

## **EXPLANATORY MEMORANDUM TO**

### **The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010**

**2010 No. 64**

#### **1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure before the Assembly.

#### **2. Purpose**

- 2.1 These Regulations implement the requirements of Directive 2006/21/EC on the management of waste from extractive industries and will place requirements upon operators in the onshore extractive industry to manage extractive waste so as to prevent or reduce, as far as possible, any adverse effects on the environment and human health.

#### **3. Background**

- 3.1 The need for increased statutory control of extractive waste in order to protect the environment and human health stems from accidents at mines in Romania and Spain that caused considerable environmental damage and posed a serious threat to human health. Both accidents involved hazardous chemicals (cyanide and arsenic) being transported considerable distances via water and sludge. The accidents raised significant issues relating to the handling and storage of hazardous material and waste, public knowledge and understanding of the risks involved and communication issues between the various responsible authorities and the public. While previous EC Directives have dealt with controlling hazardous waste none has specifically addressed the issue of waste material arising from the extractive industry.

#### **4. Consultation**

- 4.1 A public consultation on the Department's proposals for transposition via the planning system ran from 16th February 2009 to 11th May 2009. The consultation paper was circulated to a wide range of consultees and advertised in the local press, on the Department's website plus the N.I. Departments' Consultation Register.
- 4.3 There were 11 responses which all generally agreed with the proposals in the consultation document. This included support from the Quarry Products Association in Northern Ireland (QPANI) which is the key industry

representative. There were no significant issues raised in relation to the proposals for transposition except in relation to the possible introduction of specific fees for the consideration of waste management plans and inspections. In relation to this issue a number of respondents, including QPANI, disagreed with the introduction of any additional fees, particularly in the current economic climate. Having considered all responses the Department has decided not to introduce any new fees under the Regulations. New planning applications will continue to be subject to the normal planning application fees.

## **5. Equality Impact**

- 5.1 In accordance with its duty under Section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals and has concluded that they do not have significant implications for equality of opportunity. The measures will not affect any group disproportionately.

## **6. Regulatory Impact**

- 6.1 The impact assessment for the Management of Waste from Extractive Industries is attached to this memorandum at Annex A. This was updated following the consultation.
- 6.2 It is not anticipated that measures to address the Directive's requirements will involve significant costs for either government or businesses, however, the risks and associated costs of not transposing in terms of fines for infraction are significant.

## **7. Financial Implications**

- 7.1 The Regulations will place a number of additional obligations required under the Directive but aim to minimise these burdens and address them through the existing planning system rather than introduce an additional permit regime. It is not anticipated that these obligations will involve significant costs and will, where possible, build on information already available to operators. In addition, the provision of future guidance from within the industry will support any operator in fulfilling its responsibilities.
- 7.2 While the consultation paper on proposals for transposition raised the issue of the introduction of specific fees for the consideration of waste management plans and inspections the Department has decided, following consideration of consultation responses, not to introduce any new additional fees for operators. New planning applications in relation to mining operations will be liable to the normal planning application fees.

## **8. Section 24 of the Northern Ireland Act 1998**

- 8.1 These Regulations do not contravene section 24 of the Northern Ireland act 1998.

## **9. EU Implications**

- 9.1 A transposition note is available at Annex B. The legislation does the minimum necessary to comply with the Directive and to avoid infraction proceedings.

## **10. Parity and Replicatory Measure**

- 10.1 In England and Wales, the provisions necessary to transpose the requirements of the Directive are set out in the Environmental Permitting (England and Wales) (Amendment) Regulations 2009 (SI 2009/1799), which came into force on 7 July 2009, and the Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009 (SI 2009/1927), which came into force on 12 August 2009.

In Scotland, the provisions of the Directive will be transposed via the planning system by the Management of Waste from Extractive Industries (Scotland) Regulations. These Regulations are currently being finalised by the Scottish Government and are expected to come into force on 01 April 2010.

## **11. Additional Information**

- 11.1 Not applicable.

**REGULATORY IMPACT ASSESSMENT (FINAL)  
Management of Waste from Extractive Industries**

**1. Title of Proposal**

- 1.1 The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010.

**2. Purpose and Intended Effect of the Regulations**

**2.1 The objective**

- 2.1.1 The Regulations are being introduced to transpose into Northern Ireland planning legislation the requirements of European Council Directive 2006/21/EC on the management of waste from extractive industries (the “Mining Waste Directive”), whereby requirements will be placed upon operators in the onshore extractive industry to manage extractive waste so as to prevent or reduce as far as possible any adverse effects on the environment and human health.
- 2.1.2 The Regulations relate to all onshore extractive operations which produce extractive waste.
- 2.1.3 The Mining Waste Directive (MWD) applies throughout the UK and is being transposed separately in England and Wales, Scotland and Northern Ireland.

**2.2 The background**

- 2.2.1 The need for increased statutory control of extractive waste in order to protect the environment and human health was highlighted by accidents in Spain and Romania involving mining waste which led to widespread pollution of watercourses and rivers and damage to crops and marine life. The Mining Waste Directive complements Directives 2003/105/EC and 96/82/EC on the control of major accidents involving dangerous substances, and Directive 96/61/EC on integrated pollution prevention and control.

**2.3 Risk assessment**

- 2.3.1 A recent judgement by the European Court of Justice (case ref C 259/09) has found that the UK has failed to fulfil its obligations under the Directive on the basis of non transposition by 1st May 2008. Any further delay in transposition could result in significant costs due to the imposition of fines.

**3. Options**

- 3.1 Transpose the requirements of Directive 2006/21/EC into Northern Ireland planning legislation.

- 3.2. The alternative to transposing the requirements of the MWD through appropriate NI regulations is to do nothing. This is not a realistic or desirable option as the UK is legally obliged to implement the Directive. Failure to transpose the Directive into domestic legislation could lead to significant costs through infraction fines.

#### **4. Benefits**

##### **4.1 First Option: Transpose requirements of Directive 2006/21/EC**

- 4.1.1 Establishment of minimum legislative requirements for operators in the extractive industry in order to prevent or reduce as far as possible any adverse effects on the environment and human health from the management of extractive waste.
- 4.1.2 The provision of information and increased public participation in relation to planning permission for operations which have the potential to impact significantly on the environment and human health.
- 4.1.3 The establishment of ongoing monitoring and reporting arrangements in relation to extractive operations.

##### **4.2 Alternative Option: Do nothing**

- 4.2 There are no benefits associated with this option, as failure to transpose the Directive has already resulted in infraction proceedings by the European Commission.

#### **5. Other Impact Assessments**

##### **5.1 Environmental or Social Costs**

- 5.1.1 There are not considered to be any environmental or social costs associated with introducing these Regulations. The bulk of the environmental information necessary to comply with the Directive is already gathered by the extractive industry in various forms. This will standardise the collation and presentation of that information into the decision-making process in both the Department and the operational facility.

##### **5.2 Equality Impact Assessment**

- 5.2.1 The measures will not affect any section 75 priority group disproportionately.

##### **5.3 Health Impact Assessment**

- 5.3.1 The measures will not have any detrimental effects on health but aim to further reduce any risk.

## **5.4 Rural considerations**

- 5.4.1 While the majority of extractive operations, by their nature, are located in rural areas the proposed measures will apply equally to all sites regardless of location. The preponderance of sites in rural areas could mean a heavier impact on operators in rural areas dependent upon current standards of operation, however, where any such improvements in operation may be required this will be counter-balanced by subsequent improvements in environmental standards and protection of human health in rural areas.

## **6. Costs**

### **6.1 Compliance costs**

- 6.1.1 The additional obligations on Planning Service are considered to be relatively minor and do not involve significant costs. Where possible they will be incorporated into the existing planning application process.

### **6.2 Compliance costs for business**

- 6.2.1 The Regulations will place additional obligations on operators in the onshore extractive industry which produce extractive waste. These obligations will, where possible, be included within the existing planning application process and will not involve significant additional costs.

In addition, the provision of best practice guidance from within the industry will support any operator in fulfilling its responsibilities at minimal cost. A template is currently being developed in conjunction with the industry for ease of use.

As part of the public consultation on the proposals for transposition the Department asked if the proposed Regulations should introduce specific fees for the consideration of waste management plans and inspection of waste facilities. Four respondents agreed that such fees should be introduced while two disagreed, including the industry representative body the Quarry Products Association in Northern Ireland (QPANI) which argued against the introduction of an additional financial burden in the current economic climate. The Department has considered the responses and has decided not to introduce any additional specific fees for the consideration of waste management plans and inspections of waste facilities. New planning applications will continue to be subject to the normal planning application fees.

## **7. Competition Assessment**

- 7.1 Not applicable. The proposals will not impact on competition within UK markets. All EU Member States are required to transpose the Directive.

## **8. Consultation with Small Business: the Small Business Impact Test**

- 8.1 It would be rare for small firms to seek planning permission for development that would have significant effects on the environment (thus requiring an Environmental Impact Assessment (EIA)). A small firms' impact test has not

therefore been undertaken. Any requirements for EIA because of the location of the proposal, even if submitted by a small business, are already covered by the Planning (EIA) Regulations 1999

## **9. Enforcement and Sanctions**

### **9.1 In relation to business**

9.1.1 Failure of an operator to comply with the requirements of the Regulations will constitute a breach of planning control within the meaning of the Planning (Northern Ireland) Order 1991 and could lead to enforcement action by the Department.

## **10. Monitoring and Review**

10.1 The main requirement of the Regulations for the vast majority of operators will be the development of a waste management plan to be submitted for approval and which will be subject to ongoing review.

10.2 The Directive also places responsibilities on Member States to provide the Commission with information on the implementation of the Directive, on a three-yearly basis, as well as information on any accidents or waste facility closures, on an annual basis.

## **11. Consultation**

### **11.1 Within Government**

11.1.1 Representatives of the administrations of England, Scotland, Wales and Northern Ireland have been consulted on the UK position in the negotiation of the Mining Waste Directive.

### **11.2 Public Consultation**

11.2.1 A full public consultation on proposals to transpose the Directive into Northern Ireland legislation ran from 16th February 2009 to 11th May 2009 and this Regulatory Impact Assessment (in draft form) formed part of it.

11.2.2 The consultation paper was circulated to a wide range of consultees and advertised in the local press, on the Department's website and the Northern Ireland Departments' Consultation Register.

11.2.3 There were 11 responses, including those from key industry representatives, which all generally concurred with the proposals in the consultation document. There were no significant issues raised in relation to the proposals for transposition.

## 12. Summary and Recommendation

### 12.1 Table

Option	Cost	Benefit
Transpose requirements of Directive 2006/21/EC	It is not anticipated that measures to address the MWD's requirements will involve significant costs for either government or businesses.	Specific statutory control of the management of waste by all operators in the on-shore extractive industry and greater confidence in the level of protection for the environment and human health.
do nothing	Risk of possible fines imposed by European Court for non-transposition	No environmental or human health benefits.

12.2 It is anticipated that the costs to business and the public sector associated with the proposals for transposition of Directive 2006/21/EC will not be significant. The potential risks and associated costs of not transposing are significant. The European Court of Justice has already issued a judgement against the UK for non transposition (case Ref. C 259/09).

It is, therefore, recommended that the requirements of Directive 2006/21/EC are transposed through the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010.

### DECLARATION

"I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs."

Signed by a Senior Officer of the Department of the Environment



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**The Planning (Management of Waste from Extractive Industries) Regulations  
(Northern Ireland) 2010**

**TRANSPOSITION NOTE**

1. This transposition note shows how the Department of the Environment has transposed Council Directive 2006/21/EC on the management of waste from the extractive industries, the Mining Waste Directive (MWD), into Northern Ireland law.
2. The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010 apply only in Northern Ireland.

**“These regulations do what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.”**

3. The table below sets out how the Regulations transpose the requirements of Council Directive 2006/21/EC.
4. The responsibility for implementing this directive lies with the Department of the Environment unless stated otherwise in the following table.

<b>Provision of Directive</b>	<b>Provision of Regulations</b>	<b>Comment</b>
<b>Article 1 (subject matter)</b>		No need to transpose
<b>Article 2(1)</b> (scope of the Directive)	Regulation 3	The definition of mining operations in the Planning (Northern Ireland) Order 1991 has been amended to include the management of extractive waste within the meaning of development
<b>Article 2(2)</b>	Already transposed in other Northern Ireland legislation	In particular: The Waste Management Regulations (Northern Ireland) 2006 The Waste and Contaminated Land (Northern Ireland) Order 1997 The Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2003
<b>Article 2(3)</b> (provides derogations from certain requirements of the Directive)	Regulation 5	The Department will consider when to waive or reduce the requirements of the Regulations on a case

		by case basis
<b>Article 2(4)</b> (exclusion from the Landfill Directive)	Already transposed in other Northern Ireland legislation	The Landfill Regulations (Northern Ireland) 2003
<b>Article 3</b> (definitions for the purposes of the Directive)	Regulation 2(2)	Definitions are set out in regulation 2 and elsewhere in the Regulations
<b>Article 4</b> (general requirements of the Directive)	Regulations 6(1); 6(2)(g); 6(4); 7(2)(iv); 10(3); 10(1)(d) & 10(4)(a); 12(b) & (e); 13(1); 13(b),(c) & (e); 13(5); 13(6); 18(2)(a) & (b); 18(8) and 21(1) with Schedules 2, 3 & 4.	The general requirements are interwoven into many of the regulations. The Department assumes the duty placed upon the 'Member State' and operates as the 'competent authority'
<b>Article 5</b> (requirements for waste management plans)	Regulations 4(1)(a) & (c); 6, 7(2) and Schedule 1	This is a key requirement of the Regulations, being directly transposed and cross-referenced. And <i>inter alia</i> : The Waste Management Regulations (Northern Ireland) 2006 The Waste and Contaminated Land (Northern Ireland) Order 1997 The Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2003 The Landfill Regulations (Northern Ireland) 2003
<b>Article 6</b> (major accident prevention and information)	Regulations 4(1)(e); 5(2); 7(2)(iv); 13(1), (2) & (3); 13(6) and 18 with Schedule 4	This has been split across several regulations according to obligations on the operator and the Department for ease of interpretation by operators.
<b>Article 7</b> (application and permit)	Regulations 4(1)(a) & (c); 6(1); 6(2)(a), (b) & (d); 6(5); 7(2); 8; 14(2); 15 and 21(2)	Planning permission granted under the Planning (NI) Order 1991 is the 'permit' for the purposes of these regulations which require the Department to exercise its relevant functions so as to ensure compliance with the Article.

<p><b>Article 8</b> (public participation)</p>	<p>Covered in the Planning (Northern Ireland) Order 1991; Regulations 7(1)(d), 18(4) 19(1)(a) and 21(2) with Schedule 4</p>	<p>Public participation is an integral element of the planning system in Northern Ireland; however, this may be disapplied in the case of mining operations involving the management of inert waste and unpolluted soil.</p>
<p><b>Article 9</b> (classification system for waste facilities)</p>	<p>Regulations 2(2); 4(1)(a) &amp; (d); 6(3)(c) and Schedule 3</p>	<p>This Article is transposed by requiring the appropriate classification of any Category A waste facility within the waste management plan which must be approved prior to the grant of planning permission.</p>
<p><b>Article 10</b> (excavation voids)</p>	<p>Regulations 6(2)(h), 10(3) and 12(b)</p>	<p>This Article is transposed by requiring the information as part of the waste management plan and, where appropriate, during operations and after closure.</p>
<p><b>Article 11</b> (construction and management of waste facilities)</p>	<p>Regulations 9(1)(a-h); 9(2) &amp; (3) and 16</p>	<p>This Article is transposed by requiring the Department to exercise its relevant functions regarding the construction and management of waste facilities so as to ensure compliance with the Article.</p>
<p><b>Article 12</b> (closure and after closure procedures for waste facilities)</p>	<p>Regulations 11; 12(a), (b), (e) &amp; (f); 16(1) and 17(3) &amp; (4)</p>	<p>This Article is transposed by establishing closure and after closure procedures for waste facilities in relation to duties of both the operator and the Department to ensure compliance with the Article.</p>
<p><b>Article 13</b> (prevention of water status deterioration, air and soil pollution)</p>	<p>Regulations 5(7) &amp; (8); 9(1)(d)(ii) and 10</p>	<p>This Article is transposed by requiring the operator to provide documentary evidence and, where appropriate, monitoring reports to the Department in relation to the</p>

		prevention of water status deterioration, air and soil pollution so as to ensure compliance with the Article.
<b>Article 14</b> (financial guarantee)	Regulations 8, 15(a) & (c) and 17(4)(b)	This Article is transposed by requiring where appropriate, the provision of a financial guarantee prior to the commencement of operations which will be subject to periodic review so as to ensure compliance with the Article.
<b>Article 15</b> (environmental liability)		Transposed into Northern Ireland law by the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009.
<b>Article 16</b> (transboundary effects)	Regulations 18(8) and 19(1)	This Article is transposed by requiring the Department to co-operate with other Member States so as to ensure compliance with the Article.
<b>Article 17</b> (inspections by the competent authority)	Regulations 9(1)(i), 9(2) and 14 The Planning (Northern Ireland) Order 1991	The monitoring requirement is also covered under existing planning and environmental legislation [detailed <i>inter alia</i> at article 5] and administrative practices
<b>Article 18</b> (obligation to report)		No need to transpose as reporting to the Commission will be as part of a UK response. Availability of information to members of the public is already covered by The Freedom of Information Act 2000 and The Environmental Information Regulations 2004.
<b>Article 19</b> (penalties)	Covered in the Planning (Northern Ireland) Order 1991	Already in effect through the planning system in terms of enforcement powers and related

		penalties.
<b>Article 20</b> (inventory of closed waste facilities)	Regulation 20	Article 20 is transposed by requiring the Department to maintain an inventory of closed mining waste facilities so as to ensure compliance with that Article.
<b>Article 21 (second paragraph)</b> (best available techniques)	No need to transpose as the Department operates as the competent authority and will be a party to the exchange of information with the Commission.	The Commission will organise an exchange of information on this topic. BAT is a requirement throughout these Regulations e.g. 10(4)
<b>Article 22</b> (implementing and amending measures) <b>and Article 23</b> (committee)		No need to transpose
<b>Article 24(1)</b> (transitional provision – existing mining waste facilities)	Regulations 4(1)(c) & (d); 5(3) & (7); 6(5); 8(2) and 10(4)	Mining operations involving the management of extractive waste whose approval was granted prior to the date of coming into operation of these Regulations are made subject to these Regulations and have until 01 November 2011 to submit a waste management plan to the Department for approval and until 01 May 2014 to provide a suitable financial guarantee.
<b>Article 24(2)</b> (transitional provision – closed facilities)	Regulation 5(1)	These Regulations shall not apply to waste facilities which closed on or before 01 May 2008 and remain closed.
<b>Article 24(3)</b> (transitional provision – closed facilities)		These requirements are currently delivered through existing controls set out in legislation, mainly through the planning system.
<b>Article 24(4)</b>	Regulation 5(3)	This is transposed by disapplying the appropriate requirements of the Regulations to relevant waste facilities. The UK has notified the

		Commission of the closed facilities on 1 August 2008.
<b>Article 25 (transposition), Article 26 (entry into force) and Article 27 (entry into force)</b>		No need to transpose