

SCHEDULE 20

Regulation 35(2)(n)

Mining waste operations

Application

1. This Schedule applies in relation to every mining waste operation.

Interpretation

- 2.—(1) In this Schedule—

“mining waste facility” means a “waste facility” as defined in Article 3(15) of the Mining Waste Directive but excludes those facilities mentioned in Article 24(2) or in the first paragraph of Article 24(4) of that Directive;

“mining waste operation” means the management of extractive waste, whether or not involving a mining waste facility, but does not include the activities in Article 2(2)(c) of the Mining Waste Directive;

“relevant emergency planner” means, in relation to an application for a mining waste facility that is located in—

- (a) London, the London Fire and Emergency Planning Authority,
- (b) an area where there is a fire and civil defence authority, that authority,
- (c) the Isles of Scilly, the Council of the Isles of Scilly,
- (d) an area in the rest of England, the county council for that area or where there is no county council for that area, the district council for that area,
- (e) an area in Wales, the county council or county borough council for that area; and

“waste management plan” means a plan of the type described in Article 5(1) of the Mining Waste Directive which has the objectives in Article 5(2) and contains the elements and information set out in Article 5(3) of that Directive.

- (2) When interpreting the Mining Waste Directive for the purposes of this Schedule—
 - (a) except where otherwise defined in this paragraph, an expression that is defined in Part 1 of these Regulations has the meaning given in that Part;
 - (b) “permit” means an environmental permit; and
 - (c) the competent authority is the regulator.

Applications for grant or variation of an environmental permit

3.—(1) The regulator must require that every application for the grant or variation of an environmental permit in relation to a mining waste operation involving a mining waste facility to which Article 7 of the Mining Waste Directive applies includes—

- (a) the information specified in Article 7(2) of that Directive; and
- (b) where Article 6 of the Directive applies, the information mentioned in the second sentence of the third paragraph of Article 6(3).

(2) Where the regulator receives an application for the grant or variation of an environmental permit and that application includes the information required under sub-paragraph (1)(b), the regulator must immediately forward the information to the relevant emergency planner.

(3) The regulator must require that every application for the grant or variation of an environmental permit in relation to any other mining waste operation includes a waste management plan.

(4) For the purposes of this paragraph, the regulator may accept a waste management plan produced pursuant to other legislation which complies with Article 5(1) to (4) of the Mining Waste Directive if it has been reviewed and amended in accordance with Article 5(4) of that Directive.

Review of environmental permits

4. The regulator must periodically review an environmental permit relating to a mining waste facility if Article 7 of the Mining Waste Directive applies in respect of that facility and any of the circumstances in Article 7(4) of the Directive apply in relation to it.

Classification of mining waste facilities

5. The regulator must exercise its functions so as to ensure compliance with Article 9 of the Mining Waste Directive in respect of any mining waste facility to which Article 7 of that Directive does not apply.

Inspections

6. The regulator must inspect every mining waste facility to which Article 7 of the Mining Waste Directive applies so as to comply with the requirements of Article 17(1) of that Directive.

Exercise of relevant functions

7. The regulator must exercise its relevant functions so as to ensure compliance with the following requirements of the Mining Waste Directive—

- (a) Article 2(4);
- (b) Article 4;
- (c) Article 5(4) and (6);
- (d) Article 6(2), the first and second paragraphs of Article 6(3), the first paragraph of Article 6(4) to the extent that it relates to plans prepared under the first paragraph of Article 6(3) and the second paragraph of Article 6(4) to the extent that it relates to the regulator's functions;
- (e) Article 7(1) and (3)(a);
- (f) Article 10;
- (g) Article 11;
- (h) Article 12;
- (i) Article 13;
- (j) Article 14 (1) to (3);
- (k) Article 17(2);
- (l) Article 24(1).

Public participation

8. The regulator must exercise its functions under the public participation provisions in relation to mining waste facilities to which Article 7 of the Mining Waste Directive applies so as to meet the requirements of Article 8 of that Directive.

Derogation from requirements

9.—(1) The regulator must exercise its functions to ensure that the requirements mentioned in the first paragraph of Article 2(3) of the Mining Waste Directive do not apply to the substances mentioned in that paragraph where they result from an operation mentioned in that paragraph, to the extent allowed by that paragraph.

(2) The regulator must waive the requirements of the Mining Waste Directive in relation to the deposit of the substances mentioned in the second paragraph of Article 2(3) of that Directive if the regulator is satisfied that the requirements of Article 4 of that Directive are met.

(3) The regulator must waive the requirements mentioned in the third paragraph of Article 2(3) of the Mining Waste Directive in relation to the waste mentioned in that paragraph to the extent allowed by that paragraph.

Closure of a mining waste facility

10.—(1) The regulator must set out any reasoned decision under Article 12(2)(c) of the Mining Waste Directive in a closure notice served on the operator.

(2) A closure notice must, in addition to stating the regulator’s reasons for requiring initiation of the closure procedure, specify—

- (a) the steps the operator is required to take to initiate the procedure; and
- (b) the period within which they must be taken.

(3) The regulator may withdraw a closure notice at any time by further notice served on the operator.

(4) Closure of a mining waste facility does not relieve the operator of liability under the environmental permit conditions that relate to the facility.

(5) The regulator must exercise its functions so as to ensure compliance with Article 14(4) of the Mining Waste Directive.

Inventory of closed mining waste facilities

11. The regulator must maintain and make available to the public an inventory of closed mining waste facilities so as to ensure compliance with Article 20 of the Mining Waste Directive.

Developments in best available techniques

12.—(1) The regulator must ensure that it is informed of developments in best available techniques.

(2) In this paragraph, “best available techniques” has the meaning given in Article 2(12) of the IPPC Directive.

Planning permission requirements and conditions

13.—(1) Following an application under regulation 13(1), the regulator must not grant an environmental permit in relation to a mining waste facility to which Article 7 of the Mining Waste Directive applies if use of the site as a mining waste facility requires planning permission and no such permission is in force.

(2) Where—

- (a) a mining waste operation is the subject of an environmental permit;
- (b) that operation has been granted planning permission subject to conditions (“planning conditions”); and

(c) there is an inconsistency between the environmental permit conditions and the planning conditions,
the environmental permit conditions prevail.

(3) In this paragraph, “planning permission” means planning permission under the Town and Country Planning Act 1990⁽¹⁾ and includes—

- (a) a certificate under section 191 of that Act; and
- (b) an established use certificate under section 192 of that Act, as originally enacted, which continues to have effect for the purposes of subsection (4) of that section.

Applications for grant or variation of an environmental permit for a Category A mining waste facility

14.—(1) The regulator must not grant an application for the grant or variation of an environmental permit relating to a Category A mining waste facility until it has been notified by the relevant emergency planner that it has the information necessary to enable it to draw up an external emergency plan.

(2) The regulator must refuse an application relating to a Category A mining waste facility that is an existing mining waste facility upon receipt of a notice by the relevant emergency planner stating that the operator has not provided the information necessary to enable the relevant emergency planner to draw up an external emergency plan.

(3) In this paragraph, “external emergency plan” means a plan as required under the third paragraph of Article 6(3) of the Mining Waste Directive that has the objectives specified in the first paragraph of Article 6(4) of that Directive.

⁽¹⁾ 1990 c. 8. Sections 191 and 192 were amended by the Planning and Compensation Act 1991 (c. 34), section 10(1).