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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 60**

The Management of Extractive  
Waste (Scotland) Regulations 2010

PART 1

INTRODUCTORY

**Citation and commencement**

1.—(1) These Regulations may be cited as the Management of Extractive Waste (Scotland) Regulations 2010 and, other than regulation 3(1), come into force on 1st April 2010.

(2) Regulation 3(1) comes into force on 1st May 2012.

**Commencement Information**

**II** [Reg. 1](#) in force at 1.4.2010, see [reg. 1\(1\)](#)

**Interpretation**

2.—(1) Subject to paragraph (2), in these Regulations—

[<sup>F1</sup>“the 1996 Regulations” means the Special Waste Regulations 1996,]

“the 1997 Act” means the Town and Country Planning (Scotland) Act 1997(1);

“applicant” means the natural or legal person who makes an application for planning permission to which Part 4 applies;

[<sup>F2</sup>“best available techniques” is as defined in Article 2(2) as read with Article 2(3) of Decision 2012/134/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for the manufacture of glass,]

“Category A waste facility” means a waste facility that does not fall within the scope of [<sup>F3</sup>Directive 2012/18/EU]—

- (a) where a failure or incorrect operation, e.g. the collapse of a heap or the bursting of a dam, could give rise to a major accident, on the basis of a risk assessment taking into account factors such as the present or future size, the location and the environmental impact of the waste facility;
- (b) which contains waste classified as hazardous under [<sup>F4</sup>Articles 3(2) and 7 of Directive 2008/98/EC] above a certain threshold; or
- (c) [<sup>F5</sup>which contains substances or mixtures classified as hazardous under Regulation (EC) No 1272/2008 above a certain threshold;]

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(1) [1997 c.8](#), to which there are amendments which are not relevant to these Regulations.

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

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

[<sup>F6</sup>“dangerous substance” means a substance or mixture which is hazardous within the meaning of Regulation (EC) No 1272/2008,]

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“Directive 2000/60/EC” means Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy<sup>(2)</sup>[<sup>F12</sup>, as it had effect immediately before IP completion day];

[<sup>F13</sup>“Directive 2008/98/EC” means Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives, as amended by Commission Regulation (EU) No 1357/2014 replacing Annex III of Directive 2008/98/EC[<sup>F14</sup>, as it had effect immediately before IP completion day];]

[<sup>F15</sup>“Directive 2012/18/EU” means Directive 2012/18/EU of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC[<sup>F16</sup>, as it had effect immediately before IP completion day];]

[<sup>F17</sup>“European Waste Catalogue” is as defined in regulation 1(4) of the 1996 Regulations;]

“extractive waste” means waste produced from an extractive industry and resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries, but does not include—

- (a) waste which is generated by the prospecting, extraction and treatment of mineral resources and the working of quarries, but which does not directly result from those operations;
- (b) waste resulting from the offshore prospecting, extraction and treatment of mineral resources; 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 that Article;

“extractive waste area” 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 areas for hazardous waste generated unexpectedly;
- (b) a period of one year or less for areas for non-hazardous non-inert waste;
- (c) a period of three years or less for areas for unpolluted soil, non-hazardous prospecting waste, waste resulting from the extraction, treatment and storage of peat and inert waste,

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(2) O.J. No. L 327, 22.12.2000, p.1 as amended by Directive 2008/105/EC of the European Parliament and of the Council (O.J. No. L 348, 24.12.2008, p.84).

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

- (d) excavation voids into which waste is replaced, after excavation of the mineral, for rehabilitation and construction purposes,
- (e) any dam or other structure serving to contain, retain, confine or otherwise support such a facility, and
- (f) heaps and ponds;

“financial guarantee” means the guarantee required by regulation 15(1);

[<sup>F18</sup>“hazardous waste” is as defined in Articles 3(2) and 7 of Directive [2008/98/EC](#);

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

“inert waste” means waste that does not undergo any significant physical, chemical or biological transformations; inert waste will 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; the total leachability and pollutant content of the waste and the ecotoxicity of the leachate must be insignificant, and 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 area or waste facility, including polluted drainage, which may adversely affect the environment if not appropriately treated;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(3);

“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 human health or the environment or both, whether immediately or over time, on-site or off-site;

“mineral resource” or “mineral” means a naturally occurring deposit in the earth’s crust of an organic or inorganic substance, such as energy fuels, metal ores, industrial minerals and construction materials, but excluding water;

“offshore” means that area of the sea and seabed extending from the low water mark of ordinary or median tides outwards;

“operator” means the natural or legal person responsible for the management of extractive waste at a waste facility, including in respect of temporary storage of extractive waste as well as the operational and after-closure phases, and where an extractive waste area or waste facility has not been put into operation, means the person who will have control over the operation of the extractive waste area or waste facility when it is put into operation;

“planning authority” means the local authority responsible for planning permission where an extractive waste area or waste facility is located;

“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 mineral resources 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, and “prospecting waste” means waste generated by such activity;

“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 4 or 6 and non-governmental organisations promoting environmental protection and meeting any requirements under legislation are deemed to have such an interest;

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

[<sup>F19</sup>“Regulation (EC) No 1272/2008” means Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006<sup>[F20]</sup>, as it had effect immediately before IP completion day];]

“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;

“SEPA” means the Scottish Environment Protection Agency;

“site” means all land at a distinct geographic location under the management control of an operator;

“substantial change” means a change in the structure or operation of an extractive waste area or waste facility that, in the opinion of the planning authority, may have significant negative effects on human health or the environment;

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

“treatment”, except where the context otherwise requires, means the mechanical, physical, biological, thermal or chemical process or combination of processes carried out on mineral resources, including from the working of quarries, 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 national or [<sup>F21</sup>assimilated] law;

[<sup>F22</sup>“waste” is as defined in Article 3(1) of Directive 2008/98/EC;]

“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; Category A waste facilities and facilities for waste characterised as hazardous in the waste management plan shall be waste facilities regardless of the period of accumulation or deposit, but any other area shall not be a waste facility unless the accumulation or deposit will exceed the following time periods—

- (a) six months for facilities for hazardous waste generated unexpectedly;
- (b) one year for facilities for non-hazardous non-inert waste;
- (c) three years for facilities for unpolluted soil, non-hazardous prospecting waste, waste resulting from the extraction, 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 such a facility, and is also deemed to include, but not be limited to, heaps and ponds, but does not include 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 11; and

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

(2) Notwithstanding paragraph (1), expressions used in these Regulations <sup>F23</sup>..., unless the context otherwise requires, have the same meaning for the purposes of these Regulations as in [<sup>F24</sup>Directive 2006/21/EC on the management of waste from extractive industries as it had effect immediately before IP completion day].

(3) Where these Regulations refer to—

- (a) an application, notification or request which may be made by any person; or
- (b) an approval, decision, determination, notification, permission or opinion to be issued by the planning authority,

any such application, notification or request shall be made in writing and any such approval, decision, determination, notification, permission or opinion shall be issued in writing (and these requirements may be fulfilled by electronic communication where regulation 32 applies).

#### Textual Amendments

- F1** Words in [reg. 2\(1\)](#) inserted (31.12.2020) by [The Management of Extractive Waste \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/273\)](#), regs. 1(2), **8(2)(a)**; 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F2** Words in [reg. 2\(1\)](#) substituted (31.12.2020) by [The Management of Extractive Waste \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/273\)](#), regs. 1(2), **8(2)(b)**; 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F3** Words in [reg. 2\(1\)](#) substituted (30.10.2019) by [The Management of Extractive Waste \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/273\)](#), regs. 1(2), **3(a)(i)**
- F4** Words in [reg. 2\(1\)](#) substituted (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), reg. 1(1), [sch. para. 26\(a\)](#)
- F5** Words in [reg. 2\(1\)](#) substituted (30.10.2019) by [The Management of Extractive Waste \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/273\)](#), regs. 1(2), **3(a)(ii)**
- F6** Words in [reg. 2\(1\)](#) substituted (30.10.2019) by [The Management of Extractive Waste \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/273\)](#), regs. 1(2), **3(b)**
- F7** Words in [reg. 2\(1\)](#) omitted (30.10.2019) by virtue of [The Management of Extractive Waste \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/273\)](#), regs. 1(2), **3(c)**
- F8** Words in [reg. 2\(1\)](#) omitted (30.10.2019) by virtue of [The Management of Extractive Waste \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/273\)](#), regs. 1(2), **3(d)**
- F9** Words in [reg. 2\(1\)](#) omitted (30.10.2019) by virtue of [The Management of Extractive Waste \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/273\)](#), regs. 1(2), **3(e)**
- F10** Words in [reg. 2\(1\)](#) omitted (27.3.2011) by virtue of [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), reg. 1(1), [sch. para. 26\(b\)](#)
- F11** Words in [reg. 2\(1\)](#) omitted (30.10.2019) by virtue of [The Management of Extractive Waste \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/273\)](#), regs. 1(2), **3(f)**
- F12** Words in [reg. 2\(1\)](#) inserted (31.12.2020) by [The Management of Extractive Waste \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/273\)](#), regs. 1(2), **8(2)(c)** (as amended by [S.S.I. 2020/310](#), regs. 1, **3(2)**); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F13** Words in [reg. 2\(1\)](#) substituted (8.6.2015) by [The Waste \(Meaning of Hazardous Waste and European Waste Catalogue\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/188\)](#), regs. 1(1), **8(2)**
- F14** Words in [reg. 2\(1\)](#) inserted (31.12.2020) by [The Management of Extractive Waste \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/273\)](#), regs. 1(2), **8(2)(d)** (as amended by [S.S.I. 2020/310](#), regs. 1, **3(2)**); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F15** Words in [reg. 2\(1\)](#) inserted (30.10.2019) by [The Management of Extractive Waste \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/273\)](#), regs. 1(2), **3(g)**

<b>F16</b>	Words in reg. 2(1) inserted (31.12.2020) by <a href="#">The Management of Extractive Waste (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/273)</a> , regs. 1(2), <b>8(2)(e)</b> (as amended by <a href="#">S.S.I. 2020/310</a> , regs. 1, <b>3(2)</b> ); 2020 c. 1, <b>Sch. 5 para. 1(1)</b>
<b>F17</b>	Words in reg. 2(1) inserted (31.12.2020) by <a href="#">The Management of Extractive Waste (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/273)</a> , regs. 1(2), <b>8(2)(f)</b> ; 2020 c. 1, Sch. 5 para. 1(1)
<b>F18</b>	Words in reg. 2(1) substituted (27.3.2011) by <a href="#">The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226)</a> , reg. 1(1), <b>sch. para. 26(d)</b>
<b>F19</b>	Words in reg. 2(1) inserted (30.10.2019) by <a href="#">The Management of Extractive Waste (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/273)</a> , regs. 1(2), <b>3(h)</b>
<b>F20</b>	Words in reg. 2(1) inserted (31.12.2020) by <a href="#">The Management of Extractive Waste (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/273)</a> , regs. 1(2), <b>8(2)(g)</b> (as amended by <a href="#">S.S.I. 2020/310</a> , regs. 1, <b>3(2)</b> ); 2020 c. 1, <b>Sch. 5 para. 1(1)</b>
<b>F21</b>	Word in reg. 2(1) substituted (1.1.2024) by <a href="#">The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374)</a> , reg. 1(1), <b>sch. 2 para. 18(2)</b>
<b>F22</b>	Words in reg. 2(1) substituted (27.3.2011) by <a href="#">The Waste (Scotland) Regulations 2011 (S.S.I. 2011/226)</a> , reg. 1(1), <b>sch. para. 26(e)</b>
<b>F23</b>	Words in reg. 2(2) omitted (31.12.2020) by virtue of <a href="#">The Management of Extractive Waste (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/273)</a> , regs. 1(2), <b>8(3)(a)</b> ; 2020 c. 1, Sch. 5 para. 1(1)
<b>F24</b>	Words in reg. 2(2) substituted (31.12.2020) by <a href="#">The Management of Extractive Waste (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/273)</a> , regs. 1(2), <b>8(3)(b)</b> (as amended by <a href="#">S.S.I. 2020/310</a> , regs. 1, <b>3(2)</b> ); 2020 c. 1, <b>Sch. 5 para. 1(1)</b>
<b>Commencement Information</b>	
<b>I2</b>	<a href="#">Reg. 2</a> in force at 1.4.2010, see <a href="#">reg. 1(1)</a>

**Consequential amendment of subordinate legislation**

3.—(1) In the [Town and Country Planning \(General Permitted Development\) \(Scotland\) Order 1992\(4\)](#)—

- (a) in article 3(10)(d) (permitted development) omit “or Class 64 of Part 18”;
- (b) in article 3(10)(e) omit “or Class 63 of Part 18” and sub-paragraph (iii);
- (c) in Schedule 1, Part 15 (mineral exploration), Class 53, before sub-paragraph (2)(a) insert “(za) it is contrary to the requirements of the [Management of Extractive Waste \(Scotland\) Regulations 2010](#)”;
- (d) in Schedule 1, Part 15, Class 54, before sub-paragraph (2)(a) insert “(za) it is contrary to the requirements of the [Management of Extractive Waste \(Scotland\) Regulations 2010](#)”;
- (e) in Schedule 1 omit Part 18 (waste tipping at a mine).

(2) In Part 2 of Schedule 4 to the [Water Environment \(Controlled Activities\) \(Scotland\) Regulations 2005\(5\)](#) (relevant legislation for determination of applications), at the end insert “The [Management of Extractive Waste \(Scotland\) Regulations 2010 \(S.S.I. 2010/60\)](#)”.

<sup>F25</sup>(3) .....

(4) [S.I. 1992/223](#); paragraph 10 was added by [S.I. 1997/1871](#) article 3(a). There are other amendments which are not relevant to these Regulations.  
 (5) [S.S.I. 2005/348](#), which is relevantly amended by [S.S.I. 2008/170](#), regulation 20 (the amendment is not fully in force).

(4) In regulation 4 of the Landfill (Scotland) Regulations 2003(6) (cases where those Regulations do not apply), after paragraph (b) insert “(ba) waste which falls within the scope of the Management of Extractive Waste (Scotland) Regulations 2010;”.

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**Textual Amendments**

**F25** Reg. 3(3) revoked (30.6.2013) by [The Town and Country Planning \(Development Management Procedure\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/155\)](#), reg. 1, **sch. 9** (with regs. 2, 49, 51(2)-(4))

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**Commencement Information**

**I3** Reg. 3(1) in force at 1.5.2012, see [reg. 1\(2\)](#)

**I4** Reg. 3(2)-(4) in force at 1.4.2010, see [reg. 1\(1\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Management of Extractive Waste (Scotland) Regulations 2010, PART 1.