

EXPLANATORY MEMORANDUM TO

The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015

2015 No. 85

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of the Environment to accompany the above named Statutory Rule which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under powers conferred by section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.
- 1.3 The Rule comes into operation on 1st April 2015.

2. Purpose

- 2.1 The purpose of the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015 ("2015 Regulations") is to firstly include appropriate technical revisions accounting for the move to the new two tier planning system and secondly to reflect various Directive/Regulation references which have been amended, repealed, codified and superceded since the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010 ("2010 Regulations") became operational.
- 2.2 This Rule is also intended to address the issue raised as part of the European Commission's pilot test case that the transposing legislation did not explicitly exempt extractive waste falling within the scope of the transposing legislation from the scope of Directive 1999/31/EC (the Landfill Directive).

3. Background

- 3.1 The European Commission's work on mining waste stems from accidents at mines in Romania and Spain that caused considerable environmental damage. 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.
- 3.2 The Mining Waste Directive provides for measures, procedures and guidance to prevent, or reduce as far as possible, any adverse effects on the environment, and any resultant risks to human health, brought about as a

result of the management of waste from the extractive industries. Such "waste" includes tailings, waste rock and overburden, and topsoil (i.e. the upper layer of the ground) provided that they constitute waste as defined in the Waste Framework Directive.

- 3.3 With the introduction of a two tier planning system to be in place by April 2015, the majority of planning functions will be transferred to the responsibility of the new district councils. To facilitate this change the 2010 Regulations will be revoked and re-enacted as the 2015 Regulations, which will include appropriate technical revisions accounting for the move to the new two tier planning system, as well as reflecting the various Directive/Regulation references which have been amended, repealed, codified and superseded since the 2010 Regulations came into operation.

4. Consultation

- 4.1 The Department consulted on its "Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 1" between 28 May 2014 and 20 August 2014. In the consultation document the Department indicated that it will also take forward a range of technical statutory rules which are needed to take account of the new two-tier planning model. The statutory rules are all subject to the full scrutiny of the Assembly as part of the legislative process but as they do not involve new policies or significant changes to existing policies they are not being made subject to public consultation. The 2015 Regulations is one of those statutory rules.

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 implications for equality of opportunity

6. Regulatory Impact

- 6.1 A Regulatory Impact Assessment carried out in respect of the new Management of Waste from Extractive Industries Regulations indicated that the proposals would not impose any significant costs to business or the voluntary sector. (See Annex)

7. Financial Implications

- 7.1 There may be increased costs to the Department/DOJ/Council/Planning Appeals Commission associated with training staff and the operation of these Regulations. At this stage it is not possible to be precise regarding cost implications in detail as there is no indication as to when, or how often these provisions will be required. Any resulting costs to business should be minimal.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department considers that the legislation complies with the requirements of section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 This is not a parity or replicatory measure.

11. Additional Information

11.1 Not applicable

12. Contact

12.1 Please direct any queries to Brian Gorman at the Department of the Environment Tel:028 90823532 or email Brian.Gorman@doeni.gov.uk

REGULATORY IMPACT ASSESSMENT (FINAL)**1. Title of Proposal**

The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015. The statutory rule is subject to negative resolution rules.

2. Purpose and intended effect of measure**i) The objective:**

The purpose of the proposed Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015 (“2015 Regulations”) is to provide for the transfer and introduction of planning functions to councils. Under the review of public administration responsibility for the majority of planning functions currently carried out by the Department will transfer to councils. As part of this review regulations contained in the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010 (“2010 Regulations”), have been identified as appropriate to convert to the responsibility of the councils. The changes will transfer similar planning powers to councils, allowing them to operate and function properly in relation to the management of waste from extractive industries, as well as reflecting and updating various EU Directive/Regulation references which have been amended, repealed, codified and superseded, since the introduction of the 2010 Regulations.

ii) The background:

The European Parliament and the Council of the EU adopted the MWD on 15 March 2006. It sets out requirements for the management of waste material, such as rock, tailings (i.e. the waste solids or slurries that remain after the treatment of minerals by a number of techniques) and overburden (i.e. the material that extractive operations move during the process of accessing minerals, including during the pre-production development stage), arising from the on-shore prospecting, extraction, treatment and storage of mineral resources and the working of quarries for the purposes of preventing harm to the environment and human health. Therefore the 2010 Regulations transposed EU Directive 2006/21/EC on the management of waste from the extractive industries, the Mining Waste Directive (MWD), into Northern Ireland law and the regulations were consulted upon in 2009. The Department is taking forward a programme of subordinate legislation both reforming the planning system and transferring the majority of planning functions to the new councils. As part of this programme the 2010 Regulations will be revoked and re-enacted as the 2015 Regulations, to include appropriate technical revisions accounting for the move to the new two tier planning system and also to reflect various Directive/Regulation references which have been amended, repealed, codified and superseded.

iii) Risk assessment:

The present legislation allows the Department to perform planning functions in relation to the management of waste from extractive industries, however, as part of the two tier planning system, the proposed legislation has been developed to allow councils to also have the powers to carry out these planning functions. No additional risks are envisaged with these arrangements allowing councils to perform planning functions in accordance with the 2015 Regulations. However inadequate transposition of the MWD could result in significant costs through infraction proceedings which may be undertaken by the European Commission.

3. Options Appraisal

Option 1: Do nothing

This is not a realistic or acceptable option as under the review of public administration responsibility for the majority of planning functions currently carried out by the Department will transfer to councils on the 1st April 2015.

Option 2: Introduce subordinate legislation and guidance for the Management of Waste from Extractive Industries.

The introduction of regulations governing the management of waste from extractive industries by councils and the Department will ensure compliance with section 2(2) of the European Communities Act 1972.

4. Costs and Benefits

Option 1: Do Nothing

Costs:

This option would not incur any additional costs, however this option is not considered viable as it does not meet the requirements of the 2011 Act to transfer the majority of planning powers to councils and for councils to set the framework for planning decisions in their areas.

Benefits:

No economic, social or environmental benefits are derived from this option.

Option 2: Introduce subordinate legislation and guidance for the Management of Waste from Extractive Industries.

Costs:

The financial implications of the move to the new two-tier planning system have been addressed in the financial package being transferred to the new councils. Costs for applicants should be similar to the current application process under this option. An

applicant may also incur costs in relation to any legal advice they may seek but this would be a matter for an individual applicant and is not a requirement of the regulations.

Costs associated with staff time in the development and management of subordinate legislation through the required Assembly process have been met by the Department.

Benefits:

It is clearly beneficial to establish minimum requirements for operators in the extractive waste industry in legislation 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. There will also be benefits from 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. Monitoring and reporting arrangements shall be established, in relation to the extractive waste industry, which will be beneficial in terms of identifying any operational issues.

5. Business sectors affected

The regulations may place additional obligations on businesses in the onshore extractive waste industry that do not already follow best practice. In addition the provision of best practice guidance within the industry will support any operator in fulfilling its responsibilities at minimal cost.

6. Enforcement and Sanctions

Failure to comply with the Directive by the Department or councils would run the risk of domestic legal challenge or possible infraction proceedings by the European Commission.

Failure of operators in the extractive waste industry to comply with the requirements of the regulations could lead to enforcement action being taken by the Department or councils to address a breach of planning control.

7. Consideration of impacts

Equality Impact Assessment

The Department's initial screening for equality impacts considers that the proposals will not discriminate unlawfully, unfairly or unjustifiably against any sections of the community specified in Section 75 of the Northern Ireland Act 1998.

Health Impact

No impact on health has been identified.

Small Business Impact Test

The department is of the view that the legislation should not have any detrimental impact on small businesses. The requirement of the legislation is to set out the range of procedural measures necessary to support councils and the Department to operate the management of waste from extractive industries system post transfer of functions to councils.

Human Rights Assessment

The Department considers that the proposed amendments are fully compliant with the Human Rights Act 1998.

Rural Impact Assessment

There will be no significant differential impact of the proposals between urban and rural areas because of the specific scope of the changes.

8. Monitoring and review

The main requirement of the regulations for the majority of operators will be the development of a waste management plan to be subject to ongoing review as an additional requirement of the planning process. The Directive also places responsibilities on Member States to provide the European 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. Where the Department feels that the processes for the management of waste from extractive industries are not operating effectively, or where such evidence is provided to it, it will undertake an appropriate review.

9. Consultation

i. Within Government

The draft regulations have been the subject of discussion and internal consultation with DOE Strategic Planning, Departmental Solicitors Office and other officials.

ii. Public Consultation

The Department consulted on its "Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 1" between 28 May 2014 and 20 August 2014. In the consultation document the Department indicated that it will also take forward a range of technical statutory rules which are needed to take account of the new two-tier planning model. These statutory rules will all be subject to the full scrutiny of the Assembly as part of the legislative process but as they do not involve new policies or significant changes to existing policies they were not made subject to public consultation. The 2015 Regulations was one of those statutory rules.

10. Summary and Recommendation

The proposed 2015 Regulations have been developed to amend the existing arrangements for the management of waste from extractive industries into appropriate regulations to address the requirements of the new two-tier planning system. Option 2 is the recommended option and it is proposed that the regulations be brought into operation as an element of the transfer of planning functions to the new councils and the establishment of a new two-tier planning system in Northern Ireland.

11. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by a senior officer of the Department of the Environment.



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Date: 26th February 2015

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