

[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 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 European Commission.

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 MWD's 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.]

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