

SCHEDULE 20

Regulation 68(3)

Further provision relating to waste

Interpretation: general

1. In this Schedule—

“authority” means—

- (a) an appropriate authority,
- (b) the Agency,
- (c) a planning authority,
- (d) a person appointed under section 114(1)(a) of the 1995 Act⁽¹⁾;

“local planning authority” has the same meaning as in the Town and Country Planning Act 1990⁽²⁾;

“planning authority” means—

- (a) a local planning authority,
- (b) a joint committee constituted under section 29 of the Planning and Compulsory Purchase Act 2004⁽³⁾,
- (c) the person appointed under paragraph 1 of Schedule 6 to the Town and Country Planning Act 1990⁽⁴⁾,
- (d) a government department in respect of its functions under the planning Acts, or
- (e) the Secretary of State in respect of his functions under the planning Acts;

“plan making provisions” means—

- (a) paragraph 5 of Schedule 4 to the 1994 Regulations,
- (b) Part 2 of the Town and Country Planning Act 1990⁽⁵⁾,
- (c) section 44A of the 1990 Act⁽⁶⁾,
- (d) in England, Parts 1 and 2 and Schedule 8 of the Planning and Compulsory Purchase Act 2004, and
- (e) in Wales—
 - (i) Part 6 of the Planning and Compulsory Purchase Act 2004,
 - (ii) article 3(3) of the Planning and Compulsory Purchase Act 2004 (Commencement No. 6, Transitional Provisions and Savings) Order 2005⁽⁷⁾;

“the planning Acts” means—

- (a) the Town and Country Planning Act 1990,
- (b) the Planning (Listed Buildings and Conservation Areas) Act 1990⁽⁸⁾,
- (c) the Planning (Hazardous Substances) Act 1990⁽⁹⁾,

(1) Section 114 was amended by the Water Act 2003, c. 37, sections 3(13), 8(7), 13(4) and 21(4), and by S.I.2000/1973.

(2) 1990, c. 8.

(3) 2004, c. 5.

(4) Paragraph 1 was amended by the Planning and Compensation Act 1991 c. 34, section 32.

(5) Part 2 is repealed by the Planning and Compulsory Purchase Act 2004, section 120 and Schedule 9, but is saved for certain purposes in England by S.I. 2004/2202 and in Wales by S.I. 2005/2847 (W.118).

(6) Section 44A was inserted by the Environment Act 1995, c. 25, section 92(1).

(7) S.I. 2005/2847.

(8) 1990 c. 9.

(9) 1990 c. 10.

- (d) the Planning (Consequential Provisions) Act 1990⁽¹⁰⁾, and
 - (e) the Planning and Compulsory Purchase Act 2004;
- “planning permission” has the meaning given by section 336 of the Town and Country Planning Act 1990⁽¹¹⁾;
- “pollution control authority” means an authority other than a planning authority;
- “specified functions” has the meaning given in paragraph 2;
- “waste management plan” means a plan or other expression of strategy or policy in relation to waste management made under the plan making provisions.

Interpretation: specified functions

- 2.—(1) In this Schedule, “specified functions” means—
- (a) in the case of an appropriate authority, its functions—
 - (i) under Part II of the Food and Environment Protection Act 1985⁽¹²⁾, and
 - (ii) in relation to the determination of appeals against decisions of the Environment Agency in the exercise of its specified functions;
 - (b) in the case of the Environment Agency, its functions in relation to—
 - (i) consents under Chapter II of Part III of the Water Resources Act 1991⁽¹³⁾ for a discharge of waste in liquid form other than waste waters,
 - (ii) authorisations under regulation 18 of the Groundwater Regulations 1998⁽¹⁴⁾, and
 - (iii) notices under regulation 19 of the Groundwater Regulations 1998;
 - (c) in the case of a person appointed under section 114(1)(a) of the 1995 Act, his functions in relation to the determination of appeals against decisions of the Environment Agency in the exercise of its specified functions;
 - (d) in the case of a planning authority—
 - (i) determining an application for planning permission or an appeal made under section 78 of the Town and Country Planning Act 1990⁽¹⁵⁾ relating to such a determination,
 - (ii) deciding whether to take action under section 141(2) or (3) or 177(1)(a) or (b) of the Town and Country Planning Act 1990⁽¹⁶⁾, or under section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990,
 - (iii) deciding whether to direct under section 90(1), (2) or (2A) of the Town and Country Planning Act 1990⁽¹⁷⁾ that planning permission must be deemed to be granted,
 - (iv) deciding whether—
 - (aa) in making or confirming a discontinuance order, to include in the order any grant of planning permission, or

⁽¹⁰⁾ 1990 c. 11.

⁽¹¹⁾ The definition of “planning permission” in section 336 was amended by the Planning and Compensation Act 1991, sections 32 and 84(6) and Schedules 7 and 19.

⁽¹²⁾ 1985, c. 48.

⁽¹³⁾ 1991, c. 57.

⁽¹⁴⁾ S.I. 1998/2746.

⁽¹⁵⁾ Section 78 was amended by the Planning and Compensation Act 1991 (c. 34), section 17(2) and the Planning and Compulsory Purchase Act 2004 (c. 5), sections 40(2)(e) and 43(2).

⁽¹⁶⁾ Section 177 was amended by the Planning and Compensation Act 1991 (c. 34), section 32 and Schedule 7.

⁽¹⁷⁾ Section 90(1) was amended by the Environment Act 1995, c. 25, section 78 and Schedule 10; Section 90(2A) was inserted by the Transport and Works Act 1992, c. 42, section 16(1).

- (bb) to confirm (with or without modifications) a discontinuance order insofar as it grants planning permission,
and for the purposes of this sub-paragraph, “discontinuance order” means an order under section 102 of the Town and Country Planning Act 1990 (including an order made under that section by virtue of section 104 of that Act), or under paragraph 1 of Schedule 9 to that Act (including an order made under that paragraph by virtue of paragraph 11 of that Schedule)(18),
 - (v) making a local development order under section 61A of the Town and Country Planning Act 1990(19), and
 - (vi) discharging functions under Part II of the Town and Country Planning Act 1990, under parts 1 and 2 of and Schedule 8 to the Planning and Compulsory Purchase Act 2004 in relation to England or under part 6 of and Schedule 8 to the Planning and Compulsory Purchase Act 2004 in relation to Wales.
- (2) But a function which must be discharged by statutory instrument is not a specified function.

Exercise of specified functions: all waste operations

- 3.—(1) Every authority must exercise its specified functions in relation to waste operations—
- (a) for the purposes of implementing Article 4 of the Waste Framework Directive; and
 - (b) when exercising a function under the plan making provisions, for the purposes of implementing Article 3(1) of the Waste Framework Directive.
- (2) Every authority, other than a planning authority, must exercise its specified functions in relation to waste operations so as to ensure that the records referred to in Article 14 of the Waste Framework Directive are kept and made available to the authority on request.

Exercise of specified functions: disposal of waste

- 4.—(1) Every authority must exercise its specified functions in relation to disposal of waste—
- (a) for the purposes of implementing Article 5 of the Waste Framework Directive, ignoring the words “in cooperation with other Member States where this is necessary or advisable”;
 - (b) for the purposes of implementing, so far as material, any waste management plan.
- (2) Every pollution control authority must exercise its specified functions in relation to disposal of waste so as to ensure that the requirements in the second paragraph of Article 9(1) of the Waste Framework Directive are met.

Periodic inspections

5. Every authority must make appropriate periodic inspections of every establishment or undertaking carrying on a waste operation in relation to which it is required to exercise its specified functions under paragraph 3 or 4.

Requirements applying to planning authorities

- 6.—(1) Nothing in paragraph 3 or 4 requires a planning authority to deal with a matter which the relevant pollution control authority has power to deal with.

(18) Section 102 was amended by the Planning and Compensation Act 1991 (c. 34), section 32 and Schedule 7; Section 102 and Paragraph 1 of Schedule 9 were amended by section 21 and Schedule 1 of that Act.

(19) Section 61A was inserted by the Planning and Compulsory Purchase Act 2004 (c. 5), section 40(1).

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Statutory Instrument: The Environmental Permitting (England and Wales) Regulations 2007 No. 3538

(2) A planning authority must not grant planning permission for a landfill unless it has taken the requirements of paragraph 1.1 of Annex 1 of the Landfill Directive into consideration.