
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 60

The Management of Extractive
Waste (Scotland) Regulations 2010

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.