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STATUTORY RULES OF NORTHERN IRELAND

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**2015 No. 85**

**The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015**

**PART 6**

**DUTIES OF THE COUNCIL**

**Inspections by the council**

**14.** The council shall, prior to the commencement of operations involving the management of extractive waste and thereafter at regular intervals, inspect each waste facility for which permission for relevant development has been granted to ensure that the operator is complying with the conditions imposed on that permission pursuant to these Regulations and implementing the waste management plan approved by it.

**Financial guarantee**

**15.** Where planning permission for relevant development is subject to the condition in regulation 8(1) the council shall—

- (a) calculate the financial guarantee on the basis of—
  - (i) the likely environmental impact of the waste facility, taking into account in particular the classification of the waste facility, the characteristics of the waste and the future use of the rehabilitated land, and
  - (ii) the assumption that independent and suitably qualified third parties will assess and perform any rehabilitation work needed;
- (b) determine the form of the financial guarantee and may accept the provision of a guarantee from an industry-sponsored mutual guarantee fund or equivalent; and
- (c) periodically review the size of the guarantee and adjust as necessary, in accordance with any rehabilitation work which it may deem necessary on the land affected by the extractive waste, as described in the approved waste management plan prepared in accordance with regulation 6.

**Further information and evidence**

**16.—(1)** Where the applicant has submitted a waste management plan and the council is of the opinion that the plan should contain further information to meet the requirements of regulation 6 and Schedule 1, it may require the applicant, by notice in writing to submit such further information.

**(2)** Where planning permission for relevant development is subject to the condition in regulation 9(1)(d)(ii), the council shall consider whether the monitoring report submitted to it should be validated by an independent expert.

(3) On receipt of a request under paragraphs (1) or (2) the applicant shall submit the further information or evidence within three months from the date of the request or such extended period as may be agreed in writing between the applicant and the council and, if not submitted, the application shall be deemed to be refused and the deemed refusal shall not give rise to an appeal to the planning appeals commission by virtue of section 58 of the 2011 Act (Appeals) or section 60 of the 2011 Act (Appeal against failure to take planning decision).

(4) Where such further information and any other information including consultee responses is received by the council it shall be advertised on its website and placed on the planning register, kept pursuant to section 242 of the 2011 Act (Planning register).

(5) Where information is requested under paragraph (1) or any other information is received by the council, it shall suspend determination of the application and shall not determine it before the expiry of the period of four weeks after the date on which the notice of that information was published under paragraph (4), or the expiry of the period of notice given to bodies consulted about that information, whichever is the latest.

### **Public participation**

**17.**—(1) Where an application for planning permission in relation to relevant development, which is not EIA development, has been made, the council shall make available for public inspection at all reasonable hours a register, kept pursuant to section 242 of the 2011 Act, which shall include a copy of the following, where applicable—

- (a) any determination, opinion or direction given or information received pursuant to these Regulations; and
- (b) where information has been taken into consideration in determining an application for planning permission or subsequent application or appeal, a statement containing—
  - (i) the content of the decision and any conditions attached to it,
  - (ii) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public,
  - (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development, and
  - (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.

(2) Where the register under this regulation is kept using electronic storage, the council may make the register available for inspection by the public on a website maintained by the council for that purpose.

### **Closure**

**18.**—(1) Where the council receives a request for authorisation for closure of a waste facility, it shall issue an authorisation for closure notice.

(2) The council shall not issue an authorisation for closure notice unless it is satisfied that all conditions of the planning permission relating to the waste facility in question have been met.

(3) Prior to the issue of a final closure notice in accordance with paragraph (4), the council shall, without undue delay—

- (a) assess all reports provided by the operator;
- (b) carry out a final on-site inspection of the waste facility in question; and
- (c) certify that the land affected by the waste facility has been rehabilitated.

(4) Where the council is satisfied, following its inspection and assessment pursuant to paragraph (3), that the closure procedures have been appropriately carried out, it shall issue a final closure notice in writing which—

- (a) certifies that the land affected by the waste facility has been rehabilitated; and
- (b) releases the operator from obligations in respect of any financial guarantee condition to which the planning permission is subject pursuant to regulation 8, except insofar as they relate to any after-closure conditions to which the permission is subject pursuant to regulation 12.

(5) The council may, if it considers it appropriate to do so, take over responsibility for the obligations relating to a condition to which a planning permission is subject pursuant to regulation 12(a).

### **External emergency plan**

**19.**—(1) Where planning permission has been granted or deemed to be granted for relevant development in respect of a Category A waste facility, the council shall draw up an external emergency plan specifying the measures to be taken off-site in the event of an accident.

(2) The external emergency plan shall have the following objectives—

- (a) to contain and control major accidents and other accidents so as to minimise their effects, and in particular to limit damage to human health and the environment;
- (b) to implement the measures necessary to protect human health and the environment from the effects of major accidents and other incidents;
- (c) to communicate the necessary information to the public and to the relevant services or authorities in the area; and
- (d) to provide for the rehabilitation, restoration and clean-up of the environment following a major accident.

(3) The public concerned will be provided with early and effective opportunities to participate in the preparation and review of the external emergency plan referred to in paragraph (1) and the council shall make arrangements to inform the public concerned of proposals to prepare and review the plan, including information about the right to participate in that process and how to do so.

(4) The council shall afford the public concerned a reasonable timescale to express comments and shall take due account of the comments received in reaching its decision on the preparation or review of the plan.

(5) Information on safety measures and the action required in the event of an accident at the site shall be provided by the council to the public concerned, free of charge.

(6) The information referred to in paragraph (5) shall contain at least all matters specified in Schedule 4.

(7) The information referred to in paragraph (5) shall be reviewed by the council at least every three years and updated as necessary.

(8) Where the council becomes aware of an accident involving a Category A waste facility which is likely to have significant adverse effects on the environment of, and any resultant risks to human health in, another Member State, the council must immediately notify the Department. Such notification must include a copy of all information provided to the council pursuant to a condition imposed by virtue of regulation 13(6).

(9) The Department, upon being notified under paragraph (8), must forward a copy of the information referred to in paragraph (8) to the other Member State concerned.

### **Co operation with other Member States**

**20.**—(1) Where it appears to the council that proposed relevant development which is the subject of an application for planning permission or a waste management plan, as the case may be, is likely to have significant adverse effects on the environment of, and any resultant risks to human health in, another Member State it shall immediately forward to the Department a copy of the application or waste management plan.

(2) Where on consideration of the information to be provided pursuant to paragraph (1) the Department considers that the proposed relevant development is likely to have significant adverse effects on the environment of, and any resultant risks to human health in, another Member State or where another Member State likely to be thus affected so requests, the Department shall—

- (a) forward a copy of the application or waste management plan, as the case may be, and all related material to the other Member State at the same time as it makes such documents available to the public in Northern Ireland;
- (b) give the Member State a reasonable time in which to consult its own nationals and allow them to submit representations before the council decides whether or not to grant the application or approve the waste management plan, as the case may be.

(3) This regulation shall not apply to those applications or waste management plans, as the case may be, in respect of planning permission for relevant development which constitutes EIA development.

### **Inventory of closed waste facilities**

**21.**—(1) The council shall prepare and maintain an inventory of closed waste facilities, including abandoned waste facilities, which caused serious negative environmental impacts or have the potential of becoming, in the short or medium term, a serious threat to human health or the environment.

(2) The inventory shall be available for inspection by the public at all reasonable hours.

(3) On request by any member of the public and on payment of a reasonable fee, the council shall provide a copy of any item entered in the inventory.

(4) The inventory shall take into account the methodologies referred to in Article 21 of the Directive, where available.

### **Review**

**22.**—(1) The council shall review the conditions imposed pursuant to these Regulations on a planning permission for relevant development—

- (a) where there are substantial changes in the operation of the waste facility or the waste deposited;
- (b) on the basis of monitoring results reported by the operator pursuant to regulation 9(3) or inspections carried out pursuant to regulations 9(1)(d) or 14(1); or
- (c) in the light of substantial changes in best available techniques.

(2) Where the council undertakes a review in accordance with paragraph (1), it shall inform the public concerned and give them an opportunity to make comment before the council completes its review.

(3) A review in consequence of paragraph (1) may add to, reduce or update the conditions attached to that permission in pursuance of these Regulations.

### **Consequential amendment of subordinate legislation**

**23.** In regulation (4) of the Landfill Regulations (Northern Ireland) 2003<sup>(1)</sup> (Cases where Regulations do not apply), after paragraph (b) insert “(ba) waste which falls within the scope of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015”.

### **Revocation, savings and transitional provisions**

**24.**—(1) The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010<sup>(2)</sup> (“2010 Regulations”) are revoked.

(2) Nothing in paragraph (1) shall affect the continued application of the 2010 Regulations in respect of the approval by the Department of a waste management plan where—

- (a) the application for planning permission to which the waste management plan relates was received by the Department after the coming into operation of the 2010 Regulations; and
- (b) planning permission was granted by the Department before the coming into operation of these Regulations.

(3) Where by virtue of paragraph 2 of Schedule 2 to the Planning (2011 Act) (Commencement No.3) and (Transitional Provisions) Order (Northern Ireland) 2015<sup>(3)</sup> an application for planning permission—

- (a) is treated as if it had been made to the appropriate council under the 2011 Act; or
- (b) is treated as having been made to the Department under section 26 of the 2011 Act; or
- (c) is treated as having been referred to the Department under section 29 of the 2011 Act,

then, where that application is for relevant development within the meaning of the 2010 Regulations it shall be treated as an application for relevant development for the purposes of these Regulations and anything done by, to or in relation to the Department in connection with its functions under the 2010 Regulations shall be treated as if it had been done by, to or in relation to the appropriate council or, as the case may be, the Department in connection with its functions under these Regulations.

(4) Where by virtue of regulation 4(1)(c) of the 2010 Regulations planning permission for development comprising mining operations granted before the 1st April 2010 was deemed, subject to the prior submission to and approval by the Department of a waste management plan in accordance with regulations 6 and 7 of the 2010 Regulations, to include planning permission for relevant development then—

- (a) where a waste management plan has been submitted to and approved by the Department before the coming into operation of these Regulations that planning permission shall be deemed under these Regulations to include planning permission for relevant development and shall be subject to the conditions of regulation 8 to 12 of these Regulations; and a Category A waste facility shall also be subject to regulation 13;
- (b) where a waste management plan has been submitted to the Department but is not approved before the coming into operation of these Regulations then it shall be treated as if it had been submitted to the appropriate council and if approved by the council in accordance with the provisions of these Regulations that planning permission shall be deemed in accordance with sub-paragraph (a);
- (c) where before the coming into operation of these Regulations no such waste management plan has been submitted to the Department for its approval then, without prejudice to the power of the Department or the council to take enforcement action under Part 5 of the 2011 Act, a waste management plan must be submitted to the council for its approval and

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(1) [S.R. 2003 No.496](#)

(2) [S.R. 2010 No.64](#)

(3) [S.R. 2015 No.49 \(c.5\)](#)

if approved by the council that planning permission shall be deemed in accordance with sub-paragraph (a).

(5) Nothing in this regulation shall affect the generality of section 29 of the Interpretation Act (Northern Ireland) 1954.