STATUTORY INSTRUMENTS

2011 No. 988

The Waste (England and Wales) Regulations 2011

PART 6

Duties of planning authorities

General interpretation

16.—(1) In this Part—

"the 1990 Act" means the Town and Country Planning Act 1990(**1**);

"the 2004 Act" means the Planning and Compulsory Purchase Act 2004(**2**);

"the 2008 Act" means the Planning Act 2008(**3**);

"local planning authority" has the same meaning as in 1990 Act;

"mineral planning authority" has the same meaning as in section 1 of the 1990 Act(**4**);

"planning permission" has the meaning given in section 336 of the 1990 Act(**5**).

(2) In this Part, "the planning Acts" means—

(a) the 1990 Act;

(b) the Planning (Listed Buildings and Conservation Areas) Act 1990(**6**);

(c) the Planning (Hazardous Substances) Act 1990(**7**);

(d) the Planning (Consequential Provisions) Act 1990(**8**);

(e) the 2004 Act; and

(f) the 2008 Act.

(3) In this Part, "planning authority" means—

(a) a local planning authority;

(b) a joint committee constituted under section 29 of the 2004 Act;

(c) a person appointed under paragraph 1 of Schedule 6 to the 1990 Act(**9**);

(d) a government department in respect of its functions under the planning Acts; or

(e) an appropriate authority in respect of its functions under the planning Acts.

(**1**) 1990 c. 8.
(**2**) 2004 c. 5.
(**3**) 2008 c. 29.
(**4**) Section 1 was amended by the Local Government (Wales) Act (c. 19), section 18(3) and (4).
(**5**) The definition of "planning permission" in section 336 was amended by the Planning and Compensation Act 1991 (c. 34), sections 32 and 84(6) and Schedules 7 and 19.
(**6**) 1990 c. 9.
(**7**) 1990 c. 10.
(**8**) 1990 c. 11.
(**9**) Paragraph 1 was inserted by the Planning and Compensation Act 1991 (c. 34), section 32.

Meaning of planning functions

17.—(1) In this Part, "planning functions" means any of the following functions, other than a function which must be discharged by statutory instrument—

(a) determining—

(i) an application for planning permission under section 70 of the 1990 Act, or

(ii) an appeal made under section 78 of the 1990 Act in relation to the determination of such an application(**10**);

(b) deciding whether to take action under section 141(2) or (3) or 177(1)(a) or (b) of the 1990 Act(**11**), or under section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990;

(c) deciding whether to direct under section 90(1), (2) or (2A) of the 1990 Act(**12**) that planning permission must be deemed to be granted;

(d) deciding whether—

(i) in making or confirming a discontinuance order, to include in the order any grant of planning permission, or

(ii) to confirm (with or without modifications) a discontinuance order insofar as it grants planning permission;

(e) making a local development order under section 61A of the 1990 Act(**13**);

(f) discharging functions under Part 2 of the 1990 Act;

(g) discharging functions in relation to England under—

(i) Part 2 of and Schedule 8 to the 2004 Act, or

(ii) Part 5 of the Local Democracy, Economic Development and Construction Act 2009(**14**);

(h) discharging functions in relation to Wales under Part 6 of and Schedule 8 to the 2004 Act;

(i) deciding whether to—

(i) make a development consent order under section 104 or 105 of the 2008 Act, or

(ii) 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) In paragraph (1)(d), "discontinuance order" means an order under—

(a) section 102 of the 1990 Act (including an order made under that section by virtue of section 104 of that Act)(**15**); or

(b) paragraph 1 of Schedule 9 to the 1990 Act (including an order made under that paragraph by virtue of paragraph 11 of that Schedule).

(**10**) Section 78 was amended by the Planning and Compensation Act 1991 (c. 34), section 17(2) and by the Planning and Compulsory Purchase Act 2004 (c.5), sections 40(2)(e) and 43(2).
(**11**) Section 177 was amended by the Planning and Compensation Act 1991 (c. 34), section 32 and Schedule 7.
(**12**) 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).
(**13**) Section 61A was inserted by the Planning and Compulsory Purchase Act 2004 (c. 5), section 40(1).
(**14**) 2009 c. 20.
(**15**) 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.

Exercise of planning functions

18. A planning authority must have regard to the following provisions of the Waste Framework Directive when exercising its planning functions to the extent that those functions relate to waste management—

(a) Article 13;

(b) the first paragraph of Article 16(1), ignoring the words "in cooperation with other Member States where this is necessary or advisable" and "taking into account best available techniques";

(c) Article 16(2) and (3).

Inspections

19.—(1) This regulation applies where a planning authority has planning functions in relation to establishments or undertakings carrying on disposal or recovery of waste.

(2) The planning authority must ensure that appropriate periodic inspections of those establishments or undertakings are made(**16**).

Further duties in relation to planning permission

20.—(1) A planning authority must not grant planning permission or development consent for a landfill unless it has taken into consideration the requirements of—

(a) paragraph 1.1 of Annex I to Council Directive 1999/31/EC on the landfill of waste(**17**);

(b) paragraph 5 of that Annex, but only in respect of nuisances and hazards arising from traffic beyond the site of the landfill.

(2) A mineral planning authority must not grant planning permission for a mining waste facility to which Article 7 of Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries(**18**) 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 plans referred to in Article 7(3)(b) of that Directive.

(3) In this regulation—

"landfill" has the meaning given in Article 2(g) of Directive 1999/31/EC, but does not include any operation excluded from the scope of that Directive by Article 3(2);

"mining waste facility" means a "waste facility" as defined in Article 3(15) of Directive 2006/21/EC, but does not include those facilities mentioned in Article 24(2) or in the first paragraph of Article 24(4).

(**16**) Sections 196A-196C of the Town and Country Planning Act 1990 (c. 8) provide for powers relevant to inspection. Those sections were inserted by the Planning and Compensation Act 1991 (c. 34).
(**17**) OJ No L 182, 16.7.1999, p1, as last amended by Directive 2008/98/EC (OJ No L 312, 22.11.2008, p3).
(**18**) OJ No L 102, 11.4.2006, p15, as amended by Regulation (EC) No 596/2009 (OJ No L 188, 18.7.2009, p14).