

EXECUTIVE NOTE

THE MANAGEMENT OF EXTRACTIVE WASTE (SCOTLAND) REGULATIONS 2010

SSI 2010/60

1. The above SSI, which is made in exercise of powers conferred by section 2(2) of the European Community Act 1972, transposes Directive 2006/21/EC on the management of waste from extractive industries in Scotland (the “Mining Waste Directive”).

Background

2. The Mining Waste Directive was adopted on 1 May 2006 and its key objective is to ensure that the management of extractive waste is undertaken in a way which prevents, or reduces as far as possible, the risk of adverse effects on the environment and human health.

3. The Directive stems from accidents at mines in Romania and Spain which caused considerable environmental damage involving hazardous substances (cyanide and arsenic respectively) being transported considerable distances via water and sludge. However, the Directive properly recognises that the vast majority of mining operations do not present similar risks and sets out a proportionate and risk-based approach to dealing with mining waste. This is particularly relevant to Scotland where nearly all waste is inert and therefore benefits from lighter controls.

Infraction Proceedings

4. The original date for the Directive’s transposition was 01 May 2008 and the UK is currently the subject of infraction proceedings (case Ref. C 259/09). A formal defence has been sent confirming the intention to introduce legislation transposing the provisions of the Directive in Scotland on 1 April 2010, subject to the procedures of the Scottish Parliament.

Application

5. The Directive only applies to extractive “waste” i.e. topsoil, overburden, tailings, ponds, etc and to the land on which such material is stored. It does not impact on the saleable mineral product or other wastes not associated with the extraction process. The main requirements of the Directive are:

- waste management plans to be prepared by operators for all sites that manage extractive waste;
- permits for “waste facilities” where the material involved is not inert;
- permits, financial guarantees, major accident prevention policies, safety management plans and internal emergency plans to be prepared for the most hazardous facilities;

Policy objectives

6. The Directive covers issues currently controlled by planning, environmental and health and safety regulation. Existing controls are considered to already meet the standards promoted in the Directive. However, Regulations are needed to ensure these controls fully reflect the requirements of the Directive in relation to how information is considered, presented and regulated.

7. Consultation in Scotland supported transposition of the Directive's additional requirements through the town and country planning system wherever possible. This route avoids unnecessary duplication and overlap and ensures requirements for information and analysis are proportionate and reasonably relate to the risks involved. At present, planning controls over extractive waste are primarily secured through planning conditions imposed to control the impact of development on local communities and the environment. These conditions are informed by environmental statements that ensure environmental issues are considered as part of the planning process to enable applicants to eliminate or mitigate impacts as far as possible as the project develops. These mechanisms, adapted as necessary, are considered ideal to secure the high environmental standards promoted by the Directive.

8. The Regulations make clear that compliance with non-planning requirements will continue to be a matter for the Scottish Environment Protection Agency and the Health and Safety Executive. Both these bodies will be statutory consultees for all new mineral planning applications.

9. Existing sites will be required to comply with the Regulations by 1 May 2012. Guidance is being worked up with stakeholders to ensure that this is achieved with as little burden as possible. In most instances this will mean, at the most, the submission of a waste management plan setting out how existing methods of working secure, or will be changed to secure, compliance with the Regulations.

Sensitivity

10. The Regulations are not considered contentious.

Consultation

11. The Regulations have been subject to public consultation and close dialogue with the industry and relevant regulators. This has resulted in Regulations which are considered to properly transpose the Directive whilst, as far as possible, minimise additional regulatory burdens.

Financial implications

12. A Regulatory Impact assessment has been prepared and placed in the Scottish Parliament Information Centre.

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18 February 2010

REGULATORY IMPACT ASSESSMENT

THE MANAGEMENT OF EXTRACTIVE WASTE (SCOTLAND) REGULATIONS 2010

INTRODUCTION

1. This Regulatory Impact Assessment provides information on the likely impact of the Management of Waste from Extractive Industries (Scotland) Regulations 2010 on the operators of mines and quarries.

PURPOSE AND INTENDED EFFECT OF REGULATION

Objectives

2. The Regulations put in place procedures to ensure that material, such as waste rock, tailings and overburden, extracted from mines and quarries is managed in a way that prevents or reduces as far as possible any adverse effects on the environment or human health.

Background

3. The Regulations put in place legislative requirements that are necessary to comply with *Directive 2006/21/EC on the management of waste from the extractive industries* (“the Directive”). The Directive stems from accidents at mines in Romania and Spain that caused considerable environmental damage. Both accidents involved hazardous chemicals being transported considerable distance via water and sludge. The accidents raised significant issues relating to the handling and storage of mining waste; public knowledge and understanding of the risks involved; and communication issues between the various responsible authorities and the public.

Rationale for Government Intervention

4. Existing regulatory requirements seek to ensure that waste is managed in a way that ensures safety and does not cause harm to the environment. This is done through planning, environmental and health and safety regulation. However, some of the requirements of the Directive are not fully transposed through existing national law. New implementing regulations are required for this purpose.

CONSULTATION

5. A Working Group was set up to consider how the Directive could be implemented throughout the UK and many of the procedures in the Regulations benefit from the scrutiny of this Group. However, implementation of the Directive in Scotland is based on different procedures and further discussions on implementation options for Scotland have taken place with the Scottish Environment Protection Agency, the Health and Safety Executive and representatives from the Scottish mineral industry. Separate public consultation took place on the Scottish Government’s proposals for implementing the Directive and the proposed statutory scheme for doing so. A draft of this RIA was placed on the Scottish Government’s website and specifically circulated to industry representative bodies for comment.

Options

6. The Scottish Government has identified the following transposition options:

Do nothing: this is not considered to be realistic. To do nothing would mean that mining and quarrying operations in this country would continue to be subject to existing, national town and country planning, health and safety and environmental regulations, as appropriate. However, certain important aspects of the Mining Waste Directive, including the requirements for a waste management plan and for a specific permit to operate some waste facilities, would not be transposed into Scots law, leaving Scotland in breach of its obligations under the Directive and individual operators subject to legal challenge for carrying on operations that breach European Law.

Transposing the Directive through the planning system: the Directive covers planning, environmental and health and safety matters. Discussions with the industry have confirmed that their favoured transposition route is through the planning system so long as any new procedures take advantage, as far as possible, of existing town and country planning legislation and appropriately recognise that other requirements are already being met through existing environmental and health and safety legislation. This transposition route would result in existing planning application procedures being used to ensure that development is in accordance with the requirements of the Directive.

Transposition the Directive through other routes: it would be possible to introduce legislation setting up a new consent regime, whether through the planning system or through environmental legislation. However, this would likely impose an additional, and expensive, burden on industry and fail to recognise the existing role that town and country planning legislation plays in regulating issues such as controlling dust, direction of working, moving, handling and sorting of soils and overburden, restoration and aftercare schemes, financial guarantees, etc.

COSTS AND BENEFITS

Sectors and groups affected

7. The Directive applies to all new and existing mineral extraction sites. It therefore affects the mineral industry and those bodies who play a role in assessing planning applications. This will, in particular, include the planning authority, the Scottish Environment Protection Agency and the Health and Safety Executive.

8. The requirements imposed by the Regulations will be dependent on the characteristics of the material at individual sites. This is intended to ensure a lighter regulatory touch for sites that do not pose serious risks to the environment or human health whilst recognising that a more stringent approach is needed where failure or incorrect operation could result in significant damage. Where risk is more serious, the Directive requires a permit and for those the pose the most serious risk (Category A waste facilities) accident and emergency arrangements must be put in place.

9. As part of the transposition process, the British Geological Survey undertook a study which assessed the nature of waste produced by active Scottish mines and quarries. The report concluded that there were 342 active (non-peat) mines and quarries in operation at December

2006. 328 of these sites produced inert waste only. 14 opencast coal sites are listed as capable of producing hazardous waste. However, subsequent discussions confirmed that this may not be the case and that, depending on the extraction process, opencast coal sites may produce inert waste only. The assumption therefore is that nearly all sites in Scotland that produce mining waste are low risk and will generally just have to be covered by a waste management plan which complies with the Directive. The requirements for other sites will vary depending on whether the site is classified as a “waste facility” or a “Category A waste facility”. It is expected that very few sites, if any, will require a permit and major accident prevention policy. However, further assessments must be done on a site by site basis to determine how particular provisions in the Requirements will apply to particular sites.

Benefits

10. The principal benefit is that issues surrounding mining waste will be specifically and consistently considered thereby reducing future risk of accidents.

Costs

11. The Regulations will apply to both existing and new sites.

Existing sites preparing a waste management plan only

12. The Regulations set out the requirements placed on operators when preparing waste managements plans. These requirements will vary depending on how long the waste is accumulated or deposited on site. If it is for more than 3 years, the site will be classified as a “waste facility” and operators will be expected to comply with all waste management plan requirements.

13. The views of industry throughout negotiations was that when reviewing existing sites, it will be found that original planning application documents, environmental statements and, where applicable, review applications will contain much of the information required under the Regulations. The main task would be extracting and re-presenting this information. It was estimated that this could take one person a week to do. The cost of operators’ time is estimated on the basis of information supplied through the CBI Minerals Committee. This indicates a cost of between £50/hour and £70/hour. A mid-point of £60/hour or £420 per day would mean a cost of £2,100 a week per site although such costs may reduce over time as a knowledge/expertise base is built up.

Existing waste facilities requiring an Article 7 Permit

14. The Regulations require existing sites which need a “permit” under the Directive to submit a new planning application for the extractive waste element of development. This route is proposed given the additional obligations in the Directive associated with permits, including public participation requirements. Where necessary an environmental impact assessment (EIA) would be required and, if this is the case, information could be drawn from existing EIAs. It will be a matter for planning authorities to consider on a case by case basis whether EIA would be needed. Such considerations would be restricted solely to extractive waste and not to wider mineral extraction activities. In such instances, it is assumed that an addendum to the previous RIA would be appropriate with an average additional cost of around £20,000 likely. This cost is expected to be relevant to very few sites, if any.

15. Existing waste facilities would still need waste management plans so the costs identified above remain relevant. The most significant difference is that the waste management plan would form part of the planning application process and therefore be subject to a planning application fee. The Town and Country Planning (Fees for Applications and Deemed Applications)(Scotland) Amendment Regulations 2007 set this fee at £145 for each 0.1 hectare of the site area, subject to a maximum of £21,750. Planning application fees will therefore vary on a case by case basis, depending on the size of the area being used to store the extractive waste. However, there may be scope to use provisions in the 1997 Act which enable operators to apply for the variation of a planning permission. This would restrict application costs to £145.

Category A waste facilities

16. Category A waste facilities will be subject to additional financial guarantee requirements. Scottish planning guidance already advocates the use of financial guarantees so, again, it is likely that this requirement is already being met regardless of the Directive. However, requirements relating to major-accident prevention policies are new and will have clear cost implications for operators. The Regulatory Impact Assessment prepared in relation to similar obligation placed on operators by Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances found that the costs to lower-tier sites for meeting similar analysis, writing and notification requirements was £9k, £8k and £2k respectively.

New sites

17. The Regulations transpose most of the Directive's requirement through existing planning application procedures. This should mean that all sites (i.e. those requiring a waste management plan **and** a waste management plan and permit) will be able to incorporate the relevant consideration into existing planning application procedures, including environmental impact assessment, for mineral extraction. This will enable operators to address waste issues in a more focussed and consistent way to ensure compliance with the Directive. This should entail minimum additional costs. New Category A Waste facilities will be subject to the same costs highlighted in paragraph 16.

SMALL/MICRO FIRMS IMPACT TEST

18. Impacts on small and micro firms are generally likely to be greater than for larger firms because of the ratio between output and administrative costs. The industry is satisfied that the Regulations keep such impacts to a minimum. The Scottish Government will work with industry representative bodies on what supporting guidance should accompany the Regulations to reduce such burdens.

LEGAL AID IMPACT TEST

19. It is not expected that these proposals will have a significant impact on use of the legal aid fund.

TEST RUN OF BUSINESS FORMS

20. No new forms will be introduced as a result of the Regulations although operators will be required to submit waste management plans. The Scottish Government will work closely with the industry and stakeholders on guidance on the preparation and consideration of these plans, including the development of a model plan.

COMPETITION ASSESSMENT

21. Mineral sites, with the exception of coal, usually supply local markets. The main impact is likely to be the one-off cost of preparing waste management plans for existing sites. As all sites are affected equally (dependent on the waste managed) the Regulations are unlikely to impact on competition, particularly as the Directive's requirements are applicable throughout the UK.

ENFORCEMENT, SANCTIONS AND MONITORING

22. The Regulations will benefit from the enforcement arrangements that are already in place under town and country planning legislation although they contain their own provisions relating to sanctions, if necessary. These are considered to be proportionate. The impact of the Regulations will be monitored through discussions with the industry and regulatory bodies and will be reviewed if changes are considered beneficial.

Declaration and Publication

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

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