



Transposing the Mining Waste Directive (2006/21/EC) in Northern Ireland

Consultation Paper

February 2009



Transposing the Mining Waste Directive (2006/21/EC) in Northern Ireland - Consultation Paper

Introduction

This consultation paper seeks views on the proposals of the Department of the Environment (the Department) to transpose EU Directive 2006/21/ EC on the management of waste from the extractive industries, the Mining Waste Directive (MWD), into Northern Ireland law.

How to Respond

Completed answer booklets should be returned to the Planning Service, an Executive Agency of the Department, no later than **11th May 2009** in one of the following ways:

1. **By post** to:

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Mining Waste Directive Consultation
Planning Service
3rd Floor
Millennium House
17-25 Great Victoria Street
Belfast
BT2 7BN

2. **By e-mail** to: mining.waste@doeni.gov.uk

3. **By fax** (marked 'Mining Waste Directive Consultation Response') to: **028 9041 6960**

This consultation paper comes with a number of questions in relation to the proposals for transposition of Directive 2006/21/EC in to Northern Ireland legislation. These are intended to guide your response although you do not need to answer every question

and you may comment on any aspect of the proposals even if a question has not been included. We look forward to receiving responses to the proposals contained within this consultation document. As a reference and for your convenience we have listed all of the questions together in an answer booklet.

Additional copies of the consultation document can be downloaded from the Planning Service website at www.planningni.gov.uk. Additional hard copies of the consultation document and copies in alternative formats (e.g. Answer booklet in Microsoft Word™) are also available on request from the postal, e-mail or fax numbers above or by telephone on 028 90416940.

If you have any comments or complaints about the consultation process itself (rather than the content of this document) these should be directed to the postal or e-mail addresses above and clearly identified as a comment or complaint.

PART I: INTRODUCTION

MINING WASTE DIRECTIVE

Consultation paper

1. This consultation paper seeks views on the proposals of the Department of the Environment (the Department) to transpose EU Directive 2006/21/EC on the management of waste from the extractive industries, the Mining Waste Directive (MWD), into Northern Ireland law.
2. The European Parliament and the Council of the EU adopted the MWD on 15 March 2006. It sets out requirements for the management of waste material, such as rock, tailings (i.e. the waste solids or slurries that remain after the treatment of minerals by a number of techniques) and overburden (i.e. the material that extractive operations move during the process of accessing minerals, including during the pre-production development stage), arising from the on-shore prospecting, extraction, treatment and storage of mineral resources and the working of quarries for the purposes of preventing harm to the environment and human health.

Background

3. The European Commission's (EC) work on mining waste stems from accidents at mines in Romania and Spain that caused considerable environmental damage. Both accidents involved hazardous chemicals (cyanide and arsenic) being transported considerable distances via water and sludge. The accidents raised significant issues relating to the handling and storage of hazardous material and waste; public knowledge and understanding of the risks involved and communication issues between the various responsible authorities and the public. While previous EC Directives have dealt with controlling hazardous waste none has specifically addressed the issue of waste material arising from the extractive industry.

4. Most types of waste are now subject to control under the Waste Framework Directive (WFD) (2006/12/ EC)¹, however, Article 2(1)(b)(ii) excludes from its scope "*waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries*" where waste of this kind is "*covered by other legislation*". Planning is deemed to be "*other legislation*". To date the WFD regulatory controls have not therefore been applied to mining waste. However, both the WFD and the Landfill Directive (1999/31/ EC) will continue to apply to waste, other than extractive waste, used for the filling in of excavation voids.

The Mining Waste Directive

5. The MWD provides for measures, procedures and guidance to prevent, or reduce as far as possible, any adverse effects on the environment, and any resultant risks to human health, brought about as a result of the management of waste from the extractive industries. Such "waste" includes tailings, waste rock and overburden, and topsoil (i.e. the upper layer of the ground) provided that they constitute waste as defined in the WFD.
6. Member States were required to transpose² the MWD into national law by 1 May 2008. Annex A lists all the Articles included in the MWD. The full text of the MWD is available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:102:0015:01:EN:HTML>.

Defining "waste" under the MWD

7. Article 3(1) provides that, for the purposes of the MWD, "waste" is as defined in Article 1(1)(a) of the WFD, however, there is no definitive list of what is and is not

¹ These measures apply to all substances or objects which the holder disposes of or is obliged to dispose of pursuant to the national provisions in force in the Member States. They must prohibit the abandonment, dumping or uncontrolled disposal of waste, and must promote waste prevention, recycling and processing for re-use. The measures provide for cooperation between the Member States with a view to establishing an integrated and adequate network of disposal installations. The network should enable waste to be disposed of in one of the nearest appropriate installations, so as to guarantee a high level of environmental protection.

² To faithfully render the requirements of the directive into the context of national law.

waste within the meaning of that Article. Whether or not a substance or object is waste, and when waste ceases to be waste, are matters that must be determined on the facts of the case and the interpretation of the law is ultimately a matter for the Courts. It rests, in the first place, with the producer or holder of a substance or object to decide whether it is being discarded and is waste.

8. There is now a substantial body of case law by the European Court of Justice (ECJ) on the interpretation of the definition of waste and the meaning of "discard". A summary of the ECJs judgments on the definition of waste is available on the Department of Environment, Food and Rural Affairs website at:
<http://www.defra.gov.uk/environment/waste/topics/pdf/ECJCaseLaw20090127.pdf>

9. The requirements in the MWD will affect all on-shore sectors of the mining and quarrying industry that produce "waste" although impacts on individual operations will depend on whether such waste is classified as inert, non-inert non-hazardous or hazardous. The Geological Survey (Northern Ireland) has been commissioned to undertake a study to assess the nature of the waste produced by active mines and quarries in Northern Ireland. It is anticipated that this study will confirm that virtually all sites in Northern Ireland will produce only inert waste. The survey is being conducted on the basis of current methodology available for classifying waste (i.e. European Waste Classification) and it is acknowledged that ongoing work on the Directive through the EC Comitology³ process may affect the consideration of the survey's findings.

10. The Commission is due to publish guidance, as it was obliged to do, on the priority topics listed in Article 22(1). This guidance will clarify the definition of "inert waste" in Article 3(3), "waste characterisation" and the "classification of waste facilities" in Annex III of the MWD. Member States may draw up lists of waste materials which shall be regarded as inert in accordance with defined criteria.

³ The European Commission, as the executive branch of the European Union, has the task of implementing European legislation passed by the European Parliament and the Council of the European Union. In implementing the legislation within its scope, the Commission is assisted by committees in a process known as Comitology

11. As most mining waste in Northern Ireland is likely to be inert, significant environmental damage on the scale of the accidents in Romania and Spain is very unlikely. Indeed, if well constructed, sensibly located and properly managed and maintained in accordance with existing regulatory requirements, the management of extractive waste should be safe and not cause harm to the environment or any resultant risks to human health. In addition, it is recognised that the extractive industry in Northern Ireland takes its responsibilities for safety and environmental protection seriously.

Transposition Proposal in Northern Ireland

12. In terms of the mechanism for transposition of the MWD there are differences in how the various UK administrations propose to give effect to the Directive's requirements. In England and Wales work is being progressed via the environmental permitting route⁴, whereas in Scotland this work is being progressed via the planning process. This debate has also taken place in Northern Ireland and, having considered the merits of both options, it has been decided to progress transposition via the planning route similar to Scotland. While the consideration of the available options for transposition has taken time the original deadlines of the Directive remain unchanged. The UK did not meet the required transposition date of 1 May 2008 and Northern Ireland is slightly behind other UK administrations.
13. Consequently, this consultation, while addressing the main issues set out in the MWD, does not include draft Regulations. These will be developed subsequently and will set out how existing planning application procedures will be adapted to ensure compliance with the Directive.

Scope of Proposed Regulations

⁴ The Environmental Permitting (EP) Regulations in England and Wales came into force on 6 April 2008. These new regulations will make existing legislation more efficient by combining Pollution Prevention and Control (PPC) and Waste Management Licensing (WML) regulations and now will include MWD requirements within its scope.

14. Article 2 of the MWD excludes a number of activities and classifications of waste from the scope of the Directive. These are:
- 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 e.g. food waste, waste oil, spent batteries.
 - waste resulting from the offshore prospecting, extraction and treatment of mineral resources; and
 - 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, the Water Framework Directive, to the extent authorised by that Article.
15. Article 2(3) of the MWD allows competent authorities to reduce or waive the requirements of the Directive for the deposit of non-hazardous waste generated by the prospecting of mineral resources (except oil and evaporates other than gypsum and anhydrite), and the deposit of unpolluted soil and of waste resulting from the extraction, treatment and storage of peat, as long as the general requirements under Article 4 are met. It is intended, therefore, to take full advantage of all available derogations within the Directive in line with other UK jurisdictions. This would, in particular, considerably reduce the regulatory burden on those sites that produce only inert waste as a result of extractive operations.

Question 1: Do you agree that Northern Ireland should take advantage of all derogations in MWD?

16. The MWD sets the underlying principles and provisions that must be transposed into domestic law. The Department believes that most of the MWDs requirements are already being met through existing legislative provision and administrative arrangements relating to the environment, health and safety and land use planning. In relation to the planning system, conditions are currently imposed in planning permissions for mining operations to control impacts on visual amenity and the landscape, and relating to traffic, noise, dust, direction of working, moving, handling and sorting of soils and overburden, restoration and after care schemes etc.

17. Close working between Government departments and agencies ensures that requirements placed upon the extractive industries are co-ordinated and that operations are appropriately monitored. However, to ensure that the obligations on Member States as set out in the MWD are formally enacted it is necessary to introduce new legislation in Northern Ireland to set these requirements on a statutory basis. This will mean that the way information is gathered, submitted, considered and approved may need to be revised to take account of the Directive. It will also place current best practice by the industry in relation to certain operations on a statutory basis.

Main Requirements of the MWD

18. The main requirements of the MWD, dependent on the nature of the waste managed, are as follows:
- a waste management plan (prepared by the operator and approved by the Department) setting out procedures for the minimisation, treatment, recovery and disposal of extractive waste in line with the MWD;
 - a major-accident prevention policy, including a safety management system and internal emergency plan, to be drawn up by the operator and approved by the relevant competent authority for the potentially most hazardous waste facilities;
 - a permit issued by the Northern Ireland Environment Agency (NIEA) to operate a "waste facility" for extractive waste;
 - closure and after-closure procedures for waste facilities; and
 - requirement for the operator to provide a financial guarantee (or equivalent) prior to the commencement of operations involving the deposit/accumulation of waste in a waste facility to ensure that sufficient funds are available to rehabilitate the land affected by a waste facility to a satisfactory state in the event that an operator defaults on his closure obligations.
19. In practice most, if not all, operators in Northern Ireland who produce inert waste will only be required to comply with the general requirement of the MWD to be evidenced through the preparation of a waste management plan and possibly the operation of a permitted waste facility. Regulations, however, will need to be

future-proofed in case the planning process ever needs to deal with extractive operations or processes which may produce waste beyond the current nature of the waste produced by the extractive industry in Northern Ireland.

Compliance with MWD in advance of Domestic Legislation

20. While domestic legislation has not been enacted by the required date of 1 May 2008 to give effect to the general requirements of the MWD the Directive has already come into force. In order to affect a “proper and appropriate regard” for the MWD in advance of Regulations coming into operation the Department has introduced specific administrative provisions under Article 25 of the MWD. This is in the form of a letter to all current applicants seeking permission for mineral extraction indicating that the Department will have “proper and appropriate regard to the general requirements of the Directive when considering relevant planning applications” and setting out how best to achieve the Directive’s objectives in advance of the proposed Regulations coming into operation.
21. The Quarry Products Association in Northern Ireland (QPANI) is the main representative organisation for the Northern Ireland extractive industry. While recognising the need for regulation, it has been working closely with the Department in order to minimise the impact on the industry. QPANI has already undertaken to make its guidance on waste management (developed as part of the Aggregates Levy Control Scheme (ALCS), and endorsed by the EC) available to all operators via their website.
22. The Department administers the ALCS on behalf of Her Majesty's Revenue and Customs (HMRC). An Aggregates Levy was introduced in 2002 to reflect the true cost of, and to help alleviate the environmental damage caused by, aggregate extraction. The ALCS was approved by the EC, came into operation from 1st April 2004 and is currently approved until Mar 2011. The Scheme is voluntary but by joining and agreeing to carry out environmental improvements operators are entitled to 80% reduction in the Levy
23. The Scheme is based on a Code of Practice and Audit Protocol which identifies the key areas where environmental improvements are required. Operators are

required to have periodic environmental audits carried out by accredited environmental auditors. These audits, supplemented by site visits, are used by the Department to identify improvements to be carried out. There are 17 key areas identified in the Code of Practice including waste management which focuses on waste identification, minimisation, re-use and recycling, proper accounting for waste and disposal.

24. Virtually all aggregate operators who are liable for the Levy are members of the ALCS. While the first audits completed identified significant issues to be addressed across the industry, successive audits have made it clear that significant progress has been made across all areas of environmental concern, particularly in the area of waste management.

Way Ahead

25. Subject to the processes of the Northern Ireland Assembly it is intended that Regulations will be brought into operation by the end of 2009 so that all new applications will be subject to the requirements set out in the MWD. The development of these Regulations will be framed by this consultation process and will introduce practical changes to the planning application process which are raised in Part 2 of this consultation paper.

Position of ROMPs

26. Provisions in Article 27 and Schedule 3 to the Planning Reform (Northern Ireland) Order 2006, which have yet to be commenced, will amend the Planning (Northern Ireland) Order 1991 to require owners and operators currently holding planning permissions for quarries in Northern Ireland to submit updated conditions to which the applicant considers the planning permission should be subject. It is intended that this review of old mineral permissions (ROMPs) will require operators to demonstrate compliance with the requirements of the MWD. These conditions shall be kept under review during the lifetime of the permissions. If an operator fails to demonstrate the required compliance they may become subject to enforcement procedures.

Transboundary Effects

27. The MWD places an obligation on Member States regarding transboundary effects on the environment and human health. Northern Ireland is unique among UK jurisdictions as it is the only region to share a land border with another Member State i.e. the Republic of Ireland. The implications for Northern Ireland have been previously addressed on numerous occasions for other Directives and the legislation which ensued, and there are now well-established procedures in place for transboundary consultation which will be invoked as necessary for MWD.

Other obligations placed on Member States – monitoring and reporting.

28. The MWD imposes additional obligations on the competent authority in relation to inspections, inventories, monitoring of waste facilities and reporting to the European Commission. As transposition in NI is via the planning process the Competent Authority is the Department of the Environment. Before moving to full implementation of the Directive on the specified dates (see paragraphs 46-49), transitional provisions need to be in place and notified to the European Commission.

Links to other control regimes

29. The granting of planning permission does not remove the need to meet other environmental and health & safety requirements of the MWD that are, and will continue to be, secured outwith planning control. Such requirements are likely to include many of the issues raised in Part 2 of this document.
30. The Northern Ireland Environment Agency (NIEA) has published several guidance booklets⁵ for the owners and operators of quarries and mineral extraction sites which cover activities which, if carried out in accordance with good practice, should not normally cause pollution of the water environment. The guidance deals with intentional discharges to the water environment from mineral extraction

⁵ http://www.ni-environment.gov.uk/mineral_extraction_industry_screen.pdf
http://www.ni-environment.gov.uk/mineral_workings_advice_note.pdf

sites and with impacts on the water environment from abstractions or impoundment activities.

Summary

31. The requirements of the MWD are linked to planning, environmental and health and safety regulation. In many instances, these requirements are already being met through compliance with existing procedures. In line with the aims of the NI Assembly regarding “better regulation” the intention is to meet any new requirements by, as far as possible, building on existing arrangements and, where necessary, making adaptations that result in minimal burdens on all concerned while fully meeting the requirements of the MWD.
32. Part 2 of this consultation document sets out the proposals which are intended to satisfy the requirements of the Directive which are not currently addressed through existing domestic legislation. A key element to be formalised in Regulations is the inter-relationships between NIEA, the Health and Safety Executive Northern Ireland (HSENI) and the planning system.

Equality Impact Assessment

33. The proposals set out in this consultation document have been the subject of an Equality Impact Assessment and are not considered to discriminate unlawfully, unfairly or unjustifiably against any sections of the community specified in Section 75 of the Northern Ireland Act 1998. A copy of this assessment is available on the Department’s website.

Regulatory Impact Assessment

34. A partial Regulatory Impact Assessment (RIA) is contained at Annex B and the Department welcomes any comments on this.

PART 2 – EXPLANATORY DETAILS

Transposing the Directive in Northern Ireland via the Planning System

35. An essential requirement in order to give effect to the MWD via the planning system is a statutory basis upon which to require and determine planning applications for development involving the management of extractive waste and to grant planning permission, or otherwise, in relation to whether MWD requirements have been satisfactorily addressed. It is proposed that this basis will be established by extending the meaning of development in the Planning (Northern Ireland) Order 1991 by amending the definition of “mining operations” to include *“the management of waste resulting from the prospecting, extraction, treatment and storage of mineral resources”*.

Question 2: Do you agree with the proposal to extend the meaning of development in the 1991 Order by amending the definition of “mining operations” to include *“the management of waste resulting from the prospecting, extraction, treatment and storage of mineral resources”*?

Definition of Waste

36. There is no definitive list of what is and is not waste within the meaning of Article 3(1) of MWD. However, the Department considers that the ECJ in a number of its judgements have provided guidance on the characterisation of by-products in terms of whether they should be considered as waste or otherwise. For example, the ECJ has identified circumstances in which residues from mining operations, which are to be used to fill galleries/voids in the mine from which they were extracted, may be classified as non-waste by-products.

These circumstances are where:

- the mining operator physically identifies the residues which will actually be used to fill the galleries/voids;
- the mining operator provides the competent authority with sufficient guarantees of that use; and

- the competent authority assesses whether the period during which the residues will be stored before being returned to the mine is so long that those guarantees cannot in fact be provided.
37. The Department intends to place the onus on operators to provide the necessary identification of waste products and to obtain its express agreement via the planning approval process that material can be considered as a non-waste by-product. For many mineral sites, the restoration plan submitted as part of the planning application will characterise all residues and by-products as well as the uses to which they may be put, with compliance secured through normal planning conditions.

Categorisation of Waste Facilities

38. The flowchart at Annex C sets out how the MWD impacts on particular waste streams and may provide some assistance to operators in fulfilling their obligations in relation to the identification of waste. This flowchart identifies that all sites producing extractive waste will be covered to varying extents by the MWD and, in particular, will need to comply with Article 5 requirements for a waste management plan although some of the provisions in Article 5 apply only to those sites that are categorised as either a "waste facility" or a "Category A waste facility".
39. Category A waste facilities are defined in Annex III of the Directive as those sites:
- 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; or
 - Which contains waste classified as hazardous under Directive 91/689/ EEC above a certain threshold; or
 - which contain substances or preparations classified as dangerous under Directives 67/548/ EEC or 1999/45/ EC above a certain threshold.
- Further information on the categorisation of waste facilities is due in an EC Decision.

40. Only Category A waste facilities will be subject to the requirements of Article 6 in relation to major accident prevention and information and, because of the higher level of risk associated with these sites, most of the provisions of the Directive will be relevant, particularly those relating to financial guarantees and transboundary effects (both issues dealt with later in the consultation paper).
41. Article 6 requires a Major Accident Prevention Plan, to be reviewed every 3 years, which achieves the following objectives:
- (a) to contain and control major accidents and other incidents so as to minimise their effects, and in particular to limit damage to human health and the environment;
 - (b) to implement the measures necessary to protect human health and the environment from the effects of major accidents and other incidents;
 - (c) to communicate the necessary information to the public and to the relevant services or authorities in the area; and
 - (d) to provide for the rehabilitation, restoration and clean-up of the environment following a major accident.

It also imposes obligations on the operator to inform the competent authority and obligations to ensure full public participation and access to information.

42. "Waste facilities" are those sites where the accumulation or deposit of extractive waste, whether in a solid or liquid state or in solution or suspension, takes place for the following time-periods:
- **no time-period** for Category A waste facilities and facilities for waste characterised as hazardous in the waste management plan;
 - a period of more than **six months** for facilities for hazardous waste generated unexpectedly;
 - a period of more than **one year** for facilities for non-hazardous non-inert waste;
 - a period of more than **three years** for facilities for unpolluted soil, non-hazardous prospecting waste, waste resulting from the extraction, treatment and storage of peat and inert waste.

43. Such facilities are deemed to include any dam or other structure serving to contain, retain, confine or otherwise support such a facility, and also to include, but not be limited to, heaps and ponds, but excluding excavation voids into which waste is replaced, after extraction of the mineral, for rehabilitation and construction purposes. The Department's interpretation is that the definition of waste facility also excludes the following from its scope:
- the accumulation or deposit of unpolluted soil, non-hazardous prospecting waste, waste resulting from the extraction, treatment and storage of peat and inert waste for a period of less than 3 years; and
 - the accumulation or deposit of non-hazardous non-inert waste for a period of less than 1 year
- unless in either case the waste is deposited in a Category A waste facility.
44. In addition to a waste management plan, operators of waste facilities will be required to obtain a Permit which complies with Article 7 of the MWD. Permits are subject to further requirements under MWD, namely:
- Article 8 - public participation;
 - Article 11 - construction and management of waste facilities;
 - Article 12 - closure and after-closure procedures;
 - Article 13 - prevention of water status deterioration, air and soil pollution;
 - Article 14 - financial guarantees; and
 - Article 17 - inspections by the competent authority.
45. As noted already, Article 2(3) of the MWD provides that, "*inert waste and unpolluted soil resulting from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries and waste resulting from the extraction, treatment and storage of peat shall not be subject to Articles 7, 8, 11(1) and (3), 12, 13(6), 14 and 16, unless deposited in a Category A waste facility*". In addition, the Department intends to take advantage of the derogations which allow Member States to waive the requirements of Articles 11(3), 12(5) and (6), 13(6), 14 and 16 for non-hazardous non-inert waste unless deposited in a Category A waste facility.

Key Dates

46. There are a number of key dates specified in the MWD the first of which is the “transposition” date of 1 May 2008 by which time Member States were required to “bring into force laws, regulations and administrative provisions necessary” (Article 25(1)) to give effect to the requirements of the MWD. Having passed this date for transposition the Department has confirmed that it intends to bring forward the necessary legislation by the end of 2009 subject to the processes of the NI Assembly. In the interim period, the Department has also confirmed that it “*will have proper and appropriate regard of the general requirements of the directive when considering planning applications*” And has issued a letter to all current applicants along these lines.
47. The MWD also required Member States to inform the Commission by 1 August 2008 of any facilities covered by Art 24(4) i.e. facilities that:
- stopped accepting waste before 1 May 2006;
 - are completing the closure procedures in accordance with the applicable Community or national legislation or programmes approved by the Competent Authority; or
 - will be effectively closed by 31 December 2010.
- The Department has already provided input to the UK’s response advising that no such facilities have been identified.
48. The Directive sets out ‘transitional provision’ in Article 24.1. Sites which were operating or had been granted a permit to operate on 1 May 2008 must comply with the provision of the MWD by 1 May 2012 with two exceptions detailed below.
49. From 1 May 2008, in order to facilitate the ‘prevention of water status deterioration, air and soil pollution’, the MWD requires that the concentration of weak acid dissociable cyanide at the point of discharge of the tailings from the processing plant into pond does not exceed 50 parts per million (ppm) as from the 1 May 2008, 25 ppm as from 1 May 2013, 10 ppm as from 1 May 2018 and 10 ppm at waste facilities which are granted a permit after 1 May 2008 (Art 13(6)). This, however, should have little effect on the extractive industry in NI.

| DATE | concentration of weak acid dissociable cyanide at the point of discharge |
|-------------|--|
| 01 May 2008 | <50 ppm |
| 01 May 2008 | 10ppm at 'new' waste facilities which are granted a permit |
| 01 May 2013 | 25 ppm |
| 01 May 2018 | 10 ppm |

50. The Department's aim is to implement the Directive in a way that imposes minimum burden on the planning system and operators. However, the Directive sets out compulsory requirements to evaluate waste management plans and, where necessary, to ensure permits are in place before a waste facility can operate. Member States must ensure that all existing waste facilities comply with the provisions of the Directive by 1 May 2012 although any requirements for a financial guarantee will not need to be met until 1 May 2014.
51. The Directive does not include specific provisions for existing sites not involving a waste facility. The Department is therefore proceeding on the basis that there is an expectation that such sites should comply with the Directive as soon as the Regulations come into force. All operators should be made aware of the requirements of MWD through the consultation process and from information supplied to them from within industry bodies such as QPANI. It is understood that the obligations on the industry and individual operators will be minimal as it essentially makes current good practice a statutory requirement. Much of the necessary information may already be available and utilised within the industry in order to satisfy existing regulatory requirements.

Waste Management Plans

52. Article 5(1) of the MWD requires Member States to ensure that an operator draws up a waste management plan setting out the operator's proposals for the minimisation, treatment, recovery and disposal of extractive waste, taking account of the principle of sustainable development. It is intended that all operators will be required to demonstrate compliance with Articles 4 and 5 (and possibly article 10 where this is relevant) through the development and submission of an appropriate

waste management plan as a requirement of the planning application process.

53. Waste management plans should provide sufficient information to evaluate the operator's ability to meet the following objectives set out in Article 5(2):
- a) to prevent or reduce waste production and its harmfulness, in particular by considering:
 - i) waste management in the design phase and in the choice of the method used for mineral extraction and treatment;
 - ii) the changes that the extractive waste may undergo in relation to an increase in surface area and exposure to conditions above ground;
 - iii) placing extractive waste back into the excavation void after extraction of the mineral, as far as is technically and economically feasible and environmentally sound in accordance with existing environmental standards at Community level and with the requirements of this Directive where relevant;
 - iv) putting topsoil back in place after the closure of the waste facility or, if this is not practically feasible, reusing topsoil elsewhere;
 - v) using less dangerous substances for the treatment of mineral resources;
 - b) to encourage the recovery of extractive waste by means of recycling, reusing or reclaiming such waste, where this is environmentally sound in accordance with existing environmental standards at Community level and with the requirements of the Directive where relevant;
 - c) to ensure short and long-term safe disposal of the extractive waste, in particular by considering, during the design phase, management during the operation and after-closure of a waste facility and by choosing a design which:
 - i) requires minimal and, if possible, ultimately no monitoring, control and management of the closed waste facility;
 - ii) prevents or at least minimises any long-term negative effects, for example attributable to migration of airborne or aquatic pollutants from the waste facility; and
 - iii) ensures the long-term geotechnical stability of any dams or heaps rising above the pre-existing ground surface.

54. Many of the waste management plan objectives should already be an integral part of the consideration process for new development proposals and, in most cases, satisfying existing legislative and policy requirements associated with planning, environmental protection and health and safety will ensure a large degree of compliance with the requirements of the MWD.
55. In terms of the characterisation of waste operators should obtain the express agreement of the Planning Service as soon as possible but no later than 1 May 2012. Material will be regarded as "extractive waste" for the purposes of the MWD if such identification and guarantees cannot be provided to the satisfaction of the Planning Service. Consequently, an operator may be in breach of planning permission in the absence of such express agreement. The review of old mineral permissions offers an important opportunity for operators to secure such agreement.

Content of a Waste Management Plan

56. It is intended that a waste management plan will include at least the following elements (it should be noted that all the Directive's requirements are included for ease of reference although those in bold will only apply to waste facilities):
- a) **where applicable, the proposed classification for the waste facility in accordance with the criteria laid down in Annex III:**
- **where a Category A waste facility is required, a document demonstrating that a major-accident prevention policy, a safety management system for implementing it and an internal emergency plan will be put into effect in accordance with Article 6(3);**
 - **when the operator considers that a Category A waste facility is not required, sufficient information justifying this, including an identification of possible accident hazards.**
- b) waste characterisation in accordance with Annex II of the Directive and a statement of the estimated total quantities of extractive waste to be produced during the operational phase;

- c) a description of the operation generating such waste and of any subsequent treatment to which it is subject;
- d) a description of how the environment and human health may be adversely affected by the deposit of such waste and the preventive measures to be taken in order to minimise environmental impact during operation and after closure, **including the aspects referred to in Article 11(2) (a), (b), (d) and (e);**
- e) the proposed control and monitoring procedures pursuant to Article 10, when applicable, **and Article 11(2)(c);**
- f) **the proposed plan for closure, including rehabilitation, after-closure procedures and monitoring as provided for in Article 12;**
- g) measures for the prevention of water status deterioration in accordance with Directive 2000/60/ EC (Water Framework) and for the prevention or minimisation of air and soil pollution pursuant to Article 13;
- h) **a survey of the condition of the land to be affected by the waste facility, where applicable; and**
- i) how operations will comply with the best available techniques of Article 4.

57. Some of these requirements may already be addressed by operators when submitting a planning application e.g. via compliance with the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 (EIA Regulations). In such cases operators may wish to replicate such information as elements of the stand alone waste management plan.

Question 3: Do you agree that a waste management plan is an appropriate method through which an operator should demonstrate compliance with the requirements set out in Articles 4, 5 and 10?

- 58. Where an applicant fails to satisfy the Department that the waste management plan satisfactorily addresses the requirements of the MWD planning approval will not be granted.
- 59. In addition, the MWD requires that waste management plans are reviewed every 5 years and/or amended as appropriate in the event of substantial changes to the operation of the waste facility or to the waste deposited. In Northern Ireland it will

be made a condition of planning permission that operators will be required to review the waste management plan accordingly. Any amendment shall be notified to the Department which will monitor waste management plans. Approval of revised waste management plans will be given within a defined timetable. It is suggested that an approval will issue within 3 months from the submission of the full revised version of the Waste Management Plan. Should an operator not conduct the necessary review of the waste management plan this will be considered to be a breach of planning control and the operator may be subject to enforcement action.

Consideration of the Waste Management Plan

60. Planning applications will continue to be considered on the basis of whether the proposal is an acceptable use of land and type of development. In addition, however, consideration will also be given as to an operator's ability to satisfy the relevant requirements of the MWD as evidenced in the waste management plan submitted as an element of the planning application. It is recognised that measures proposed by operators may have been required under existing environmental or health and safety regulation.

Question 4: Do you agree that the planning application process is a suitable mechanism through which to consider the appropriateness of the waste management plan?

61. The current process for considering and deciding upon planning applications for the extractive industries involves consultation with, and input from, other agencies such as NIEA and HSENI. These consultation arrangements will need to be extended to meet the requirements of the MWD. The consultation arrangements with NIEA are a Departmental matter and will be modified appropriately to access the expertise and experience of the agency in relation to environmental issues which need to be considered in determining relevant planning applications.

62. As regards HSENI, there is already statutory provision for consultation in certain circumstances⁶, however, it is not considered that this is sufficient to effectively transpose to requirements of the Directive.
63. Accordingly, the Department proposes to extend the current statutory provision to make HSENI a consultee for all planning applications involving extractive operations. The advice from HSENI and NIEA on the contents of relevant planning applications, including the waste management plans, will be important considerations in the determination of a planning application in terms of:
- whether proposals are consistent with the environmental and health and safety requirements of the Directive;
 - whether additional information may be required; and
 - conditions which may need to be attached to any planning permission.

Question 5: Do you agree with the Department's proposal to modify the current consultation arrangements with NIEA and HSENI to ensure compliance with the MWD?

The Review of Old Mineral Permissions

64. The objectives of the review of old mineral permissions (ROMPs) are as follows:
- To ensure that all active mines and quarries in Northern Ireland have planning conditions that comply with modern environmental standards.
 - To ensure that dormant quarries that have planning permission cannot be returned to use before their planning conditions have been reviewed; and
 - To ensure that the review process also meets the requirements of the Planning (Environmental Impact Assessment) Regulations 1999⁷ (the "EIA Regulations") which implement Council Directive 85/337/EEC (as amended by Council Directives 97/11/EC and 2003/35/EC).

⁶ See article 15 of the Planning (General Development) Order (Northern Ireland) 1993 SR No.278

⁷ SR 1999/73 and as amended

The Department intends to use the ROMPs process to contribute significantly to compliance with the MWD.

65. Examination of existing permissions reveals that fewer conditions were attached to permissions prior to 1980 than was the case with later permissions granted after the Minerals Unit was established within Planning Service and particularly after the EIA regulations came into operation in 1989 and subject to a major revision in 1999. Furthermore, pollution prevention legislation has advanced over the years so that conditions attached to old permissions may now be deficient. For example few, if any, consents during the 1970s would have dealt adequately with noise.
66. Evaluation criteria have been identified for ROMPs which include issues such as time limits for operation; access, traffic and protection of the public highway; environmental protection and aftercare; and closure.
67. Regulation 2(2) of the 1999 EIA regulations require all development in:
 - "Quarries, open-cast mining and peat extraction (unless included in Schedule 1); and
 - Underground mining (in Schedule 2)to fulfil the obligations under this legislation.
68. The matters for inclusion in an environmental statement are set out in Schedule 4 of the 1999 EIA regulations and include in Part 1, paragraph 3 "*A description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors*". Thus, changes to any of these factors necessitate a reassessment of that factor and the potential implications on the interrelationship with other factors.
69. The MWD also provides for "*measures, procedures and guidance to prevent, or reduce as far as possible, any adverse effects on the environment, in particular water, air, soil, fauna and flora and landscape, and any resultant risks to human health, brought about as a result of the management of waste from the extractive*

industries” (Article 1). This includes setting the objectives for wastes that are generated such that *“their hazardousness should be reduced and that they should present as little risk as possible, that preference should be given to recovery and especially to recycling, that the quantity of waste for disposal should be minimised and should be safely disposed of...and also sets as a priority action the promotion of sustainable management of extractive industries with a view to reducing their environmental impact”* (Recital 3).

70. Therefore the ROMPs and associated EIA requirements are expected to address many of the requirements of the MWD concerning a high level of protection for the environment and human health, both during operation and after closure, highlighting the sustainability aspects over the whole lifecycle of the operation. It will be an important tool for delivering on *“minimum requirements in order to prevent or reduce as far as possible any adverse effects on the environment”* (MWD Recital 4).
71. The timing of ROMPs may need to be re-examined in the light of the MWD requirements as it is intended that the ROMPs process will contribute significantly to compliance with the MWD. Any ROMPs which are scheduled beyond 2012 may need to be brought forward to ensure ongoing operations are compliant with the requirements of the MWD and to ensure that operators are not in breach of the proposed MWD regulations.

Question 6: Do you agree that ROMPs is the most appropriate mechanism for bringing planning permissions into line with waste management plans?

Article 7 Permits for Waste Facilities

72. It is intended that permit requirements detailed under Article 7 of the MWD will largely be satisfied through the granting of planning permission, which would consider the views of HSENI and NIEA as consultees, in order to lighten the administrative burden on operators in line with the principles of better regulation. However, planning permission in itself cannot confer compliance with other regulatory requirements. It can, however, provide an opportunity to complete the

combination of consents necessary for the operation of a waste facility through the existing procedures for the consideration of planning applications.

73. Article 7(2)(e) of the MWD requires that any relevant environmental impact assessment should form part of the application for a permit. For new sites this will be covered by the provisions of the EIA Regulations if the proposed development falls within a sensitive site or Schedules 1 or 2 of those Regulations. In the case of existing sites an application for an Article 7 permit may necessitate an EIA if it falls within a sensitive site or involves development listed under Schedules 1 or 2.

Financial Guarantees

74. In addition, the MWD sets a requirement for financial guarantees from an operator to ensure that all obligations relating to a planning approval, including after-closure provisions, are discharged. A financial guarantee, which might be in the form of a financial deposit or an appropriate industry-sponsored mutual guarantee for example, will be required before the commencement of operations involving the accumulation or deposit of extractive waste in a waste facility. An applicant must provide assurance to the Department's satisfaction that such a financial guarantee is readily available at any given time for operations involving a waste facility for which a permit is issued, i.e. planning permission granted, to be rehabilitated to a satisfactory state.
75. If a financial guarantee is required, it will be considered as part of the planning application process. Such consideration is already the norm in cases where Planning Service considers that a financial guarantee is necessary before a planning application to extract minerals is approved. . An article 40⁸ agreement is the normal mechanism used to address requirements that can not be the subject of planning conditions such as the payment of financial sums. Article 7 requires that no waste facility shall be allowed to operate without a permit and that an operator should only be granted a permit if all the relevant requirements of the Directive are complied with. This will mean that, where required, planning

⁸ The Planning (Northern Ireland) Order 1991 and as amended

permission will not be granted if an acceptable financial guarantee is not in place.

76. The intention that the grant of planning permission will act as confirmation that the necessary guarantees have been provided is consistent with Better Regulation principles and the reduction of the number of permits required by an operator to a minimum. This reflects the aim of Article 7.1 in which *“any permit produced pursuant to other national or Community legislation may be combined to form a single permit, where such a format obviates the unnecessary duplication of information and the repetition of work by the operator or Competent Authority”*.
77. There are associated provisions setting out the general basis for calculating the guarantee, and requiring periodical adjustments to the size of the guarantee. The EC is preparing technical guidelines for the establishment of the financial guarantee, as required by Article 22 of the Directive. The Regulations for transposition of the MWD will require these technical guidelines to be used in calculating the size of any financial guarantee and will also set out any requirements in relation to subsequent revisions.
78. The Department’s intention to take advantage of the exclusions and use the derogations provided by Article 2(3) of the Directive means that a financial guarantee would not be required unless the waste is to be deposited in a 'Category A' waste facility. It is therefore envisaged that the requirement for a financial guarantee will apply only to a small number of extractive waste facilities in Northern Ireland, if any.
79. For existing sites, it is possible that not all of the MWD requirements would have been addressed in the consideration of the original planning application. In relation to operations which were in operation on 1 May 2008 and which involve a Category A waste facility Article 24(1) of the MWD requires that such a financial guarantee as set out in Article 14(1) is in place by 1 May 2014. The Department intends to address the issue of financial guarantees for relevant permissions as an element of ROMPs and that where an appropriate guarantee is not put in place to the Department’s satisfaction the permission may be subject to enforcement action.

Question 7: Do you agree that planning permission should be withheld for new operations and enforced for existing operations where a suitable financial guarantee is not put in place?

Modification of Planning Permission

80. It is possible that in certain circumstances it may be necessary to modify existing permissions to ensure they are brought into line with the requirements of the MWD e.g. by applying conditions relating to the review of waste management plans on a five yearly basis or when there is a significant change in the nature of waste produced. The Department has powers under Article 38 of the Planning (Northern Ireland) 1991 to modify or revoke any permission having regard to the development plan or “*any other material considerations*”. The Department considers that the MWD and proposed Regulations would constitute such material considerations.

Best Available Techniques

81. Article 4 of the MWD requires operators to take measures to prevent, or reduce as far as possible, any adverse effects on the environment and human health. Such measures are to be based, amongst other things, on the best available techniques (BAT) applied through Directive 96/61/ EC on integrated pollution prevention and control (IPPC) and should take account of the technical characteristics of the waste facility, its geographical location and the local environmental conditions.
82. The measures set out in Directive 96/61/ EC⁹ cover issues such as low waste technology, overall impact on the environment, accident prevention, energy efficiency and the consumption of raw materials. These measures do not presently apply to extractive waste in Northern Ireland so the Department intends that Regulations will include a requirement for operators to demonstrate compliance with Article 4 of the MWD, detailed in the waste management plan, as an element of the planning application, that is to demonstrate compliance with

⁹ Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control

BAT principles¹⁰ such as those specified in Article 3 of The Pollution Prevention and Control Regulations (Northern Ireland) 2003.

83. The Department is of the view that members of the Aggregates Credit Levy Scheme will already have satisfied many of these requirements under that scheme.

Question 8: Do you agree that the principles of Best Available Techniques should be demonstrated through waste management plans as an element of a planning application or by some other means, and if so what?

84. Article 21(2) of the MWD requires Member States to ensure that the competent authority follows or is informed of developments in best available techniques. Article 21(3) confirms that the Commission shall organise an exchange of information between Member States and the organisations concerned on best available techniques, associated monitoring and developments in them. The Commission will publish this information and it is likely that the Department will need to provide further guidance/advice in due course to highlight the outcome of this further work. The Department may work to publish guidelines in conjunction with industry partners such as QPANI.

Transboundary Effects

85. If the Department becomes aware that the operation of a category A waste facility in Northern Ireland is likely to have significant adverse effects on the environment of, and any resultant risks to human health, in another Member State, it must forward the information provided to the Department by the operator when making a request for a permit or licence to that Member State at the same time as it makes this information available to its own nationals.
86. The same applies where a Member State, likely to be thus affected, so requests that same information pertaining to the permit or licence i.e. the information will be

¹⁰ <http://www.ni-environment.gov.uk/pollution/ippc/horizontal-guidance.htm>
<http://www.ni-environment.gov.uk/pollution/ipc/guidancenotespartb.htm>

supplied at the same time as it makes this information available to its own nationals.

87. This exchange of information shall form the basis for any consultation necessary within the context of bilateral relations between the two Member States on a reciprocal and equivalent basis.
88. The consultation with the other Member State needs to be on the same basis as the Department's consultation with its own nationals and an appropriate length of time afforded to the public concerned of the Member State likely to be affected so they will have the right to comment on them before the competent authority reaches its decision. This is to ensure equal rights to all of Europe's citizens.
89. In the event of an accident involving a waste facility as referred to in paragraph 39 any information supplied by the operator to the competent authority, as required by MWD Article 6(4), shall be immediately forwarded to the other Member State in order to minimise the consequences of the accident for human health and to assess and minimise the extent of the actual or potential environmental damage.

LINKS TO OTHER CONTROL REGIMES

Environmental Regulation

90. The Water Framework Directive (2000/60/EC), which aims to protect the quantity and quality of water in the whole water environment, was transposed into Northern Ireland Legislation by the Water Environment and Water Services (Northern Ireland) Act (2003). This Act gave Northern Ireland Ministers powers to introduce regulatory controls over activities in order to protect and improve Northern Ireland's water environment. The Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006, which came into operation on 1st April 2006, provides details of these regulatory controls and applies to:
 - discharges to all surface waters and groundwaters (replacing the Control of Pollution Act 1974 and Groundwater Regulations 1998);
 - abstractions from all surface waters and groundwaters;

- impoundments (dams and weirs) of rivers, loughs, wetlands and transitional waters; and
 - engineering works in inland waters.
91. The Groundwater Directive (80/68/ EEC) identifies potential pollutants against which groundwater needs protecting. These potential pollutants are grouped together under List I and List II substances. List I substances are particularly harmful pollutants and must be prevented from entering groundwater. List II substances have the potential to cause pollution. The input of List II substances to groundwater must be limited to avoid pollution.
92. The NIEA regulates discharges to the water environment, including groundwater, under water abstraction licensing through a system of licences, registrations and general binding rules. Water abstraction licensing requires that both the Groundwater Directive and the Water Framework Directive are complied with. This means that the requirements of the MWD relating to these Directives are achieved through existing water abstraction licensing controls.
93. Most applications for major new mineral sites are likely to require an environmental statement under the EIA Regulations as amended. Schedule 4 of these Regulations describes the matters that should be addressed in such statements. This includes a description of the proposed measures to prevent, reduce and, where possible, offset any significant effects on the environment, including effects on population, fauna, flora, soil, water and air. Development Control Advice Note 10¹¹ on environmental impact assessment issued by the Department provides further information on the EIA process.

Health and Safety Regulation

94. Mines and quarries in Northern Ireland are already covered by comprehensive health and safety legislation that already ensure compliance with most of the provisions in the MWD relating to human health. The most relevant are the

¹¹ Available at http://psmillint.drd.nigov.net/intranet/index/policy/supplementary_guidance/dcans/dcan10.htm

Quarries Regulations (Northern Ireland) 2006¹² ("the Quarries Regulations")¹³.

These apply to quarries and opencast coal sites:

- being prepared for extraction of minerals;
- where mineral extraction or preparations takes place as part of a work activity;
- where work to prevent water or other material flowing into an adjacent quarry takes place, including after quarrying has finished; and
- being prepared for abandonment, e.g. landscaping.

Regulation 8 of the Quarries Regulations requires the operator to establish a management structure to enable operation in accordance with the health and safety document. Regulation 9 prohibits a person working unless they are competent to do the work, or are under the supervision of someone who is competent to instruct and train them.

95. Health and safety at tips used in conjunction or connection with the operation of a quarry are controlled by the Quarries Regulations, even if they are some distance from the excavation site. This is the case whether the tip is only used for waste or landscaping material or is, for example, a clay stockpile adjacent to brickworks.
96. The Quarries Regulations place duties upon both the person entitled to work the quarry and the operator and include requirements to produce a Health and Safety document and for all proposed and existing excavations or tips to be appraised at appropriate intervals. Operators also have to follow a set of excavation and tips rules, which specify the way in which the excavation and tips will be constructed and managed to ensure safety. The GB document "*Health and safety at quarries: Quarries Regulations 1999*"¹⁴ " has been approved by HSENI for use with the NI Quarries Regulations.
97. The Mines and Quarries (Tips and Tipping Plans) Regulations¹⁵ (NI) 1995 cover disused tips, whether of mine or quarry origin. Under these Regulations, the Department of Trade and Industry is responsible for ensuring that disused tips do not, by reason of stability, constitute a danger to members of the public. If an authority suspects a tip is unstable, it has the power to ask from the owner, or any

¹² SR 2006 No. 205

¹³ Also the Quarries (Explosives) Regulations (Northern Ireland) 2006 (S.R. 2006 No. 204).

¹⁴ L118; ISBN 07176 24587

¹⁵ SR 1995 No. 296

other relevant person, all relevant sections, records and plans relating to the security of the tip and its foundations. Authorities can access the tips and its surroundings to carry out site investigations and instruct the owner of the tip to undertake whatever remedial works are considered necessary

98. In addition, the Health and Safety at Work (Northern Ireland) Order 1978 sets out general duties to secure the health, safety and welfare of persons at work and protecting persons, other than persons at work, against risks to health and safety arising out of or in connection with the activities of persons at work. The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (Northern Ireland) 1997 sets out reporting requirements and procedures for such events.

Waste Framework Directive

99. The Waste Management Licensing Regulations (Northern Ireland) 2003 came into operation on 19th December 2003, transferring the responsibility for waste management licensing from district councils to the Department of the Environment. Under these Regulations NIEA issues licenses, sets conditions on licensed activities and monitors sites to ensure compliance with license conditions. The determination of any outstanding applications to district councils for new licenses or variations will fall to NIEA. They must ensure compliance with MWD regulations when issuing any licence and this may also be covered under planning conditions.

100. Under the Waste and Contaminated Land (NI) Order 1997 licenses will be required to authorise:
- the deposit of controlled waste in or on land;
 - the disposal and treatment (including recovery) of controlled waste;
 - the use of certain mobile plant to dispose of or treat controlled waste.

Major Accident Prevention and Information

101. Article 6 of the MWD sets out measures aimed at minimising the risk of major accidents in relation to waste facilities categorised as Category A in line with Annex III of the Directive i.e. 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; or
 - it contains waste classified as hazardous under Directive 91/689/ EEC (the Hazardous Waste Directive) above a certain threshold; or
 - it contains substances or preparations classified as dangerous under Directives 67/548/ EEC (the Directive on Classification, Packaging and Labelling of Dangerous Substances) or 1999/45/ EC (the Dangerous Preparation Directive) above a certain threshold.
102. Where such risk exists, operators must adopt and apply a major accident prevention policy for waste. This should involve the delivery of a safety management system, emergency plans to be used in the event of accidents and the dissemination of safety information to persons likely to be affected by a major accident.
103. In the event of an accident, operators should be required to provide the competent authorities with all the relevant information necessary to mitigate actual or potential environmental damage. These particular requirements do not apply to those waste facilities falling within the scope of Directive 96/82/EC on the control of major accident hazards involving dangerous substances¹⁶.
104. Article 6 does not apply to Category A waste facilities falling within the scope of Directive 96/82/EC. The relevant parts of that Directive are transposed in domestic law by the Control of Major Accident Hazards (Northern Ireland) Regulations 2000 (COMAH) as amended. These Regulations apply mainly to the chemical industry, but also to some storage activities, such as explosives, and

¹⁶ Control of Major Accident Hazards Regulations (Northern Ireland) 2000 (SR 2000/93) and as amended in 2005 (SR 305)

other industries where threshold quantities of dangerous substances identified in the Regulations are kept or used. For other Category A waste facilities, the intention is to transpose the requirements in Article 6 through new procedures similar to those in the COMAH Regulations. This part of the consultation paper identifies how this would work in practice.

105. The following provisions will apply to both new and existing sites involving a Category A waste facility. The transposition proposals set out in this consultation paper would mean that all existing sites requiring an Article 7 Permit, including those involving a Category A waste facility, would need to submit a planning application. This will ensure that, in all cases, considerations in relation to Article 6, including the need to provide competent authorities with the information necessary to prepare external emergency plans, is considered in tandem with the planning application process.
106. Article 5(3)(a) specifically refers to the need for operators to demonstrate that, if required, “a document demonstrating that a major-accident prevention policy, a safety management system for implementing it and an internal emergency plan will be put into effect” as part of the process for providing a waste management plan under Article 5. This, in effect means, that an Article 7 permit for a Category A waste facility can only be granted (and works can only commence) when an operator has demonstrated compliance with Article 6 requirements.
107. As proposed in this consultation paper, HSENI and NIEA would be consulted on all new planning applications involving extractive waste or those which require a waste management plan and/or the categorisation of a waste facility. This should better facilitate early discussions and close co-operation on all aspects of the Directive, including those relating to Category A waste facilities.

Main Article 6 Requirements

108. Article 6(3) of the MWD requires operators to take steps to prevent major accidents, specifically, they must:

- prepare a Major Accident Prevention Policy (MAPP) and put into effect a safety management system implementing it;
- put into effect an internal emergency plan specifying the measures to be taken on site in the event of an accident;
- appoint a safety manager responsible for the implementation and periodic supervision of the MAPP.

109. Article 6(6) also includes a requirement to provide information to the public on safety measures and action to be taken in the event of an emergency. Following the COMAH model, this duty will also fall on operators.

110. The Department proposes that an operator when submitting a planning application, which involves a Category A waste facility, must include evidence of a MAPP, an internal emergency plan and the appointment of a safety manager. Where this information is not provided or does not appropriately address the requirements of the MWD permission will not be granted.

Question 9 : Do you agree that the proposed requirements as an element of the planning application process are adequate in addressing the requirements of Article 6?

111. The MWD is silent on what role is appropriate for other bodies in relation to the duties placed on operators. Provisions will be needed to ensure that procedures put in place by operators are sufficient to meet the MWDs general obligations. Under COMAH, NIEA and HSENI are identified as a joint competent authority.

112. Finally, Article 6(3) requires “competent authorities” to draw up external emergency plans. Linked to this, are duties to provide the public with ‘*early and effective opportunities to participate in the preparation or review of the external emergency plan*’.

113. While it is anticipated that few, if any, such facilities will operate in Northern Ireland Regulations will nonetheless make provision to satisfy fully the requirements of Article 6. Discussions with relevant authorities are ongoing to specify how this will be transposed in Northern Ireland. These discussions

include defining, with respect to the proposed Regulations, who is the relevant competent authority and who co-ordinates any emergency response and consultation with the public.

Requirements placed on the Department as planning authority

Inspections

114. Before, during and after operations there is a requirement on the competent authority to develop and continue to undertake a programme of inspections of any waste facility covered by an Article 7 permit. The aim of the inspection is to ensure compliance with the relevant conditions of the permit i.e. planning permission under these proposals.
115. A positive inspection finding shall in no way reduce the responsibility of the operator under the conditions of the permit. However, consideration is being given to a risk based model of inspections linked to Better Regulation principles. This could lead to fewer inspections being required for compliant sites and thus reduce costs to the operator. If an operator is found to be in breach of any of the conditions of the permit the frequency of the inspections may increase significantly.

Question 10: Do you agree that the proposals to satisfy the requirements of the MWD in relation to inspections are consistent with Better Regulation principles?

Competency

116. Article 11(1) includes an additional requirement on member states to take “appropriate measure to ensure that the management of a waste facility is in the hands of a competent person and that technical development and training of staff are provided” in relation to any waste facility involving non-inert waste or a Category A waste facility. A further requirement of Article 11(2)(c) is that there are suitable plans and arrangements for regular monitoring and inspection of the waste facility by competent persons and for taking action in the event of results

indicating instability or water or soil contamination”.

117. The Quarries Regulations already require that all those working at a quarry must be competent before works start, whether or not they are employees of the quarry operator, and that there are sufficient competent people on site to manage the quarry and supervise as necessary. The requirement for competence is not restricted to quarry managers and those who work on the site, but also to all those in the management structure whose decisions affect quarry operations. HSENI has adopted HSEGBs policy on competence¹⁷. The Department’s view is that these existing arrangements already meet the competency requirements in the Directive in relation to health and safety, including instability monitoring and inspection requirements
118. The MWD Regulations will need to make specific provision to ensure compliance with the competency requirements relating to water or soil contamination in Article 11(2)(c) of the Directive. It is proposed that the model in health and safety legislation is followed. This would mean that the Regulations would place a general requirement on operators to ensure that “suitable plans and arrangements for regular monitoring and inspection of the waste facility by competent persons and for taking action in the event of results indicating water or soil contamination” are in place, including “technical development and training” of such persons.

Question 11: Do you agree that placing a general requirement on operators is an appropriate means of securing the competency requirements of Article 11?

Other Transitional Arrangements

119. Article 24(4) provides that only some of the Directive's requirements will apply to waste facilities that:-
- stopped accepting waste before 1 May 2006;

¹⁷ Available at www.hse.gov.uk/foi/internalops/sectors/manuf/3_05_15.pdf

- are completing the closure procedures in accordance with applicable Community or national legislation or programmes approved by the competent authority; and
- will be effectively closed by 31 December 2010.

120. The Department proposes to rely on the existing legislative framework to deliver the Directive's requirements applying to any such facilities. Closure procedures will therefore continue to be governed by planning conditions dealing with the restoration and aftercare of mineral sites. In addition existing health and safety and environmental legislation covering other aspects, such as health and safety precautions, pollution control and operator competence, will continue to apply. The Department intends to use the exclusions and derogations set out in Article 2(3) of the Directive in relation to waste facilities covered by Article 24(4).

121. The Department intends that the existing mineral planning permission for any waste facility covered by Article 24(4) will satisfy the Directive's requirements, including the general requirements of Article 4. The Department does not expect that any significant changes to planning permission conditions will be necessary but would intend to use existing powers under Article 38 of the 1991 Order to modify a permission by imposing additional planning conditions considered necessary, to ensure compliance with the relevant requirements of the Directive.

Inventory of closed waste facilities

122. Article 20 of the Directive requires Member States to ensure that an inventory of closed waste facilities, including abandoned waste facilities, is drawn up, periodically updated and made available to the public by 1 May 2012. The inventory should include only those sites which cause serious negative environmental impacts or have the potential of becoming in the medium or short term a serious threat to human health or the environment. The Department is considering how best to take this work forward.

Change of Operator

123. Where the operator of a waste management operation changes, planning permission runs with the land, so that anyone carrying out an operation on the land concerned is bound by the planning permission and accompanying conditions. There would therefore be no need to apply for a transfer of the planning permission. However, a planning condition on the original application will require the new operator to notify the Department on their financial provision, competency etc relating to the extant permission. Operators may need to apply for transfer of other consents, such as groundwater consents, and also meet operator competence authorisation requirements.

Fees

124. Applications for development consisting of the winning and working of minerals are subject to The Planning (Fees) Regulations (Northern Ireland) 2005 and as amended. Under these Regulations there is no separate existing provision relating to fees for the consideration of waste management plans or the inspection of waste facilities.

Question 12: Should the proposed Regulations introduce specific fees for the consideration of waste management plans and inspections?

Record Keeping

125. The proposed Regulations will impose an obligation on the operator to keep up-to-date records of all waste management operations. This will most likely form the basis for the waste management plan and is an 'extension' of current waste record keeping obligations.

126. These up-to-date records must be made available to the competent authority i.e. the Department, for inspection and there must be an appropriate transfer of relevant up-to-date information and records relating to the management of the waste facility in the event of a change of operator.

Obligation to report

127. The MWD places obligations upon Member States to report on the implementation of the Directive every three years with the Commission subsequently publishing a composite report. In addition, Member States are also required to report annually on any events covered by Articles 11(3) and 12(6) namely, any events likely to affect the stability of a waste facility and any significant adverse environmental effects revealed by the control and monitoring procedures of the waste facility.

Future Publicity of MWD Requirements

128. It is important that in addition to putting in place necessary legislation to give effect to the requirements of the MWD that operators are advised of their obligations so as to avoid the need for enforcement action and, more importantly, to ensure as far as possible that all operations do not constitute a risk to the environment or human health. To this end the Department intends to continue to work with industry representatives to publicise both the MWDs requirements and best practice to influence and inform mineral operations.

RPA impacts.

129. With the implementation of the decisions on the review of public administration (RPA) the majority of planning functions will transfer to local councils. The legislation will have to reflect the change from a unitary planning authority and maintain the statutory basis of requirements in order to maintain compliance.

ARTICLES IN THE MINING WASTE DIRECTIVE

- Article 1** Subject Matter.
- Article 2** Scope of the Directive, including exclusions and derogations.
- Article 3** Definition of terms for the purposes of the Directive.
- Article 4** General requirements: obligation *inter alia* is to ensure extractive waste is managed without causing harm to human health or the environment.
- Article 5** Requirement for a waste management plan for the minimisation, treatment, recovery & disposal of extractive waste.
- Article 6** Major accident prevention measures for Category A waste facilities.
- Article 7** Requirement for a permit to operate a waste facility, including a financial guarantee.
- Article 8** Public notification and participation in the process for granting a permit under Article 7.
- Article 9** Classification of waste facilities.
- Article 10** Requirements in relation to the replacement of extractive waste back into the extraction void.
- Article 11** Measures to ensure a waste facility is (i) managed by a competent person (ii) constructed (or modified), monitored and inspected so as to ensure physical stability and prevent pollution; & arrangements made for rehabilitation and aftercare of the facility.
- Article 12** Closure and after-closure procedures for waste facilities, including monitoring and reporting obligations (subject to Article 2 derogations).
- Article 13** Measures to prevent water status deterioration, air and soil pollution (subject in part to Article 2 derogations).
- Article 14** Requirement for a financial guarantee for the operation of a permitted waste facility to ensure all permit obligations, including after-closure provisions, are met.
- Article 15** Amendment to the Environmental Liability Directive.
- Article 16** Arrangements to cover international transboundary effects of Category A waste facilities.

- Article 17** Requirements for the competent authority to carry out inspections of waste facilities subject to Article 7 and for operators to keep up-to-date records of all waste management operations for inspection.
- Article 18** Obligation on Member States to report to the European Commission.
- Article 19** Requirement to provide for penalties for infringement of the implementing regulations.
- Article 20** Obligation on Member States to produce and maintain an inventory of closed & abandoned waste facilities.
- Article 21** Obligations on European Commission to ensure exchange of information; and on Member States to ensure competent authority follows developments in best available techniques.
- Article 22** Implementing and amending measures.
- Article 23** Committee.
- Article 24** Transitional Provisions.

[PARTIAL] REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

1.1 The Planning (Management of waste from the extractive industry) Regulations (Northern Ireland) 2009.

2. Purpose and Intended Effect of the Regulations

(i) The objective -

2.1 The regulations are being introduced to transpose into Northern Ireland planning legislation the requirements of European Council Directive 2006/21 (the “Mining Waste Directive”), whereby requirements will be placed upon operators in the onshore extractive industry to manage extractive waste so as to prevent or reduce as far as possible any adverse effects on the environment and human health.

2.2 The regulations relate to all onshore extractive operations.

2.3 The Mining Waste Directive applies throughout the UK and is being transposed separately in England, Scotland, Wales and Northern Ireland.

(ii) The background

2.5 The need for increased statutory control of extractive waste in order to protect the environment and human health was highlighted by accidents in Spain and Romania involving mining waste which led to widespread pollution of watercourses and rivers and damage to crops and marine life. The Mining Waste Directive complements: Directives 2003/105/EC and 96/82/EC on the control of major accidents involving dangerous substances; Directive 96/61/EC on integrated pollution prevention and control.

(iii) Risk assessment

2.6 Inadequate transposition of the Mining Waste Directive could result in significant costs through infraction proceedings by the European Commission.

3. Options

(i) Transpose the requirements of Directive 2006/21/EC into Northern Ireland planning legislation.

(ii) Do nothing

3.1 The alternative to transposing the requirements of the Mining Waste Directive through appropriate NI regulations is to do nothing. This is not a realistic or desirable option as the UK is legally obliged to implement Directive 2006/21/EC. Failure to transpose would result in infraction proceedings by the European Commission.

4. Benefits

Option (i) Transpose requirements of Directive 2006/21/EC

4.1 Establishment of minimum requirements for operators in the extractive industry in legislation in order to prevent or reduce as far as possible any adverse effects on the environment and human health from the management of extractive waste. The provision of information and increased public participation in relation to planning permission for operations which have the potential to impact significantly on the environment and human health. The establishment of ongoing monitoring and reporting arrangements in relation to extractive operations.

Option (ii) Do nothing

4.2 There are no benefits associated with this option, as failure to transpose the Directive would result in infraction proceedings by the European Commission.

5. Other Impact Assessments

Environmental or Social Costs

5.1 There are not considered to be any environmental or social costs associated with introducing these regulations.

Equality Impact Assessment

5.2 The measures will not affect any section 75 priority group disproportionately.

Health Impact Assessment

5.3 The measures will not have any detrimental effects on health.

Rural considerations

5.4 While the majority of extractive operations are located in rural areas the proposed measures will apply equally to all sites regardless of location. The preponderance of sites in rural areas could mean a heavier impact on rural communities dependent upon current standards of operation, however, where this might be required it could be counter-balanced by subsequent improvements in environmental standards and protection of human health in rural areas.

6. Costs

(i) Compliance costs

6.1 The additional obligations on Planning Service are considered to be relatively minor and do not involve significant costs. Where possible they will be incorporated into the existing planning application process and/or proposed arrangements for the review of old mineral permissions (ROMPs).

(ii) Compliance costs for business

6.2 The regulations may place additional obligations on operators in the onshore extractive industry who do not already follow best practice, however, it is proposed that these obligations will, where possible, be included within the existing planning application process and will not involve significant costs. In addition the provision of best practice guidance form within the industry will support any operator in fulfilling its responsibilities at minimal cost.

7. Competition Assessment

7.1 Not applicable. The proposals will not impact on competition within UK markets. All EU Member States are required to transpose the Directive.

8. Consultation with Small Business: the Small Business Impact Test

8.1 It would be rare for small firms in the extractive industry to seek planning permission for development that would have significant effects on the environment (thus requiring EIA). A small firms' impact test has not therefore been undertaken.

9. Enforcement and Sanctions

In relation to the Department

9.1 Failure to comply with the Directive would run the risk of domestic legal challenge or infraction proceedings by the EC.

In relation to business

9.2 Failure of operators in the extractive industry to comply with the requirements of the Regulations could lead to enforcement proceedings being instituted by Planning Service with the prospect of the revocation of planning permission.

10. Monitoring and Review

10.1 The main requirement of the Regulations for the majority of operators will be the development of a waste management plan to be subject to ongoing review as an additional requirement of the planning process.

10.2 The Directive also places responsibilities on Member States to provide the Commission with information on the implementation of the Directive, on a three-yearly basis, as well as information on any accidents or waste facility closures, on an annual basis.

11. Consultation

(i) Within Government

11.1 Representatives of other Government Departments and the administrations of England, Scotland, Wales and Northern Ireland have been consulted on the UK position in the negotiation of the Mining Waste Directive.

(ii) Public Consultation

11.2 A full public consultation on proposals to transpose the Directive into Northern Ireland legislation will be carried out at the end of 2008/start of 2009 and this Regulatory Impact Assessment formed part of it.

11.3 The Consultation Paper will be sent to a wide range of bodies and be advertised in local newspapers and on the Department's website.

12. Summary and Recommendation

| Option | Cost | Benefit |
|--|--|---|
| (i) – Transpose requirements of Directive 2006/21/EC | It is not anticipated that measures to address the MWDs requirements will involve significant costs for either government or businesses. | Tighter statutory control of the management of waste by all operators in the extractive industry and greater security in protecting the environment and human health. |
| (ii) - do nothing | Fines imposed by European Court for non-transposition | No environmental or safety benefits. |

12.1 It is anticipated that the costs to business and the public sector associated with the proposals for transposition of Directive 2006/21/EC will not be significant. The risks and associated costs of not transposing are significant. It is, therefore, recommended that the requirements of Directive 2006/21/EC are transposed through the Planning (Management of waste from the extractive industry) Regulations (Northern Ireland) 2009.

DECLARATION

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

Signed by a Senior Officer of the Department of the Environment

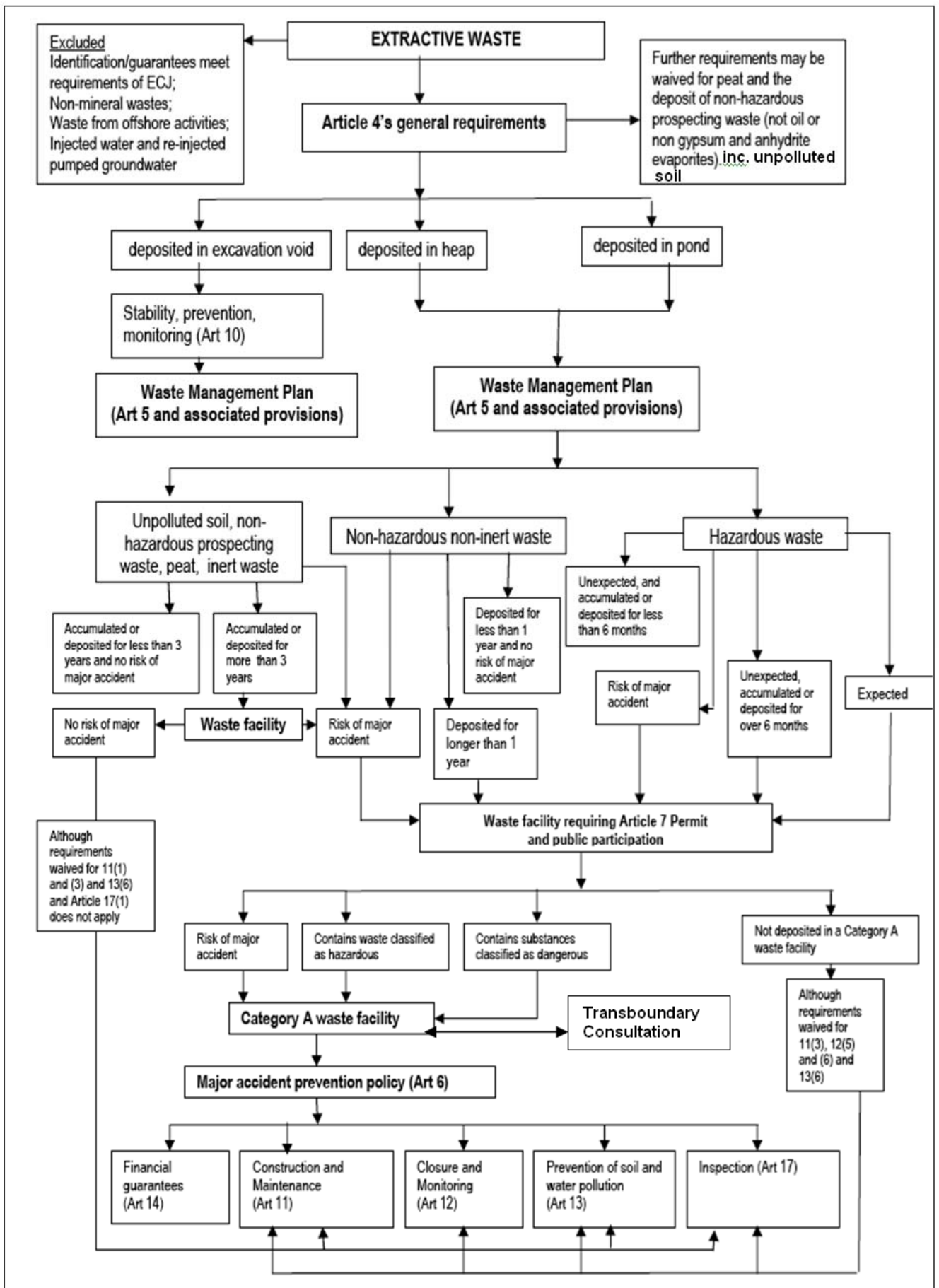
[Signature Director of Corporate Services Planning Service.] **Date:** February 2009

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LIST OF CONSULTEES

ANNEX D

Association of Consulting Engineers
Bar Library
Belfast Hills Partnership
Belfast Solicitors Association
Catholic Bishops of NI
Chartered Institute of Environmental Health
Chief Executive of the NI Judicial Appointments Commission
Citizens Advice Bureau
Civic Forum
Civil Law Reform Division
Confederation of British Industry, NI Branch CBI
Construction Employers Federation
Council for Nature Conservation and the Countryside
Derryhale Residents Association
DETI Central Management Branch
DFP Departmental Solicitors' Office
DHSSPS Health Estates
Director of Central Procurement
Director of Network Services
DRD Library
DRD Roads Service
DSD Belfast Development Office
DSD North West Development Office
DSD Regional Development Office Special Programmes
Branch
Environment and Planning Law Association of NI
Equality Commission for NI
Federation of Small Businesses
Fire Authority for Northern Ireland
Food Standards Agency NI
Friends of the Earth
Geological Survey of Northern Ireland
HM Revenue & Customs
Human Resources Office, Equality Department
Human Rights Commission
Independent Health Coalition
Inland Revenue
Institute of Professional Legal Studies
Institute Of Directors
Institution of Civil Engineers (NI Association)
Invest Northern Ireland
Laganside Courts
Landscape Institute NI
Law Centre (NI)
Ministry of Defence

NI Chamber of Commerce and Industry
NI Chamber of Trade
NI Quarry Products Association
NI Resident Magistrates' Association
NI Water Limited
NIC/ICTU
North/South Ministerial Council
Northern Ireland Assembly
Northern Ireland Association Engineering Employer's
Federation
Northern Ireland Court Service
Northern Ireland District & Borough Councils
Northern Ireland Environment Agency (NIEA)
Northern Ireland Environment Link
Northern Ireland Government Departments
Northern Ireland Law Commission
Northern Ireland Local Government Association
Northern Ireland MPs, MEPs, Political Parties and MLAs
Northern Ireland Office
Northern Ireland Quarry Owners Association
Official Publications Section
Participation & the Practice of Rights Project
Planning Appeals Commission
Planning Magazine
Policy Development Officer
Quarryplan Limited
Regional Development Office
Regional Planning and Transportation Division
Royal Town Planning Institute (Irish Branch, Northern
Section)
School of Law
Scottish Government
Secretary, HM Council of County Court Judges
Society of Local Authority Chief Executives
The Executive Council of the Inn of Court of NI
The General Consumer Council for NI
The Law Society of Northern Ireland
The NI Council for Voluntary Action
The Workers Party
Ulster Society for the Preservation of the Countryside
Ulster Unionist Party
Ulster Wildlife Trust
University of Ulster
University of Ulster, School of the Built Environment
World Wildlife Fund (NI)