approach has been based on achieving full cost recovery, identifying efficiencies and exploring opportunities to improve the service we offer.

3.1. Transparency and timing

Summary of consultee response

Customers expressed concern that complex proposals have been put forward within a short timescale, with not enough time to take feedback into account or for industry to adjust their budgeting for 2018/19, particularly where some charges are rising sharply.

Customers also felt that we should have been more transparent with the make-up of charges, demonstrating the evidence behind the charge amount and that they were proportionate.

Environment Agency response

We acknowledge consultee comments on the wide scope of this consultation and concerns regarding timing. We sought to support our customers on this through early engagement (from September 2016) with an industry represented group, the Charges Review Group, and with targeted engagement leading up to the consultation. Our consultation document was split into sections to enable customers to focus on charge changes and sectors specifically relevant to them, and supporting material such as pre-recorded presentations made available to further explain the changes.

Although we have had requests to delay implementation we are unable to delay changing our charges until April 2019. This is because we are required by government to cover the costs of our regulatory services and ensure we carry out our role as an effective regulator. Since 2010-11 only two charge schemes have had charge increases, which have been modest. Overall our charges income has increased by approximately 1.5% from 2011-12 to 2017-18 while cumulative inflation in the period has been approximately 15%. During this same period the Environment Agency has had its grant in aid for environment and business activities reduced. We have increased efficiency and reduced the amount of regulation, however there is a limit to how far this can go and without an increase in charges we will be unable to provide the regulatory service that our customers and government expect.

We have followed HM Treasury's Managing Public Money and Classification of Receipts guidance when calculating the costs of our regulatory services and setting our charges. Our approach has been based on assessing full cost recovery, identifying efficiencies and exploring opportunities to improve the service we offer. The consultation document presented information about how we have modelled the charges and included a summary of the types of costs making up our charges with some information about each component.

In order to further assist customers to understand the make-up of our charges we have published Annex 4 to this response document. This provides some more narrative on the proportion of

activities and costs, an understanding of how this may vary by charge and the relative efficiency of our costs.

3.2. Time & materials charging

Summary of consultee response

There were some concerns expressed about the time and materials elements of our charging proposals. Concerns were around the way we have arrived at the rates we apply, and the clarity and budgetary impacts of introducing these charges immediately.

In charging for novel technologies there were concerns over the potential for rapidly escalating costs, the definitions of what constitutes novel, and how we would deliver this service.

Environment Agency response

The rates are discussed in the item on transparency.

We will in all cases involving time and material charges alert operators when they are entering time and materials charging, and keep them informed of estimated costs of on-going work.

For the pre-application enhanced service, this service already exists (for installations, waste facilities, and water quality regimes) and we are proposing to widen the approach to all Environmental Permitting Regulations regimes (except for flood risk activity permits) at a rate of £100 per hour. We are revising our guidance to make sure that the basic service and this enhanced service we provide are clearly defined, efficient and effective for the customer. Our plan is to implement from April 2018.

We have reconsidered applying time and materials charging to all applications involving novel technology. We are now proposing to apply the most apt fixed application charge, with the option that an operator can choose to use a staged application process (using time and materials charges) if this approach more suits their requirements. We would encourage potential applicants to use our pre application service to discuss their plans, products and technology so that they can develop the best possible future application. Our plan is to implement this from April 2018.

For applications at high public interest sites we were proposing to introduce a time and materials charge to allow us to recover the additional costs of determining these applications. Responses to the consultation raised questions on definitions, unclear costs, and potential for this mechanism to be abused by those opposed to a specific application. We have reviewed our guidance and procedures to ensure a clear, fair and robust system is in place. We propose to include this charge in our new scheme, but will delay the implementation until October 2018 to allow time for these systems to be set up and to allow operators more time to budget for these costs.

We had three proposals to use time and materials charges for elements of compliance work; reviewing plans required under permit conditions, work following serious and significant incidents, and when we suspend permits. Our guidance will clearly define our approach to using these charges, when they will apply, how they will operate, and review the processes we will have in place. We will also explain how these charges are both separate and distinct from compliance activities which are recovered through subsistence charges, and costs recovered for incident response under sections 161-161AB Water Resources Act 1991 or other powers.

For reviewing plans required under permit conditions, and work following serious or significant incidents, we will not implement these charges until October 2018 to allow operators time to budget for these new charges and for us to ensure our guidance and procedures are clear.

For work when we suspend a permit, we will implement time and materials charging from April 2018 for these exceptional but serious events.

3.3. Supplementary application charges

Summary of consultee response

Our proposals to charge fixed additional charges in certain circumstances met with concerns over the size of the charge, and requests for more clarity on when we would apply the charge.

Environment Agency response

These supplementary charges have been separately identified to ensure that we are only collecting the fees from those applicants where we have to expend the additional time in assessing applications.

In regard to the non-refundable part of a charge when applications are rejected as not duly made, we have reviewed our guidance and procedures to better explain our approach. Sometimes when we are assessing if a new application is complete, we come across omissions which take up significant amounts of time as we attempt to resolve them with the customer. However, where there are obvious errors or omissions leading to early rejection of an application, a full refund will still be made. We welcome the opportunity offered by some consultees to work with Trade Associations to develop model applications to help avoid issues with applications in the future. We plan to implement this charge from April 2018

We have amended charging for information notices guidance to ensure there is complete clarity on when this charge will apply. This will be when we have asked for information in a notice, the information request has not been complied with, and we consider it necessary to serve another notice asking for information in relation to the same issue. This charge will NOT apply to requests for information on a different issue. We plan to implement this charge from April 2018.

The charge for assessing Waste Recovery Plans only applies to certain types of activity, but the requests for us to consider such plans can be made prior to grant of a permit, at the application stage, or at some point during the subsistence of a permit as the operator considers changing their activities. It would not be correct to recover our costs from baseline application fees, this would not ensure that we recovered our costs from the right person at the right time, for the work we do for them. We have ensured that the guidance is clear on when this will apply, how we will deal with minor amendments to Waste Recovery Plans and that we operate in a timely, efficient and consistent manner. We plan to implement this charge from April 2018.

3.4. Supplementary subsistence charges

Summary of consultee response

Concerns were expressed about the commencement of operations/first year charge, and it needing to be more targeted.

Environment Agency response

Our proposals included a first year charge. The aim of this charge is to pay for additional regulatory time in the first year of operation of a site to help the operator get off to the right start. We have reviewed our implementation and will now be restricting the charge to the waste treatment and transfer sector permits, where we see most benefit being derived from the additional regulatory support. We have amended the charging scheme to better define the applicability of this charge. We will implement this charge for permits granted from April 2018.

3.5. Non-commercial works for environmental improvement works in Flood Risk Activity

Summary of consultee response

A significant number of responses to our consultation highlighted the potential impact of our flood risk activity charge proposals on works of environmental benefit carried out on a non-commercial basis. We received feedback to say that the proposed charge increases would have been detrimental to environmentally beneficial works continuing. Given that such works are carried out on small budgets, respondents said that the proposed charges could have been prohibitive. Many

of these types of work are often carried out on small budgets by local authorities, charities and other small organisations, and sometimes with support from the Environment Agency. Such works can have significant benefit to achieving natural flood risk management objectives and improving habitats.

Environment Agency response

We accept that our original proposals would have meant some significant increases to flood risk activity charges as we sought to recover the full costs of our work.

In response to this feedback, we have changed our charge proposals. We recognise the significant benefits that these works can contribute towards natural flood risk management, habitat creation and enhancing the water environment, and we do not want our charges to discourage such good works taking place. We have not increased charges for works that, in our view, are for the benefit of the environment and are being carried out on a non-commercial basis. We will need to use taxpayer funding to subsidise our regulation in this area and we will seek to drive down those costs with further efficiencies.

We have introduced an application charge category for 'non-commercial activities undertaken for the purpose of environmental improvement', applying a charge of £170 for applications of this nature. This charge is the same as used under the current scheme. When compliance activity needs to be undertaken a subsistence charge at £68 will apply, in line with the lowest rate we will charge under the new scheme.

3.6. Clarity in categories, guidance and rules

Summary of consultee response

Responses to the consultation highlighted the need to provide better definitions, clearer guidance and rules to describe the different categories of activities, explanations of what supplementary charges would apply and rules on how to treat sites undertaking several activities all within one permit.

Environment Agency response

For charge categories we have reviewed the definitions explicitly listing the processes included in those categories to avoid any confusion on applicability. For example this would include a description of the ancillary activities that are covered in the description of a coal powered power station, thus avoiding the mistake of them being considered additional activities (and attracting additional charges). We have provided some more examples in our guidance to further help operators' understanding.

The guidance on how and when we will apply supplementary charges, either during application determination or annual compliance checks, has been enhanced to better define when we will apply those charges, who they will apply to, and what the operator can expect from us.

Certain operators will, by the virtue of the design and operation of their facilities, undertake several regulated activities. The range of potential combinations and permutations is too wide to address through individually tailored charge categories for each possibility. To ensure that we do recover the full costs of our work for multiple activities we consulted on a 'sum of all charges rule' where activities that could fall under different Charge Categories would attract separate charges. Following feedback to our consultation we have simplified these rules, and have ensured the guidance provides clear information to the operators on when these apply and how. We have also improved category descriptions for particular Environmental Permitting Regulations charge categories to give greater clarity for customers as to the extent of the activities covered. Charge categories now list all relevant site types and processes to enable a quicker look up for customers. This will also help with identifying when additional charges will apply.

3.7. Economic impacts on specific customer groups

Summary of consultee response

Customers commented in various ways on the proposed increases to charges. Some signalled their inability to pay those increases and suggested ways to reduce them.

Environment Agency response

The charges are based on our assessment of the effort necessary to carry out our regulatory actions. We aim and are required in accordance with HM Treasury's Managing Public Money rules to recover those costs. We have undergone scrutiny on our effort levels and costs both internally and with colleagues from across other Defra organisations. The consultation has also provided another platform from which to verify our assessments.

We have completed an economic assessment of how the proposed new charges will impact on the industries we regulate under the Environmental Permitting Regulations. The assessment concluded that, at an economic level, the charge changes will have no significant financial impact on any sector. For all of the industries we regulate, the charge changes represent less than 1% of total industry turnover. Customers will also benefit from the improved regulation.

The assessment also concluded that the charging proposals will not have a significant impact on barriers to entry for any of the sectors covered under the Environmental Permitting Regulations.

We have also considered whether there would be any impacts on individual businesses, especially in the waste, metals, water and intensive agriculture sectors. We have been particularly concerned to understand the impact of charge increases on small businesses (those with fewer than 50 employees) due to affordability concerns. Our detailed analysis using Companies House data suggested that only a handful of small businesses (less than 0.2% of all the firms we regulate) could face any significant impact from charge increases. We also identified a wider group of small businesses for which no data on affordability are available. This group made up around 3% to 5% of all the firms we regulate in the water, waste and installations sectors. Based on this analysis, we believe the charge changes will have no significant overall economic impact.

As a result of the economic assessment and feedback from sectors, we have reviewed some costs and will make adjustments to our charges as follows;

3.7.1. Closed landfill

We will introduce new charge categories for customers that can demonstrate that their site presents a low potential for pollution. Customers will be charged under these categories once they submit a risk assessment and we approve it. Customers will pay a higher charge initially and continue with this charge until they send us their risk assessment and we accept it. In subsequent years we will undertake lower levels of regulatory activity at those sites hence the lower subsistence charge.

3.7.2. Householders

We will hold Flood Risk Activity Permit charges at the current rate for householders carrying out works on their property under permitted development rights and we will apply light touch regulation in-line with the level of risk.

3.7.3. Pig and Poultry Industry

We have worked with the trade associations to better understand the Intensive farming BREF review process and to refine the costs of varying the permits following the review of the new technical standards. We will now take an administrative approach and reduce the charge accordingly to £380. This approach will be dependent on permit holders completing preparatory work to provide all the information required to enable a streamlined assessment. If a permit holder fails to engage in the approach, or provides inadequate information or applies for a derogation such that a streamlined review is not possible, the charge would revert to the normal or substantial variation charge (depending on complexity).

3.7.4 Land spreading of waste

Despite concerns from the land spreading sector that charges are rising sharply and over how they are applied across the country, we will not make adjustments to these charges. We have reviewed

our effort levels and believe that the rise in charges cannot be avoided, as investment is needed to deal with the environmental risks and compliance levels within this sector.

3.8. Waste Electrical and Electronic Equipment (WEEE)

Within our consultation we proposed changes to how we recover full costs to regulate the WEEE system. These regulations operate on an annual calendar year basis, with charges paid in respect of each calendar year period. The new charges apply to anything done for the calendar year commencing 1 January 2019 and any subsequent years.

Summary of consultee response

The overall response to the introduction of an annual subsistence charge for producer compliance schemes (PCSs) was favourable

Responses showed that, although respondents largely agreed with the need for us to recover full costs, they felt that the increase to producer charges were too great and would be particularly felt by smaller obligated producers. Many respondents felt that we should be able to charge producers less than proposed, and offset the fall in our income by increasing charges for waste treatment facilities and exporters.

Environment Agency response

We intend to implement the PCS annual subsistence charge set at £12,500 from the 2019 compliance year.

We have changed our proposals to reduce charges for some producers. Rather than applying a single fixed charge for all producers of electrical and electronic equipment (EEE), we will apply reduced charges for non-VAT registered producers. In response to feedback from the consultation we have also reduce charges for overseas producers, since the costs of regulating these customers is less than UK-based companies. The annual producer registration charges will be as follows from 2019:

- £30 for each member of the scheme who is a small producer
- £100 for each large producer not registered for Value Added Tax
- £100 for each large overseas producer not registered for Value Added Tax
- £375 for each large overseas producer registered for Value Added Tax
- £750 for all other scheme members

Whilst we received responses that suggested we should increase waste treatment facility and exporter charges, we do not view this as a viable alternative charging system. The alternative option presented in responses would be a significant divergence from the current system and raise costs of entry significantly. We are not minded to adopt the model proposed in responses as the costs could provide a barrier to entry for many small waste treatment facilities, and we still see that the fairest means to recover the full costs for regulating the WEEE system is through the producer registration charge. We will therefore implement the new waste treatment facility and exporter charges as proposed.

However, we will continue to work with customers and the other agencies to keep the WEEE system under review and consider whether a different charge structure could be adopted across the UK in the long-term.

4. Next steps

The new charging schemes come into force on 1 April 2018, after approval by the Secretary of State, Department for the Environment, Food and Rural Affairs (Defra). The changes will be implemented under existing legislation in Sections 41 to 43 of the Environment Act 1995.

Customers will be informed of their new charges prior to invoices being issued for 2018/19, and information will be included within those invoices explaining the new charges.

As mentioned in Section 3.2, certain time and materials charging may not be implemented until later in the year to allow time for these systems to be set up and to allow operators more time to budget for these costs.

The following documentation is published on .gov.uk:

- The Environment Agency (Environmental Permitting) (England) Charging Scheme 2018. The charging scheme includes Tables of Application and Subsistence Charges in a Schedule.
- The Environment Agency (Environmental Permitting) (England) Charging Scheme Guidance 2018
- The Environment Agency (Waste - Miscellaneous) (England) Charging Scheme 2018
- Environment Agency (EU Emissions Trading Scheme) (England) Charging Scheme

4.1. Future charging developments and consultations

Over the next few years, we will be engaging with our customers to develop and shape proposals on:

- The way we regulate. These proposals are collectively known as Performance Based Regulation. Our intention is to consult on proposals for linking all or part of Performance Based Regulation to charges for Environmental Permitting Regulations sites
- Reforming the abstraction charges framework in line with the aims of the Strategic Review of Charges and to align with the strategic framework being consulted on for current regimes in Environmental Permitting Regulations
- A full review of Navigation charges with the aim of moving towards new charging plan for boat registration charges and the Navigation service
- Sustainable funding for the 25 year Environment Plan.

Annexes - see separate file

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Annex 2 List of consultation participants

Annex 3 Further analysis of the impacts of the charging proposals on barriers to entry and on small businesses - February 2018

Annex 4 Extra narrative on make-up of charges

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