

SCHEDULE 25

Regulation 68

Waste and extractive waste

PART 1

Interpretation

Interpretation: general

1.—(1) In this Schedule—

“authority” means—

- (a) an appropriate authority,
- (b) a planning authority;

“collection” has the meaning given in Article 1(g) of the Waste Framework Directive and excludes the disposal or recovery of the waste;

“collection point” means a place which is used for the collection of waste by an establishment or undertaking where the establishment or undertaking does not—

- (a) receive payment for collecting the waste, or
- (b) collect waste as its main business activity;

“development consent” means development consent under the Planning Act 2008(1);

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

“mineral planning authority” has the same meaning as in section 1 of the Town and Country Planning Act 1990;

“place of production” means, in relation to any waste, the place where the waste was originally produced;

“plan making provisions” means—

- (a) paragraph 5 of Schedule 4 to the Waste Management Licensing Regulations 1994(3),
- (b) Part 2 of the Town and Country Planning Act 1990 insofar as it continues to have effect(4),
- (c) section 44A of the 1990 Act(5),
- (d) in relation to England, Parts 1 and 2 and Schedule 8 of the Planning and Compulsory Purchase Act 2004(6), and
- (e) in relation to Wales—
 - (i) Part 6 of the Planning and Compulsory Purchase Act 2004,

(1) 2008 c. 29.

(2) 1990 c. 8. Section 1 was amended by the Local Government (Wales) Act 1994, section 18(3) and (4), c. 19.

(3) S.I. 1994/1056, amended by S.I. 1995/288, 1995/1950, 1996/593, 1996/634, 1996/972, 1996/1279, 1997/2203, 1998/606, 1998/2746, 2000/1973, 2002/674, 2002/1087 (W. 114), 2002/1559, 2002/2980, 2003/595, 2003/780 (W. 91), 2003/2635, 2004/70 (W. 6), 2004/3276, 2005/894, 2005/1728, 2005/1806 (W. 138), 2005/2900, 2006/937, 2006/3315, 2007/1156 and 2007/2596.

(4) Part 2 is repealed by the Planning and Compulsory Purchase Act 2004, section 120 and Schedule 9, but is saved for certain purposes in England by S.I. 2004/2202 and in Wales by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

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

(6) 2004 c. 5.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Environmental Permitting (England and Wales) Regulations 2010 No. 675

- (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),
- (d) the Planning (Consequential Provisions) Act 1990(10),
- (e) the Planning and Compulsory Purchase Act 2004, and
- (f) the Planning Act 2008;

“planning authority” means—

- (a) a local planning authority,
- (b) a joint committee constituted under section 29 of the Planning and Compulsory Purchase Act 2004,
- (c) a person appointed under paragraph 1 of Schedule 6 to the Town and Country Planning Act 1990(11),
- (d) a government department in respect of its functions under the planning Acts,
- (e) the Secretary of State in respect of the Secretary of State’s functions under the planning Acts, or
- (f) the Infrastructure Planning Commission established under section 1 of the Planning Act 2008;

“planning permission” has the meaning given in section 336 of the Town and Country Planning Act 1990(12);

“specified functions” has the meaning given in paragraph 2 of this Part; and

“waste management plan” means a plan or other expression of strategy or policy in relation to waste management made under the plan making provisions.

(2) For the purposes of this Schedule, a container, lagoon or other place is secure in relation to waste kept in it if—

- (a) all reasonable precautions are taken to ensure that the waste cannot escape from it; and
- (b) members of the public are unable to gain access to the waste.

Interpretation: specified functions

2.—(1) In this Schedule, “specified functions” means the following functions—

- (a) in the case of an appropriate authority, its functions under Part 2 of the Food and Environment Protection Act 1985(13);
- (b) in the case of a planning authority—
 - (i) determining an application for planning permission under section 70 of the Town and Country Planning Act 1990,

(7) S.I. 2005/2847.

(8) 1990 c. 9.

(9) 1990 c. 10.

(10) 1990 c. 11.

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

(12) 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.

(13) 1985 c. 48.

- (ii) determining an appeal made under section 78 of that Act⁽¹⁴⁾ in relation to a determination under sub-paragraph (i),
 - (iii) 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⁽¹⁵⁾, or under section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990,
 - (iv) deciding whether to direct under section 90(1), (2) or (2A) of the Town and Country Planning Act 1990⁽¹⁶⁾ that planning permission must be deemed to be granted,
 - (v) deciding whether—
 - (aa) in making or confirming a discontinuance order, to include in the order any grant of planning permission, or
 - (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)⁽¹⁷⁾,
 - (vi) making a local development order under section 61A of the Town and Country Planning Act 1990⁽¹⁸⁾,
 - (vii) discharging functions under Part 2 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,
 - (viii) deciding whether to—
 - (aa) make a development consent order under section 104 or 105 of the Planning Act 2008⁽¹⁹⁾, or
 - (bb) make changes to, or revoke, such an order under section 153 of that Act, other than in accordance with paragraph 2 of Schedule 6 to that Act.
- (2) But a function which must be discharged by statutory instrument is not a specified function.

PART 2

Requirements of authorities

Exercise of specified functions: all waste operations

1.—(1) Every authority must exercise its specified functions in relation to every waste operation—

- (a) for the purposes of implementing Article 4 of the Waste Framework Directive; and

⁽¹⁴⁾ 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).

⁽¹⁵⁾ Section 177 was amended by the Planning and Compensation Act 1991 (c. 34), section 32 and Schedule 7.

⁽¹⁶⁾ 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).

⁽¹⁷⁾ 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 of, and Schedule 1 to, that Act.

⁽¹⁸⁾ Section 61A was inserted by the Planning and Compulsory Purchase Act 2004 (c. 5), section 40(1).

⁽¹⁹⁾ 2008 c. 29.

(b) when exercising a function under the plan making provisions, for the purposes of implementing Article 3(1) of the Waste Framework Directive.

(2) An appropriate authority must exercise its specified functions in relation to every waste operation so as to ensure that the records referred to in Article 14 of the Waste Framework Directive are kept and made available to it on request.

Exercise of specified functions: disposal of waste

2.—(1) Every authority must exercise its specified functions in relation to the 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) An appropriate authority must exercise its specified functions in relation to the 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

3. 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 1 or 2 of this Part.

Requirements applying to planning authorities

4.—(1) Nothing in paragraph 1 or 2 of this Part requires a planning authority to deal with a matter which an appropriate authority or a regulator has power to deal with.

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

(3) A mineral planning authority must not grant planning permission for a mining waste facility to which Article 7 of the Mining Waste Directive applies unless it is satisfied that—

- (a) the operator of that facility will meet the requirements of Article 11(2)(a) of that Directive; and
- (b) the management of waste at that facility will not conflict directly or otherwise interfere with the implementation of the plan or plans referred to in Article 7(3)(b) of that Directive.

PART 3

Operations to which section 33(1)(a) of the 1990 Act does not apply: descriptions and conditions

General

1.—(1) The descriptions in this Part are set out in the first sub-paragraph of each paragraph.

(2) The conditions for an operation of each description are set out in the second sub-paragraph of each paragraph.

Temporary storage at the place of production

- 2.—(1) The temporary storage of any waste at the place of production, pending its collection.
- (2) For the purposes of this paragraph, the conditions are—
- (a) no waste is stored for longer than 12 months; and
 - (b) the waste is stored in a secure place.

Temporary storage of waste at a place controlled by the producer

- 3.—(1) The temporary storage of any waste, pending its collection, at a place controlled by the producer of the waste.
- (2) For the purposes of this paragraph, the conditions are—
- (a) the producer has control over the waste and the storage place;
 - (b) the waste does not contain or consist of—
 - (i) unbonded asbestos, or
 - (ii) any substance with a flash point of less than 21 degrees Celsius;
 - (c) the operation is not carried on in the course of providing a waste management service to another person;
 - (d) the waste is stored in a secure place;
 - (e) where more than one type of waste is stored, the types are not mixed;
 - (f) no waste is stored for longer than 3 months;
 - (g) in relation to non-liquid waste, the total quantity stored at any one time does not exceed 50 cubic metres; and
 - (h) in relation to liquid waste—
 - (i) the total quantity stored at any one time does not exceed 1,000 litres,
 - (ii) the waste is stored in a container with secondary containment.

Temporary storage at a collection point

- 4.—(1) The temporary storage of waste at a collection point for the purposes of recovering or disposing of the waste elsewhere.
- (2) For the purposes of this paragraph, the conditions are that—
- (a) the waste does not contain or consist of—
 - (i) asbestos,
 - (ii) any substance with a flash point of less than 21 degrees Celsius;
 - (b) the waste is stored in a secure container;
 - (c) where more than one type of waste is stored, the types are not mixed;
 - (d) in relation to WEEE, the total quantity of waste stored at any one time does not exceed 30 cubic metres;
 - (e) in relation to non-hazardous waste that —
 - (i) is not WEEE, and
 - (ii) is to be recovered elsewhere,the total quantity of waste stored any one time does not exceed 50 cubic metres; and

- (f) in relation to waste not covered by paragraph (d) or (e), the total quantity of waste stored at any one time does not exceed 5 cubic metres.