AVOSETTA MEETING Vienna 2018 – QUESTIONNAIRE
FLEXIBILITIES WITH REGARD TO MEETING EU REGULATORY OBJECTIVES AND REQUIREMENTS: UK POSITION

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I. Policies of prioritising economy and ecology

In recent years, EU environmental policies have more and more been framed around an emphasis on boosting competiveness, and preventing obstacles for the single market as such and small and medium sized businesses in particular. Looking at the inherent conflicts between the objective of protecting and preserving the environment, and economic activities, it appears that EU policy- and decision-makers believe in a need to prioritise the latter.

1. Are you aware of such initiatives, current or planned, in policy- and/or decision-making in your country which result in prioritising economic activities over environmental interests? If so, please provide examples.

1.1 General policies

There are three general polices of the present UK Government that are impacting on the way that the UK approaches all regulation of industry and business.

(a) Austerity Programme.

Following the financial crisis of 2007/2008, the new Conservative/Liberal Coalition Government introduced a long-term austerity programme designed to reduce public spending and without raising taxes. The health service and education were ring-fenced to protect them from direct cuts, meaning that other Government departments received larger reductions. The austerity programme continues today.

Core national environmental regulatory bodies, such as the Environment Agency and Natural England, receive 'grant-in-aid' funds from their sponsoring department, the Department of Environment, Food and Rural Affairs (DEFRA). Between 2011 and 2014/15, DEFRA's cut their budgets by 22% on average. Staff at the Environment Agency have reduced from 11400 to 9700. Natural England's grant-in-aid was halved between 2010 and 2015, and its staff will reduce further by 2020, representing almost a 1/3 loss in staff since 2011.

The scale of the cut-backs (mirrored in local authority budget reductions) can longer be met by improved efficiency. Policy work by these bodies has declined, and regulatory enforcement practices have changed. The Environment Agency, for example, no longer investigates minor water pollution incidents, and site inspections have reduced. Natural England took no prosecutions in 2014/15, though has used more administrative sanctions now available to it. The Environment Agency has some degree of protection as it also receives fees from licenced industrial and other processes, and these are likely to increase.[1]

(b) Reducing regulatory burdens on business.

In 2011, the Government introduced a series of polices designed to reduce the impact of regulation on business. In particular, a "One-in, One Out Rule" was introduced, meaning that

[1] Current legislation, however, only permits licence fees to be allocated to the regulatory costs relating to the process in question rather than being spent on general enforcement activity, which is dependent on grant in aid funds from Government.

Government Departments could not introduce new regulations that impose a direct cost on industry unless the Department could find savings equivalent to the cost by removing or modifying other regulations. In 2013, this was increased to a 'one in, two out" rule – i.e. costs removed must be twice the new cost imposed, and in 2016, this was increased to 'one in, three out'. The rule does not apply to regulations considered to have zero cost on industry, nor to EU legislation unless national transposition has gone beyond the minimum (see further below on gold plating). Since 2011, new regulations must be subject to periodic review. According to Government, there is evidence that industry is now more accepting of the need for regulation, against the backdrop of these reforms.

Each Department provides a six-monthly report outlining future measures and Government's action on regulation and deregulation. In 2011, DEFRA (the Environment Ministry) was the first Department to carry out a cost-benefit analysis of its entire regulatory stock.[2] It identified 435 regulations with direct cost to industry – around 50% derived from EU or international legislation. Some 56% of direct costs to industry came within three sectors (water, air, and waste), but the overall costs were estimated to be offset by about a third for direct benefits to society. Where benefits to society could be monetarized, the overall benefit-cost ratio was 2.4: 1. That is, for every £1 spent by industry on regulation there was £2.4 benefit to society. The 'one in, three out' policy refers only to costs to industry rather than cost/benefits to society generally.

This deregulatory policy is reinforced by a government "red tape' challenge designed to review generally the burden of unnecessary regulation on business. A review in 2012[3] contained proposals to abolish 67 regulations, and recast and consolidate 151 rules. Some proposals were pretty uncontroversial, such as merging existing regulations or removing obsolete law – for example, a new system of electronic waste transfer notes removed the need for some 23 million paper transfer notes.[4]

(c) No gold plating of EU law

Since 2010, the Government regularly publishes guidance for all departments on how to transpose EU legislation. The latest version[5] repeats the aversion to 'gold-plating': "*When transposing EU legislation the aim should be to avoid going beyond the minimum requirements of the measure being transposed. Taking such an approach will ensure that the UK does not create unnecessary legislative burdens and place UK business at a competitive disadvantage. This principle should only be departed from where there are exceptional circumstances which would justify it"*. The Guidance also encourages departments to look at non-regulatory alternatives if the relevant EU legislation allows this.

"Gold-plating" is defined to include: extending the scope of the relevant Directive, implementing early, and "*not taking full advantage of any derogations which keep requirements to a minimum (e.g. for certain scales of operation, or specific activities).*"

[2] DEFRA (2011), 'The Costs and Benefits of Defra's Regulatory Stock: Emerging Findings from Defra's Regulation Assessment'.
[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/69598/pb13819-red-tape-environment.pdf
[4] See generally, P Kellett (Director of Legal Services, Environment Agency), 'Better Regulation, Deregulation and Environmental law' (2015) 27 Environmental Law and Management 200.
[5] HM Government (2018), 'Transposition Guidance – How to Implement European Legislation Effectively'.

The latest version of the Guidance lays more emphasis on choosing appropriate and proportionate sanctions unless the EU legislation specifies a particular form of sanction (which is rare). If sanctions are required, they should be the minimum necessary. Criminal sanctions should only be contemplated if a failure to do so would result in a clear violation of EU law: *"the key question is what type of sanctions will be effective, dissuasive and proportionate, and the presumption remains that civil penalties should be used wherever possible".* [6]

1.2 Legislation

Two specific provisions of legislation should be highlighted.

(1) Cost and Benefits duty of Environment Agency

The Environment Act 1995, which established the Environment Agency (responsible for licencing and enforcement in respect of water management, waste, and industrial emissions for major industries), places a general duty on the Agency to *"take into account the likely costs and benefits"* of the exercise or non-exercise of any of its powers (s 39). The provision caused considerable political concern when the legislation went through Parliament and a prediction that there would be many legal challenges, especially by industry, to decisions taken by the Environment Agency. This has not happened (there appears to be no reported case), mainly because the duty is heavily qualified: (a) it does not apply where it would be "unreasonable" for the Agency to do so, and (b) the duty must not affect the Agency's duty to discharge its other statutory obligations. There is Government guidance on how the Agency should interpret and apply the duty.

(2) Growth Duty on Regulators

A new duty has been introduced under section 108 Deregulation Act 2015, which applies to nearly all regulators, including the Environment Agency and Natural England[7] (responsible for nature conservation including habitats protection). Section 108 came into force at the end of March 2017 and it is likely to have a greater impact than the cost and benefits duty. It states that:

(1) A person exercising a regulatory function to which this section applies must, in the exercise of the function, have regard to the desirability of promoting economic growth.
(2) In performing the duty under subsection (1), the person must, in particular, consider the importance for the promotion of economic growth of exercising the regulatory function in a way which ensures that—
(a) regulatory action is taken only when it is needed, and
(b) any action taken is proportionate.

Statutory guidance has been issued by the Government on how to apply the duty.[8] It relevantly states that: "*The growth duty does not legitimise non-compliance and its purpose is*

[6] The Macrory Report on Regulatory Sanctions (2006) advocated introducing civil sanctions as an alternative to a criminal prosecution but not as a substitute – i.e. a regulator needed access to both criminal and civil (administrative) sanctions depending on the circumstances of the breach. The present Government is concerned that some Departments have created numerous criminal offences when transposing EU legislation, and is now advocating decriminalization as the default position.
[7] Relevant regulators and regulatory functions are listed in Economic Growth (Regulatory Functions) Order 2017.
[8] Department of Business, Energy and Industrial Strategy (2017) *Growth Duty: Statutory Guidance*

not to achieve or pursue economic growth at the expense of necessary protections. The purpose is to ensure that specified regulators give appropriate consideration to the potential impact of their activities and their decisions on economic growth, both for individual businesses and more widely for sectors or groups that they regulate, alongside their consideration of their other statutory duties. "

The guidance emphasises the need for regulators to understand how the businesses they regulate work, and the approaches individual businesses take to achieve compliance: "*This will enable them to regulate in a cost-effective way that recognises the good track record of compliant businesses; effectively motivates and supports compliance improvements where needed; and tackles significant non-compliance"*. Regulators must ensure they provide clear guidance to businesses on how to comply with their requirements.

Regulators will be required to provide an annual report as to the effect of the growth duty on the way they exercise their functions (this provision has not yet come into effect).

At the end of November 2017, the Environment Agency consulted on a new enforcement policy designed to reflect the growth duty. Notably, the growth duty does not apply to a 'function of instituting or conducting criminal proceedings' or of 'conducting civil proceedings' (this includes the imposition of administrative sanctions) (s 111(2)). It is therefore unlikely to have a major impact of enforcement as such, and the Agency draft policy reflects this: "*Our primary role is to protect people and the environment. The growth duty sits alongside our primary role. ……The growth duty does not legitimise non-compliance and its purpose is not to achieve or pursue economic growth at the expense of protection of people and the environment."* But given the range of sanctions now available to the Agency (criminal, administrative (civil), and negotiated environment undertakings), the duty may well influence the choice of sanction taken by the Agency, and will reinforce the policy of providing advice to legitimate operators in how to comply as the first option.

But we are in uncharted legal waters. Bodies such as the Environment Agency have a major role in issuing permits and licences, and it may be here that the duty will have more impact, to the extent that the relevant environmental legislation permits a degree of discretion. There have been no legal cases yet in the courts concerning the duty, but in practice legal advisors to operators increasingly refer to the duty, when challenging decisions taken by the Agency concerning licences or enforcement.

II. Techniques aiming at introducing more flexibility to or even diluting regulation

1. Offsetting regulatory directions

a) EU-ETS

In the current EU emission trading system (EU-ETS) framework, MS are allowed to use credits from outside the EU-ETS within this trading system. Those international credits result either from emission reduction projects in developing countries (Clean Development Mechanism; Art 11a EU-ETS Directive) or from greenhouse gas reduction projects among developed countries (Joint Implementation, Art 11a EU-ETS Directive). These credits are tradable within the EU-ETS and can thus be used to comply with requirements under the EU-ETS. As of 30 April 2016, the total number of international credits (CER and ERU) used or exchanged accounts for over 90 % of the allowed maximum.

1. (How) was the possibility of using international credits transposed into national legislation?

This has not been transposed. The UK simply relies on the EU rules for using international credits in the EU ETS, as found in Commission Regulation (EU) No 1123/2013 of 8 November 2013 on determining international credit entitlements pursuant to Directive 2003/87/EC of the European Parliament and of the Council [2013] OJ L299/32.

2. Has your country used the possibility of using international credits to comply with EU-ETS requirements? If so, to what extent? Are you aware of the reasons for relying on this possibility?

The choice of using international credits is up to individual permitted installations when ensuring they have sufficient allowances to surrender each year, in line with EU rules on using international credits. Maximum individual credit entitlements for market participants for 2008-2020 have been reported to the EU and can be found in the EU Transaction Log.

A different UK mechanism in fact enhances the operation of the EU ETS (rather than derogating from it), making it a stronger force for decarbonisation at the risk of making UK ETS installations less competitive. The price of carbon allowances in the UK is topped up by a 'Carbon Support Price', increasing the market cost of allowances to a level ('Carbon Price Floor') that drives low carbon investment (which the EU ETS has not achieved). The CSP is currently £18/tCO_2 and is capped at this level until 2020. All revenue is retained by the Treasury, which recouped £1b in CPF tax receipts in 2017.

After 2020, the emissions reduction target will be a domestic one, thus the use of international credits in the next trading period of the EU ETS is not foreseen.

3. How is the change to a domestic emissions reduction target received in your country? Is this change expected to affect your country's abilities to comply with EU-ETS requirements? Are you aware that other possibilities are discussed to compensate for the loss of the flexibility through international credits?

This potential change has not been explicitly acknowledged or planned for in UK climate policy to date. To date, UK 5-yearly carbon budgets (under the Climate Change Act 2008 – see further below) have been set until 2032 and current policy plans for meeting these legislative mitigation targets assume UK participation in the EU ETS according to its rules (as they may change from time to time). The primary issue for the UK now is whether it will remain a member of the EU ETS beyond the expiry of Phase III in 2020 (the UK has negotiated to stay a member of the ETS post-Brexit until that point). The UK Climate Change Committee has recommended remaining an EU ETS member if at all possible so that UK decarbonisation plans stay on track, or otherwise maintaining the use of a carbon price in another form.

b) Effort Sharing (Non-ETS)

In the current framework for non-ETS sectors, targeted by the Effort Sharing Decision (ESD), MS are provided with a range of flexibilities in order to meet their (respective) reduction targets. MS are allowed to bank and borrow their (surplus) annual emission allocations (Art 3.3 ESD) as well as to transfer annual emission allocations to another MS (Art 3.4 ESD). In addition, MS can also use international project credits from emission reduction projects in developing countries (Clean Development Mechanism) or from greenhouse gas reduction projects among developed countries (Joint Implementation) to meet their commitments under the ESD (Art 5 ESD). In a 2016 report, the Commission finds that so far, no MS has used any of the flexibility instruments provided in the ESD, yet a change is expected in the years to come (SWD(2016) 251 final).

1. (How) were the flexibility mechanisms of the ESD transposed into national law?

Since 2008, the UK has had an ambitious national scheme for mitigating GHGs under its Climate Change Act 2008 (CCA). As indicated above, this requires the UK government to set 5-yearly carbon budgets, against a long-term target of attaining an overall 80% reduction in GHG levels by 2050 (against a 1990 baseline). Carbon budgets have two components: (1) net UK emissions within the traded sector (defined by the UK's share of the EU ETS cap); and (2) domestic emissions within the non-traded sector (covering those emissions covered by the ESD). To date, carbon budgets have been set for 5 periods: 2008-2012, 2013-2017, 2018-2022, 2023-2027, 2028-2032. In meeting these carbon budgets, the UK government is entitled to rely on some credits from outside the UK but a quantitative limit must be set on their use for every 5-year carbon budget period (s 11 CCA). This quantitative limit is a maximum threshold for using international credits and does not require their use by government. It is also constrained by the flexibility mechanisms allowed by the ESD. It is otherwise within the discretion of government to set this ceiling, subject to consulting the UK Climate Change Committee (CCC) and Devolved Administrations and taking into account section 15 CCA, which provides that the Secretary of State 'must have regard to the need for UK domestic action on climate change'. Each 5-yearly 'credit limit' on international credit units that can be used to meet UK carbon budgets must be implemented by secondary legislation 18 months before the start of each carbon budget period.[9]

2. Has your country used any of the flexibility mechanisms yet in order to comply with ESD requirements? If so, to what extent?

In the first 3 carbon budgets, limits on international credits for the non-traded sector were allowed as follows:

- 2008-2012: 0 $MtCO_2e$
- 2013-2017: 55 $MtCO_2e$ (this was equivalent to the limit of international credits permitted under the ESD for this period). Note that these credits were not in fact used by the Government as they were not required to meet the 2nd carbon budget.
- 2018-2022: 55 $MtCO_2e$ (this was adopted to maintain the previous limit level, which was seen as not having had an adverse impact on UK low carbon investment).[10] It remains to be seen whether this flexibility will in fact be used by the Government in the current budget period.

In setting these international credit limits, the Government has engaged in complex analysis that weighs at least the following: uncertainty about future UK emissions and insuring against costly domestic policies for meeting carbon budgets, impact on short-term UK low carbon investment (a reason for setting a low limit), impact on long-term confidence in meeting 2050 target, and support for the global carbon market (a reason for setting a high limit).[11]

Support for flexibility mechanisms is still high. In fact, in the current post 2020 reform of the ESD, further flexibility mechanisms are discussed. Those flexibility mechanisms include the use of cancelled ETS certificates and the use of LULUCF credits to meet ESD targets (forestry offsets).

[9] Most recently, The Climate Change Act 2008 (Credit Limit) Order 2011.
[10] This was against the advice of the UK Climate Change Committee and UK devolved administrations, which advised a limit of zero to incentivize domestic mitigation action.
[11] See the impact assessment for setting the most recent 3rd carbon budget credit limit: http://www.legislation.gov.uk/ukia/2016/178/pdfs/ukia_20160178_en.pdf. This assessment also discusses how the credit limit interacts with EU policies and requirements, including the ESD.

3. How is this proposal on further flexibility mechanisms received in your country? If the proposal becomes law, would you expect your country to rely on those flexibility mechanisms in the future?

There has been limited policy discussion of this development to date, particularly because the Government has so far failed to deliver the plan for delivering the 4th and 5th carbon budgets (covering 2023-32), which it is legally required to do. This delay is partly due to Brexit and the Government's diverted attention on planning for and the impacts of this. The CCC has expressed strong view that new UK policies to meet these carbon budgets are needed urgently, particularly as ambitious domestic action is required, and there is a presumption that domestic action will fulfil carbon budgets rather than flexibility mechanisms (and a statutory duty to consider the need for this).[12]

2. Exemptions from regulatory directives

a) Water Framework Directive: Establishing less stringent environmental objectives

The Water Framework Directive (WFD) establishes the overall objective of achieving "good status" for all waters, in view of which, ia, environmental objectives are set for different types of waters. Art 4.5 of the Directive provides for the possibility of deviating from these environmental objectives set by the Directive with regards to specific bodies of water which are affected by human activity or when their natural condition is such that it may be unfeasible or unreasonably expensive to achieve good status. The less stringent environmental objectives are to be reviewed every six years.

1. (How) was the possibility of establishing less stringent environmental objectives transposed into national law? Is the transposing legislation stricter than Art 4.5 by, e.g., adding further requirements for deviating from the environmental objectives?

The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (SI 2017/407), reg 17 transpose Article 4(5). The substantive wording is identical except for a small difference in relation to the final condition (Article 5(d) on review) in reg 17(6)(b): 'the review of that objective in accordance with regulation 12(6) *must include consideration of whether a less stringent objective should continue to be set*'. See also reg 12(6) (environmental objectives must be 'periodically reviewed and, where appropriate, updated' by 22 December 2021 and every 6 years after that).

2. Have national authorities relied on the option of establishing less stringent environmental objectives in their river management plans? If so, to what extent and for what reasons? If not, why?

Yes. The extent to which less stringent environmental objectives have been relied on depends on the particular river basin management plan (RBMP). There are hundreds of water bodies covered in each RBMP and many derogations have been applied. Note that the RBMPs (at least for England and Wales, which cover most of the UK's river basin districts) combine less stringent environmental objectives under Article 4(5) and time extensions under Article 4(4) in setting out how many derogations (or so-called 'alternative objectives') are employed in a RBMP and why. For example, the Thames River Basin Management Plan for 2015-2020 relies on 'alternative objectives' for 474 water bodies, whilst the South West River Basin Management Plan, relies on them for 513 water bodies. There is a common categorisation of reasons for these derogations across the England and Wales RBMPs (which are all prepared

[12] https://www.theccc.org.uk/wp-content/uploads/2017/06/2017-Report-to-Parliament-Meeting-Carbon-Budgets-Closing-the-policy-gap.pdf.

by or with the Environment Agency), and again the spread of reasons differs across RBMDs. This is exemplified in the table below with Thames and South West shown as comparative examples. Note the reasons listed below for relying on derogations are not mutually-exclusive. Guidance on the application of these reasons in setting alternative objectives can be found in an Agency overview document on RBM planning (pp 35-37).

'Alternative objective' reason	**Sub-reason**	**Thames**	**South West**
Technically infeasible	No known technical solution is available	149	11
	Cause of adverse impact unknown	148	70
	Practical constraints of a technical nature prevent implementation of the measure by an earlier deadline	0	3
	Problem cannot be addressed because of lack of action by other countries (NB limited application in UK)		
	Number of water bodies where technically infeasible has been used	263	79
Disproportionately expensive	Unfavourable balance of costs and benefits	105	66
	Disproportionate burdens	301	412
	Number of water bodies where disproportionately expensive has been used	343	452
Natural conditions	Ecological recovery time	5	23
	Groundwater status recovery time	0	3
	Background conditions	5	43
	Number of water bodies where natural conditions has been used	10	
	Total number of water bodies with an alternative objective (extended deadline and/or less stringent status objective)	474	513

3. If national authorities have established less stringent environmental objectives in their river management plans, are these objectives regularly reviewed? Have such less stringent environmental objectives been adapted or even lifted?

These are reviewed every 6 years as partly of the RBM planning cycle. Notably there were only a couple less stringent objectives in the 2009 UK RBMPs as the regulator did not yet have sufficient evidence, nor had an economic test to evaluate disproportionate expense been agreed with stakeholder groups. Furthermore, planning the management of the water environment is an ongoing process that uses and generates new evidence. For instance, in 2015 RBMPs, several less stringent objectives were set on the basis that it was not technically

feasible to reduce the phosphorus load discharged from sewage treatment works sufficiently to achieve good status in the receiving water body. The water industry has since collaborated on a multimillion GBP research and trialling programme. As a result, there is now evidence that it is technically feasible to reduce further the phosphorus load discharged from sewage treatment works. As a result, in the 2021 update of RBMPs, it is expected that fewer less stringent objectives will be set using the Technically Infeasible justification.

4. Are there possibilities for the public to challenge the establishment of less stringent environmental objectives in river management plans? If so, please describe those possibilities briefly.

Yes. When the RBMPs are initially set, they (including less stringent objectives) are subject to public consultation as well as SEA. Notably however, the formal consultation documents are complicated for a lay public, partly due to the large amount of information the Directive requires plans to include. Regulator advice is that the best way to influence the content of the plans (including individual water body objectives) is to help improve the evidence used to inform RBMP proposals. Although this evidence can be and is provided by stakeholders as a result of formal consultation, in practice, it works best if people speak directly to local staff, either directly or via local interest groups. Judicial review challenges against the regulator in relation to setting less stringent objectives are theoretically possible (if the legal requirements are not complied with or an irrational decision is made) but none have been brought to date. A complaint could also be made to the EU Commission of course. There are also political channels for challenging less stringent objectives – Members of Parliament may be lobbied to challenge the content of plans that must be approved by a government minister and UK environmental NGOs actively campaign on water issues.

b) Industrial Emissions Directive: Setting less strict emission limit values

The Industrial Emissions Directive (IED) requires MS authorities, in permitting industrial installations covered by the Directive, to set emission limit values which ensure that emissions do not exceed the emission levels associated with the best available techniques (BATs; Art 15.3 IED). However, if due to the geographical location/the local environmental conditions or the technical characteristics of the installation concerned achieving those emissions limits would lead to disproportionately higher costs compared to the environmental benefits, MS authorities may set less strict emission limit values as part of the permit. As part of the permit conditions, the less strict emission limit values must be reviewed in accordance with Art 21 IED.

1. (How) was the option of setting less strict emission limit values as permit conditions transposed into national law? Is the transposing legislation stricter than Art 15.4 by, e.g., adding further requirements for deviating from the emission limit values?

In England and Wales, the Environmental Permitting Regulations 2016 (SI 2016/1154) ('EPRs'), Schedule 7 (Part A Installations: Industrial Emissions Directive) transpose Article 15(4) by cross-referencing the Directive directly:
'The regulator must exercise its relevant functions so as to ensure compliance with the following provisions of the Industrial Emissions Directive—
…
(h) Article 15 (excluding the penultimate sub-paragraph of Article 15(4));'

2. Have national authorities relied on the option of setting less strict emission limit values in permitting industrial installations? If so, to what extent, for what reasons and for which types of industrial installations? If not, why?

Yes. In England, the Environment Agency has a thorough internal process for considering derogation requests made by installations (in permitting installations in the first instance, the

Agency assumes compliance with BATC). This is a lengthy process (derogations decisions are usually but not always made within 1 year) and requires a team of economic, technical and policy expertise to assess the requests through a dedicated regulatory procedure. To date, 14 installations in England have been granted exemptions – iron and steel (1), glass (1), paper and pulp (1), cement and lime (11). The total number of UK derogations (ie also including the devolved administrations) granted to date is 42 (of 44 requested) – each request may require derogation from more than one BATC. The precise reasons in each case are highly technical and specific to each installation and its technical operation. In evaluating requests, the Environment Agency uses a 'Derogation Cost-Benefit Analysis Tool' (standard Government CBA adapted to the environmental/derogations context) and feeds the results of this into a wider decision-making framework, which also includes consideration of the operator's starting point, benefits that might be overestimated or underestimated in certain locations, history of complaints, consistency with other operators in the sector etc (ie taking a 'basket of measures' approach). Notably some of the derogations issued by the Agency have been fed back into the BAT reference review process, since they have exposed limitations in some BATC for specific technical operations.

3. If national authorities have set less strict emission limit values in permitting industrial installations, is there a requirement to review these permit conditions regularly?

Regulation 34 of the EPRs requires that 'the regulator must periodically review environmental permits' and this includes review of any less strict emission limit values. The regulator undertakes such review as they implement each BATC within the 4 years required by Article 21(3) IED and will also do so after each BATC is updated again in accordance with Article 13(5). The regulator may also review the permit if any of the cases in Article 21(5) are met (Sch 7 EPRs, para 7). Note that the Environment Agency has had no cause to review any of the derogations granted to date.

4. Are there possibilities for the public to challenge the setting of less strict emission limit values as part of permit conditions, [or to challenge] *the lack of review of such less strict emission limit values* ~~*respectively*~~? If so, please describe those possibilities briefly.

Para 8 of Schedule 7 of the EPRs provides that 'The regulator must exercise its functions so as to meet the requirements of Article 24 of the Industrial Emissions Directive', where Article 24(1)(c) IED makes clear its public participation requirements must apply for permits where the application of Art 15(4) is proposed. In the Environment Agency derogation request process described above, any 'minded to allow' decision is then put for 28 days public consultation. In reality, many of these sites are not of high public interest, and the engagement with the public has been of a very low level in derogations issued so far. Equally, there have been no judicial review challenges in court questioning the legality of the regulatory process in relation to any derogation granted (although this is in theory possible).