
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations transpose Directive [2006/21/EC](#) of the European Parliament and of the Council on the management of waste from extractive industries and amending Directive [2004/35/EC](#) (OJ L102, 14.04.2006, p15) (“the Mining Waste Directive”) in respect of the requirements in Article 6 of the Mining Waste Directive concerning the preparation of an off-site (external) emergency plan, which must specify the measures to be taken off-site in the event of an accident. Article 6 applies only to waste facilities that are classified as Category A. Waste facilities are defined in Article 3(15) of the Mining Waste Directive as areas designated for the accumulation or deposit of extractive waste (extractive waste is waste resulting from prospecting, extraction, treatment and storage of minerals and the working of quarries) and these are referred to as mining waste facilities in these Regulations. Mining waste facilities are classified as Category A under the Mining Waste Directive if they contain hazardous waste or dangerous substances, or where failure or incorrect operation of the facility could give rise to a major accident.

Article 6 requires competent authorities to produce an off-site emergency plan. The competent authority for an area is defined as the London Fire and Emergency Planning Authority, a fire and civil defence authority, county council or borough council. A site is defined as the whole area under the control of the operator where a mining waste facility is present (*regulation 2*).

However, those facilities which are subject to Directive [96/82/EC](#) on the control of major accident hazards involving dangerous substances (OJ L010, 14.01.97, p 13 amended by Directive [2003/105/EC](#), OJ L345, 31.12.2003, p97) (the relevant parts of which are transposed in domestic law by the Control of Major Accident Hazards (COMAH) Regulations 1999 ([S.I. 1999/743](#) as amended by [S.I. 2005/1088](#)), will continue to be subject to that Directive. Facilities which fall within the scope of Directive [96/82/EC](#) are excluded from the requirement to produce external emergency plans. As a result, the requirement in the COMAH Regulations for off-site emergency plans will continue to apply to those facilities, but there is no requirement for another off-site emergency plan to be produced under these Regulations (*regulation 3*).

Operators of mining waste facilities are required to obtain a permit under Article 7 of the Mining Waste Directive. This requirement is given effect to in the Environmental Permitting (England and Wales) Regulations 2007 ([S.I 2007/3538](#) as amended by [S.I. 2009/1799](#)). Operators are required to provide information to the Environment Agency under those Regulations in order to obtain a permit, and the Environment Agency is then obliged to send that information to the competent authority. That authority is then obliged to draw up an off-site emergency plan, generally within 6 months, and to consult the specified parties on its preparation. There are provisions for obtaining further information from the operator, for notification to the Environment Agency and for testing of the plan (*regulation 4*).

The objectives for the plan are set out in regulation 5. The procedures for enabling the public to participate in the preparation or review of the plan are set out in regulation 6, and regulation 7 requires operators to provide information on safety measures and on the action required in the event of an accident to the public, and to review that information.

Regulation 8 places an obligation on operators to provide information to the competent authority in the event of a major accident, and for the competent authority to forward that information on to other EEA States where there are likely to be transboundary effects, in order to minimise the consequences of that accident for both human health and safety and the environment. Regulation 9 makes provision for enforcement, offences and penalties. It provides that the competent authority is responsible for

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enforcement of the Regulations and that the offence and penalty provisions section 33 to 42 of in the Health and Safety at Work Act 1974 apply subject to limits as to the maximum penalties which are set out in regulation 9(4). Regulation 10 provides for the charging of fees by the competent authority to the operator.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Waste Management Division, Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London, SW1P 2AL and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).

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