
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 60

The Management of Extractive
Waste (Scotland) Regulations 2010

PART 1

INTRODUCTORY

Citation and commencement

1.—(1) These Regulations may be cited as the Management of Extractive Waste (Scotland) Regulations 2010 and, other than regulation 3(1), come into force on 1st April 2010.

(2) Regulation 3(1) comes into force on 1st May 2012.

Interpretation

2.—(1) Subject to paragraph (2), in these Regulations—

“the 1997 Act” means the Town and Country Planning (Scotland) Act 1997⁽¹⁾;

“applicant” means the natural or legal person who makes an application for planning permission to which Part 4 applies;

“best available techniques” is as defined in Article 2(11) of Directive 96/61/EC concerning integrated pollution prevention and control⁽²⁾;

“Category A waste facility” means a waste facility that does not fall within the scope of Directive 96/82/EC on the control of major-accident hazards involving dangerous substances⁽³⁾—

(a) where a failure or incorrect operation, e.g. the collapse of a heap or the bursting of a dam, could give rise to a major accident, on the basis of a risk assessment taking into account factors such as the present or future size, the location and the environmental impact of the waste facility;

(b) which contains waste classified as hazardous under Directive 91/689/EEC⁽⁴⁾ above a certain threshold; or

(c) which contains substances or preparations classified as dangerous under Directive 67/548/EEC⁽⁵⁾ or Directive 1999/45/EC⁽⁶⁾ above a certain threshold;

“competent person” means a natural person with sufficient training, experience, knowledge and other qualities to enable that person to undertake the duties assigned to them relative to these Regulations;

(1) 1997 c.8, to which there are amendments which are not relevant to these Regulations.

(2) O.J. No. L 156, 25.6.2003, p.17.

(3) O.J. No. L 10, 14.1.1997, p.13.

(4) O.J. No. L 377, 31.12.1991, p.20; as amended by Council Directive 94/31/EC (O.J. No. L 168, 2.7.1994, p.28) and Corrigendum to Directive 91/689/EC (O.J. L 23, 30.1.1998, p.39).

(5) O.J. No. L 196, 16.8.1967, p.1.

(6) O.J. No. L 200, 30.7.1999, p.1.

“dam” means an engineered structure designed to retain or confine water or waste or both within a pond;

“dangerous substance” means a substance, mixture or preparation which is dangerous within the meaning of Directive 67/548/EEC or Directive 1999/45/EC;

“Directive 67/548/EEC” means Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances(7);

“Directive 76/464/EEC” means Council Directive 76/464/EEC on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community(8);

“Directive 80/68/EEC” means Council Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances(9).

“Directive 91/689/EEC” means Council Directive 91/689/EEC on hazardous waste(10);

“Directive 1999/45/EC” means Directive 1999/45/EC of the European Parliament and of the Council concerning the approximation of the laws, regulations and administrative provisions of the member States relating to the classification, packaging and labelling of dangerous preparations(11);

“Directive 2000/60/EC” means Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy(12);

“extractive waste” means waste produced from an extractive industry and resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries, but does not include—

- (a) waste which is generated by the prospecting, extraction and treatment of mineral resources and the working of quarries, but which does not directly result from those operations;
- (b) waste resulting from the offshore prospecting, extraction and treatment of mineral resources; or
- (c) the injection of water and re-injection of pumped groundwater as defined in the first and second indents of Article 11(3)(j) of Directive 2000/60/EC, to the extent authorised by that Article;

“extractive waste area” means any area designated for the accumulation or deposit of extractive waste, whether in a solid or liquid state or in solution or suspension, for the following time periods—

- (a) a period of six months or less for areas for hazardous waste generated unexpectedly;
- (b) a period of one year or less for areas for non-hazardous non-inert waste;
- (c) a period of three years or less for areas for unpolluted soil, non-hazardous prospecting waste, waste resulting from the extraction, treatment and storage of peat and inert waste,

but does not include any area which falls within a waste facility; and an extractive waste area is deemed to include—

- (d) excavation voids into which waste is replaced, after excavation of the mineral, for rehabilitation and construction purposes,

(7) O.J. No. L 196, 16.8.67, p.1.

(8) O.J. No. L 129, 18.5.76, p.23.

(9) O.J. No. L 20, 26.1.80, p.43 as amended by Council Directive 91/692/EC (O.J. No. L 377, 31.12.1991, p.48).

(10) O.J. No. L 377, 31.12.91, p.20.

(11) O.J. No. L 200, 30.7.99, p.1.

(12) O.J. No. L 327, 22.12.2000, p.1 as amended by Directive 2008/105/EC of the European Parliament and of the Council (O.J. No. L 348, 24.12.2008, p.84).

(e) any dam or other structure serving to contain, retain, confine or otherwise support such a facility, and

(f) heaps and ponds;

“financial guarantee” means the guarantee required by regulation 15(1);

“hazardous waste” is as defined in Article 1(4) of Directive 91/689/EEC;

“heap” means an engineered facility for the deposit of solid waste on the surface;

“inert waste” means waste that does not undergo any significant physical, chemical or biological transformations; inert waste will not dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter with which it comes into contact in a way likely to give rise to environmental pollution or harm human health; the total leachability and pollutant content of the waste and the ecotoxicity of the leachate must be insignificant, and in particular not such as to endanger the quality of either surface water or groundwater or both;

“leachate” means any liquid percolating through the deposited waste and emitted from or contained within an extractive waste area or waste facility, including polluted drainage, which may adversely affect the environment if not appropriately treated;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(13);

“major accident” means an occurrence on-site in the course of an operation involving the management of extractive waste in any establishment covered by these Regulations, leading to a serious danger to human health or the environment or both, whether immediately or over time, on-site or off-site;

“mineral resource” or “mineral” means a naturally occurring deposit in the earth’s crust of an organic or inorganic substance, such as energy fuels, metal ores, industrial minerals and construction materials, but excluding water;

“offshore” means that area of the sea and seabed extending from the low water mark of ordinary or median tides outwards;

“operator” means the natural or legal person responsible for the management of extractive waste at a waste facility, including in respect of temporary storage of extractive waste as well as the operational and after-closure phases, and where an extractive waste area or waste facility has not been put into operation, means the person who will have control over the operation of the extractive waste area or waste facility when it is put into operation;

“planning authority” means the local authority responsible for planning permission where an extractive waste area or waste facility is located;

“pond” means a natural or engineered facility for disposing of fine-grained waste, normally tailings, along with varying amounts of free water, resulting from the treatment of mineral resources and from the clearing and recycling of process water;

“prospecting” means the search for mineral deposits of economic value, including sampling, bulk sampling, drilling and trenching, but excluding any works required for the development of such deposits, and any activities directly associated with an existing extractive operation, and “prospecting waste” means waste generated by such activity;

“the public” means one or more natural or legal persons and associations, organisations or groups made up of such persons;

“the public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making under Parts 4 or 6 and non-governmental

organisations promoting environmental protection and meeting any requirements under legislation are deemed to have such an interest;

“receiving body of water” means surface waters, groundwater, transitional waters and coastal water as defined in Article 2(1), (2), (6) and (7) of Directive 2000/60/EC;

“rehabilitation” means the treatment of the land affected by a waste facility in such a way as to restore the land to a satisfactory state, with particular regard to soil quality, wildlife, natural habitats, freshwater systems, landscape and appropriate beneficial uses;

“SEPA” means the Scottish Environment Protection Agency;

“site” means all land at a distinct geographic location under the management control of an operator;

“substantial change” means a change in the structure or operation of an extractive waste area or waste facility that, in the opinion of the planning authority, may have significant negative effects on human health or the environment;

“tailings” means the waste solids or slurries that remain after the treatment of minerals by separation processes (e.g. crushing, grinding, size-sorting, flotation and other physico-chemical techniques) to remove the valuable minerals from the less valuable rock;

“treatment”, except where the context otherwise requires, means the mechanical, physical, biological, thermal or chemical process or combination of processes carried out on mineral resources, including from the working of quarries, with a view to extracting the mineral, including size change, classification, separation and leaching, and the re-processing of previously discarded waste, but excluding smelting, thermal manufacturing processes (other than the burning of limestone) and metallurgical processes;

“unpolluted soil” means soil that is removed from the upper layer of the ground during extractive activities and that is not deemed to be polluted under national or community law;

“waste” is as defined in Article 1(a) of Directive 2006/12/EC of the European Parliament and of the Council on waste⁽¹⁴⁾;

“waste facility” means any area designated for the accumulation or deposit of extractive waste, whether in a solid or liquid state or in solution or suspension; Category A waste facilities and facilities for waste characterised as hazardous in the waste management plan shall be waste facilities regardless of the period of accumulation or deposit, but any other area shall not be a waste facility unless the accumulation or deposit will exceed the following time periods—

- (a) six months for facilities for hazardous waste generated unexpectedly;
- (b) one year for facilities for non-hazardous non-inert waste;
- (c) three years for facilities for unpolluted soil, non-hazardous prospecting waste, waste resulting from the extraction, treatment and storage of peat and inert waste,

and such a facility is deemed to include any dam or other structure serving to contain, retain, confine or otherwise support such a facility, and is also deemed to include, but not be limited to, heaps and ponds, but does not include excavation voids into which waste is replaced, after extraction of the mineral, for rehabilitation and construction purposes;

“waste management plan” has the meaning given by regulation 11; and

“weak acid dissociable cyanide” means cyanide and cyanide compounds that are dissociated with a weak acid at a defined pH.

(14) O.J. No. L 114, 27.4.2006, p.9.

(2) Notwithstanding paragraph (1), expressions used in these Regulations and in Directive [2006/21/EC](#) on the management of waste from extractive industries⁽¹⁵⁾, unless the context otherwise requires, have the same meaning for the purposes of these Regulations as in that Directive.

(3) Where these Regulations refer to—

- (a) an application, notification or request which may be made by any person; or
- (b) an approval, decision, determination, notification, permission or opinion to be issued by the planning authority,

any such application, notification or request shall be made in writing and any such approval, decision, determination, notification, permission or opinion shall be issued in writing (and these requirements may be fulfilled by electronic communication where regulation 32 applies).

Consequential amendment of subordinate legislation

3.—(1) In the Town and Country Planning (General Permitted Development) (Scotland) Order 1992⁽¹⁶⁾—

- (a) in article 3(10)(d) (permitted development) omit “or Class 64 of Part 18”;
- (b) in article 3(10)(e) omit “or Class 63 of Part 18” and sub-paragraph (iii);
- (c) in Schedule 1, Part 15 (mineral exploration), Class 53, before sub-paragraph (2)(a) insert “(za) it is contrary to the requirements of the Management of Extractive Waste (Scotland) Regulations 2010;”;
- (d) in Schedule 1, Part 15, Class 54, before sub-paragraph (2)(a) insert “(za) it is contrary to the requirements of the Management of Extractive Waste (Scotland) Regulations 2010;”, and
- (e) in Schedule 1 omit Part 18 (waste tipping at a mine).

(2) In Part 2 of Schedule 4 to the Water Environment (Controlled Activities) (Scotland) Regulations 2005⁽¹⁷⁾ (relevant legislation for determination of applications), at the end insert “The Management of Extractive Waste (Scotland) Regulations 2010 ([S.S.I. 2010/60](#))”.

(3) In paragraph (2)(d) of Schedule 3 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008⁽¹⁸⁾ (classes of development), at the end insert “, including management of extractive waste”.

(4) In regulation 4 of the Landfill (Scotland) Regulations 2003⁽¹⁹⁾ (cases where those Regulations do not apply), after paragraph (b) insert “(ba) waste which falls within the scope of the Management of Extractive Waste (Scotland) Regulations 2010;”.

PART 2

APPLICATION OF THESE REGULATIONS

General application

4. Subject to regulation 5 (transitional provisions), no operator shall commence or continue operation of an extractive waste area or waste facility unless that area or facility has been granted planning permission in accordance with the provisions of these Regulations.

⁽¹⁵⁾ O.J. No. L 102/15, 11.4.2006, p.15.

⁽¹⁶⁾ [S.I. 1992/223](#); paragraph 10 was added by [S.I. 1997/1871](#) article 3(a). There are other amendments which are not relevant to these Regulations.

⁽¹⁷⁾ [S.S.I. 2005/348](#), which is relevantly amended by [S.S.I. 2008/170](#), regulation 20 (the amendment is not fully in force).

⁽¹⁸⁾ [S.S.I. 2008/432](#).

⁽¹⁹⁾ [S.S.I. 2003/235](#).

Transitional provisions

5.—(1) Nothing in these Regulations shall apply to a waste facility which closed before 1st April 2010 and which remains closed.

(2) Regulation 4 shall not apply to any of the following areas or facilities if, on 1st April 2010, that area or facility is in operation and it is not a Category A waste facility, but an operator of the area or facility may not commence or continue operations after 30th April 2012 unless that operator has obtained the approval of the planning authority for a waste management plan in respect of it (except where paragraph (6) applies and the requirement for such a plan has been waived)—

- (a) an extractive waste area;
- (b) a waste facility, where the extractive waste is inert waste resulting from the prospecting, extraction, treatment or storage of mineral resources;
- (c) a waste facility, where the extractive waste is unpolluted soil resulting from the prospecting, extraction, treatment or storage of mineral resources;
- (d) a waste facility, where the extractive waste is non-hazardous waste generated from the prospecting of mineral resources, except oil and evaporites other than gypsum and anhydrite; or
- (e) a waste facility, where the extractive waste is waste resulting from the extraction, treatment or storage of peat.

(3) An operator who requires approval of a waste management plan in terms of paragraph (2) must submit a plan that addresses the requirements of regulation 11 (waste management plan) to the planning authority, which authority shall—

- (a) consult with SEPA;
- (b) evaluate the operator's ability to meet the objectives of the plan, taking account of the extent to which compliance will be secured through other national or Community legislation;
- (c) when it is content that the plan complies with the requirements of regulation 11, impose a planning condition under this regulation that extractive waste be managed in accordance with that plan and the planning condition required by regulation 16(2) (review of waste management plan);
- (d) if an existing planning condition conflicts with the planning conditions imposed under sub-paragraph (c), vary the existing condition to ensure that extractive waste is managed in accordance with the plan; and
- (e) notify the operator that the plan is approved and the applicable condition or conditions.

(4) The operator of a waste facility to which paragraph (2) does not apply and which is in operation on 1st April 2010 must by 1st May 2012 obtain planning permission in accordance with the provisions of these Regulations for the continued operation of that facility.

(5) In relation to an operator to whom paragraph (4) applies—

- (a) in the application of regulations 11(3) and 18(1), for “prior to start of operation of that facility” there shall be substituted “prior to a decision by the planning authority to approve the waste management plan”;
- (b) regulation 14 (mandatory conditions: general) shall not apply, and the operator must provide the documentation referred to in that regulation along with the application for planning permission;
- (c) the condition set out in regulation 15 (provision of a financial guarantee) shall not require provision of a financial guarantee until 1st May 2014, and

- (d) in the application of regulation 23(5)(b) (maximum concentration of weak acid dissociable cyanide in discharge to a pond) for “does not exceed 10 parts per million” there shall be substituted “will not exceed 50 parts per million prior to 1st May 2013, will not exceed 25 parts per million from 1st May 2013 to 30th April 2018, and thereafter will not exceed 10 parts per million”.

(6) Where any extractive waste area or waste facility is in operation when these Regulations commence and the extractive waste is—

- (a) non-hazardous waste generated from the prospecting of mineral resources, except oil and evaporites other than gypsum and anhydrite;
- (b) unpolluted soil, or
- (c) waste resulting from the extraction, treatment and storage of peat,

the planning authority may waive the requirement in paragraph (2) for approval of a waste management plan, or reduce the requirements of regulation 11, if it is satisfied that the extractive waste will be managed without endangering human health and without using processes or methods which could harm the environment, and in particular without—

- (i) risk to water, air, soil and fauna and flora;
- (ii) causing a nuisance through noise or odours;
- (iii) causing unacceptable effects to the landscape or places of special interest; and
- (iv) resulting in the abandonment, dumping or uncontrolled depositing of extractive waste.

(7) In this regulation, “in operation” includes having a grant of planning permission that would allow operations to commence.

PART 3

REQUIREMENTS FOR PARTICULAR CATEGORIES OF PREMISES

Extractive waste area

6. Where any extractive waste is to be managed in an extractive waste area, and the planning authority is satisfied that the requirements of regulation 11 (waste management plan) are met, in granting planning permission or on review of the requirements of a permission the planning authority shall impose, and shall only impose, such conditions in pursuance of these Regulations as will ensure compliance with regulations 14(a) and 16.

Inert waste, unpolluted soil and peat-related waste

7.—(1) This regulation applies where extractive waste is—

- (a) inert waste or unpolluted soil resulting from the prospecting, extraction, treatment or storage of mineral resources; or
- (b) waste resulting from the extraction, treatment or storage of peat,

and is not deposited in a Category A waste facility.

(2) The waste management plan need not include the matters required by regulation 11(1)(a) and (b).

(3) Where the planning authority is satisfied that the other requirements of regulation 11 are met, in granting planning permission the only conditions the planning authority shall impose in pursuance of these Regulations are such conditions as are necessary to ensure compliance with—

- (a) regulations 14(a) and 16;

- (b) in regulation 22(1)(c) to (h), (2)(a) and (3); and
- (c) in regulation 23, paragraphs (1), (3) and (4), subject to any modification the planning authority considers appropriate under regulation 23(2).

Non-hazardous prospecting waste, unpolluted soil and peat-related waste

8.—(1) This regulation applies where extractive waste is—

- (a) non-hazardous waste generated from the prospecting of mineral resources, except oil and evaporites (other than gypsum and anhydrite);
- (b) unpolluted soil; or
- (c) waste resulting from the extraction, treatment and storage of peat.

(2) The planning authority may, in granting planning permission or on review of the requirements of a permission, reduce or waive any further requirements of these Regulations, including the mandatory conditions in Part 5, if it is satisfied that the extractive waste will be managed without endangering human health and without using processes or methods which could harm the environment, and in particular without—

- (a) risk to water, air, soil and fauna and flora;
- (b) causing a nuisance through noise or odours;
- (c) causing unacceptable effects to the landscape or places of special interest; and
- (d) resulting in the abandonment, dumping or uncontrolled depositing of extractive waste.

Non-hazardous non-inert waste

9. Where extractive waste is non-hazardous non-inert waste, the following provisions of these Regulations shall not apply unless it is deposited in a Category A waste facility—

- (a) regulation 15(1);
- (b) regulations 22(4) and 24(3);
- (c) regulation 23(5); and
- (d) regulation 27(b), (e) and (f).

PART 4

PROCEDURE FOR APPLICATION FOR AND GRANT OF PLANNING PERMISSION

Applications for planning permission

10.—(1) This Part applies to an application to a planning authority for planning permission (other than planning permission in principle) where all or part of that application relates to an extractive waste area or waste facility which contains, or which it is proposed will be developed to contain, extractive waste.

(2) An application to which this Part applies must be accompanied by a waste management plan which complies with the requirements of regulation 11.

(3) The requirements of the 1997 Act, and of any orders and regulations made thereunder, and relative rights of appeal, continue to apply to an application for planning permission to which this Part applies.

(4) The Scottish Ministers may give directions requiring that an application under this regulation be referred to them for determination instead of being dealt with by the authority, and in such a case these Regulations shall apply, with any necessary modifications, as they apply to applications which fall to be determined by the planning authority.

(5) Sections 237 and 239 of the 1997 Act (validity of certain decisions and proceedings for questioning their validity) shall have effect in a case to which paragraph (4) applies as if the action mentioned in section 237(3) included any decision of the Scottish Ministers on an application referred to them under that paragraph.

Waste management plan

11.—(1) The waste management plan submitted by the operator of an extractive waste area or waste facility in accordance with regulation 10(2) must plan for the minimisation, treatment, recovery and disposal of extractive waste, take account of the principle of sustainable development, have the objectives in Schedule 1 and include the following—

- (a) the identity of the operator;
- (b) the location, or proposed location, of the extractive waste area or the waste facility, including in respect of a waste facility any possible alternative locations;
- (c) sufficient information and identification to enable the planning authority to evaluate the operator's ability to meet the objectives of the waste management plan, as detailed in Schedule 1, and explaining in particular how the option and method chosen as detailed in paragraph (a)(i) of that Schedule will fulfil those objectives;
- (d) the category, in accordance with paragraph (2), into which the operator considers that the area or facility falls, with appropriate assessment to allow the planning authority to consider whether it agrees with that categorisation, including an identification of possible accident hazards;
- (e) waste characterisation in accordance with Schedule 2 and a statement of the estimated total quantities of extractive waste to be produced during the operational phase;
- (f) a description of the operation generating such waste and of any subsequent treatment to which it is subject;
- (g) a description of how the environment and human health may be adversely affected by the deposit of such waste and the preventative measures to be taken in order to minimise environmental impact during operation and after closure, including the requirements referred to in regulation 22(1)(c), (d), (g) and (h);
- (h) whether or not the operator intends to place extractive waste into excavation voids for rehabilitation and construction purposes (whether the voids were created through surface or underground extraction), and, if such placing is intended, details of the proposed control and monitoring procedures—
 - (i) to secure the stability of the extractive waste pursuant to regulation 22(1)(c) to (e), (g) and (h);
 - (ii) to prevent the pollution of soil, surface water and groundwater in accordance with regulation 23(1)(a) to (c) and regulation 23(4), and
 - (iii) to ensure the monitoring of the extractive waste and the excavation void in accordance with regulation 27(a) and (b);
- (i) the proposed plan for closure, including rehabilitation, after-closure procedures and monitoring as provided for in regulation 27;

- (j) measures for the prevention of water status deterioration in accordance with Directive 2000/60/EC and for the prevention or minimisation of air and soil pollution pursuant to regulation 23(1); and
 - (k) if categorised as a waste facility, a survey of the condition of the land affected or to be affected by it.
- (2) The options for the proposed categorisation are—
- (a) extractive waste area;
 - (b) waste facility; or
 - (c) Category A waste facility.

(3) Where a facility is categorised as a Category A waste facility, whether by the operator or the planning authority, the waste management plan shall include a document demonstrating that a major-accident prevention policy, a safety management system for implementing that policy and an internal emergency plan, all as described in regulation 18, are in effect or will be put into effect in accordance with that regulation prior to start of operation of that facility.

(4) The operator may satisfy the requirements of paragraphs (1) and (3) by reference in the waste management plan to other documentation in the possession of the operator, and where compliance with other national or Community legislation will require the operator to satisfy any of the requirements of those paragraphs, it will be sufficient for the operator to advise the planning authority of the legislation involved and the parts of the waste management plan which will be satisfied in that way.

Consultations before consideration of applications

12.—(1) A planning authority shall place a copy of a waste management plan submitted along with an application to which this Part applies in the register kept pursuant to section 36 of the 1997 Act (registers of applications etc.), and shall place with that plan any further information submitted in respect of that plan.

(2) Before considering an application to which this Part applies, a planning authority shall consult with SEPA and the Health and Safety Executive, and in considering an application a planning authority shall take into account any comments made by those bodies, including whether any of the requirements of these Regulations shall be dealt with under other national or Community legislation.

(3) Where it appears to a planning authority that an application to which this Part applies for the operation of a Category A waste facility will, if granted, be likely to have significant adverse effects on the environment of, and any resultant risks to human health in, another member State of the European Union, the planning authority shall as soon as possible forward a copy of the application and related material to the Scottish Ministers, giving details of those adverse effects and health risks.

(4) Where the planning authority has forwarded a copy of an application to the Scottish Ministers in accordance with paragraph (3), that authority shall publish on a website maintained by it, as soon as reasonably practicable, notification that the application is subject to consultation with another member State and the timescale which will apply to the determination of the application.

Decision by planning authority

13.—(1) A planning authority shall evaluate the applicant's ability to meet the objectives of the waste management plan, taking account of the extent to which compliance will be secured through other national or Community legislation, and consider whether the applicant has complied with the requirements of these Regulations.

(2) Where regulation 11(3) (Category A waste facilities) applies, the planning authority shall satisfy itself, in considering the documentation submitted under this Part and Part 6, that major-

accident hazards are identified and that the necessary features are incorporated into the design, construction, operation and maintenance, closure and after-closure of the waste facility in order to prevent such accidents and to limit their adverse consequences for human health, the environment, or both, including any transboundary impacts.

(3) The planning authority may approve a waste management plan in the form in which it is submitted to the authority or may modify it and approve it as modified.

(4) The planning authority shall not grant planning permission unless it is satisfied as to the matters in paragraph (1) and, where applicable, paragraph (2), including that the waste management plan is appropriate to the category into which it considers the area or facility falls, and where it gives notice of a decision to grant planning permission the notice shall state—

- (a) whether the area or facility is categorised as an extractive waste area or as a waste facility and, if the latter, whether it is or is not categorised as a Category A waste facility;
- (b) the identity of the operator and the location, or proposed location of the area or facility;
- (c) where regulation 15 requires a financial guarantee, either the sum required by way of that guarantee, with details of its calculation, or the way in which the amount of that guarantee is to be determined; and
- (d) any conditions the planning authority determines are necessary to meet the requirements of these Regulations which, except as otherwise provided in Parts 2 and 3, shall not be inconsistent with the mandatory conditions provided in Part 5.

(5) Any decision by a planning authority to grant an application for planning permission does not obviate the need for compliance with any other applicable national or Community legislation.

PART 5

MANDATORY CONDITIONS AND REVIEW

Mandatory conditions: general

14. Subject to regulations 5 to 9 (partial application of the Regulations), every planning permission granted in accordance with regulation 13 is deemed to be subject to the conditions that—

- (a) extractive waste be managed in accordance with the waste management plan, and
- (b) where the permission is in respect of a waste facility, the facility will not commence operations until documentation has been provided to the satisfaction of the planning authority to explain how the applicant will operate the facility to meet the requirements of regulations 22 and 23 and of any other national and Community legislation applicable and referred to in the waste management plan.

Financial guarantee

15.—(1) Subject to Parts 2 and 3, every planning permission granted in accordance with regulation 13 is deemed to be subject to the condition that the planning authority, prior to the commencement of any operations involving the accumulation of extractive waste in a waste facility, will be provided with a financial guarantee that is adequate to fulfil the purpose set out in paragraph (2).

(2) The purpose of the financial guarantee will be to ensure that—

- (a) all obligations required under the planning permission in respect of the waste facility, including after-closure provisions, will be discharged; and

- (b) there will be funds readily available at any given time for the rehabilitation of the land affected by the waste facility, as described in the waste management plan.
- (3) The financial guarantee will be calculated to the satisfaction of the planning authority on the basis of—
 - (a) the likely environmental impact of the waste facility, taking into account in particular the category of the waste facility, the characteristics of the waste and the future use of the rehabilitated land; and
 - (b) the assumption that independent and suitably qualified third parties will assess and perform any rehabilitation work needed.
- (4) The planning authority shall determine the form of the guarantee, and may accept the provision of a guarantee from an industry-sponsored mutual guarantee fund.

Review and update of waste management plan

- 16.—**(1) Every planning permission granted in accordance with regulation 13 is deemed to be subject to the condition that the waste management plan must be reviewed by the operator and updated as appropriate—
- (a) no later than the fifth year after the date on which the permission was first granted and thereafter no later than every fifth year following the date of the last review; and
 - (b) in the event of substantial changes to the extractive waste area or waste facility, or to the waste deposited.
- (2) When approving a waste management plan under regulation 5(3) (transitional provisions), the planning authority must impose a planning condition that the plan must be reviewed by the operator and updated as appropriate—
- (a) no later than the fifth year after the date on which it was approved and thereafter no later than every fifth year following the date of the last review; and
 - (b) in the event of substantial changes to the extractive waste area or waste facility, or to the waste deposited.
- (3) Any amendments made to the waste management plan, whether as a result of a review or otherwise, shall be notified to the planning authority.

Review and update of planning permission

- 17.—**(1) Every planning permission granted in accordance with regulation 13 in respect of a waste facility is deemed to be subject to the condition that the operator shall notify the planning authority of any substantial change in the operation of the facility or the waste deposited, along with such details as are required to allow the planning authority to review the requirements imposed in pursuance of these Regulations in respect of a permission granted under regulation 13.
- (2) A planning authority may, where it considers it appropriate to do so, review at any time the requirements imposed in respect of a waste facility in pursuance of these Regulations in respect of a permission granted under regulation 13, including (but not limited to) where review is appropriate—
- (a) on the basis of monitoring results reported by the operator pursuant to regulation 22(4);
 - (b) as a consequence of inspection reports submitted to the planning authority pursuant to regulation 24(1); or
 - (c) following any information provided by the Scottish Ministers to the planning authority of developments in best available techniques,
- and in every case shall undertake such review not later than five years after the grant of that permission or the latest review of it.

(3) Following a review undertaken in consequence of paragraph (1) or (2), a planning authority may add to, reduce or update the conditions attached to that permission in pursuance of these Regulations and shall consider whether the size or form of any financial guarantee required in accordance with regulation 15(1) requires adjustment to fund the rehabilitation work described in the current waste management plan (and, if so, such an adjusted guarantee shall be provided).

(4) The requirements of regulations 14 to 16 (mandatory conditions) (where appropriate, as modified by Parts 2 and 3), and of paragraph (1), shall apply on review as if the planning authority were granting a permission in accordance with regulation 13.

(5) Where the planning authority receives notification of a substantial change in accordance with paragraph (1), or decides to undertake a review in respect of a waste facility in terms of paragraph (2), it shall consult SEPA and shall give the public concerned an opportunity to express comments and opinions to it before it completes the review.

PART 6

ADDITIONAL REQUIREMENTS FOR CATEGORY A WASTE FACILITIES

Major-accident prevention policy, safety management system and internal emergency plan

18.—(1) Where an applicant intends to operate a Category A waste facility, prior to start of operation of that facility the operator must draw up a major-accident prevention policy, put into effect a safety management system to implement that policy, and must also put into effect an internal emergency plan specifying the measures to be taken on site in the event of an emergency.

(2) That policy and system must be in accordance with Schedule 3.

(3) The major-accident prevention policy must—

- (a) be drafted with reference to the objectives in Schedule 3; and
- (b) provide the name and contact details of a safety manager responsible for the implementation and periodic supervision of the policy.

(4) The internal emergency plan shall have the following objectives—

- (a) to contain and control major accidents and other incidents 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.

(5) Copies of the major-accident prevention policy, the safety management system and the internal emergency plan must be provided to the department which is responsible for emergency planning of the local authority in whose area the Category A waste facility is located.

External emergency plan

19.—(1) An external emergency plan must be drawn up by the emergency planning department referred to in regulation 18(5), using the information provided by the operator when making the application referred to in regulation 10.

(2) The operator must provide that department with such further information as it requires to draw up the external emergency plan.

(3) The external emergency plan must specify the measures to be taken off-site in the event of an accident and shall have the same objectives as the internal emergency plan required by regulation 18.

(4) In the event of a major accident, the operator must immediately provide that department with all information required to help minimise the consequences of the accident for human health and to allow the assessment and minimisation of the actual and potential extent of the environmental damage.

Public consultation and public information

20.—(1) The public concerned will be provided with early and effective opportunities to participate in the preparation and review of the external emergency plan to be drawn up in accordance with regulation 19.

(2) The department which is responsible for emergency planning referred to in regulation 18(5) shall determine how the provision in paragraph (1) is best achieved, and must make arrangements to inform the public concerned of proposals to prepare and review the external emergency plan, including information about the right to participate in that process and how to do so.

(3) That department must afford the public concerned a reasonable timescale to express comments and must ensure that due account is had to comments received in reaching a decision on the preparation or review of the plan.

(4) Information on safety measures and the action required in the event of an accident at the site must be provided by the operator to the public concerned, free of charge, and that information must contain at least all matters specified in Schedule 4.

(5) In preparing the information referred to in paragraph (4), and determining the manner of its provision to the public concerned, the operator must consult with that department, but the operator is responsible for its form, accuracy and completeness.

(6) The information referred to in paragraph (4) must be reviewed by the operator at least every three years and updated as necessary.

Co-operation with other member States

21.—(1) Where the local authority referred to in regulation 18(5) 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 of the European Union, the local authority must immediately notify the Scottish Ministers.

(2) A notification under paragraph (1) must provide a copy of all information provided to that local authority pursuant to regulation 19(4).

(3) The Scottish Ministers, upon being notified under paragraph (1), must forward a copy of the information referred to in paragraph (2) to the member State.

PART 7

CONSTRUCTION AND MANAGEMENT

Construction and management: duties of operator

22.—(1) The operator of any waste facility shall ensure, in constructing a new waste facility or modifying an existing waste facility, that the following requirements are met—

- (a) the management of the waste facility is in the hands of a competent person;
- (b) the requisite technical development and training of staff is provided;

- (c) the waste facility is suitably located, taking into account in particular Community or national obligations relating to protected areas, and geological, hydrological, seismic and geotechnical factors and is designed to meet the necessary conditions for, in the short and long term perspectives, preventing pollution of the soil, air, groundwater or surface water in accordance with Directives [76/464/EEC](#), [80/68/EEC](#) and [2000/60/EC](#) and ensuring efficient collection of contaminated water and leachate as and when required under the planning permission, and reducing erosion caused by water or wind as far as it is technically possible and economically viable;
 - (d) the waste facility is suitably constructed, managed and maintained to ensure its physical stability and to prevent pollution or contamination of soil, air, surface water or groundwater in the short and long-term perspectives as well as to minimise as far as possible damage to landscape;
 - (e) there are suitable plans and arrangements for regular monitoring and inspection of the waste facility by competent persons and for taking action in the event of results indicating instability or water or soil contamination;
 - (f) up-to-date records are kept of all waste management operations, which are available for inspection by the planning authority on request;
 - (g) suitable arrangements are made for the rehabilitation of the land and the closure of the waste facility; and
 - (h) suitable arrangements are made for the after-closure phase of the waste facility.
- (2) In relation to paragraph (1)(e) the operator shall—
- (a) keep records of the monitoring and inspections along with documentation relating to the conditions attached to the planning permission, in order to ensure the appropriate hand-over of information, particularly in the event of a change of operator; and
 - (b) report to the planning authority, at a frequency to be determined by it, but in any event no less than once a year, all monitoring results on the basis of aggregated data, in order to demonstrate compliance with the conditions attached to the planning permission and to increase knowledge of waste and waste facility behaviour.
- (3) In the event of a change of operator during the management of a waste facility the operator shall ensure that there is a transfer of relevant up-to-date information and records relating to the waste facility.
- (4) Where the operator identifies any events likely to affect the stability of the waste facility or any significant adverse environmental effects revealed by the control and monitoring procedures in paragraph (1)(e), the operator shall—
- (a) notify the local authority, without undue delay and no later than 48 hours after they have been identified of those events or effects;
 - (b) implement the internal emergency plan referred to in regulation 18(1), where applicable;
 - (c) follow any instruction from the local authority as to the corrective measures to be taken; and
 - (d) be liable for the costs of the measures undertaken.

Prevention of water status deterioration, air and soil pollution

23.—(1) In providing documentation to the planning authority (or, where appropriate, SEPA) in accordance with a condition attached by virtue of regulation 14, the operator shall provide evidence, both prior to the commencement of any operations and during operations demonstrating, where

applicable, compliance with the Water Environment and Water Services (Scotland) Act 2003⁽²⁰⁾ and the Water Environment (Controlled Activities) (Scotland) Regulations 2005⁽²¹⁾, through—

- (a) the evaluation of the leachate generation potential, including contaminant content of the leachate, of the deposited waste during the operational phase of the waste facility and determined water balance of that facility;
- (b) prevention or minimisation of leachate generation and surface water or groundwater and soil from being contaminated by the waste;
- (c) collection and treatment of contaminated water and leachate from the waste facility to the appropriate standard required for their discharge; and
- (d) the taking of adequate measures to prevent or reduce dust and gas emissions.

(2) The planning authority (or, where appropriate, SEPA) may reduce or waive compliance with the requirements of paragraph (1)(b) and (c), during both the operational and after-closure phases, where it has assessed environmental risks, taking into account in particular and as applicable Directives [76/464/EEC](#), [80/68/EEC](#) or [2000/60/EEC](#), and has decided that—

- (a) the collection and treatment of leachate is not necessary, or
- (b) it has been established that the waste facility poses no potential hazard to soil, groundwater or surface water.

(3) Where the operator disposes or intends to dispose of extractive waste, whether in solid, slurry or liquid form, into any receiving body of water other than one constructed for the purpose of disposing of extractive waste, the operator shall provide and submit evidence to demonstrate that the operator has complied, or will on disposal comply, with Directives [76/464/EEC](#), [80/68/EEC](#) and [2000/60/EEC](#).

(4) Where the operator places or intends to place extractive waste back into excavation voids, whether created through surface or underground extraction and which will be allowed to flood after closure, the operator shall provide and submit evidence to demonstrate—

- (a) that the operator has taken, or will when the extractive waste is so placed take, the necessary measures to prevent or minimise water status deterioration and soil pollution in accordance with paragraphs (1)(b), (c) and (d), insofar as applicable; and
- (b) compliance with Community obligations, in particular those in Directive 2000/60/EC.

(5) Where the operator manages or intends to manage a pond involving the presence of cyanide, the operator shall provide and submit evidence to demonstrate—

- (a) that the concentration of weak acid dissociable cyanide in the pond is reduced to the lowest possible level using best available techniques, or when the pond is so managed will be reduced to that level using such techniques; and
- (b) evidence that the concentration of weak acid dissociable cyanide at the point of discharge of the tailings from the processing plant into the pond does not exceed 10 parts per million at waste facilities.

(6) Where the planning authority so requests, the operator shall demonstrate through a risk assessment that takes site-specific conditions into account that the concentration limits in paragraph (5)(b) need not be further lowered.

Construction and management: inspection by the planning authority

24.—(1) Prior to commencement of deposit operations, and annually thereafter, the planning authority must inspect each waste facility for which permission has been granted in consequence of

⁽²⁰⁾ asp 3.

⁽²¹⁾ S.S.I. 2005/348.

an application under regulation 10, to ensure that the operator is complying with the conditions of that permission and implementing the waste management plan.

(2) The planning authority shall ensure that it is satisfied that the operator has complied with all requirements in regulation 22(2).

(3) When considering the content of a monitoring report provided under regulation 22(2)(b), the planning authority shall consider whether it should be validated by an independent expert and the operator will allow any such expert instructed by the planning authority access to the waste facility to conduct appropriate monitoring and shall co-operate with all reasonable requirements of the independent expert.

PART 8

CLOSURE AND AFTER-CLOSURE OF WASTE FACILITIES

Closure procedures: duties of operator

25. An operator shall only commence the closure of a waste facility if at least one of the following conditions is met—

- (a) the relevant conditions stated in the planning permission are met;
- (b) authorisation is granted by the planning authority, at the request of the operator;
- (c) the planning authority issues a reasoned decision to that effect.

Closure and after-closure procedures: duties of planning authority

26.—(1) Where an operator requests that a waste facility be regarded as finally closed, the planning authority shall without undue delay—

- (a) carry out an on-site inspection;
- (b) assess all reports provided by the operator; and
- (c) where satisfied that the closure procedure has been carried out correctly—
 - (i) certify that the land affected by the waste facility has been rehabilitated;
 - (ii) communicate to the operator in writing its approval for closure of the facility; and
 - (iii) provide the operator with a written statement releasing that operator from obligations in respect of any financial guarantee required under regulation 15(1), other than any obligations under regulation 27 (after-closure procedures: duties of operator).

(2) The waste facility shall not be regarded as closed until the planning authority has communicated to the operator its approval of the closure of the waste facility, which communication shall in no way reduce the operator's obligations under the conditions of the planning permission or otherwise in law.

(3) The planning authority shall determine the period of time the operator is to remain responsible, following the closure of a waste facility, for the maintenance, monitoring, control and corrective measures and in doing it so shall take into account the nature and duration of any hazard or potential hazard.

(4) Where it considers it appropriate, the planning authority may determine that it shall take over the responsibilities in paragraph (3) from the operator.

(5) The planning authority shall determine whether it is necessary for the operator to carry out any of the activities described in regulation 27(b) and if so shall notify the operator of what it has determined to be necessary.

(6) The planning authority shall determine whether the operator is to provide reports under regulation 27(f) and, if so, what the frequency of those reports is to be.

After-closure procedures: duties of operator

27. Following closure of a waste facility the operator shall—

- (a) remain responsible for the maintenance, monitoring, control and corrective measures for as long as the planning authority requires;
- (b) where considered necessary by the planning authority, in order to fulfil relevant environmental requirements, as set out in Directives [76/464/EEC](#), [80/68/EEC](#) and [2000/60/EC](#), the operator shall control the physical and chemical stability of the facility and minimise any negative environmental effect, in particular with respect to surface and groundwater, by ensuring that—
 - (i) all the structures pertaining to the facility are monitored and conserved, with control and measuring apparatus always ready for use; and
 - (ii) where applicable, overflow channels and spillways are kept clean and free;
- (c) evaluate the leachate generation potential, including contaminant content of the leachate, of the deposited waste, and determine the water balance of the waste facility;
- (d) prevent or minimise leachate generation and surface water or groundwater and soil from being contaminated by the waste and collect and treat contaminated water and leachate from the waste facility to the appropriate standard required for their discharge, unless the planning authority reduces or waives these requirements in accordance with regulation 23(2);
- (e) without delay, notify the planning authority of any events or developments likely to affect the stability of the waste facility and any significant adverse environmental effects revealed by the relevant control and monitoring procedures and where applicable the operator shall—
 - (i) implement the internal emergency plan;
 - (ii) follow any instructions from the planning authority as to the corrective measures to be taken; and
 - (iii) accept financial liability for the costs of the measures in sub-paragraphs (i) and (ii); and
- (f) report to the planning authority, if it so requires and at a frequency determined by it, on the basis of aggregated data, all monitoring results for the purposes of demonstrating compliance with planning conditions and increasing knowledge of waste and waste facility behaviour.

Inventory of closed waste facilities

28.—(1) The planning authority shall prepare and maintain an inventory of closed waste facilities, including abandoned waste facilities, in its area which cause serious negative environmental impacts or have the potential of becoming in the medium or short term a serious threat to human health or the environment.

(2) The inventory shall be made available to the public.

(3) The inventory shall be prepared by 1st May 2012 and shall take into account the methodologies referred to in Article 21 of Directive [2006/21/EC](#) on the management of waste from extractive industries, if these are available.

PART 9

APPEALS, ENFORCEMENT AND GENERAL PROVISION

Appeals

- 29.**—(1) An operator may appeal to the Scottish Ministers against—
- (a) the terms on which a planning authority approves a waste management plan under regulation 5(3) or regulation 13(3);
 - (b) the assessment by that authority of the size of financial guarantee required by virtue of regulation 15;
 - (c) where a waste management plan has been submitted but not approved—
 - (i) any terms that a planning authority notifies an operator that it would require before its approval will be given, or
 - (ii) a failure to approve the plan within six months of the date that the plan was submitted or within such extended period as may at any time be agreed upon in writing between the applicant and the authority;
 - (d) the outcome of any review undertaken under regulation 17, but only in respect of—
 - (i) any addition to, reduction from, or updating of the conditions attached to the permission, or
 - (ii) any adjustment of the size of financial guarantee required by virtue of regulation 15;
 - (e) any determination of the planning authority under regulation 26(3), (5) or (6).

(2) An appeal under paragraph (1) must be made by giving notice of appeal to the Scottish Ministers before the end of the period of three months beginning with the date on which the operator was notified, or was due to be notified, of the matter against which the appeal is taken and must be made on a form supplied by or on behalf of the Scottish Ministers for use for appeals under Schedule 10 to the 1997 Act and giving, so far as reasonably practicable, the information required by that form.

(3) Paragraphs 18 and 21(3) of Schedule 8 to the 1997 Act (determination of appeals) shall apply to appeals under paragraph (1) as they apply to appeals under paragraph 17 of that Schedule, and for their purposes an appeal under paragraph (1)(c)(ii) shall be deemed to be against a decision to refuse the application in question.

Enforcement

30. For the purposes of these Regulations, Part 6 of the 1997 Act (enforcement) applies, and the following shall be treated as constituting a breach of planning control for the purposes of the application of that Part—

- (a) carrying out development without any planning permission required by these Regulations;
- (b) failure to comply with any condition or limitation subject to which such planning permission has been granted (including the mandatory conditions in Part 5 of these Regulations) or with any other requirement imposed on an operator by these Regulations;
- (c) in the case of an extractive waste area or waste facility to which regulation 5(2) applies, commencing or continuing operations after 30th April 2012 without the approval of the planning authority for a waste management plan in respect of that area or facility;
- (d) in the case of a waste facility to which regulation 5(4) applies, continuing to operate that facility after 30th April 2012 without the planning permission required by that regulation.

Compensation

- 31.**—(1) This regulation shall apply where the requirements in paragraph (2) are met and—
- (a) an application for approval of a waste management plan which requires to be made in accordance with regulation 5(2) is finally determined;
 - (b) an application for planning permission which requires to be made in terms of regulation 5(4) is finally determined; or
 - (c) where requirements imposed in pursuance of these Regulations have been finally determined on review in terms of regulation 17.
- (2) The requirements for the purposes of paragraph (1) are—
- (a) the conditions to which the mineral permissions relating to the site are to be subject, after that determination or review, differ from the conditions to which the mineral permissions relating to the site were subject immediately prior to that determination; and
 - (b) the effect of the later conditions, as compared with the effect of the previous conditions, except in so far as they are or were restoration or aftercare conditions, is to restrict working rights in respect of the site, and, for the purposes of this sub-paragraph, whether working rights are restricted shall be determined in accordance with paragraph 13(3) of Schedule 10 to the 1997 Act.
- (3) In a case to which this regulation applies, but subject to paragraph (5), Parts IV (compensation for effects of certain orders) and X (statutory undertakers) of the 1997 Act shall apply and shall have effect as if an order made under section 65 of that Act—
- (a) had been confirmed by the Scottish Ministers under section 66 of that Act at the time when the application in question was finally determined; and
 - (b) as so confirmed, had effect to modify those permissions to the extent specified in paragraph (5).
- (4) For the purposes of this regulation, the order referred to in paragraph (3) is one whose only effect adverse to the interests of any person having an interest in the land or minerals comprised in the site is to restrict working rights in respect of the site to the same extent as the relevant restriction.
- (5) For the purposes of Schedule 13 of the 1997 Act (regulations as to compensation) and of any regulations made under that Schedule, the permissions treated as being modified by the order mentioned in paragraph (4) shall be treated as if they were planning permissions for development which neither consists of nor includes any minerals development.

Electronic communications

- 32.**—(1) Where the criteria in paragraph (2) are met, any document required or authorised to be sent by these Regulations may be sent by electronic communications and any requirement in these Regulations that any document is to be in writing is fulfilled.
- (2) The criteria are—
- (a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive it electronically; and
 - (b) that document transmitted by the electronic communication is—
 - (i) capable of being accessed by the recipient;
 - (ii) legible in all material respects; and
 - (iii) sufficiently permanent to be used for subsequent reference.
- (3) Any person sending a document using electronic communications is deemed to have agreed—

- (a) to the use of such communications for all purposes relating to the application which are capable of being carried out electronically; and
 - (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that communication.
- (4) Deemed agreement under paragraph (3) subsists until that person gives notice to revoke the agreement.
- (5) Notice of withdrawal of consent to the use of electronic communications or of revocation of agreement under paragraph (4) takes effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.
- (6) In this regulation—
- “address” includes any number or address used for the purpose of such communications or storage;
 - “document” includes any notice, consent, decision, representation, statement, list, report, form, plan, certificate or other information or communication;
 - “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(22);
 - “legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form; and
 - “sent” includes served, submitted or given and cognate expressions are to be construed accordingly.

St Andrew’s House,
Edinburgh
23rd February 2010

STEWART STEVENSON
Authorised to sign by the Scottish Ministers