

EXPLANATORY MEMORANDUM TO
THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS AND
DEEMED APPLICATIONS) (AMENDMENT) (ENGLAND) REGULATIONS 2006

2006 No. 994

- 1.** This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 These Regulations provide for the payment of fees in respect of site visits carried out by local planning authorities to mining sites and landfill sites to monitor compliance with the planning permissions which apply to the sites.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Section 303 of the Town and Country Planning Act 1990 gives the Secretary of State¹ power, by regulations, to make provision for the payment of a charge or fee to a local planning authority in respect of the performance by the authority of any function they have or in respect of anything done by the authority which is calculated to facilitate or is conducive to or incidental to the performance of any such function.

4.2 Section 303 was amended by section 53 of the Planning and Compulsory Purchase Act 2004² to widen the scope of the power which had previously been limited to making provision for a charge or fee in respect of applications for planning permission and other consents. These Regulations are the first to make use of the extended power.

4.3 The Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989³ provide for the payment of fees to local planning authorities in respect of the specified applications. These Regulations amend the 1989 Regulations to provide for the payment of fees in respect of site visits to mining and landfill sites by local planning authorities to check compliance with planning control.

¹ In relation to England.

² See Hansard 10th February 2005 Column 89 WS.

³ S.I. 1989/193.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

The Baroness Andrews has made the following statement regarding Human Rights:

In my view the provisions of the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2006 are compatible with the Convention rights.

7. Policy background

7.1 The objective of the proposed new charging regime is to recover the costs to minerals and waste planning authorities (MWPAs) in England of carrying out their existing function of monitoring mineral and landfill permissions according to best practice procedures. These costs are not recovered in planning application fees. The proposed new regime will affect operators of mineral extraction and landfill sites.

7.2 The extraction of minerals and the deposition of waste in landfills are a continuing process of development from the opening of the site to its final closure, restoration and the completion of any required after-care of the restored land. From beginning to end such development is subject to planning conditions. Monitoring, and if necessary enforcement, of those conditions is important to ensure that they deliver the necessary environmental protection and standards that were applied in order to secure planning permission. In many cases, without the application of conditions such development could not be made environmentally acceptable and would therefore not have been permitted. Long-term monitoring of compliance with conditions is therefore central to minerals and landfill development in a way that does not apply to the same degree to other forms of development. MWPAs have long expressed the view that the standard fees for initial planning applications do not cover this long-term commitment, and that the lack of resources meant that monitoring was not being consistently carried out to the degree to provide proper assurance of compliance. The 1998 Comprehensive Spending Review (CSR98) considered local government's representations on this matter and concluded that MWPAs should be empowered to recover the costs of monitoring and enforcing planning conditions, to ensure that they have sufficient resources to carry out this aspect of their work properly:

" ... when a legislative opportunity arises, the scope of charges should be extended to allow mineral planning authorities to recover the costs of monitoring and enforcing planning conditions."

7.3 Following CSR(98), two research studies "*Mineral Planning Authority Fees for Monitoring Mineral and Landfill Permissions*": April 2000: Arup/Bailey consultants and a report with an identical title by GHK/LUC consultants dated August 2004 concluded that there were inadequacies with regard to operator performance in

complying with conditions attached to mineral or landfill permissions and current levels of monitoring of these conditions.

7.4 Many of the problems rest with a few operators who do not have the same high standards as the majority, and with those carrying out operations, mostly waste disposal, without a planning permission. The latter are outside the scope of this proposal but MWPAs have powers, under Part VII of the Town and Country Planning Act 1990, to take enforcement action as necessary. There are also problems with properly permitted operations which sometimes fail to comply with all of the conditions in their permissions. This can lead to environmental problems and adverse impacts on the environment and local community. The Arup/Bailey study considered that the current levels of funding of MWPAs were insufficient to monitor all sites to an adequate level to avoid such problems. Both this and the 2004 study found that current practice fell short of best practice (as assessed by the Planning Officers' Society) by some considerable margin.

7.5 The initial research and dissemination seminars for stakeholders to discuss the issues raised by the consultants in 2000, followed by public consultation in Autumn 2001, secured a good deal of agreement on the scope and content of a fees regime. But it left questions about the validity of the estimated costs to authorities of monitoring. As a result of the validation of local authority costs in 2004, the proposed fee per site per visit was significantly lower than had been proposed in 2001 (£267, compared to £406 at 2003/04 prices). At 2006/07 prices the proposed fee per visit to an active site would be £288. Each active site would be subject to a maximum of 8 visits per year for which a fee is payable. Guidance (see paragraph 7.10 below) will be available to identify the factors that MWPAs should take into account in deciding the number of visits. Generally, where active sites are compliant with planning conditions there should be no more than 4 visits per year. A lower fee of £96 is proposed for a visit to an inactive site to establish that the status of the site had not changed. An inactive site, which should take much less time to monitor than an active site, would be subject to only one chargeable visit per year. In launching this fees regime the Government intends to issue a commitment to reviewing its practical application once it has been established and has bedded in, no later than 2011.

7.6 A further consultation paper was issued in June 2005. This fulfilled a commitment in the earlier consultation to seek views on the detail of a proposed new fee regime. It included information from both research studies, dissemination seminars and the responses to the 2001 consultation. The 2005 consultation paper invited comments on all aspects of the proposals, including a partial RIA, and sought specific comments on:

- whether fees should be charged at a national rate per visit;
- what should be defined as a chargeable visit;
- whether the visit should be charged according to the attendance of one individual or a group of local authority officers;
- the number of visits that should be made annually;
- what constitutes a site;
- what level of monitoring should be applied to dormant/ inactive sites; and
- liability to pay.

7.7 There were 49 responses to the 2005 consultation (which ran from 9 June 2005 to 1 September 2005). 25 were from local authorities and one of their associations, 8

from minerals and waste industry associations and federations, representing a high proportion of the industry's operators, 7 from individual operators and 9 'others'. In addition, meetings were held with representatives of the minerals and waste industry in September and October 2005 to discuss the proposals in the consultation paper and their potential impact on small businesses.

7.8 The responses from within the different groups of consultees were very similar to each other, though there were some differences of opinion in the detail and handling of the proposed fees system. MWPAs were in favour of the introduction of a fees regime. Generally this was along the lines proposed by ODPM. Equally, the industry was unequivocal in their objection to the implementation of any monitoring fee regime. Many industry respondents felt that they were already being charged (indirectly) for this service through existing taxation, including the Landfill Tax and the Aggregates Levy.

7.9 Notwithstanding the industry's formal objections to the principle, almost all industry respondents commented on the detailed proposals in the paper. In general the view of both the industry and MWPAs was that the ODPM had got the proposed structure of the proposed regime about right, including the proposed level of fee and its scope. However, the industry wanted accreditation of sites (under environmental quality assurance schemes such as EMAS or ISO14001) to be taken into account when determining number of visits. Many industry respondents did not want justified complaints to form part of the fees regime. In return for fees, the industry expected an improved, transparent and consistent monitoring service. They indicated that would be looking for value for money from the fees and expect fully trained and qualified planning staff to carry out the monitoring work.

7.10 A guidance note, which has been prepared in consultation with representatives of the Planning Officers' Society and the minerals and waste industries, will be available to help implement the new fee regime and in explaining the scope of the new regime and the Government's expectations of how it will operate according to best practice principles. The guidance will be issued in draft form to all MWPAs and mineral and landfill industry respondents to the 2005 consultation exercise in order to aid implementation of the new regime. Subject to the progress of the Regulations through Parliament and to Ministerial approval, the guidance will be finalised when the Regulations come into effect. A copy of the final version will then be placed on the ODPM website and sent to MWPAs in England and the industry's trade associations.

7.11 The Regulations define "active site" as a mining site or landfill site, or a site which is partly a mining site and partly a landfill site, where development to which the relevant mineral permission or landfill permission relates is being carried out to any substantial extent; or other works to which a condition attached to such permission are being carried out to any substantial extent. An "inactive site" is a site which is not an active one. "Substantial extent" is not defined but is a concept used in the definition of "dormant site" in Schedule 13 to the Environment Act 1995 (which provides for the initial review of the conditions attached to old mineral planning permissions and provides that dormant sites cannot re-start until new conditions have been attached by the local planning authority). A dormant site would be an inactive site under these Regulations. The concept is also used in Schedule 9 to the Town and Country Planning Act 1990 (see paragraph 3(2), 5(3)) which gives the authority power to prohibit (without the payment of compensation) the resumption of mineral working

where it appears to the authority that works have permanently ceased. The authority is entitled to assume that works have ceased if no works have occurred "to any substantial extent" for two years. In neither provision are the words defined, leaving it as a question of fact to be determined in any particular case. In the light of its use in the 1990 and 1995 Acts, the ODPM considered it is appropriate to use the expression "substantial extent" in these Regulations, without further definition.

8. Impact

A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

Jon Vickers at the Office of the Deputy Prime Minister Tel: 0207 944 8138 or e-mail: jon.vickers@odpm.gsi.gov.uk can answer any queries regarding the instrument.

FINAL REGULATORY IMPACT ASSESSMENT

MINERAL PLANNING AUTHORITY MONITORING OF MINING AND LANDFILL SITES: IMPLEMENTATION OF A NEW FEES REGIME IN ENGLAND

1 Purpose and intended effect of measure

(i) The objective

1.1 The objective of the proposed new charging regime is to recover the costs to minerals and waste planning authorities in England (referred to below as mpas for simplicity) of carrying out their existing monitoring function of mineral and landfill permissions according to best practice procedures. These costs are not recovered in the planning application fees. The proposed new regime will affect operators of mineral extraction and landfill sites and also operators of other waste activities (such as waste transfer stations, recycling and composting) where these are located on a mineral extraction site or landfill site and are an integral part of the operation of the site, because they will be paying for a regulatory activity which currently costs them nothing.

1.2 Mpas will be able to charge for a regulatory activity for which many authorities do not currently have sufficient resources to achieve best practice (as recommended by the Planning Officers' Society). The proposed fees will be available to offset expenditure currently allocated to monitoring and enforcement from mpas' general revenue.

The background

1.3 Monitoring, and if necessary enforcement, of the complex and technical planning conditions that govern both mineral and landfill waste sites is important to ensure high

environmental standards and to maintain the credibility of the planning system. Mpas have long expressed the view that the standard fees for initial planning applications do not cover this long-term monitoring and enforcement commitment. The 1998 Comprehensive Spending Review (CSR) therefore concluded that mpas should be empowered to recover the costs of monitoring and enforcing planning conditions to ensure that they have sufficient resources to carry out this aspect of their work properly:

" when a legislative opportunity arises, the scope of charges should be extended to allow mineral planning authorities to recover the costs of monitoring and enforcing planning conditions."

- 1.4 Under section 303 of the Town and Country Planning Act 1990 (the 1990 Act), before amendment by section 53 of the Planning and Compulsory Purchase Act 2004 (the 2004 Act), the First Secretary of State was able, by regulations, to make provision for the payment of a fee to a local planning authority in respect of an application made to them under the Planning Acts. The fee for a planning application did not cover the monitoring of the development and the 1990 legislation does not provide for such a fee to be set. This is in contrast to the Building Regulation regime where a separate fee is paid for monitoring. Similarly, the Environment Agency charges a fee for monitoring compliance with a waste permit.
- 1.5 Section 53 of the 2004 Act amended and widened the scope of section 303 of the 1990 Act. This now enables the First Secretary of State to provide for the payment of both charges and fees relating to planning applications and other functions of local planning authorities.
- 1.6 In order to make provision for mpas to charge fees for their monitoring function, the First Secretary of State will have to make regulations under section 303 of the 1990 Act (as amended).
- 1.7 The proposals will affect mpas in England only. A separate and similar regime is likely to be implemented shortly in Wales and the Scottish Executive, who are aware of the proposals, will consider taking similar action.

Rationale for government intervention

- 1.8 Two research studies ("Mineral Planning Authority Fees for Monitoring Mineral and Landfill Permissions": April 2000: Arup/Bailey and a report with an identical title by GHK/LUC dated August 2004-see paragraph 2.2 below) concluded that there were inadequacies with regard to operator performance in complying with conditions attached to mineral or landfill permissions and current levels of monitoring of these conditions.
- 1.9 Many of the problems rest with a few operators who do not have the same high standards as the majority and with those carrying out operations, mostly waste disposal, without a planning permission. The latter are outside the scope of this proposal but there are powers available to mpas to take enforcement action wherever possible against those operating without the necessary permission. However, there are also problems with properly permitted operations where operators sometimes fail to comply with all of the conditions in their permissions and this can lead to environmental problems and adverse impacts on the local community. Arup/Bailey considered that the current levels

of funding of mpas were insufficient to monitor all sites to an adequate level to avoid such problems developing. Both studies found that current practice fell short of best practice (as assessed by the Planning Officers' Society) by some considerable margin.

2 Consultation

Within Government

2.1 Ministerial colleagues in other Government departments were notified of the two consultation exercises and the research which preceded them (see next paragraph)

Public consultation

2.2 Following the outcome of the CSR, Arup/Bailey was commissioned in 1999 to assess the costs of monitoring both mineral extraction sites and the infilling of mineral workings with waste. Following the report of that research in April 2000, and a programme of dissemination seminars in 2000, the (then) Department of the Environment, Transport and the Regions held a public consultation exercise in September 2001 on options for the scope and content of a new fee regime. In the light of reservations expressed by some respondents about the validity of the estimated costs of site visits, ODPM commissioned further research in April 2004 from GHK/LUC on mineral and waste planning authorities' (mwpas) monitoring costs. That research assessed the costs of monitoring mineral extraction sites, landfill sites not specifically associated with mineral extraction sites (which similarly can be used for many years) and other waste activities located on a mineral extraction or landfill site which are an integral part of the operation of the site.

2.3 A further consultation paper was issued in June 2005, which fulfilled a commitment in the earlier consultation exercise to seek views on the detail of a proposed new fee regime and included information from both research studies, the dissemination seminars and the responses to the 2001 consultation exercise. The consultation paper invited comments on all aspects of the proposals, including the partial RIA (at Annex F of the paper) but sought specific comments on:

- whether fees should be charged at a national rate per visit;
- what should be defined as a chargeable visit;
- whether the visit should be charged according to the attendance of one individual or a group of local authority officers;
- the number of visits that should be made annually;
- what constitutes a site;
- what level of monitoring should be applied to dormant/ inactive sites; and
- liability to pay.

A summary of the responses to the consultation are on the ODPM's website at: www.odpm.gov.uk

2.4 There were relatively few written comments on the partial RIA. However, representatives of the minerals and waste industry felt that the industry was already being charged for the perceived environmental benefits described in the consultation paper to result from a best practice level of monitoring through the unified business rate, Aggregates Levy and Landfill Tax.

- 2.5 In addition, meetings were held with representatives of the minerals and waste industry in September and October 2005 to discuss the proposals in the consultation paper and their potential impact on small businesses. Comments made in writing and during those meetings have been taken into account in producing this final RIA. In particular, industry representatives said that, in assessing the impact of the proposals, there was a need to distinguish between, first, small businesses on small sites which might, subject to the type of development on the site, take less time to monitor and secondly, businesses which were small in terms of turnover.
- 2.6 Overall, while the industry maintained its ‘in principle’ objection to the proposed fee regime, the consultation exercise revealed broad agreement from all consultees on the proposed structure of the regime, though the industry wanted accreditation to be taken into account by authorities when determining the number of visits and many industry respondents did not want justified complaints to form part of the fees regime. On the basis of the written comments and views expressed during the meetings, we have retained the options in the partial RIA and taken account of the various comments and views in the consideration of each of them which follows.

3 Options

Option 1: Do nothing

- 3.1 Under this option, mpas would continue monitoring at the same level as at present and without making a charge.

Option 2: Self-regulation by operators with EMAS/ISO14001 accreditation

- 3.2 This option would remove, to some extent but not all, responsibility of mpas to carry out the monitoring function in respect of sites with operators that have a good record of compliance with planning conditions and are accredited. Mpas would need to continue to monitor unaccredited sites and those with poorer performance.

Option 3: To establish a new fee-charging regime based on an average charge per visit, with the mpa determining frequency

- 3.3 This option would fulfil the CSR commitment; enable mpas to monitor sites to a level of best practice; and make operators, who benefit from permissions, pay the average cost of the regulatory function. The option was identified as the clear favourite from a range of options considered during a consultation exercise in 2001 and was the recommended option in the consultation paper issued in June 2005.

Option 3A: A combination of a standard charge per site with charges per visit.

- 3.4 This is a hybrid of Option 3 and another option considered by Arup/Bailey, which was consulted upon in 2001 and 2005. This would allow the possibility of covering the basic costs of a minimum level of mpa monitoring with the scope to cover additional visits depending on site circumstances. The hybrid option received some support from mpas and is therefore, for the purposes of this RIA, being considered alongside Option 3.

Option 4: To establish a new fee-charging regime based on local or regional costs

- 3.5 This option is similar to option 3 but would, additionally, enable individual mpas to set charges on a local or regional basis, to reflect the actual costs that apply in different parts of the country and the actual time taken to inspect individual sites.

Rejected options

- 3.6 A considerable number of other options were considered at various stages in the development of proposals for the new fees regime but were rejected for further consideration. These are set out in Annex A.

4 Benefits

Option 1: Do nothing

Economic

- 4.1 The only benefit of this option would be to operators, who would continue to be regulated without having to pay the cost of site visits.

Environmental

- 4.2 The present inadequate levels of monitoring would continue with unacceptable environmental impact in some cases.

Social

- 4.3 There would be no benefits as the present variable levels of monitoring would continue with unacceptable social impact in some cases.

Option 2: Self-regulation by operators with EMAS/ISO14001 accreditation

Economic

- 4.4 Under this option operators with a proven track record of compliance with planning conditions and/or EMAS or ISO14001 accreditation would be entrusted with self-regulation. Mpas would need to carry out occasional quality control checks on these sites, and would need to respond to complaints, but the burden of the monitoring function would be lifted to some extent from local authorities who could then devote more time and effort to monitoring and enforcement of unaccredited operations and poorer performers.

- 4.5 There would be financial implications for those operators entrusted with self-regulation, as they would need to establish transparent systems for monitoring their performance, which would need to be available to mpas for checking as required. Sites run by unaccredited operators would need to be monitored by mpas and those run by poorer performers would be subjected to a higher level of monitoring but the costs for this would continue to reside with local authorities.

- 4.6 The option would be of benefit to reliable and accredited operators, who would not need to arrange a schedule of visits with the mpas and would not need to pay the proposed fees.

- 4.7 However, there is insufficient evidence that EMAS and ISO14001 accreditation is a clear guide to operational effectiveness, expressed as conformity with planning conditions. The option would also be complex to administer on a part self-regulation, part mpa-monitoring basis. The consultation responses have confirmed that accreditation could, however, be one of the factors that mpas take into consideration when determining the number of site visits under option 3.

Environmental

- 4.8 Mpas may be able to concentrate on monitoring unaccredited sites and those with poorer performing operators with additional resources available from not monitoring accredited sites. But there is a risk that the quality of self-regulating operator performance could gradually decline without regular independent mpa monitoring, which could result in unacceptable environmental impacts in some cases.

Social

- 4.9 Mpas may be able to concentrate on monitoring unaccredited sites and those with poorer performing operators with additional resources available from not monitoring accredited sites. But there is a risk that the quality of self-regulating operator performance could gradually decline without regular independent mpa monitoring, which could result in unacceptable social impacts in some cases.

Option 3: To establish a new fee-charging regime based on an average charge per visit, with the mpa determining frequency

Economic

- 4.10 The benefits of this option are that it would place the financial burden of this regulatory function on operators in support of the 'polluter pays' principle. Although industry representatives have expressed the view that mineral and landfill waste operators are already paying for environmental improvements to their operations through, for example, the Landfill Tax and Aggregates Levy, these charges were not introduced to encourage environmental improvements at mineral and waste sites, which is the objective of monitoring to a best practice level the continuous and long running development taking place at these sites. The option would ensure that mpas were able to recover the costs of a best practice level of monitoring in their areas and would bring about local authority savings of £1.61m (see calculation at paragraph 5.7 below), which could be used for other purposes.
- 4.11 Poorer performing operators would need more monitoring visits to ensure full compliance with conditions. Consequently a system that charged for each site visit would encourage poorer performers to improve their performance, thus reducing the number of visits and total costs, and freeing up more mpa time to devote to other issues (such as taking enforcement action against unpermitted operators). A regime based on a nationally-set fee for each visit calculated from average mpa costs has the merit of simplicity and equity for large companies operating in different parts of England.

Environmental

- 4.12 Monitoring to a best practice level would lead to an improvement in compliance with planning permissions, particularly amongst currently poorer performing operators. This

should ensure that the unacceptable environmental impact of minerals and waste permissions would be minimised.

Social

- 4.13 Monitoring to a best practice level would lead to an improvement in compliance with planning permissions, particularly amongst currently poorer performing operators. This should ensure that the unacceptable social impact of minerals and waste permissions would be minimised.

Option 3A: A combination of a standard charge per site with charges per visit.

Economic

- 4.14 This was a combination of two options which formed part of the 2001 consultation. It would involve calculating a standard site charge to apply to all sites which would cover the costs of a minimum level of mpa monitoring (1 or 2 visits per annum). There would also be the scope for allowing charges to cover additional visits determined as necessary by the mpa (Option 3 above).
- 4.15 The benefits to mpas are that it would be relatively easy to calculate and administer and, for the operators the charge, whilst reflecting the monitoring requirements of a particular site, would not be as great as those in Option 3. The disadvantage is that the costs would cover a minimum, rather than best practice, level of monitoring. Whilst there was some support for this hybrid option during the 2001 consultation, this was dwarfed by the support for Option 3 above. Option 3 was supported in the 2005 consultation.

Environmental

- 4.16 There would be no environmental benefits. Since this option envisaged a minimum level of mpa monitoring (ie less than half of that recommended by the Planning Officers' Society) monitoring would be likely to be no more effective than at present (and probably less so). This would be likely to lead to an increase in unacceptable environmental impact in some cases.

Social

- 4.17 For the reasons outlined in paragraph 4.16, this option would be likely also to lead to an increase in unacceptable social impact in some cases.

Option 4: To establish a new fee-charging regime based on local or regional costs

Economic

- 4.18 This option would enable mpas to set charges according to actual time spent at each site and actual local or regional costs, rather than applying charges that were nationally-set averages of time and cost. It would benefit those operators located in areas of the country where the actual costs of the monitoring function were lower than the current averages. Conversely, operators in parts of the country where mpa costs are higher would be likely to pay more than the proposed national average charge. This option

could achieve full cost recovery of the mpa monitoring function. The main problem with this option is that the accounting systems of local authorities are currently generally inadequate for this to be a realistic option at present, but it may become so in time.

- 4.19 A local or regional charge would need to be kept under review and its administration would be likely to be more burdensome to individual mpas than a centrally-determined national average charge.

Environmental

- 4.20 This option assumes that monitoring would increase to a level of best practice and should thus lead to an improvement in compliance with planning permissions, particularly amongst poorer performing operators. This should ensure that the unacceptable environmental impact of minerals and waste permissions would be minimised.

Social

- 4.21 Operating at a level of best practice should ensure that the unacceptable social impact of minerals and waste permissions would be minimised.

5 Costs

Option 1: Do nothing

Economic

- 5.1 The 'do nothing' option would mean that the costs of the current, variable, level of monitoring would continue to be met out of general local authority revenue. There might be a negative impact in terms of discouraging mpas that had been expecting a fees regime to be established and possibly a knock-on effect on performance. Many are inadequately resourced to allow them to perform to a satisfactory level and may find what would be a clear reversal of a long standing Government commitment demoralising.

Environmental

- 5.2 Mpas would continue to monitor at the same variable and often less than best practice inadequate level as at present. This could lead to an increase in the proportion of operators failing to comply with environmental planning conditions and a commensurate increase in environmental harm. Certainly, there would be no assurance of regular liaison between authorities and operators and so no additional incentive to operators to raise environmental standards.

Social

- 5.3 The continuing variable and less than best practice level of monitoring and the failure of certain operators to raise environmental standards and sometimes comply with planning conditions would mean continuing deterioration to the amenity of local communities.

Option 2: Self-regulation by operators with EMAS/ISO14001 accreditation

Economic

- 5.4 Under this option, mpas would continue to fund the cost of monitoring. They would need to carry out occasional quality control checks on accredited operators, and would need to respond to complaints concerning sites where operators are accredited, but the burden of the monitoring function would be lifted to some extent, resulting in (unquantifiable) financial and time savings for local authorities. This would allow local authorities to devote more time and effort to monitoring of unaccredited operations and monitoring and enforcement of poorer performing operators. There would be some costs to operators arising from them carrying out the monitoring function previously performed by mpas.

Environmental

- 5.5 Greater self regulation by accredited operators with less independent scrutiny by mpas carries a risk of deteriorating environmental standards although this would be offset by mpas focussing their effort on unaccredited and poorer performing sites and this should lead to improvements in the environmental standards at these sites.

Social

- 5.6 Similarly, greater self regulation by accredited operators with less independent scrutiny by mpas carries a risk of deterioration in local amenity though again, there should be an improvement to the amenity of other local communities as a result of mpas focusing more monitoring effort on unaccredited and poorer performing sites.

Option 3: To establish a new fee-charging regime based on an average charge per visit, with the mpa determining frequency

Economic

- 5.7 GHK/LUC estimate that the number of sites in England subject to monitoring is approximately 2,500. The cost of a best practice approach of monitoring these sites would be just over £1,000 per site per annum, making a total cost of around £2.7m per annum (at 2003/4 prices). Under this option, mpas would also be able to recover the costs of monitoring sites to a best practice level from operators for the first time. This would have the following implications:

- i. current local authority spending of £1.61m (£239 (which is the GHK/LUC estimate of 2003/04 costs of site visits, including travel costs) x 2500 sites x 2.7 (which is the current average frequency of annual monitoring visits) could be used for other purposes such as improving training for mpa inspection officers;
- ii. there would be a financial burden on the operators of approximately 2,500 sites, which did not previously exist, amounting to £2.7m per annum (just over £1,000 per site);
- iii. nationally prescribed fees based on average costs, irrespective of the size and type of site, would place a heavier burden on SMEs (see paragraph 7.2 below);
- iv. there would be self-imposed pressure on operators to improve their performance (which would carry costs) in order to reduce the number of visits to sites and thereby reduce the monitoring costs;

- v. the reduction in visits postulated in iv) would facilitate more time for mpas to devote to other activities.

Environmental

- 5.8 This option would enable mpas to monitor sites according to best practice, encouraging more consistent compliance by operators with environmental conditions at less cost to the environment and enabling greater attention on poorer performing operators.

Social

- 5.9 The environmental improvements described in paragraph 5.8 above would lead to a reduction in social costs because of improvements to the amenity of local communities.

Option 3A: A combination of a standard charge per site with charges per visit.

Economic

- 5.10 On the basis that this option would cover the basic costs of a minimum level of mpa monitoring (1 or 2 visits per annum), the standard average cost per site would be a maximum of £478 (2 x £239 - which is the GHK/LUC estimate of the 2003/04 costs of site visits, including travel costs) and £1.2m per annum nationally. Whilst an additional charge could be made in respect of sites requiring more monitoring under this option, this would not allow full recovery of the cost of monitoring to a best practice standard. In addition, there would be greater costs to mpas in charging for visits which were additional to the standard site charge.

Environmental

- 5.11 This option would enable mpas to charge for the monitoring of sites at little more than the current level. There would be some improvement in compliance with environmental conditions but not as much as Option 3.

Social

- 5.12 There would be some reduction in social costs arising from improvements to the amenity of local communities adjacent to poorer performing sites, but little improvement elsewhere.

Option 4: To establish a new fee-charging regime based on local or regional costs

Economic

- 5.13 This option would have similar overall economic effects to those applying to Option 3, in that both options would be based on a charging regime. The difference with this option would be that a different level of charges would be applied to reflect local or regional variations in costs and time spent on each visit. The differences would depend on a number of factors, such as salary differentials, diversity of type and size of mineral/waste sites in the area and proximity of sites. The individual cost differences would be unquantifiable without mounting a major exercise but should amount to

£2.7m overall (ie the GHK/LUC estimate of the average cost of a best practice approach to monitoring sites in England).

Environmental

- 5.14 This option would enable mpas to monitor sites according to best practice, encouraging more consistent compliance by operators with environmental conditions at less cost to the environment and enabling greater attention on poorer performing operators.

Social

- 5.15 The environmental improvements described in paragraph 5.14 above would lead to a reduction in social costs because of improvements to the amenity of local communities.

6 Issues of equity and fairness

- 6.1 In sections 6-10 which follow, Option 1 "Do nothing" has not been further explored, as it does not achieve the objective, but forms the baseline from which other impacts are measured.

Option 2: Self-regulation by operators with EMAS/ISO14001 accreditation

- 6.2 This option would allow operators, with a proven track record of compliance with planning conditions and/or EMAS or ISO14001 accreditation, to self-regulate, thus removing them from close mpa monitoring, although there would be a residual requirement for quality control checks. Unaccredited operations would still need to be monitored to a best practice level and less compliant operators could be subjected to closer scrutiny by mpas, with the extra resources which would then be at their disposal. . This option would only be acceptable and equitable if all parties, including mpas and local communities, have confidence that accreditation was an acceptable substitute for independent monitoring to a best practice level by mpas and that does not seem to be the case.
- 6.3 The mineral and waste industry's view is that ISO14001 and EMAS accreditation are good measures of performance. Accreditation demonstrates the commitment of the operator to a high standard of performance and should be taken into account. Those with accreditation are audited both internally and externally and any non-compliance with planning conditions are flagged up. Mpas are more sceptical about the value of accreditation of management systems as a proxy for monitoring compliance with planning permissions. They feel that there is insufficient evidence that accreditation equates with operational effectiveness and compliance with planning conditions.
- 6.4 Under this option, the cost of quality checks at accredited sites and the cost of monitoring at unaccredited sites would remain with mpas, so the polluter would not pay. This is clearly inequitable in the light of current environmental policy and the CSR commitment.
- 6.5 There are no issues of equity and fairness arising in respect of rural areas or race equality. However the option may have an impact on health and well-being because there is no guarantee that self-regulation will ensure best practice.

Option 3: To establish a new fee-charging regime based on an average charge per visit, with the mpa determining frequency

- 6.6 This proposal would transfer the cost of monitoring compliance with planning conditions from the local authority to the operator. Where the operator could demonstrate, through continued satisfactory compliance, that he was discharging his responsibilities in a reasonable manner, the local authority would need to visit the site less often than those of less reliable operators and the costs would reduce in consequence.
- 6.7 All conditions attached to a minerals or waste permission should be complied with in order to avoid unacceptable environmental or social impacts. Poorer performing operators would therefore receive more visits to ensure compliance and thereby incur more costs. A flat rate of charge, irrespective of the size of the operation and the level of turnover of the company, would impact more on SMEs. In the longer term, it may be possible to move to a locally-based system (Option 4) where fee levels reflect mpas' actual costs in monitoring individual sites.
- 6.8 The proposed flat rate charge based on average costs, which would be administratively easier to operate than a system based on actual costs, would impact slightly differently on different types of operation. For example, smaller sites may take less time to monitor and more frequent monitoring could be needed, for example, for sand and gravel operations where the pace of change is often more rapid than at a hard rock quarry. Under the proposal, both the rationale for a flat rate charge based on average costs and its level would be kept under review (see section 10).
- 6.9 There are no issues of equity and fairness arising in respect of rural areas or race equality. However the option is likely to have an impact on health and well-being because best practice monitoring will help to ensure full compliance with planning conditions. This, in turn, should ensure that polluting emissions, such as dust and noise, are minimised.

Option 3A: Standard Site Charge plus Site visit Charge

- 6.10 Under this option, the cost of monitoring compliance with conditions would be transferred to the polluter (the operator) from the mpa. But it would not cover the full cost of monitoring to a best practice level, which could restrict the extent to which mpas could focus on poorer performers and result in an inadequate service for the general public. The standard charge would mean that operators would be expected to pay the same irrespective of the size, complexity and pace of change at their sites.
- 6.11 There are no issues of equity and fairness arising in respect of rural areas or race equality. Health and well-being is unlikely to improve because the overall level of monitoring is unlikely to increase.

Option 4: To establish a new fee-charging regime based on local or regional costs

- 6.12 This option, based on actual costs rather than an average charge applying to all, would be fair and equitable. It would ensure that operators complying with planning conditions would receive less visits and charges would reflect local circumstances. SME operators of smaller sites would be likely to benefit because shorter (and therefore cheaper) visits

tend to be associated with smaller sites. The option would, however, place an increased burden on local authorities, who would be required to have more detailed management systems including timesheets, identifying the actual costs of monitoring. As has been previously mentioned, local authorities' accounting systems are currently generally inadequate for this to be a realistic option at present.

- 6.13 There are no issues of equity and fairness arising in respect of rural areas or race equality. However the option is likely to have an impact on health and well-being because best practice monitoring will help to ensure full compliance with planning conditions. This, in turn, should ensure that polluting emissions, such as dust and noise, are minimised.

7 Consultation with small business: the Small Firms' Impact Test

- 7.1 Meetings were held with members of the minerals and waste industry representing a high proportion of the industry's smaller operators to consider the impact of the proposed regime. The meetings explored the various options to assess what effect they had on small businesses (see also Annex B for details).
- 7.2 The general outcome was that operators with tighter margins and lower turnover would find the burden of payment heavier than would other operators. This burden would be compounded if the business concerned were carrying out operations on small sites that were quicker and easier to monitor than the average. The industry suggested that it would be fairer to charge such operators at quarter day increments to reflect the sites' complexity.
- 7.3 We confirmed that we are committed to reviewing the new fee regime no later than 2011. Included in the review will be a consideration of the impact the regime has had on small firms with the possibility of moving to a regime which reflected actual costs rather than an average nationally-set charge per visit. Currently, the weight of evidence and opinion as expressed in two research studies and two consultation exercises is in favour of a nationally-set charge. This would be simpler to implement than other options and would avoid regional or site-by-site variations in charging that would be hard for mpas currently to justify. A set charge would also be fairer on smaller firms than self regulation by operators (option 2) which the industry told us would be inequitable as small firms are less likely to become accredited and, therefore, more likely to be judged as 'poor' performers and subject to a higher level of monitoring.
- 7.4 However, it would only be possible to review the regime when local authority management cost systems would enable mineral planning authorities to demonstrate transparency in the calculation of the charge in terms of both time spent during the site visit and the unit costs of staff undertaking the visit. In the meantime, providing operators comply with their planning conditions, it would be possible for the number of visits, and therefore the overall costs, to be maintained.
- 7.5 We have consulted the Small Business Service and they are content with our approach.

8 Competition assessment

- 8.1 All options are in respect of England only, although the Scottish Executive and the Welsh Assembly Government are currently considering the introduction of fees regimes.

- 8.2 The minerals extraction industry contains a wide range of operators of various sizes. There is a relatively small number of large companies (about 45) and around 965 SMEs (see paragraph 7.1). Turnover can vary considerably, depending on the type of mineral that is being extracted, the size of the site and the amount of winnable mineral and the rate of extraction.
- 8.3 A competition filter test has been carried out, which indicated that the proposal was likely to have little or no effect on competition.

Option 2: Self-regulation by operators with EMAS/ISO14001 accreditation

- 8.4 Under this option, mpas would continue to fund the cost of monitoring but operators with a proven track record of compliance with planning conditions and/or EMAS/ISO 14001 accreditation would be able to undertake their own monitoring. This would be unlikely to impact significantly on the competitiveness of operators in England, compared to other operators in the rest of the UK.

Option 3: To establish a new fee-charging regime based on an average charge per visit, with the mpa determining frequency

- 8.5 Under this proposal, all operators within England would be equally subject to the proposed flat-rate charge. Given the relatively small scale of the proposed charge per visit (£288 inclusive of a travel cost supplement based on average travel costs at 2006/07 prices) and the scope for minimising costs through a reduction in scheduled site visits as a result of compliance with the planning conditions, we would not expect the proposal to have a significantly adverse impact on the competitiveness of operators in England compared to other operators in the rest of the UK. Moreover, similar fee regimes are proposed to be introduced in Wales and, subject to the views of the Scottish Parliament on obtaining the necessary powers, in Scotland.

Option 3A: Standard Site Charge plus Site visit Charge

- 8.6 This option reflects a minimum level of monitoring for operators that comply with planning conditions. The implications of the option on the competitiveness of such operators would, as with option 3, not be significant .

Option 4: To establish a new fee-charging regime based on local or regional costs

- 8.7 This option would enable mpas to charge operators the actual costs of monitoring and to reflect local or regional variations. It could, in principle, and given equal compliance with planning conditions by all operators, enable operators of smaller sites to become very marginally more competitive than larger operators in the UK.

9 Enforcement and Sanctions

- 9.1 Each of the options would be dependent on the mpa having a right of entry to land in order to carry out the monitoring function. They would be able to rely on the powers in section 196A of the Town and Country Planning Act 1990 to achieve this end.

- 9.2 Enforcement of planning conditions would continue as at present, under planning legislation. In the event of serious breaches of conditions, it would be possible for the mpa to suspend operations

Option 2: Self-regulation by operators with EMAS/ISO14001 accreditation

- 9.3 Whilst operators with a proven track record of compliance with planning conditions and/or EMAS/ISO 14001 accreditation would be able to monitor their own performance, mpas would still need to carry out quality control checks and respond to complaints. It is likely that operators would be motivated to respond positively to demands to comply with conditions, where there had been breaches, because of the desire to retain self-regulation. The easing of the monitoring burden would allow mpas to focus on unaccredited operators and poorer performers.

Option 3: To establish a new fee-charging regime based on an average charge per visit, with the mpa determining frequency

- 9.4 During the consultation, mpas called for sanctions to be applied to operators who fail to pay their monitoring fees under this option. They suggested that this could be in the form of either revoking or suspending an operator's planning permission.
- 9.5 The ODPM consider that the relatively small scale of the proposed flat-rate charge should result in a high rate of compliance with the new regime. However, in the event of non-payment by the operator, recovery would be expected to be pursued by the mpa as part of its day-to-day debt recovery operations. The position on non-payment will be reviewed together with other aspects of the new regime, in the light of experience.
- 9.6 Any disagreements between mpas and operators about the proposed number of monitoring visits each year could be resolved by the mpa's internal complaints mechanism or, by the Local Government Ombudsman and ultimately, through judicial review.

Option 3A: Standard Site Charge plus Site visit Charge

- 9.7 The same enforcement procedures would apply to this option as to those for Option 3 above.

Option 4: To establish a new fee-charging regime based on local or regional costs

- 9.8 The same enforcement procedures would apply to this option as to those for Option 3 above. Fees would be based on actual costs, rather than an average, which has 'winners' and 'losers'. Mpas would need to justify their costs.

10 Monitoring and review

- 10.1 Charging for monitoring of mineral and landfill permissions is a new concept within the planning system and ODPM recognises that, whichever option is chosen, there would be a need to monitor the progress of the regime, to ensure that it operated effectively and to see if it needed to be improved in any way. Major indications of the effectiveness

of any of the options are the level of compliance with planning permissions and the reduction in the number of complaints which prove to be justified.

Option 2: Self-regulation by operators with EMAS/ISO14001 accreditation

10.2 This option would additionally involve mpas in carrying out quality assurance checks on self-regulating operators to ensure continued compliance with planning conditions. It would also be necessary to consider any complaints about the sites .

Option 3: To establish a new fee-charging regime based on an average charge per visit, with the mpa determining frequency

10.3 The following issues would also be a matter for further investigation if this option were selected:

- i. the appropriateness of the charge per site visit and whether it should be raised from time to time to take account of inflation;
- ii. whether a simple approach based on a national average fee per site continued to be appropriate or whether local authority management costs had developed sufficiently to introduce a local or regional, rather than national, charging approach;
- iii. the impact of the new regime on SMEs, compared with larger operators, and the scope for introducing charging thresholds;
- iv. the level of fee non-payment by operators.

Option 3A: Standard Site Charge plus Site visit Charge

10.4 The same issues as those for Option 3 above would need to be investigated if this option were selected.

Option 4: To establish a new fee-charging regime based on local or regional costs

10.5 The following issues would also be a matter for further investigation if this option were selected:

- i. whether charges should be raised from time to time to take account of inflation;
- ii. the impact of the new regime on SMEs, compared with larger and nationally operating businesses, and the scope for introducing charging thresholds;
- iii. consistency of approach between mpas for calculating actual costs;
- iv. the level of fee non-payment by operators.

10.6 The prospects for extending the regime to waste activities not located on a mineral extraction or landfill site would need to be considered in respect of each of the above options.

11 Implementation and delivery plan

11.1 Subject to Ministerial and Parliamentary approval, the Regulations will come into force on 6 April 2006 implementing the changes for monitoring visits according to option 3. Mpas and industry representatives will be sent a draft guidance note in February 2006 to help them prepare for the implementation of the regime. A copy of the final version of the guidance note with any amendments will then be placed on the ODPM website and

re-sent to mpas and the industry. Mpas will be expected to provide operators with written site monitoring reports after each site visit giving feedback of compliance with planning conditions and identifying any failures to comply with conditions. This information should help the industry in maintaining and improving their standards and keep the burden of site inspections to a minimum.

12 Post-implementation review

12.1 ODPM are committed to reviewing the new fee regime no later than 2011 to see if it needed to be improved in any way. The review will consider all aspects of the regime including its practical application, ease and effectiveness of operation and its impact on both SMEs (for example to consider whether an actual costs system should be applied) and standards of monitoring (see also paragraph 10.3).

13 Summary and recommendation

Option	Total cost per annum	Total benefit per annum
1. 'Do nothing'	Local authorities would continue to finance the activity at current, variable, levels. Monitoring and enforcement activity would continue to fall well below best practice levels with no incentive to improve environmental standards and local amenity.	Operators would not have to pay for the service.
2. Self-regulation by operators with EMAS/ ISO14001 accreditation	Local authorities would continue to finance the activity as at present but savings would accrue from the reduction in monitoring sites with a proven track record of compliance with planning conditions and/or EMAS/ISO14001 accreditation. Such savings could be redeployed on monitoring unaccredited and poorer performing sites with possibly an overall neutral effect on the environment and local amenity. There would be costs to the operators in securing and maintaining accreditation and in self-monitoring sites.	This would allow mpas to devote more time and effort to monitoring and enforcement of unaccredited and poorer performing sites. It would also benefit reliable accredited operators, who would not be subject to the same level of monitoring as other operators.

<p>3. To establish a new fee-charging regime based on an average charge per visit, with the mpa determining frequency</p>	<p>There would be a new regulatory burden on operators of £2.7m per annum at 2003/4 prices. A nationally applied standard fee would place a greater burden on businesses with smaller turnover, which would be compounded where the business operates on a small site.</p>	<p>This would enable monitoring and enforcement to occur at best practice levels with consequential benefits to the environment and local amenity. Nationally set average fees per site would be simple and equitable for large companies operating in different parts of England. It would also lead to savings to local government of £1.61m per annum at 2003/4 prices, which could be available for other purposes. There would be a consequential self-imposed pressure on operators to improve their performance in order to reduce the number of visits (and thereby reduce their costs). The envisaged reduction in visits would enable mpas to devote more time to poorer performing sites.</p>
<p>3A. Hybrid option: standard site charge plus site visit charge</p>	<p>There would be a new regulatory burden on operators of £1.2 million per annum at 2003/4 prices. Monitoring would be to a minimum, rather than best practice, level with less improvement to the environment and local amenity than option 3.</p>	<p>The benefits to mpas are that it would be relatively easy to calculate and administer and for the operators the charge, whilst reflecting the monitoring requirements of a particular site, would not be as great as those in Option 3.</p>
<p>4. To establish a new fee-charging regime based on local or regional costs</p>	<p>As with option 3, there would be a new regulatory burden on operators but charges would vary to reflect mpas' actual costs. In total, the costs for England as a whole would also be likely to be of the order of £2.7m per annum at 2003/4 prices. This option would be more</p>	<p>The benefits would be the same as those for option 3. But operators in areas with higher local authority salary and other costs and with larger sites requiring longer to monitor would be likely to pay higher charges than operators with smaller sites in areas with lower local authority</p>

	administratively burdensome to mpas to operate.	costs. This remains an aspirational option whilst local authority accounting systems are generally unable to identify management costs.
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Recommendation

- 13.1 The minerals and waste industries have in principle objections to the introduction of fees for monitoring mineral and landfill sites. However, this long-standing commitment to introduce fees derives from the continuous nature of the development over many years and often decades. In spite of the industries' objections, the weight of evidence and opinion as expressed in two research studies and two consultation exercises is in favour of a nationally-set charge. This would be simpler to implement than other options and would avoid regional or site-by-site variations in charging that would be hard for mpas currently to justify. ODPM accepts, however, that local discretion might be a possible option for the future, as local authority management accounting systems improve. This RIA shows that option 3 has the merit of simplicity, it should lead to improvements in the environment and local amenity. ODPM therefore concludes that it would be appropriate to introduce a nationally-set charge for the new fees regime, but would be ready to reconsider the prospects for moving to local discretion no later than 5 years after the new regime is established, in the light of experience of the operation of the regime.
- 13.2 The recommendation is to prepare Regulations on the basis of establishing a new fee regime according to option 3 to commence on 6 April 2006, in line with the Government's 'Common Commencement Dates' initiative. We would propose to also prepare guidance for mpas and the industries on the requirements in the regulations, the implementation of the new regime and good practice in monitoring. We will review the regime no later than 2011 in the light of experience and consider whether a regime based on local or regional costs (option 4) might be a productive development.

Declaration and Publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed... Kay Andrews.....

Date..... 7th February 2006

**Baroness Andrews
Parliamentary Under Secretary of State
Office of the Deputy Prime Minister**

Contact point for enquiries and comments:

Jon Vickers
Minerals and Waste Planning Division
Office of the Deputy Prime Minister
Zone 4/C2
Eland House
Bressenden Place
London SW1P 5DU

Telephone: 020 7944 8138
Fax: 020 7944 3859
e-mail: jon.vickers@odpm.gsi.gov.uk

ANNEX A

OPTIONS SUGGESTED, BUT REJECTED, DURING THE DEVELOPMENT OF THE PROPOSED NEW FEES REGIME

Options suggested by Arup/Bailey

Options (i) to (v) below were consulted on in 2001 and rejected on the basis of the consultation comments.

Fees based on the area of the site being worked/filled

There was no evidence to suggest that the desirable monitoring frequency was dictated by the size of the site. No respondents to the 2001 consultation exercise supported this option. Many agreed with the consultants' suggestion that there would be a disproportionate burden placed on operators with extensive sites, such as those with peat or sand and gravel works.

Fees based on the expected or actual output/input levels

Concerns were expressed during the 2001 consultation that the supply of information on outputs and/or inputs could be patchy and commercially sensitive and that charging would only be possible retrospectively.

Fees based on a flat rate per site irrespective of frequency of visit

This would be straightforward to administer. However, it could be regarded as unfair as it would take no account of monitoring needs.

Fees based on a flat rate per site together with charges based on output (ie a combination of (iii) + (ii) above)

This was considered to be administratively complex and the same problems identified in (ii) above would also apply.

Flat rate per visit, with the mpa determining frequency, based on the area of site being worked (ie a combination of Option 3 in the main RIA and (i) above)

In essence this is similar to Option 3A in the main RIA, except the basic charge would reflect the size of the permitted area. It found no support during the previous consultation.

Options suggested during the 2001 consultation

A charging regime to be agreed annually with the operator

This was considered to be resource-intensive for both mpa and operator. Some form of independent arbitration would be necessary if operators and mpas were unable to agree.

Legal agreement for operators to employ independent consultants to monitor and report back to the mpa

This would still require officers of the local authority to assess the reports produced and check that they truly reflected the situation on site. There would be a direct cost to the site operator in paying the consultant. The legal agreement would need to make provision for the suspension of operations should the reports not be submitted or produced to a set standard. This option therefore appeared to add an extra and unnecessary level of bureaucracy and cost to the system. It would also introduce concerns about the audit trail, the level of compliance, the quality of reporting and remedial costs.

Operators to submit proposals for how they would monitor a site before it commences operations

This would remove mpas from their statutory responsibility for monitoring, and if necessary enforcing, planning permissions.

Options suggested by GHK/LUC

Discretionary charging on the basis of time spent

The option had the potential to be an accurate and efficient cost recovery mechanism. The major disadvantage would arise from the need to demonstrate transparency in the calculation of the charge, both in relation to the time charged on a case by case basis and the unit costs of the mpa. Few mpas currently have adequate time recording systems.

Charge per Officer per Visit

This option sought to reflect the actual time spent more accurately. But there would be difficulty in determining the tasks that should be attributed to each officer in assessing the total cost of a site visit and a danger of double-counting.

Additional option considered by ODPM officials

Increase local authority budgets to facilitate monitoring at 'best practice' levels

This option would rely on local authorities being given additional funding from central government to enable them to carry out monitoring at a 'best practice' level. However, the scope for securing funding for this purpose seems extremely limited as it would contravene the "polluter pays" principle. There would also be concerns that competing pressures for funding within local authorities in the future could lead to reductions in the planning budgets and consequential reductions in the monitoring budgets.

The option would benefit operators, who would continue to be under no pressure to pay for visits. They would therefore be under no self-imposed pressure to comply with planning conditions, reducing the number of visits and thereby saving money.

ANNEX B

RESULTS OF THE DISCUSSIONS WITH THE INDUSTRY ON THE IMPACT OF THE PROPOSED FEE REGIME ON SMALL FIRMS

The GHK/LUC study estimated that there were around 1600 active mineral workings and around 880 landfill sites in England. Statistics relating to the number of SMEs involved in mining and quarrying in the United Kingdom (figures for England are not available) in 2004 is available from "UK Business: Activity, Size and Location 2004", produced by the Office of National Statistics. This indicates that the position is as follows:

Micro business (0-9 employees):	610
Small business (10-49 employees):	255
Medium business (50-249 employees):	100
TOTAL	965

This indicates that the majority of mineral extraction sites can be termed micro businesses. Unfortunately, data on the number of businesses involved in landfill waste activities is not available by this means. However, given that landfill activity is not heavily labour-intensive, it is reasonable to assume that the majority of sites will also be termed 'micro' or 'small' businesses.

Identifying mineral and landfill businesses as SMEs does not, of course, reveal the ability of individual operators to pay the proposed monitoring fees. Depending on the nature and quantity of mineral being extracted, or the nature of the landfill, turnover and profits can be substantial, compared to the numbers of workers employed. Meetings were held with representatives of the minerals and waste industry to consider the impact of the proposed regime and it was recognised that a distinction should be drawn between, on the one hand, the size of the business and the sites they operate and, on the other, the size of the business and its turnover.

Option 2: Self-regulation by operators with EMAS/ISO14001 accreditation

Under this option, all operators (including SMEs) that had a proven track record of compliance with planning conditions and/or had EMAS/ISO14001 accreditation would be able to monitor their own performance with occasional independent quality checks by mpas. Securing and maintaining accredited status will incur costs. However, it may be that these costs would be lower than the fees proposed under option 3. Where mpas carried out the monitoring (ie in respect of unaccredited operators or poorer performing operators or in order to carry out a minimum validation of self-regulated sites) the costs would remain with mpas. However, the minerals and waste industry told us that many smaller businesses would consider option 2 as inequitable as small firms are less likely to become accredited and, therefore, more likely to be judged as 'poor' performers and subject to a higher level of monitoring by mpas.

Option 3: To establish a new fee-charging regime based on an average charge per visit, with the mpa determining frequency

The proposal would impact on all operators of minerals and landfill sites by imposing a flat-rate charge based on average costs for a regulatory activity that was previously provided free to the minerals and waste industry by local authorities and so funded by taxpayers and/or

Council Tax payers. Operators with tighter margins and lower turnover would find the burden of payment heavier than would other operators. This burden would be compounded if the business concerned were carrying out operations on small sites that were quicker and easier to monitor than the average. The minerals and waste industry suggested that it would be fairer to charge such operators at quarter day increments to reflect the sites' complexity.

We would keep under review the possibility of moving to a regime which reflected actual costs, but this would only be possible when local authority management cost systems are fully developed. Fully developed management accounting systems would enable mineral planning authorities to demonstrate transparency in the calculation of the charge in terms of both time spent during the site visit and the unit costs of staff undertaking the visit. In the meantime, providing operators comply with their planning conditions, it would be possible for the number of visits, and therefore the overall costs, to be minimised.

Option 3A: Standard Site Charge plus Site visit Charge

This option could impact unfairly on operators at smaller sites, as it would be based on a flat rate fee for each site irrespective of its size . However, since it would also be based on covering the basic costs of a minimum level of mpa monitoring, all operators that complied with planning conditions would pay less than under Option 3.

Option 4: To establish a new fee-charging regime based on local or regional costs

Under this option, operators would be charged costs based on actual time spent at each site and which reflected local or regional variations, rather than a standard, national average charge. This would benefit operators located in areas of the country where mpa costs were less and particularly operators of smaller sites which should be easier and quicker to monitor than large ones.