
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 60

The Management of Extractive
Waste (Scotland) Regulations 2010

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 ^{F1}... 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 [^{F2}Directive 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.

Textual Amendments

- F1** Words in [reg. 22\(1\)\(c\)](#) omitted (31.12.2020) by virtue of [The Management of Extractive Waste \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/273\)](#), [regs. 1\(2\)](#), [15](#); [2020 c. 1, Sch. 5 para. 1\(1\)](#)
- F2** Words in [reg. 22\(1\)\(c\)](#) substituted (30.10.2019) by [The Management of Extractive Waste \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/273\)](#), [regs. 1\(2\)](#), [4](#)

Commencement Information

- I1** [Reg. 22](#) in force at 1.4.2010, see [reg. 1\(1\)](#)

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(1) and the Water Environment (Controlled Activities) (Scotland) Regulations 2005(2), 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 [^{F3}Directive [2000/60/EC](#)], and has decided that—

(1) asp 3.
(2) S.S.I. 2005/348.

- (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 [^{F4}Directive 2000/60/EC].
- (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
- [^{F5}(b) compliance with [^{F6}assimilated direct] legislation.]
- (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.

Textual Amendments

- F3** Words in reg. 23(2) substituted (30.10.2019) by The Management of Extractive Waste (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/273), regs. 1(2), **5(a)**
- F4** Words in reg. 23(3) substituted (30.10.2019) by The Management of Extractive Waste (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/273), regs. 1(2), **5(b)**
- F5** Reg. 23(4)(b) substituted (31.12.2020) by The Management of Extractive Waste (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/273), regs. 1(2), **16**; 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in reg. 23(4)(b) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374), reg. 1(1), **sch. 2 para. 18(8)**

Commencement Information

- I2** Reg. 23 in force at 1.4.2010, see reg. 1(1)

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 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.

Commencement Information

I3 [Reg. 24](#) in force at 1.4.2010, see [reg. 1\(1\)](#)

Changes to legislation:

There are currently no known outstanding effects for the The Management of Extractive Waste (Scotland) Regulations 2010, PART 7.