
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 60

The Management of Extractive
Waste (Scotland) Regulations 2010

PART 5

MANDATORY CONDITIONS AND REVIEW

Mandatory conditions: general

14. Subject to regulations 5 to 9 (partial application of the Regulations), every planning permission granted in accordance with regulation 13 is deemed to be subject to the conditions that—

- (a) extractive waste be managed in accordance with the waste management plan, and
- (b) where the permission is in respect of a waste facility, the facility will not commence operations until documentation has been provided to the satisfaction of the planning authority to explain how the applicant will operate the facility to meet the requirements of regulations 22 and 23 and of any other national and Community legislation applicable and referred to in the waste management plan.

Financial guarantee

15.—(1) Subject to Parts 2 and 3, every planning permission granted in accordance with regulation 13 is deemed to be subject to the condition that the planning authority, prior to the commencement of any operations involving the accumulation of extractive waste in a waste facility, will be provided with a financial guarantee that is adequate to fulfil the purpose set out in paragraph (2).

- (2) The purpose of the financial guarantee will be to ensure that—
 - (a) all obligations required under the planning permission in respect of the waste facility, including after-closure provisions, will be discharged; and
 - (b) there will be funds readily available at any given time for the rehabilitation of the land affected by the waste facility, as described in the waste management plan.
- (3) The financial guarantee will be calculated to the satisfaction of the planning authority on the basis of—
 - (a) the likely environmental impact of the waste facility, taking into account in particular the category of the waste facility, the characteristics of the waste and the future use of the rehabilitated land; and
 - (b) the assumption that independent and suitably qualified third parties will assess and perform any rehabilitation work needed.
- (4) The planning authority shall determine the form of the guarantee, and may accept the provision of a guarantee from an industry-sponsored mutual guarantee fund.

Review and update of waste management plan

16.—(1) Every planning permission granted in accordance with regulation 13 is deemed to be subject to the condition that the waste management plan must be reviewed by the operator and updated as appropriate—

- (a) no later than the fifth year after the date on which the permission was first granted and thereafter no later than every fifth year following the date of the last review; and
- (b) in the event of substantial changes to the extractive waste area or waste facility, or to the waste deposited.

(2) When approving a waste management plan under regulation 5(3) (transitional provisions), the planning authority must impose a planning condition that the plan must be reviewed by the operator and updated as appropriate—

- (a) no later than the fifth year after the date on which it was approved and thereafter no later than every fifth year following the date of the last review; and
- (b) in the event of substantial changes to the extractive waste area or waste facility, or to the waste deposited.

(3) Any amendments made to the waste management plan, whether as a result of a review or otherwise, shall be notified to the planning authority.

Review and update of planning permission

17.—(1) Every planning permission granted in accordance with regulation 13 in respect of a waste facility is deemed to be subject to the condition that the operator shall notify the planning authority of any substantial change in the operation of the facility or the waste deposited, along with such details as are required to allow the planning authority to review the requirements imposed in pursuance of these Regulations in respect of a permission granted under regulation 13.

(2) A planning authority may, where it considers it appropriate to do so, review at any time the requirements imposed in respect of a waste facility in pursuance of these Regulations in respect of a permission granted under regulation 13, including (but not limited to) where review is appropriate—

- (a) on the basis of monitoring results reported by the operator pursuant to regulation 22(4);
- (b) as a consequence of inspection reports submitted to the planning authority pursuant to regulation 24(1); or
- (c) following any information provided by the Scottish Ministers to the planning authority of developments in best available techniques,

and in every case shall undertake such review not later than five years after the grant of that permission or the latest review of it.

(3) Following a review undertaken in consequence of paragraph (1) or (2), a planning authority may add to, reduce or update the conditions attached to that permission in pursuance of these Regulations and shall consider whether the size or form of any financial guarantee required in accordance with regulation 15(1) requires adjustment to fund the rehabilitation work described in the current waste management plan (and, if so, such an adjusted guarantee shall be provided).

(4) The requirements of regulations 14 to 16 (mandatory conditions) (where appropriate, as modified by Parts 2 and 3), and of paragraph (1), shall apply on review as if the planning authority were granting a permission in accordance with regulation 13.

(5) Where the planning authority receives notification of a substantial change in accordance with paragraph (1), or decides to undertake a review in respect of a waste facility in terms of paragraph (2), it shall consult SEPA and shall give the public concerned an opportunity to express comments and opinions to it before it completes the review.