STATUTORY RULES OF NORTHERN IRELAND

2015 No. 85

PLANNING

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

Made - - - -	*26th February 2015*
Coming into operation	*1st April 2015*

The Department of the Environment being a designated [F1] Department for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to the environment makes the following Regulations in exercise of the powers conferred by that section.

F1 S.I. 2008/301
F2 1972 c.68. The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51)

PART 1

INTRODUCTORY PROVISIONS

Citation and commencement

1. These Regulations may be cited as the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015 and shall come into operation on 1st April 2015.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 [F3] shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations—

"the 2011 Act" means the Planning Act (Northern Ireland) 2011 [F4];

[[F5]"best available techniques" has the same meaning as in Article 3(12) of Council Directive 2010/75/EU of 24 November 2010 as it had effect immediately before exit day**]**;

"Category A waste facility" means a facility so classified in Schedule 3;

"competent person" means a person with sufficient training, experience, knowledge and other qualities to enable that person to undertake the duties assigned to them relative to these Regulations;

"council" means district council;

"dam" means an engineered structure designed to retain or confine either water or waste or both within a pond;

"dangerous substance" means a substance, mixture or preparation which is dangerous within the meaning of Regulation (EC) 1272/2008[F6];

[[F7]"the Department" means the Department for Infrastructure;**]**

"the Directive" means Council Directive 2006/21/EC[F8] of 15th March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC[F9]**[**[F10]as it had effect immediately before exit day**]**;

[F11]...

"Directive 2006/118/EC" means Council Directive 2006/118/EC[F12] of 22ndDecember 2013 on the protection of groundwater against pollution and deterioration **[**[F13]as it had effect immediately before exit day**]**;

"Directive 2008/98/EC" means Council Directive 2008/98/EC[F14] of 19th November 2008 on hazardous waste **[**[F15]as it had effect immediately before exit day**]**;

"Directive 2012/18/EU" means Council Directive 2012/18/EU [F16] of 4th July 2012 on the control of major accident hazards involving dangerous substances **[**[F17]as it had effect immediately before exit day**]**;

"Directive 67/548/EEC" means Council Directive 67/548/EEC[F18] of 27th June 1967 on the approximation of laws, regulations and administrative provisions relating to the classifications, packaging and labelling of dangerous substances;

"Directive 99/45/EC" means Directive 99/45/EC[F19] of the European Parliament and of the Council of 31st May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations;

"Directive 2000/60/EC" means Directive 2000/60/EC[F20] of the European Parliament and of the Council of 23rd October 2000 establishing a framework for community action in the field of water policy **[**[F21]as it had effect immediately before exit day**]**;

"EIA development" has the same meaning as in the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 [F22];

"extractive waste" means waste produced from an extractive industry and resulting from the prospecting, winning, working, treatment and storage of minerals but does not include the following—

(a) waste which is generated by the prospecting, winning, working and treatment of minerals but which does not directly result from those operations;

(b) waste resulting from the offshore prospecting, winning, working and treatment of minerals; or

(c) the injection of water and re–injection of pumped groundwater as defined in the first and second indents of Article 11(3)(j) of Directive 2000/60/EC, to the extent authorised by **[**[F23]any law implementing**]** that Article;

"extractive waste site" means any area designated for the accumulation or deposit of extractive waste, whether in a solid or liquid state or in solution or suspension, for the following time periods—

(a) a period of six months or less for sites for hazardous waste generated unexpectedly;

(b) a period of one year or less for sites for non–hazardous, non inert waste;

(c) a period of three years or less for sites for polluted soil, non–hazardous waste resulting from the prospecting, winning of minerals, waste resulting from the working, treatment and storage of peat and inert waste;

but does not include any area which falls within a waste facility; and such a site is deemed to include—

(i) any dam or other structure serving to contain, retain, confine or otherwise support the extractive waste site;

(ii) (but not to be limited to), heaps and ponds;

but excludes excavation voids into which waste is replaced, after extraction of the mineral, for rehabilitation and construction purposes;

"financial guarantee" means the guarantee required by regulation 8;

"hazardous waste" has the meaning given to it in Article 3(2) of Council Directive 2008/98/EC;

"heap" means an engineered facility for the deposit of solid waste on the surface;

"inert waste" means waste which satisfies the following requirements—

(a) it does not undergo any significant physical, chemical or biological transformations;

(b) it does not dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter with which it comes into contact in a way likely to give rise to environmental pollution or harm human health;

(c) the total leachability and pollutant content of the waste is insignificant, in particular not such as to endanger the quality of either surface water or underground water or both; and

(d) the ecotoxicity of the leachate is insignificant, in particular not such as to endanger the quality of either surface water or groundwater or both;

"leachate" means any liquid percolating through the deposited waste and emitted from or contained within an extractive waste site or waste facility, including polluted drainage, which may adversely affect the environment if not appropriately treated;

"major accident" means an occurrence on–site in the course of an operation involving the management of extractive waste in any establishment covered by these Regulations, leading to a serious danger to either human health or the environment or both, whether immediately or over time, on–site or off–site;

"major development" shall be construed in accordance with the Planning (Development Management) Regulations (Northern Ireland) 2015 [F24];

[[F25]"Member State" shall be construed in accordance with Schedule 1 to the Interpretation Act 1978;**]**

"minerals" includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or surface working, except that it does not include turf cut for purposes other than sale;

"mining operations" has the same meaning as in section 250(1) of the 2011 Act (Interpretation);

"offshore" means that area of the sea and seabed extending from the low water mark of ordinary or medium tides outwards;

"operator" means the person who is or will be responsible for the management of extractive waste, including in respect of temporary storage of extractive waste as well as the operational and after-closure phases;

"outline planning permission" has the same meaning as in section 62(1) of the 2011 Act (Duration of planning permission);

"planning permission" means permission under Part 3 of the 2011 Act;

"pond" means a natural or engineered facility for disposing of fine grained waste, normally tailings, along with varying amounts of free water, resulting from the treatment of minerals and from the clearing and recycling of process water;

"prospecting" means the search for mineral deposits of economic value, including sampling, bulk sampling, drilling and trenching, but excluding any works required for the development of such deposits, and any activities directly associated with an existing extractive operation;

"the public" means one or more natural or legal persons and associations, organisations or groups made up of such persons;

"the public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision–making under Parts 3 or 5 and non–governmental organisations promoting environmental protection and meeting any requirements under national legislation are deemed to have such an interest;

"receiving body of water" means surface waters, groundwater, transitional waters and coastal waters as defined in Article 2(1), (2), (6) and (7) of Directive 2000/60/EC;

"Regulation (EC) 1272/2008" means Regulation (EC) 1272/2008 of 16th December 2008 on classification, labelling and packaging of substances and mixtures **[**F26as amended from time to time**]**;

"rehabilitation" means the treatment of the land affected by a waste facility in such a way as to restore the land to a satisfactory state, with particular regard to soil quality, wildlife, natural habitats, freshwater systems, landscape and appropriate beneficial uses;

"relevant development" means development comprising mining operations involving the management of extractive waste;

"substantial change" means a change in the structure or operation of a waste facility that, in the opinion of the council or, as the case may be, the Department may have significant negative effects on human health or the environment or both;

"tailings" means the waste solids or slurries that remain after the treatment of minerals by separation process (e.g. crushing, grinding, size–sorting, flotation and other physico–chemical techniques) to remove the valuable minerals from the less valuable rock;

"treatment" means the mechanical, physical, biological, thermal or chemical process, or combination of processes, carried out on extracted material, with a view to extracting the mineral, including size change, classification, separation and leaching, and the re–processing of previously discarded waste, but excluding smelting, thermal manufacturing processes (other than the burning of limestone) and metallurgical processes;

"unpolluted soil" means soil that is removed from the upper layer of the ground during extractive activities and that is not "deemed to be polluted under **[**F27national legislation or retained EU law**]**";

"waste" means anything that is waste for the purposes of Council Directive 2008/98/EC on waste;

"waste facility" means any area designated for the accumulation or deposit of extractive waste, whether in a solid or liquid state or in solution or suspension, for the following time periods—

(a) no time period for Category A waste facilities and facilities for waste characterised as hazardous in the waste management plan;

(b) six months for facilities for hazardous waste generated unexpectedly;

(c) one year for facilities for non–hazardous, non–inert waste;

(d) three years for facilities for unpolluted soil, non–hazardous waste resulting from the prospecting, winning of minerals, waste resulting from the working, treatment and storage of peat and inert waste;

and such a facility is deemed to include any dam or other structure serving to contain, retain, confine or otherwise support the facility but not to be limited to, heaps and ponds, but excludes excavation voids into which waste is replaced, after extraction of the mineral, for rehabilitation and construction purposes;

"waste management plan" has the meaning given by regulation 6; and

"weak acid dissociable cyanide" means cyanide and cyanide compounds that are dissociated with a weak acid at a defined pH.

(3) Notwithstanding paragraph (2), expressions used in these Regulations and in the Directive and not otherwise defined in these Regulations shall, unless the context otherwise requires, have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

F3 1954 c.33 (N.I.)
F4 2011 c.25 (N.I.)
F5 Words in reg. 2(2) substituted (31.12.2020) by The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(2), **6(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
F6 O.J. No. L353, 31.12.2008, p.1-1355
F7 Words in reg. 2(2) substituted (27.3.2019) by The Planning (Miscellaneous Amendments) Regulations (Northern Ireland) 2019 (S.R. 2019/24), regs. 1, **6**
F8 O.J. No. L102, 11.4.2006, p.15-34
F9 O.J. No. L143, 30.4.2004, p.56-75
F10 Words in reg. 2(2) inserted (31.12.2020) by The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(2), **6(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
F11 Words in reg. 2(2) omitted (31.12.2020) by virtue of The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(2), **6(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)
F12 O.J. No. L372, 27.12.2006, p.19-31
F13 Words in reg. 2(2) inserted (31.12.2020) by The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(2), **6(2)(d)**; 2020 c. 1, Sch. 5 para. 1(1)
F14 O.J. No. L312, 22.11.2008, p.3-30
F15 Words in reg. 2(2) inserted (31.12.2020) by The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(2), **6(2)(e)**; 2020 c. 1, Sch. 5 para. 1(1)
F16 O.J. No. L197, 24.7.2012, p.1-37
F17 Words in reg. 2(2) inserted (31.12.2020) by The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(2), **6(2)(f)**; 2020 c. 1, Sch. 5 para. 1(1)
F18 O.J. No. L196, 16.8.1967, p.1-98
F19 O.J. No. L200, 30.7.1999, p.1-68
F20 O.J. No. L327, 22.12.2000, p.1-73