EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2009

2009 No.

1. This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The draft instrument transposes the permitting and compliance requirements of Directive 2006/21/EC on the management of waste from extractive industries ("the Mining Waste Directive") in England and Wales. It does this by integrating these requirements into the single system of environmental permitting as set out in the Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538) ("the 2007 Regulations").

2.2 The draft instrument corrects a number of errors and omissions in the 2007 Regulations and updates references in those Regulations following the recent codification in Directive 2008/1/EC of Directive 96/61/EC concerning integrated pollution prevention and control ("the IPPC Directive").

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

3.1 The Department draws the Committee's attention to regulation 16 of the draft instrument.

3.2 Regulation 16 seeks to rectify an omission, in regulation 72 of the 2007 Regulations, of a reference to the Landfill (England and Wales) Regulations 2002 (S.I. 2002/1559) ("the 2002 Regulations"). The 2002 Regulations are not mentioned elsewhere in the 2007 Regulations as Schedule 10 (Provision in relation to landfill) refers to compliance with the Landfill Directive (Council Directive 1999/31/EC).

3.3 There are several outstanding appeals relating to landfill sites in the pipeline and the Department is of the view that rectifying the omission is a better solution than attempting to rely on section 16 of the Interpretation Act 1978. For example, we need to be able to save a closure notice that has been served under the earlier regime to ensure that it can be enforced. And where a permit decision has been made under the predecessor regime before 6 April 2008 and the appeal is lodged after that date, we need to ensure that the regulator can still require compliance with the conditions imposed on the landfill site. We are keen to avoid operators and their legal advisers querying the saving of the 2002 Regulations.

3.4 Although the Department could attempt to argue in each appeal that no contrary intention appears in regulation 72 of the 2007 Regulations, we are concerned that having three other pieces of legislation specifically listed in 72(1) does raise a valid question as to why there is no mention of the 2002 Regulations – and therefore whether this is evidence of a "contrary intention". We are therefore keen to avoid unnecessary legal dispute by clarifying that the intention is that the 2002 Regulations should be saved for the limited purposes set out in 72(1) of the 2007 Regulations.

4. Legislative context

4.1 The Mining Waste Directive was adopted on 1 May 2006 and its key objective is to provide:-

> "...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 risk to human health, brought about as a result of the management of waste from the extractive industries."

4.2 As a specific measure on the management of extractive waste, the requirements of the Mining Waste Directive take precedence over the more general requirements of the Waste Framework Directive[1]. Member States were required to adopt the necessary transposing legislation by **1 May 2008**.

4.3 The 2007 Regulations were made to streamline and replace existing regimes covering waste management licensing and pollution prevention and control; and replaced over forty Statutory Instruments dealing with environmental permitting with a single instrument covering:-

- who needs a permit or a registered permit exemption;
- how to apply for, vary, transfer, surrender and enforce against a permit; and
- the delivery through permitting of national policy on 11 EU Directives on environmental protection and pollution prevention and control.

4.4 The 2007 Regulations clearly separate procedure from substantive environmental protection requirements. They were designed in a way so that few of the rules concerning environmental permitting procedure (applications, transfers, variations etc.) in the 2007 Regulations would need amending in the event of changes to national or EU legislation covering the scope of activities needing environmental permits or imposing detailed regulatory requirements.

4.5 The draft instrument illustrates the benefit of this design by transposing the requirements of the Mining Waste Directive through minimal amendments to the body of the 2007 Regulations and the insertion of a new Schedule 18B. The majority of the Directive's specific requirements are set out in Schedule 18B.

4.6 A Transposition Note has been prepared setting out the transposition of the Mining Waste Directive in England and Wales and is attached to this Memorandum at Annex 1.

4.7 Explanatory Memorandum on Council Document 10143/03, "Proposal for a Directive of the European Parliament and the Council on the management of waste from the extractive industries", was submitted by the Office of the Deputy Prime Minister in June 2003 and a supplementary Explanatory Memorandum was submitted on 20 May 2004. The European Scrutiny Committee considered it politically important and cleared it in September 2004. The House of Lords Select Committee on the EU referred it to Sub-Committee D and cleared it at their meeting on 8 September 2004.

[1] Originally adopted as Directive 75/442/EEC and codified as Directive 2006/12/EC – and which will be repealed and replaced with effect from 12 December 2010 by Directive 2008/98/EC.

4.8 Article 6 of the Mining Waste Directive sets out the requirements for major-accident prevention and the associated information requirements. Not all of the requirements are delivered directly through the environmental permitting regime. The requirement for an external emergency plan dealing with an emergency beyond the site is contained in separate Regulations, with the local authority emergency planners as the competent authority. These separate Regulations are due to be laid in June 2009.

5. Territorial Extent and Application

5.1 The draft instrument applies to England and Wales.

5.2 Separate systems cover waste management licensing and pollution prevention and control in Scotland and Northern Ireland. The requirements of the Mining Waste Directive and of the codified IPPC Directive will be transposed by separate instruments in those jurisdictions.

6. European Convention on Human Rights

6.1 The Rt Hon Jane Kennedy MP, the Minister for Farming and the Environment, makes the following statement regarding human rights:-

> "In my view the provisions of the Environmental Permitting (England and Wales) (Amendment) Regulations 2009 are compatible with the Convention rights".

7. Policy background

7.1 Environmental permitting and compliance systems have arisen largely independently of each other. They have adopted, often for good reasons, a variety of approaches to the same aspects of environmental permitting and compliance to achieve similar outcomes. This led to an overall regulatory system that was often perceived and experienced as too complex for industry and regulators. The 2007 Regulations aimed to change that. The policy background to the 2007 Regulations is set out in the Explanatory Memorandum to those Regulations.

7.2 To date the requirements of the Waste Framework Directive[2] (WFD) have applied in principle to all waste produced by the extractive industries. However, a series of pollution incidents – including serious incidents in 1998 in Aznalcóllar/Spain and in 2000 in Baia Mare/Romania - led to increased public awareness of the environmental and human health risks associated with extractive operations. In response, the European Commission adopted (i) a Communication on 3 May 2000 on "*Promoting sustainable development in the EU non-energy extractive industry*"; and (ii) a Communication on 23 October 2000 addressing the "*Safe operation of mining activities: a follow-up to recent mining accidents*". The second Communication reviewed the then existing environmental legislation applying to the extractive industries and set out the following three priority actions to improve the management of waste from these industries:-

1. The legislation now adopted as the Mining Waste Directive;

[2] Originally adopted as Directive 75/442/EEC and codified as Directive 2006/12/EC – and which will be repealed and replaced with effect from 12 December 2010 by Directive 2008/98/EC.

2. An amendment to the Seveso II Directive[3] to bring the processing of mineral ores and mine waste management under the scope of the Directive; and

3. A best available techniques (BAT) document, under the IPPC Directive, on the management of waste rock and tailings in mining activities.

7.3 The Mining Waste Directive specifically covers the management of waste from land-based extractive industries. That is to say, waste arising from prospecting, extraction (including the pre-production development stage), treatment and storage of mineral resources and from the working of quarries. The Mining Waste Directive is intended to reflect the principles and priorities of the WFD and, in particular, the waste hierarchy[4] (Article 3 of the WFD) and the protection of the environment and human health (Article 4 of the WFD).

7.4 The effect of Article 2(1)(b)(ii) of the WFD is to exclude from the WFD's 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". Before the Mining Waste Directive was adopted there was no EU legislation covering this type of waste. However, the European Court of Justice concluded in the AvestaPolarit case (C-114/01) that national legislation is to be regarded as other legislation within the meaning of Article 2(1)(b) of the WFD, where it covers the categories of waste listed in that provision, and if that national legislation results in a level of protection of the environment at least equivalent to that aimed at by the WFD.

7.5 The UK currently relies on national legislation to provide an equivalent level of environmental protection to that aimed at by the WFD for the management of mineral waste from mines and quarries. The Mining Waste Directive is "other legislation" for the purposes of Article 2(1)(b)(ii) of the WFD. In this sense, the Mining Waste Directive is a "standalone Directive" which, on its transposition, will take precedence over the WFD in relation to the management of waste that falls within its scope.

7.6 The draft instrument transposes the permitting and related requirements of the Mining Waste Directive by amending the 2007 Regulations. The 2007 Regulations form part of a wider better regulation initiative designed to minimise costs for business and regulators by cutting unnecessary red tape, without changing levels of protection for the environment and human health or what is regulated. The flexible features of the 2007 Regulations, such as standard permits and flexible approaches to transfer, variation and surrender of permits encourage regulators and industry to adopt and promote risk based and proportionate regulation. That flexibility is only limited where necessary to deliver the Directive's requirements and to protect the environment or human health. For example, for some Mining Waste Directive facilities, financial guarantees must be provided by operators to ensure that the environment is protected in the long term.

7.7 A further separate consultation was started in February 2009 by the Environmental Permitting Programme aimed at bringing more existing environmental permitting and

[3] Directive 2003/105/EC amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances.

[4] The effect of Article 3 of the WFD is to require Member States to encourage: first the prevention or reduction of waste and its harmfulness; second (i) the recovery of waste by means of recycling, re-use or reclamation or (ii) the use of waste as a source of energy.

compliance systems under the single system contained with the 2007 Regulations. This consultation is due to end on the 11 May 2009.

Consolidation

7.8 The Department intends to revoke and replace the 2007 Regulations with a consolidated set of Regulations in April 2010 when it brings forward separate proposals to widen the scope of the 2007 Regulations.

8. Consultation outcome

8.1 The Department, Communities and Local Government (CLG), and the Devolved Administrations have been in regular contact with the main stakeholders on an informal and formal basis both during negotiation of the Directive and since its adoption.

8.2 In conjunction with the Department, and the Devolved Administrations, CLG initiated a three month public consultation on options for implementing the Mining Waste Directive. The consultation paper sought views and comments on the UK Government's preferred option for transposing the Mining Waste Directive in England and Wales by means of amendments to the 2007 Regulations and with the Environment Agency as the competent authority. A draft of the Regulations which are now the subject this Explanatory Memorandum was included in the consultation paper. The consultation ran for 12 weeks from 17 January to 11 April 2008; and 41 responses were received: including 2 specific to Wales and 1 to Scotland. The Summary of consultation responses on transposition of the Directive in England and Wales can be found at http://www.communities.gov.uk/documents/planningandbuilding/pdf/miningwastesummary.pdf.

8.3 Three transposition options[5] were the subject of the consultation. Differing views were expressed over the question of which regulatory authority, the Mineral Planning Authorities or the Environment Agency, should most appropriately act as the "competent authority" for implementation of the Directive.

8.4 The Government concluded that the consultation responses did not provide sufficient evidence to cause it to change its view on the preferred option for transposition. The key aims of this Directive are to prevent environmental pollution and harm to human health from the management of wastes from the extractive industries. In other sectors, these are matters where Parliament has already given specific responsibilities to the Environment Agency and the Health and Safety Executive. Both these agencies have extensive experience of mineral and quarrying issues because of their existing statutory roles for managing environmental and health and safety matters for these types of operations. The Government concluded that the same approach should be taken with wastes from the extractive industries. (See link in paragraph 8.2 for the Government Response).

9. Guidance

9.1 A consultation on Government Guidance to accompany the draft Regulations will be carried out in May 2009. A plain English leaflet will also be consulted on to help those affected understand the changes (see http://www.defra.gov.uk/environment/epp/index.htm).

[5] The transposition options for the purposes of the consultation were: (1) the planning and existing consents option, (2) the Environmental Permitting Programme and (3) a 'hybrid' option which involved elements of (1) and (2).

9.2 The European Commission proposed 5 comitology measures which were formally adopted by Member States on 3 February 2009 and by the European Commission at its Committee meetings on 20, 29 and 30 April 2009. All of these measures have now been published by the European Commission as Commission Decisions (1) 2009/335/EC[6] on technical guidelines for the establishment of financial guarantees; (2) 2009/337/EC[7] on the definition criteria for the classification of waste facilities; (3) 2009/358/EC[8] on the harmonisation, the regular transmission of the information questionnaire; (4) 2009/359/EC[9] on the definition of inert waste; and (5) 2009/360/EC[10] on the technical requirements for waste characterisation. The Government Guidance will be updated to reflect the Commission Decisions.

10. Impact

10.1 The impact on business, charities or voluntary bodies is estimated to be in the region of £95.7m to cover obligations under the draft Regulations.

10.2 The impact on the public sector is about £2m per annum to cover the costs of enforcing the draft Regulations.

10.3 An Impact Assessment is attached to this memorandum at Annex 2.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that the impact to small firms is small and costs are site specific.

11.3 The basis for the final decision on what action to take to assist small business was based on talking to representative organisations including those for small business, asking them their views and identifying what areas they faced challenging issues as a result of the draft Regulations. The draft Regulations are laid following extensive engagement with the industry.

12. Monitoring & review

12.1 Once transposition of the Mining Waste Directive is completed, lead responsibility for implementation and monitoring will be transferred from CLG to the Department.

13. Contact

13.1 John MacIntyre at the Department for Environment, Food and Rural Affairs can answer any enquiries about the draft instrument. Tel: 020 7238 4353 or e-mail: john.macintyre@defra.gsi.gov.uk

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[6] Commission Decision 2009/335/EC can be found at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:101:0025:0025:EN:PDF

[7] Commission Decision 2009/337/EC can be found at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:102:0007:0011:EN:PDF

[8] Commission Decision 2009/358/EC can be found at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:110:0039:0045:EN:PDF

[9] Commission Decision 2009/359/EC can be found at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:110:0046:0047:EN:PDF

[10] Commission Decision 2009/360/EC can be found at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:110:0048:0051:EN:PDF

Annex 1

Mining Waste Directive Transposition Note

Table A Showing how elements of Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC have been implemented by the Environmental Permitting (England and Wales) (Amendment) Regulations 2009 (S.I. 2009/XXXX)

Table A

Provision of Directive	**Provision of Regulations**	**Comment**
Article 1 (subject matter)		No need to transpose
Article 2(1) and (2) (scope of the Directive)	Regulation 3(4) and (6)	The definition of "extractive waste" is inserted into regulation 2 of the 2007 Regulations[11] and this gives effect to the exclusions in Articles 2(2) (a) and (b) "Mining waste operation" is also inserted into regulation 2 of the 2007 Regulations which is defined as the management of extractive waste whether or not involving a mining waste facility but excludes the activities in Article 2(2)(c).
Article 2(3) (provides derogations from certain requirements of the Directive)	Paragraph 9 of new Schedule 18B[12]	The regulator is required to give full effect to the derogations set out in Article 2(3) including the discretionary derogations in the second and third paragraphs of that Article.
Article 2(4) (exclusion from the Landfill Directive)	Paragraph 7(a) of new Schedule 18B	Paragraph 7 of new Schedule 18B requires the regulator to exercise its relevant functions (defined in regulation 9 of the 2007 Regulations) so as to ensure compliance with the requirements of the Directive as listed in sub-paragraphs (a) to (l)
Article 3 (definitions for the purposes of the Directive)	Paragraph 2 of new Schedule 18B	"Permit" and "competent authority" are given particular meanings in new Schedule 18B for the purposes of interpreting the Directive. Where a term is used in the Directive which is defined in Part 1 of the EP Regulations 2007, the definitions in Part 1 apply for the purposes of interpreting the Directive.

[11] Environmental Permitting (England and Wales) Regulations 2007 (SI 3538 of 2007)

[12] Schedule 18A is inserted into the Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538) ("the 2007 Regulations) by an amendment to regulation 35 of those Regulations – see regulation 11.

Provision of Directive	**Provision of Regulations**	**Comment**
Article 4 (general requirements of the Directive)	Paragraph 7(b) of new Schedule 18B	Paragraph 7 requires the regulator to exercise its relevant functions (defined in regulation 9 of the 2007 Regulations) so as to ensure compliance with the requirements of the Directive as listed in sub-paragraphs (a) to (l)
Article 5 (requirements for waste management plans)	Regulation 4(2)	Article 5 is transposed generally by requiring all mining waste operations (whether or not carried out at a mining waste facility) to be authorised by an environmental permit. This is achieved by adding mining waste operations to the definition of a "regulated facility" in regulation 8 of the 2007 Regulations.
	Paragraph 3(1) and 3(2) of new Schedule 18B,	Articles 5(1) to (3), which set out the requirements for plan, including objectives and elements are transposed by imposing an obligation on the regulator to require that every permit application for a mining waste operation includes a waste management plan. The requirement to include a waste management plan in Article 7 applications is dealt with under the provisions which transpose the requirements of Article 7(2).
	Paragraph 7(c) of new Schedule 18B	Articles 5(4) and (6) are transposed by requiring the regulator to exercise relevant functions so as to ensure compliance with those articles.
	Paragraph 3(4) of new Schedule 18B.	Article 5(5) is transposed by allowing the regulator to accept a plan produced pursuant to other legislation.
Article 6 (major accident prevention and information)	Paragraph 7(d) of new Schedule 18B	Articles 6 (2), the first and second paragraphs of Article 6(3), the first paragraph of Article 6(4) (to the extent that it relates to plans prepared under the first paragraph of paragraph (3) and the second paragraph of Article 6(4) (to the extent that it relates to the regulator's functions) are transposed by

Provision of Directive	**Provision of Regulations**	**Comment**
		requiring the regulator to exercise relevant functions so as to ensure compliance with those articles.
	Paragraphs 3(1)(b), 3(2) and 14 of new Schedule 18B	The requirement in the second sentence of the third paragraph of Article 6(3) (provision of information) is transposed by requiring the regulator to (a) require this information (where applicable) as part of the application and (b) forward the information to the local emergency planner. The regulator may not grant a permit in relation to a mining waste facility classified as Category A ("Category A mining waste facility") until it has been notified by the local emergency planner that it has the information necessary to enable it to draw up an external emergency planner. The regulator must refuse an application for a permit relating to a Category A mining waste facility upon receipt of a notice by the local emergency planner that the operator has not provided the information necessary to enable the drawing up of an external emergency plan. The remaining paragraphs of Article 6, relating to the preparation of external emergency plans, the provision of information in the event of major accidents (to the extent that this is not enforced by the regulator) and to the public in relation to safety measures and on action required in the event of an accident, will be transposed by The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009
Article 7 (application and permit)	Regulation 4(2)	Article 7(1) is generally transposed by requiring mining waste facilities to be authorised by an environmental permit in order to operate. This is achieved by including mining waste

Provision of Directive	**Provision of Regulations**	**Comment**
		operations, whether or not involving a mining waste facility in the list of "regulated facilities" in regulation 8 of the 2007 Regulations.
	Paragraph 7(e) of new Schedule 18B	The requirements in Article 7(1) are transposed by requiring the regulator to exercise its relevant functions so as to ensure compliance with this requirement.
	Paragraph 3(1)(a) of new Schedule 18B	Article 7(2), which sets out the minimum requirements for permit applications is transposed by imposing an obligation on the regulator to require that every application for a mining waste operation involving a mining waste facility to which Article 7 applies includes the information specified in Article 7(2).
	Paragraphs 7(e) of new Schedule 18B,	Article 7(3)(a), which requires that the competent authority shall only grant a permit if it is satisfied that the operator complies with the relevant requirements of the Directive, is transposed by requiring the regulator to exercise its relevant functions so as to ensure compliance with this article.
	Paragraph 14 of new Schedule 18B	In relation to the operator's duty to supply external emergency plan information to the competent authority, the Article 7(3)(a) requirement is transposed by paragraph 14 of new Schedule 18B.
	Paragraph 13(1) of new Schedule 18B and regulation 27(3)	Article 7(3)(b) is transposed by requiring that planning permission must be in place before the regulator can grant an environmental permit. It is also transposed through planning permission requirements introduced in regulation 27(3)
	Paragraph 4 of new Schedule	Article 7(4) is transposed by

Provision of Directive	**Provision of Regulations**	**Comment**
	18B	requiring the regulator to periodically review an environmental permit if the facility it authorises is covered by Article 7 and any of the circumstances in Article 7(4) apply.
	Part 5 (regulations 45 to 55) and Schedule 19 of the 2007 Regulations	Article 7(5) is transposed through the public register and confidentiality provisions of the 2007 Regulations
Article 8 (public participation)	Paragraph 8 of new Schedule 18B	Article 8 is transposed by requiring the regulator to exercise its functions under the public participation provisions in the 2007 Regulations (regulations 26, 29 and 59 and paragraphs 6 and 8 of Schedule 5) in relation to mining waste facilities to which Article 7 applies so as to meet the requirements of Article 7.
	Regulation 20(3)	The general public participation requirements that apply to all applications for environmental permits are disapplied in relation mining waste operations not involving a mining waste facility to which Article 7 applies.
Article 9 (classification system for waste facilities)	Paragraph 7(e) of new Schedule 18B	Article 9 is transposed by requiring the regulator to exercise its relevant functions so as to ensure compliance with Article 7(1)
	Paragraph 5 of new Schedule 18B	In relation to facilities to which Article 7 does not apply, Article 9 is transposed by requiring the regulator to exercise functions so as to ensure compliance with Article 9.
Article 10 (excavation voids)	Paragraph 7(f) of new Schedule 18B	This Article is transposed by requiring the regulator to exercise its relevant functions to ensure compliance with the Article.
Article 11 (construction and management of waste facilities)	Paragraph 7(g) of new Schedule 18B and paragraph 13(2)(b) of Schedule 5 to the 2007 Regulations.	This Article is transposed by requiring the regulator to exercise its relevant functions to ensure compliance with the Article. It is also transposed by the "competence" requirements in the 2007 Regulations.

Provision of Directive	**Provision of Regulations**	**Comment**
	Regulation 27(3)	The insertion of paragraph 6(3)(a) in Schedule 20 transposes the requirements of the first part of Article 11(2)(a)
Article 12 (closure and after closure procedures for waste facilities)	Paragraph 7(h) of new Schedule 18B Paragraph 10 of new Schedule 18B	This Article is transposed by requiring the regulator to exercise its relevant functions to ensure compliance with the Article. Specific provision is made for the regulator to set out any reasoned decisions under Article 12(2)(c) in a closure notice.
Article 13 (prevention of water status deterioration, air and soil pollution)	Paragraph 7(i) of new Schedule 18B	This Article is transposed by requiring the regulator to exercise its relevant functions to ensure compliance with the Article
Article 14 (financial guarantee)	Paragraph 7(j) and 10(5) of new Schedule 18B	This Article is transposed by requiring the regulator to exercise its relevant functions and other functions to ensure compliance with the Article.
Article 15 (environmental liability)		Delivered through legislation transposing the Environmental Liability Directive.
Article 16 (transboundary effects)	Regulation 20(5) and (6)	Articles 16(1) and (2) are transposed by extending the transboundary consultation provisions in Schedule 5, paragraph 10 of the draft Environmental Permitting regulations to include Category A mining waste applications. Article 16(3) will transposed by The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009.
Article 17 (inspections by the competent authority)	Paragraph 6 and 7(j) of Schedule 18B	Article 17(1) is transposed by requiring the regulator to inspect every mining waste facility to which Article 7 applies so as to comply with the requirements of that Article. Article 17(2) is transposed by requiring the regulator to exercise its relevant functions to ensure compliance with that Article.
Article 18 (obligation to		No need to transpose paragraph (1)

Provision of Directive	Provision of Regulations	Comment
report)		of the first and sentences of paragraph (2). The requirements in the third sentence of paragraph (2) are delivered through the Freedom of Information Act 2000.
Article 19 (penalties)	Regulation 12 and Part 4 of the 2007 Regulations	Article 19 is transposed through the enforcement, offence and penalty provisions of the 2007 Regulations.
Article 20 (inventory of closed waste facilities)	Paragraph 12 of new Schedule 18B	Article 20 is transposed by requiring the regulator to maintain an inventory of closed mining waste facilities so as to ensure compliance with that Article.
Article 21 (second paragraph (best available techniques)	Paragraph 13 of new Schedule 18B	The regulator is required to ensure that it is informed of developments in best available techniques.
Article 22 (implementing and amending measures) and Article 23 (committee)		No need to transpose
Article 24(1) (transitional provision – existing mining waste facilities)	Regulation 17(5)	Existing mining waste operations not involving an existing mining waste facility have until 30 December 2010 to apply for an environmental permit and existing mining waste operations involving existing mining facilities have until 1st May 2011.
Article 24(2) and first paragraph of 24(4) (transitional provision – closed facilities)	Regulation 3(5)	The facilities referred to in Articles 24(2) and (4) are excluded from the definition of a mining waste facility. These requirements are delivered through existing legislation.
Article 24(3) and second paragraph of 24(4) (transitional provision – closed facilities)		These requirements delivered through existing controls set out in legislation, mainly through the planning system. The UK has notified the Commission of the facilities described in the first paragraph of Article 24(4).
Article 25 (transposition), Article 26 (entry into force) and Article 27 (entry into force)		No need to transpose

Impact Assessment for transposing Directive 2006/21/EC of the European Parliament and the Council of 15 March 2006 on the management of waste from the extractive industries (known as the Mining Waste Directive)

Summary: Intervention & Options

Department /Agency:	Title:	
Communities & Local Government	**Impact Assessment of implementing the EU Mining Waste Directive in England and Wales**	
Stage: Final proposal	**Version:** 3.3	**Date:** May 2009
Related Publications: Consultation Paper on proposals for transposition of the [Mining Waste] Directive in England and Wales, January 2008		

Available to view or download at:

http://www.communities.gov.uk/publications/planningandbuilding/wastemanagement

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What is the problem under consideration? Why is government intervention necessary?

The UK was required to transpose into national law EU Directive 2006/21/EC on the management of waste from extractive industries - known as the Mining Waste Directive - by 1 May 2008. The Directive cannot be fully transposed through existing national law. New implementing Regulations are required for this purpose. The Government has been considering which is the best regulatory regime in which to take this forward, parrticularly in the context of better regulation and the Government's proposals for a more efficient planning system.

What are the policy objectives and the intended effects?

Effective and timely transposition of the Mining Waste Directive (MWD) in England & Wales, in accordance with the UK Government's policy on transposing European directives.

Intended effects: The MWD is transposed to the satisfaction of the European Commission; the framework to prevent or reduce harm to the environment and risks to human health resulting from the management of extractive waste is made more robust through a 'better regulation' approach.

What policy options have been considered? Please justify any preferred option.

1: Rely on existing national legislation.

2: Transpose so that the MWD is implemented through the Environmental Permitting Programme with the Environment Agency as principal regulatory authority.

Option 2 is preferred as option 1 would not properly transpose the MWD and most likely lead to sancsions and significant fines for the UK imposed by the European Court of Justice. Option 1 is therefore not feasible.

Other options to transpose the MWD were considered at consultation.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

In the second half of 2012. (Existing mineral waste facilities must comply with the MWD by 1 May 2012).

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy and, (b) the benefits justify the costs.

Signed by the responsible Minister:

.....Date: June 2009

Summary: Analysis & Evidence

Policy Option: 2	Description: Transposition through the Environmental Permitting Programme - Environment Agency as competent authority

COSTS

ANNUAL COSTS		Description and scale of **key monetised costs** by 'main affected groups' costs
One-off (Transition)	**Yrs**	See Calculation of Costs in evidence base for details of how these costs were calculated.
£ 27.58m	4	
Average Annual Cost (excluding one-off)		
£ 8.47m	10	**Total Cost** (PV) **£ 95.7m**

Other **key non-monetised costs** by 'main affected groups' Cost of financial guarantees for some non-coal waste facilities; some costs of major accident prevention measures; costs to the competent authority of establishing & maintaining an inventory of closed facilities; cost recovery by competent authorities.

BENEFITS

ANNUAL BENEFITS		Description and scale of **key monetised benefits** by 'main affected groups'
One-off	**Yrs**	Avoidance of fines from the European Court of Justice (see Annex 2 to the evidence base).
£		
Average Annual Benefit (excluding one-off)		
£		**Total Benefit** (PV) **£**

Other **key non-monetised benefits** by 'main affected groups' UK's reputation on transposing EU Directives. Brings consistent environmental and health & safety standards (a level playing field) across the EC, potentially aids competitiveness. Ensures the national agency in Engalnd & Wales with expertise in waste regulation has responsibility for the MWD.

Key Assumptions/Sensitivities/Risks Assumes: MWD applies to most extractive sites; all derogations will apply; most active sites produce inert waste. Sensitivities: tested -see paras 5.36-5.38 in Annex 1. Risks: Final agreed implementing measures issued by EC require more sites to be covered by bespoke EP permits.

Price Base Year 2007	Time Period Years 10	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate) **£ -95.7m**

What is the geographic coverage of the policy/option?	England & Wales
On what date will the policy be implemented?	December 2008
Which organisation(s) will enforce the policy?	Environment Agency & Local Authorities
What is the total annual cost of enforcement for these organisations?	£ 2.0m
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0

Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase)
Increase of £5.4m	Decrease of £	**Net Impact**	**£ 5.4m**

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Evidence Base (for summary sheets)

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Introduction

1. This Impact Assessment (IA) relates to the transposition of EU Directive 2006/21/EC on the management of waste from the extractive industries (known as the Mining Waste Directive) into UK law in England and Wales. This version of the IA has been prepared to accompany the laying of draft regulations that will transpose the Directive. It is derived from the previous version IA which was published on 17 January 2008 to accompany a Government Consultation Paper on options for transposing the Directive (see: http://www.communities.gov.uk/publications/planningandbuilding/wastemanagement).

2. The Mining Waste Directive was adopted by the European Parliament and the Council of the European Union on 15 March 2006 and entered into force on 1 May of that year. Along with other Member States, the UK was required to transpose the Directive into national law by 1 May 2008.

Objectives

3. The effective and timely transposition of the Mining Waste Directive in England & Wales, in accordance with the UK Government's policy on transposing European directives. The Mining Waste Directive provides for measures to prevent or reduce harm to the environment and risks to human health, resulting from the management of extractive waste.

Options

4. These are:

   - 1 - do nothing/rely on existing national legislation;
   - 2 - transpose through regulations under the Environmental Permitting Programme (EPP).

Option 1: do nothing/rely on existing legislation

5. To 'do nothing' would mean that the management of extractive waste from mining and quarrying (and other mineral extraction) operations in this country would continue to be subject to existing national town and country planning, health and safety and environmental regulations, as appropriate. While this existing body of legislation would continue to apply existing standards of control over mineral wastes, it is not capable of implementing the full requirements of the Mining Waste Directive, as agreed by Member States, including the UK. Certain important aspects, including the requirements for a waste management plan and for a specific permit to operate a waste facility, would not be transposed into UK law.

Option 2: Transpose the Directive through the chosen method (EPP)

6. While several regulatory options have been considered (see below), the UK Government's and the Welsh Assembly Government's preferred option has been to transpose the Directive in England and Wales through the Environmental Permitting Programme (EPP) with the Environment Agency (EA) as the competent authority or "regulator", save for some separate, 'stand-alone' provisions to deliver requirements relating to major accident prevention and emergency planning.

7. This option takes advantage of EPP, which is a joint, better regulation initiative developed by the Department for Environment, Food and Rural Affairs (Defra), the Welsh Assembly Government and the Environment Agency and specifically aimed at providing an efficient, integrated, streamlined permitting and compliance system for implementing European Directives on environmental protection.

8. In transposing the Directive the Government does not intend to go beyond the minimum requirements of the Directive, and will be applying all the derogations available.

Other transposition options considered at the consultation stage

9. The Government has also considered and consulted on several other regulatory options:

   - Delivery through the existing town and country planning and environmental discharge consent regimes (the "planning & existing consents option");
   - Delivery through the EPP with the Minerals and Waste Planning Authority (MWPA) as the competent authority or "regulator";
   - Delivery through the planning system and EPP (specifically, with the permit requirements for waste facilities under Article 7 of the Directive delivered through the EPP) - the "Hybrid" option.

10. To help inform the preparation of the Consultation IA, Communities and Local Government (CLG) commissioned a study to appraise the possible impacts, including the costs and benefits, of implementing the Government's preferred option (identified as option 2b in the Consultation IA) in England and Wales, as well as those of the other transposition options. This study was carried out between April and June 2007 by Land Use Consultants and GHK Consulting. The consultants' report and findings - an extract from which is included in Annex 1 below - provided the basis for the monetised costs set out in the Consultation IA, where the relative costs and benefits of all the transposition options were considered for comparative purposes.

11. However, this version of the IA does not include any further assessment of the costs and benefits of those options that have since been discounted. This version does however include the estimated costs of some specific elements of the Directive (see paragraphs 22 – 32 below) that are not related to the transposition option chosen (other than 'do nothing'), so were not included for comparative purposes in the Consultation IA.

Response to the consultation

12. Public consultation on all the transposition options outlined above took place between January and April 2008. In total forty-one responses were received from mineral planning authorities, the extractive industries and a number of other stakeholder bodies. Of the responses that expressed a clear view on the issue, 81% favoured transposition through EPP. However, support on this issue from the mining and quarrying industries was dependent on the local mineral planning authority being made the principal regulatory authority.

13. Of the thirty responses expressing a preference for transposition through EPP, 17 (57%) favoured the Environment Agency acting as regulatory authority, while 12 (40%) favoured mineral planning authorities taking this role. Support for the latter option came entirely from industry and other private sector respondents, while support for the Agency as regulatory authority was spread amongst planning authorities, other public sector and private sector bodies and other representative organisations. A fuller summary of the consultation responses is included at Annex 3 below.

14. Taken overall, the consultation responses did not provide any significant evidence to cause the Government to change its original view on the preferred option for transposition. The Government has therefore prepared draft regulations to transpose the Mining Waste Directive in England and Wales through the Environmental Permitting Programme, with the Environment Agency as the principal regulator. Separate regulations will transpose the requirements under Article 6 of the Directive relating to major accident emergency external plans.

Option 1: Costs and Benefits

Costs

15. The failure to properly transpose and implement the requirements of the Mining Waste Directive under this option would leave the UK in breach of its obligations under the Directive. As a consequence, the UK would be open to infraction proceedings by the Commission, potentially leading to very significant fines. In this respect, the European Court of Justice (ECJ) is able to impose financial sanctions on any Member State which fails to implement a judgement from the ECJ establishing an infringement of Community law. The Commission has warned that it will usually recommend both a penalty for each day between the judgement of the Court that there has been an infringement and compliance with the Directive, together with a lump sum penalising the continuation of the infringement between the first judgement on non-compliance and the judgement delivered under Article 228 of the European Community (EC) Treaty. See Annex 2 for information on the potential size of these fines from infractions of other Directives.

16. Failure to properly transpose the Directive would also mean that the opportunity to introduce a stronger framework for regulating the management of extractive wastes, including the minimisation and recovery of such wastes, consistent with the control frameworks that will operate elsewhere in the European Community, would not be taken up in England and Wales. While this may not result in any lowering of environmental standards or health and

safety standards, given the continued application of existing national legislation, it would not serve to provide the certainty of achieving the required standards, proportionate to the risks involved, in the Community.

Benefits

17. None specifically, other than avoidance of the costs set out in this IA.

18. In view of these consequences, the Government does not consider the 'do nothing' option to be a realistic proposition in this instance.

Option 2: Costs and Benefits

Costs

Main Costs Analysed in Consultant's Report

19. The monetised costs of transposition by the chosen method have been largely derived from the Land Use Consultants/GHK Consulting study report of June 2007, in particular, the costs for 'option 2b' in that study – see the report extract in Annex 1 below. Tables 5.9a – 5.9d summarise the total aggregate costs calculated by the consultants, including costs to the main affected groups, though the comment inserted immediately before table 5.9a should be noted.

20. A number of important assumptions had to be made by the consultants in their assessment and evaluation of costs. These assumptions are described in paragraphs 38 – 44 below. The figures produced by the consultants and presented in this IA reflect the direct costs to the relevant affected groups and do not attempt to evaluate any subsequent re-distribution of these costs, in particular, through charging and cost recovery by the relevant regulatory authorities.

21. The cost figures provided by the consultants did not include the costs of certain requirements of the Directive that may fall on the operators of some extractive waste facilities, in a way and to a degree which is not affected by the particular transposition route adopted (and therefore were not relevant in comparing costs of the different transposition options identified in the Consultation IA). The costs of these particular requirements and the degree of uncertainty that remains about them, are described further in the following paragraphs.

Cost of Financial Guarantees

22. The consultants' study did not fully assess the costs to operators of providing a financial guarantee (or equivalent) under Article 14 of the Directive. These costs are extremely difficult to quantify. However, using a methodology identified in an earlier 2003 study[13], an indicative cost of applying the Article 14 requirements to coal extraction waste at least has been calculated as £0.78m. This is based on the study report's estimate that the price of the guarantees is equivalent to £0.25 per tonne for coal and that 70% of coal sites already have financial guarantees. Using 2007/8 production figures for England and Wales would then give the following calculation:

(9.1mt+1.3mt) x 0.3 x £0.25 = **£0.78m.**

[13] The Costs and Benefits of Financial Guarantees and Securities in the UK Extractive Industry by GHK Consulting, July 2003. (http://www.communities.gov.uk/archived/publications/planningandbuilding/costsbenefits)

23. This figure is qualified by the following caveats: the possibility that some coal sites might not require a guarantee under Article 14; that some non-coal sites might require guarantees; that the report is five years old and the basis for the methodology may have changed in this time; that the report includes the assumption that all of a site would have to be covered by the guarantee, rather than just the waste facility, as required under Article 14 of the Directive. Actual costs will also be influenced by the particular nature and circumstances of each waste facility affected, and by the form of guarantee (e.g. surety bonds, cash deposits, escrow accounts, industry-sponsored mutual guarantee funds) employed.

24. Until final proposals on the definition of the criteria for classifying Category A waste facilities (see paragraph 25 below) and on technical requirements for waste characterisation have been issued by the Commission, it is difficult to assess the type and number of waste facilities that will be subject to Article 14. Subsequently, those waste facilities potentially caught by the requirement will have to be assessed individually (by the competent authority) in terms of the hazard risk they pose, to establish whether (amongst other things) they will need to be covered by a financial guarantee (or equivalent). Although coal extraction sites that produce wastes whose chemical properties are likely to be hazardous are perhaps most likely to be impacted, any mineral waste facility which, on the basis of a risk assessment, could give rise to a major accident - eg., through the collapse of a heap or a dam burst - could be classified as a Category A facility and therefore required to provide a financial guarantee. In reality, the Government expects very few facilities to be caught in this way.

Cost of Major Accident Prevention

25. The main costs associated with this option fall to mineral operators whose waste facilities are identified as Category A facilities in terms of the Mining Waste Directive.

26. The competent authority (local authority emergency planners), the Health and Safety Executive (HSE), and the Environment Agency (EA) will also incur costs under these Regulations. But these costs will be mainly, if not fully, covered by the charging proposals set out in the regulation that allow full recovery of costs from minerals operators for functions undertaken by the competent authority or on behalf of the competent authority by HSE or EA.

27. The main costs associated with this option are:

    (i) the preparation, testing, and maintenance/review of the external emergency plan by the competent authority, including consultations with the EA, HSE, the emergency services, health authorities, and the general public (Regulation 4), and any requests for further information from the operator to allow the plan to be prepared; and the costs of public participation in the preparation and review of the emergency plan (Regulation 6).

    (iii) provision and review of information to the public by the minerals operator on safety measures and action required in the event of an accident (Regulation 7);

    (iv) provision of information by the operator to the competent authority in the event of an accident (Regulation 8).

28. In addition there may be other costs associated with this option which are unquantifiable. In particular, in order to ensure compliance with the Directive the regulations provide for enforcement powers in the event that an operator does not provide information to the

competent authority. The expectation is that these powers are never likely to be needed, but if they were to be used, then costs could be incurred by the competent authority. In the first instance these would be minimal - the competent authority would require that the information be provided through a formal notice. If this was not complied with then failure to provide that information would become an offence with costs arising to both the competent authority and the operator. However, the Government does not consider that any enforcement action would ever reach this stage in practice, and so has disregarded these costs.

29. In accordance with the draft regulations for transposing the external emergency plan requirements of the Directive, the costs reasonably incurred by the competent authority in performing its functions in relation to the plan may be recovered by charging the operator a fee. In addition, there would be a cost to the operator of providing information to the public on safety measures and the action required in the event of a major accident at a Category A waste facility.

Costs of Establishing and Maintaining an Inventory of Closed Extractive Waste Facilities

30. Article 20 requires Member States to ensure that an inventory of closed waste facilities, including abandoned waste facilities, which cause serious environmental impacts, or which could potentially become a serious threat to human health or the environment, is drawn up by May 2012 and periodically updated thereafter. It is proposed [though subject to further discussion] that the inventory be drawn up and maintained by the Environment Agency. As the principal competent authority under the Directive, the Agency will already have responsibility for issuing permits for extractive waste facilities, and for monitoring and maintaining records of these facilities. In addition, some older waste facilities that are already closed and some abandoned waste facilities, are also likely to come within the scope of Article 20.

31. However, it is not possible at present to assess how many waste facilities will need to be included in the inventory, or the total costs involved to the Agency. The costs of complying with Article 20 may also be influenced to some degree by the methodologies for implementing Article 20 to be developed under Article 21. This work is underway, but final proposals for methodology guidelines are not expected to come forward from the Commission until 2010.

Penalties for Infringements

32. Article 19 requires Member States to provide for 'effective, proportionate and dissuasive' penalties for infringement of national laws which transpose the requirements of the Directive. Penalties provided under the Environmental Permitting Regulations would be available in any case of infringement of the Directive.

Other Unquantified Costs

33. There may also be some other unquantified 'costs' in terms of the need for mining and quarrying operators to get use to a new regulatory framework (under EPP). There is also the potential for some overlap in regulatory activities in relation to extractive waste facilities which will be subject to the Mining Waste Directive, as well as spatial (town and country) planning controls applying to mining and quarrying sites as a whole. However, appropriate consultation and liaison between the relevant authorities should avoid or overcome any potential conflicts or difficulties in this respect.

Benefits

34. The main benefits of transposition through the chosen method are as follows:

- The UK Government's obligation to effectively transpose the Mining Waste Directive in England and Wales is met in a reasonably timely manner, in line with the Government's general transposition policy.
- Consequently, there is a lower risk of infraction proceedings being pursued by the Commission and resulting in an adverse Court judgement against the UK Government, in respect of failure to satisfactorily transpose the Directive in England and Wales. See Annex 2 for a discussion of the potential size of these fines.
- Benefit should arise through the introduction of a consistent framework of environmental and health and safety controls on the management of extractive wastes across the European Community. The establishment of a level playing field in this area across Europe has potential benefits in terms of competitiveness.
- The implementation of the Mining Waste Directive will to some extent enhance and provide a clearer and more robust framework - through the introduction of waste management plans and permitting arrangements - for implementing environmental and health and safety controls over extractive wastes in England and Wales. This should generally strengthen the protection of the environment and human health and, over time, may prevent or lessen the adverse consequences of an accident or failure involving an extractive waste facility.
- Sustainability benefits should arise through implementation of the Article 5 requirement for an operator to draw up a waste management plan for, amongst other things, the minimisation and recovery (by means of recycling, reusing or reclaiming) of extractive wastes.
- Application of the Article 14 requirements for operators to provide a financial guarantee (or equivalent) should ensure greater certainty that waste facilities that pose the most significant risk of harm to the environment and human health will be properly maintained and/or rehabilitated, without call on public funds, in any case where the operator defaults on their obligations, in line with the 'polluter pays' principle.

Transposition of the Directive as proposed will enable the regulation of extractive wastes to come principally within the responsibility of the national body, i.e., the Environment Agency, to whom Parliament has given a specific role and responsibilities as the waste and water environmental regulator.

Interpretation of the Directive and Key Assumptions Made

35. A number of important assumptions have had to be made in the preparation of this IA, particularly in relation to the nature of the 'waste' produced by the extractive industries and the number of waste facilities that will be subject to the permitting and other more demanding requirements of the Directive. Two key aspects of these assumptions are, first, that "waste" for the purposes of the Directive includes residues such as soil and rock stored pending their use to fill galleries/voids, and therefore that the majority of extraction sites will be subject to the Directive's requirements; and second, that most (over 90%) of active extraction sites in this country produce inert waste and therefore would not be subject to the permitting requirements of Article 7 of the Directive.

36. Article 3(1) of the Directive provides that "waste" is as defined in Article 1(1)(a) of the Waste Framework Directive (WFD) (2006/12/EC). The WFD's definition of waste already applies to substances or objects arising from the extractive industries in the same way as it does to those arising from all other sectors of industry. It follows that no substance or object

arising from the extractive industries will be either classified or declassified as waste as a result of the Mining Waste Directive's transposition. In other words, transposition of the Directive has no implications for the substances or objects arising from the extractive industries that are treated as waste.

37. The Government's view is that the European Court of Justice recognised in its judgment on the AvestaPolarit case (C-114/01) that there are 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:

    (a) the mining operator physically identifies the residues which will actually be used to fill the galleries/voids;
    (b) the mining operator provides the competent authority with sufficient guarantees of that use; and
    (c) 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.

38. However, in the absence of identification by mining operators, the provision by mining operators of sufficient guarantees and the assessment of those guarantees by the competent authority, the Government has no alternative other than to assume for the purposes of this IA that "extractive waste" includes residues such as soil and rock stored pending their use to fill galleries/voids in the mine from which they were extracted.

39. In practice, the question of whether an extractive site involves the management of extractive waste and is therefore subject to the Directive's requirements, is one that will be determined on the facts of each case, as will any issue about the existence of a "waste facility" for the purposes of the Directive, and whether a permit to operate such a facility is required. However, the determination of the latter issue will also depend on the outcome of work being undertaken by the European Commission in consultation with Member States on a number of 'implementing measures'. These include the interpretation of the definition of 'inert waste'; technical requirements for the characterisation of extractive waste; and the definition of the criteria for the classification of waste facilities for the purposes of the Directive. The UK has been engaged in work and discussions with the Commission and other Member States in developing these measures. The European Commission proposed 5 comitology measures which were formally adopted by Member States on 3 February 2009. Two measures have been published by the European Commission as Commission Decisions (1) 2009/335/EC[14] on technical guidelines for the establishment of financial guarantees and (2) 2009/337/EC[15] on the definition criteria for the classification of waste facilities.

40. The key assumption has had to be made in this IA concerns the number of waste facilities likely to be classified as Category A facilities under the Directive and to which these regulations will therefore apply. Annex III of the Directive sets out the basic criteria for determining the classification of waste facilities. In addition, under the implementing and amending measures in Article 22 of the Directive, the European Commission was required to bring forward a "definition of the criteria for the classification of waste facilities in

[14] Commission Decision 2009/335/EC can be found at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:101:0025:0025:EN:PDF
[15] Commission Decision 2009/337/EC can be found at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:102:0007:0011:EN:PDF

accordance with Annex III". That definition has now been adopted by the Commission but has yet to be formally published.

41. Having appraised the Commission decision, the Government's view is that there are likely to be only a small number of Category A facilities in England and Wales given the nature of the minerals extracted in the UK and the types of wastes that arise from such mineral operations. The Commission decision on classification of waste facilities adopts a risk based approach that means that waste facilities will be defined as Category A where:

    (i) loss of structural integrity or incorrect operation of a waste facility could lead to a non-negligible potential for loss of life; serious danger to human health; or serious danger to the environment.

    (ii) it contains waste classified as hazardous under Directive 91/689/EEC - where the amount of hazardous waste is above 50% the facility will be classified as Category; where it is between 5% and 50% then it will be classified as Category A unless a site specific risk assessment considering the consequences of a failure of the waste facility means that this would not be necessary.

    (iii) it contains substances or preparations classified as dangerous under Directives 67/548/EEC or 1999/45/EC.

42. The Government's assessment is that Category A facilities in England and Wales will only be classified on the basis of criteria (i) and (ii) above as there are no known waste facilities where dangerous substances or preparations are likely to be present. Furthermore, the majority of waste facilities are likely to comprise of spoil heaps or tips which are already regulated under existing national legislation (eg the Mines and Quarries (Tips) Act 1969) to ensure that risks from loss of structural integrity are minimised. The most likely candidates for Category A status will therefore be tailings dams (under criteria (i) above and any waste facilities with a high percentage of wastes defined as hazardous (under criteria (ii) above). However, the risk-based approach to identification of Category A facilities mean that initial decisions on these will be based on a site specific assessment. The number and type of Category A sites cannot therefore be specified in any level of detail.

43. For the purposes of the IA undertaken alongside consultation on the main transposition options in January 2008, an assumption was made that there could be between 25-50 Category A existing waste facilities in England and Wales. In light of the Commission decision and further discussion with the Environment Agency, it is now considered that this range may have been too high. Therefore, for the purposes of this IA, the number of existing waste facilities likely to be classified as Category A is assumed to be in the range of 15-30.

44. Given this small number of existing waste facilities that may have Category A Status, the likelihood of there being any significant number of new waste facilities being categorised as Category A facilities in the future is considered to be very small. Therefore this IA assumes that no new facilities will come forward and that the range assumed in paragraph 27 above represents the total number of such facilities - ie in the range of 15-30.

45. If it subsequently emerges that fewer extractive sites in this country come within the scope of the Directive, then the overall cost impact of the Directive will be lower than predicted by this IA. On the other hand, decisions still to be taken in relation to the definition of inert

waste and waste facility classification, could potentially increase costs for certain sites involved in the management of extractive waste.

46. As part of the earlier appraisal study, the consultants looked at the sensitivity of their cost estimates to a change (increase) in the assumed number of waste facilities that might have to meet the Directive's more demanding regulatory requirements, in particular, the need to obtain a permit to operate a waste facility under Article 7. The outcome of this sensitivity analysis is set out in table 5.12 of the consultants' report included in Annex 1 below. It shows that if, say, 100 further sites required an Article 7 permit, the overall one-off costs could be expected to increase by around 7%.

Calculation of Costs on Summary Sheets

47. The costs on the summary sheets reflect the total of both the costs identified in the consultants' report and the costs that have been calculated in this IA which are the financial guarantees, the cost to prepare MAPPs and the cost to prepare emergency external plans. Where these costs have been calculated as ranges the upper end of the range has been used.

48. Consequently £780,000 has been added to the annual costs for the financial guarantees, £500,000 has been added to the one off costs for the preparation of emergency plans and £12,500 has been added to the one off costs for the preparation of MAPPS.

49. The consultants have also included 'total costs', that is, one-off costs plus one year's recurring costs. It is more pertinent to focus on the one-off costs or the annual recurring costs for the purposes of the impact analysis, except where net present values have been calculated (see summary sheets) using total costs over a ten year period. In addition the Consultants' report included values for the net present value of one-off costs. These have been replaced on the summary sheets with an estimate of the net present value of one-off costs and annual costs over a ten year period.

Specific Impact Tests

Competition Assessment
A competition assessment was carried out in 2007 by the consultants as part of their impact assessment study of the options for transposing the Mining Waste Directive – see paragraphs 5.39-5.41 of the study report in Annex 1 below.

The establishment of a consistent regulatory framework under the Directive across the European Community for the management of extractive wastes could potentially have some beneficial impact on UK competitiveness. In particular, this could arise in relation to any countries whose extractive industries are in competition with those in the UK, and where regulatory standards have previously been lower than those operating in the UK.

Small Firms' Impact Test
The impact on small firms was assessed as part of the consultants' 2007 study of the options for transposing the Mining Waste Directive – see paragraphs 5.42 -5.44 of the study report in Annex 1 below. There is no further evidence to suggest that the impact on small firms would be any more significant than indicated in the consultants' report.

Legal Aid Impact Test
There will be no legal aid impact from this proposal.

Sustainable Development
Part of the basis for the Mining Waste Directive is the need to protect the natural resource base of economic and social development, in accordance with the Johannesburg Plan of Implementation on Sustainable Development. An important aspect of the Directive is the promotion through the waste management plan to be prepared by operators of the minimisation and recovery of extractive waste. Implementation of the Directive should therefore contribute to the sustainable management of extractive wastes.

Carbon Assessment
Transposition of the Directive should not have any material carbon impact.

Other Environment
A principal objective of the Directive is to prevent or reduce as far as possible any adverse effects on the environment, in particular, without risk to water, air, soil, fauna and flora and landscape. Transposition of the Directive will build on existing national regulatory controls in the delivery of this objective.

Health Impact Assessment
A principal objective of the Directive is to prevent or reduce any resultant risks to human health, brought about as a result of the management of waste from the extractive industries. Transposition of the Directive will build on existing national regulatory controls in the delivery of this objective.

Race, Disability and Gender Equality
The proposed transposition of the Directive will have no impact on race, disability or gender equality.

Human Rights
The proposed transposition of the Directive will not have an impact on human rights.

Rural Proofing
It is considered that the proposed transposition of the Directive will have no significant impact on rural areas.

Specific Impact Tests: Checklist

Type of testing undertaken	***Results in Evidence Base?***	***Results annexed?***
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annexes

ANNEX 1

Extract from 2007 Consultants Report: (Supporting evidence for the Impact Assessment of options for implementing European Directive 2006/21/EC on the management of waste from the extractive industry)

The following information is largely extracted direct from the report of a study to assess the relative impacts, including the costs and benefits, of implementing different transposition options in England and Wales. This study was carried out on behalf of the Department for Communities and Local Government (CLG) between April and June 2007 by Land Use Consultants and GHK Consulting. The information below is taken from chapters 3 and 5 of the report (using the original paragraph and table numbering from that report). The full report, which has 170 pages in total, is not reproduced here, but can be made available if required by contacting CLG.

The four options referred to in the following pages are:

- **Option 1:** Delivery through the existing town and country planning and environmental discharge consent regimes (the "Planning option");
- **Option 2:** Delivery through the Environmental Permitting Programme (EPP), with two variations to this model depending on which regulator will act as the competent authority[16] (the "EP option"):
  - **Option 2a**: Delivery through the EPP with the Minerals and Waste Planning Authority (MWPA) as the competent authority or "regulator";
  - **Option 2b**: Delivery through the EPP with the Environment Agency (EA) as the competent authority or "regulator";
- **Option 3:** Delivery through the planning system and EPP (specifically, with the permit requirements for waste facilities under Article 7 of the Directive delivered through the EPP) - the "Hybrid" option.

NB: The numbering of these options does not match the options set out in this version of the IA.

IMPACT ASSESSMENT STUDY: BACKGROUND AND ASSUMPTIONS

"3.3 The [Impact Assessment] (IA) study] has been informed by … [a] study to assess the nature of waste produced by active mineral workings in the UK, undertaken [on behalf of Communities and Local Government (CLG) in 2006] by the British Geological Survey (BGS). [The following table is based on that study]:

[16] A 'competent authority' means the authority or authorities which a Member State designates as responsible for performing the duties arising from this [Mining Waste] Directive.

Table 3.1: Total active mines, quarries and other operations

Mineral	Waste	UK	England	Wales	England & Wales	England & Wales/UK
Sand & Gravel	Inert	735	510	22	532	72%
Limestone	Inert	376	280	62	342	91%
Chalk	Inert	72	68	0	68	94%
Igneous Rock	Inert	211	43	15	58	27%
Sandstone	Inert	324	211	34	245	76%
Common Clay & Shale	Inert	181	155	10	165	91%
Opencast Coal	Hazardous*	23	3	6	9	39%
Deep Mine Coal	Hazardous	15	10	5	15	100%
Silica sand	Inert	48	39	1	40	83%
Slate	Inert	37	18	18	36	97%
China Clay	Inert	15	15	0	15	100%
Ball Clay	Inert	22	22	0	22	100%
Vein Minerals	Non Inert	20	19	0	19	95%
Salt	Non Inert	7	6	0	6	86%
Potash	Non Inert	1	1	0	1	100%
Gypsum	Non Inert	7	7	0	7	100%
Peat	Inert	88	59	3	62	70%
Talc	Inert	1	0	0	0	0%
Iron Ore	Inert	5	5	0	5	100%
Others	N/A	29	N/A	N/A		
TOTAL		2217				
TOTAL (excluding Others)		**2188**	**1471**	**176**	**1647**	**75%**
	Inert (excluding peat)	2027 (93%)	1366 (93%)	162 (92%)	1528 (93%)	75%
	Non Inert	73 (3%)	46 (3%)	11 (6%)	57 (3%)	78%

Source: CLG (2006), extracted from BGS BritPits Database December 2006

** The CLG report lists opencast coal as hazardous waste, however, this classification was challenged by industry representatives during stakeholder discussions, with their view endorsed by an MWPA with experience of dealing with such sites, as they considered the generation of such waste to be an extraordinary occurrence rather than the norm for opencast coal sites. The industry view was that the majority of opencast coal sites extract using a dry dig process, which produces inert overburden. The generation of hazardous waste occurs when coal is recovered by washing, a process usually supplementary to a dry dig coal recovery operation. The washing process produces water containing suspended solids that must be treated before disposal; this waste can be classified as hazardous.*

In the absence of data on the number of opencast coal sites that use the washing process to recover coal, the IA has used the data provided by the 2006 CLG report, as instructed at project inception by the Steering Group.

Note: Peat has been excluded from inert waste due to its exclusions from the MWD.

3.4 **Table 3.1** shows that within England and Wales, the majority (93%) of the 1647 active mineral extraction sites (excluding sites listed as 'Other') produce inert waste, some 1528 sites (excluding peat), with only 3% producing waste that may be classified as non-inert non-hazardous or hazardous (57 sites).

3.5 The IA is based upon these figures. However, the CLG study considered active extraction sites only, not taking into account those sites that are currently dormant. Legally dormant sites have extant planning permission but they cannot recommence working without notifying the Minerals and Waste Planning Authority (MWPA) and agreeing a new set of conditions. However some 'dormant' sites, known as mothballed sites, can recommence work without notifying the MWPA. It has been agreed with the Steering Group that, for the purpose of the IA, dormant sites will be excluded.

3.6 In addition to the CLG study on existing waste sites, information on the likely number of new extraction sites or site extensions in England and Wales was required to complete the IA, as these will need to be compliant with the Mining Waste Directive (MWD) alongside existing sites. **Table 3.2** sets out number of mineral planning applications received in England and Wales, and the number of those applications that were granted permission, for the years 2002 to 2005. The information has been calculated based on the Annual Mineral Application Statistics provided by CLG and reported in the journal *MINERALplanning*.

Table 3.2: Mineral planning applications received in England and Wales (2002 to 2005) and the number of applications permitted

Year	Total number of applications*	Number permitted*
2005	232	204
2004	228	204
2003	243	229
2002	276	252
Average	**245**	**222**

Source: *MINERALplanning*, Number 92 September 2002 to Number 109 December 2006

***** *Including planning applications for new sites, extensions to site area, extensions to site life and deepening, but excluding manufacturing or ancillary equipment, variations of conditions or other applications*

MWD Exclusions

3.7 The transposition options should provide the minimum requirements to comply with the Directive, in the most cost-effective way. The IA has therefore been based on the assumption that all opportunities written into the Directive [Article 2(3)] for Member States to waive requirements of the MWD are to be implemented in England and Wales.

3.8 These exclusions are important for the extractive industry in England and Wales, as [93%] of sites produce inert waste and are therefore exempt from a number of provisions of the MWD, unless they are deposited within a Category A waste facility.

MWD Definitions

3.9 Category A waste facilities are classified using three criteria set out in Annex III of the MWD. One of the criteria states that facilities will be classified as Category A if their *"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"*.

3.10 The inclusion of this criterion means that all extractive waste from mineral sites, including inert and non-inert non-hazardous waste, has the potential to be classified as a Category A waste facility depending upon its operation. One such example is the deposition of chemically inert but physically non-inert waste e.g. chemically inert fine particles in a siltation lagoon or tailings dam.

3.11 The probability that inert waste could meet the criteria for a Category A waste facility has been established through consultation with MWPAs, the Health and Safety Executive (HSE) and operators as part of the IA study.

MWD Benefits

3.12 The IA has considered the transposition options for the MWD, not the provisions of the MWD. It is important to reiterate this as the general benefits of the legislation are not related to the transposition options, but to the overall provisions of the MWD. Therefore, the IA has not attempted to quantify the benefits of the MWD against not having the MWD, as it is assumed enactment of the MWD by the European Parliament is acceptance at Nation State level that the benefits of the MWD justify the costs of enactment.

3.13 In addition, the IA process incorporates consideration of environmental and social costs as well as economic. In this instance, the IA is based upon the assumption that all transposition options would be able to successfully implement the MWD (as directed by the [IA study] Steering Group), therefore, because environmental and social costs and benefits are a function of the MWD itself and not dependent upon which implementation mechanism is used, there are no significant environmental and social impacts to be considered in this IA of the transposition options.

MWD Articles

3.14 As agreed by the [IA study] project Steering Group, a number of MWD Articles have not been considered as part of this study. [The Articles excluded are]:

Table 3.3 [extract: MWD Articles excluded from the IA study]

Article	Scope
6	Major-accident prevention and information, applying to Category A waste facilities only
15	A statement to be added to the existing Environmental Liability Directive
16	Provides details on transboundary effects
18	States that Member States have an obligation to report to the Commission on the implementation of the MWD
19	Lays down requirements on Member States to set rules on penalties for infringement
20	States that Member States must undertake an inventory of closed, including

	abandoned waste facilities
21	Provisions to ensure the exchange of information between Member States
22	Sets out implementation and amending measures required, to be undertaken by the Commission
23	Provisions regarding the Committee
25	Sets out transposition of the MWD
26	States the date that the MWD will enter into force
27	States that the MWD is addressed to the Member States

3.15. Article 6 is excluded from the scope of the IA [study] ….. because the Article is considered to be a standalone provision of the MWD, to be implemented by the HSE/[EA], therefore common to all options and not to be included. However, subsequent discussions on the MWD have highlighted that where a Category A waste facility is concerned, the provisions of Article 6 i.e. a major-accident prevention policy, safety management plan, internal emergency plan etc., must be included with the waste management plan (WMP) that is required under Article 5.

3.16. The implication of these discussions is that the cost of producing a WMP can include the cost of producing the major-accident prevention information set out in Article 6(3), where Category A waste facility is concerned. However, although these costs will be a change from the existing system (the baseline) the costs will not differ between transposition options. As such, it was decided, in agreement with CLG, that an assessment of the costs of providing information under Article 6 within a WMP would remain outside the scope of the IA [study].

Number of extraction sites in England and Wales

3.17. The IA is based on the costs of transposition. This in turn requires a detailed description of the individual tasks of the operators and the public sector agencies involved. These tasks have been defined on the basis of the tasks required to ensure the compliance of an extraction site with the MWD. Thus the costs are calculated initially on a site basis. In order to estimate the overall impact requires the multiplication of the costs per site by the total number of sites. The number of existing active extraction sites in England & Wales, by mineral type, is based on the data held by the British Geological Survey (BGS). The number of new sites per year has been estimated by reference to data on new planning applications and permissions, by mineral type.

Environmental Impact Assessment

3.18 Development activities (such as extraction sites or some waste facilities) that could have impacts on the environment are subject to Environmental Impact Assessment (EIA) under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. Developments required to undertake an EIA are listed in Schedules One and Two of the Regulations; Schedule One developments must undertake an EIA, whereas those in Schedule Two are required to undertake one if they meet the requisite criteria.

3.19 An EIA dealing with extraction waste may be produced under either mineral extraction or waste developments listed in Schedules One or Two, depending on whether it is contained within an EIA for the whole extraction site or not. For mineral extraction sites as a whole, Schedule One developments are quarries and open cast mining where the surface of the site exceeds 25 ha, and an EIA may be required under Schedule Two for quarries and open-cast mining smaller than

25ha and underground mining and other forms of extraction, depending on whether the project in question is judged likely to give rise to significant environmental effects. EIA screening is therefore likely to be necessary for all extraction activity, and a full EIA may be necessary at larger scale activity.

3.20 For extraction waste developments, the need for an EIA could be triggered under waste criteria in Schedules One and Two. Schedule One developments are waste disposal installations for the incineration, chemical treatment or landfill of hazardous waste. Schedule Two developments are installations for the disposal of waste, not listed under Schedule One.

3.21 Screening for EIA is carried out at the pre-planning application stage. However, recent case law has shown that EIA can now be required at other stages of the planning application process, including submission of reserved matters applications and renewals of extant planning permissions. A review of old mineral planning permissions can also trigger EIA.

Habitats Regulations Assessment

3.22 Extraction sites which could have adverse effects on European Designated Nature Conservation Sites (comprising Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) - which together are titled Natura 2000 Sites - and Ramsar sites) must, under the Habitats Regulations 1994, be subjected to Habitats Regulations Assessment (HRA). The HRA would determine whether the mining waste activity would adversely affect the integrity of the Designated Site.

3.23 HRA Screening is required for all sites that could affect a Natura 2000 or Ramsar site, regardless of whether the site or alterations to the site are likely to need a full HRA or not. The screening process identifies the potential for a mining waste activity, or alteration to a mining waste activity, to adversely impact a Designated Site, and whether there is a need for a full HRA. Screening, and where applicable the full HRA, must be carried out at the planning application stage for new mining waste activities. Similarly to EIA, a change of conditions resulting from a review of a planning permission could potentially also trigger the need for an HRA on an existing site and therefore, where applicable, sites must be undergo HRA Screening.

3.24 It has not been possible to establish whether any changes to existing mining waste activities as a result of the MWD would adversely affect the integrity of Natura 2000 or Ramsar sites – this would be established through HRA Screening, and would require detailed discussions with Natural England. However, it can be assumed that any costs arising as a result of HRA being required would be the same for all options.

3.25 An English Nature report investigating the relationship between Designated Sites and Mineral Extraction Sites in England[17] concluded that 31% of extraction sites in England are within 1000m of a Natura 2000 site; these sites could be subjected to HRA. Using this percentage to extrapolate across England and Wales, this would equate to approximately 510 extraction sites that could require HRA within England and Wales. (It should be noted that 1000m is not an approved cut off point under which HRA is required, such a distance has not be established due to the differing types of development and nature conservation sites making a set distance impracticable. The need for an HRA is assessed on a site by site basis.)

[17] Establishing the Relationship between Designated Sites and Active and Dormant Mineral Extraction Permissions in England. Land Use Consultants in conjunction with Green Balance and the British Geological Survey, for English Nature. May 2006.

Definitions

3.26 There are ongoing discussions on the definition of "waste" to be applied to the mining waste stream. For example, representatives of the extractive industry have argued that for the majority of extraction sites there is no "waste" but stored soil and rock required for restoration. The definition of waste used by the MWD is that defined in Article 1(a) of Directive 75/442/EEC, the Waste Framework Directive[18], as codified in Directive 2006/12/EC on waste:

> "*any substance or object in the categories set out in Annex 1 which the holder discards or intends or is required to discard*"
>
> Category xi of Annex 1 states "*residues from raw materials extraction and processing (e.g. mining residues, oil field slops, etc.)*".

3.27 It is not the purpose of the IA to decide whether residues of the extraction industry are classified as waste using the definition provided and subsequent legal case law. In agreement with the Steering Group at the outset of the project, the IA has assumed that "waste" includes soil and rock stored until it is used for restoration of the site, therefore the majority of extraction sites will be subject to the requirements of the MWD.

3.28 Where extraction waste is taken off-site, that used as a secondary aggregate has not been considered as waste by the IA, therefore the receiver of the secondary aggregate would not be subject to the requirements of the MWD. For example, a construction site using secondary aggregate or a landfill site using clay or secondary aggregate for lining or restoration would not be required to comply with the MWD. If mining waste taken off-site is placed within a landfill site then it will become subject to the requirements of the Landfill Directive, not the MWD. However, if mining waste is taken elsewhere for the purpose of disposal i.e. to a site not regulated by the Waste Framework Directive or the Landfill Directive, then the receiving site would be subject to the requirements of the MWD.

3.29 The probability of the off-site disposal of mining waste in the manner described above has been considered during discussions with both operators and MWPAs as part of the IA, drawing on their experience of mining waste. For example, disposal of mining waste on- or off-site may be related to the type of mineral extracted or the state of the waste produced i.e. liquid or solid.

3.30 The concluding point on the definition of waste employed in the IA is that the assessment has been carried out to provide a per extraction site assessment of the costs of each transposition option. Should the project assumptions on the definition of waste be subsequently altered, the cost implications can be calculated by adjusting the number of sites to which the MWD applies in the IA calculations."

[The above is an extract from, but not a complete version of, Chapter 3 of the study report. The following text is extracted from Chapter 5 (paragraph 5.5 onwards) of the report.]

ACTIVITY AND COST ANALYSIS

"*Summary of Approach*

5.5 The approach to the IA based on the detailed description of the activities necessary to transpose the four options (1, 2a, 2b, 3), has been to estimate the time required (days), by actor,

[18] Framework Directive on Waste: Council Directive 75/442/EEC of the 15th July 1975

for each activity, for each option, on a per site basis. This represents the additional time compared to the baseline of current operation and management of compliance systems covering mining waste activities. Thus the costs of each option are calculated with reference to the baseline. Differences between the costs of each option indicate the relative costs of each option.

5.6 This analysis distinguishes between existing and new sites and in each case between: sites exempt from Article 7 but which fall within the remit of the MWD therefore must comply with Article 5 (predominantly extraction sites producing inert waste), termed **Article 5 sites**; and sites requiring an Article 7 permit (predominantly extraction sites producing non-inert non hazardous and/or hazardous waste), termed **Article 7 sites**. The estimate of time in days is multiplied by the cost per day of operator and public sector staff to estimate the time cost, to which is added non-staff costs to estimate the total cost per site, for each option and identified by actor. The final step is to identify the aggregate costs taking into account the number of sites of each type for each option and the associated impacts on competition and small firms.

5.7 For each option the assessment has therefore estimated

- Activity and Associated Time (Days) by Option, Actor (Operator, MWPA, EA, HSE) and Type of Site (Existing / New and Article 5 / Article 7)
- Unit Costs per Day (£) by Option, Actor and Type of Site
- Other Costs (e.g. adverts related to consultation and use of consultants, e.g. for EIA / HRA) by Option, Actor, Type of Site
- Total Costs by Option, Actor and Type of Site
- Aggregate Costs, across all sites (distinguishing one-off costs and recurring annual costs) by Option, Actor and Type of Site
- Competition and Small Firm Assessment

5.8 The results of each of these steps is summarised below.

Activity and Associated Time by Option, Actor and Type of Site

5.9 The most difficult part of the assessment has been to translate the principles of each of the transposition options into a sufficiently detailed set of tasks such that an estimate of the likely time requirements could be made for each option and for each actor. This description of activities and tasks is summarised in **Tables 5.1** and **5.2**.

5.10 The next step was to produce the related time estimates against each activity; these are summarised in **Table 5.3** ….. In the case of both existing and new sites there is a requirement for up-front activity prior to specific site related activity. In the case of the planning option this relates to initial notification by MWPAs to operators of the MWD. In the case of EP it relates to workshops for operators and the drafting of the standard rules. The time required for new sites is reduced by the work done in relation to existing sites but includes a small allowance for the preparation of national frameworks for compliance assessment by the EA and HSE in the context of the planning option. The up-front time is required irrespective of the specific number of sites and is the total time required for all sites.

Table 5.3: Total estimated time (days) by Option and type of site (for all actors)

	Options			
Type of Sites	**1**	**2a**	**2b**	**3**
Existing Sites				
Up-Front Activity	161	75	75	161
Article 5	46	40	40	46
Article 7	82	76	72	72
New Sites				
Up-Front Activity	10	0	0	10
Article 5	24	22	22	24
Article 7	38	33	32	32

Source: LUC and GHK own estimates based on activity descriptions and data provided by operators, MWPA and EA.

Note: The time for Article 7 sites includes Article 5 requirement and the time for the negotiation of guarantees (hazardous waste sites only)

5.11 The remainder of the time is estimated on a per site basis. The estimates combine estimates provided by operators and MWPA, with LUC and GHK's own 'best guess' of the effort required.[19] In the case of the EA, the final time costs per site have been compared with suggested licensing costs to ensure comparability with the EA's own estimates.

5.12 The time for Article 7 sites includes activities common to both Article 5 and Article 7 sites, as well as activities specific to sites requiring an Article 7 permit. The higher time requirements for the Planning and Hybrid options compared to the EP options reflects the additional effort to collate information, additional planning reviews triggered by the option and (in the case of the Planning option) the additional time to negotiate guarantees.

5.13 In the case of both Article 5 and Article 7 sites an allowance has been made under each of the options of the possible incidence of changes required to the planning conditions, and the related possibility that these changes will subsequently trigger a requirement for EIA. **Table 5.4** summarises these assumptions.

Table 5.4: Assumed incidence of changes to planning conditions and related EIA requirement

	1	**2a**	**2b**
Article 5 sites requiring changes to planning conditions	35%	20%	20%
Percentage of Article 5 sites with revised conditions that require an EIA	10%	17.5%	17.5%
Article 7 sites requiring changes to planning conditions	100%	100%	100%

[19] The time estimates provided by stakeholders have not been subjected to review or scrutiny due to time constraints; therefore they may be subject to change.

Percentage of Article 7 sites with revised conditions that require an EIA	20%	20%	20%

Source: LUC & GHK own estimates

Note: Although the number of sites requiring a change in planning conditions is lower for Options 2a and 2b, the consultants consider that those sites where an EIA will be required, because of the significance of the required changes, will be the same sites under all options. This is reflected in the higher percentage of sites that require an EIA under Options 2a and 2b.

Alterations to planning conditions can trigger EIA; however it is assumed that only a low percentage of applications for amendments to conditions will require an EIA by virtue of meeting the requirements of the EIA Directive through the likelihood of significant environmental effects.

5.14 We have applied these assumptions to an estimate of the likely time required for a change of planning conditions and an EIA if a site were required to undertake such an amendment. In summary the following time is assumed to be required:

MWPA**:**

- EIA Screening = 1 day
- Scope EIA = 1 day
- Issue/make available EIA for consultation = 5 days
- Negotiate changes in conditions = 2 days
- Consult on application = 1 day
- Determine application = 3 days
- Section 106 agreements = 2 days

EA:

- Response to EIA consultation = 1 day
- Response to consultation on application for variation = 0.5 day
- Article 7 sites only: Response to consultation on revised planning permission = 0.5 day

HSE:

- Response to EIA consultation = 1 days
- Response to consultation on application for variation = 0.5 day
- Article 7 sites only: Response to consultation on revised planning permission = 0.5 day

5.15 The effect of changes in the assumed number of sites requiring changes to existing planning conditions (**Table 5.4**) is considered in paragraphs 5.37 & 5.38.

Unit Costs per Day by Actor

5.16 The unit costs of time for the public sector are based on the staff and overhead costs previously identified in a review of the costs of monitoring mineral sites[20]. The unit costs approximate to the full costs of officer time including the national insurance and pension

[20] *An Assessment of Proposals for Charging for Monitoring Mineral and Landfill Permissions, A Final Report to ODPM*, GHK Consulting in association with Land Use Consultants, August 2004

payments of staff plus an allowance for related overheads (such as the costs of office space and supplies).

5.17 The estimate of the unit cost is summarised in **Table 5.5**.

Table 5.5: Unit costs of staff time

Item	Cost (£)
Average Staff (FTE) Gross Costs per annum	31,632
Overheads (@ 61%) per annum	50,927
Cost per Day (£)	242.51

Sources:

- An Assessment of Proposals for Charging for Monitoring Mineral and Landfill Permissions, A Final Report to ODPM, GHK Consulting in association with Land Use Consultants, August 2004, p21, p22
- Annual Survey of Hours and Earnings, Office for National Statistics

Notes:

1. *Staff cost based on gross salary costs £27,187 (2003/04) and inflated to 2006/07 costs based on published data on increases in earnings for public administration workers of 16.3% over the three year period*
2. *Cost per day assumes 210 days per year*

5.18 This cost has been used for all public sector staff time, i.e. including EA and HSE.

5.19 The cost of the time of operators is estimated on the basis of information supplied through the CBI Minerals Committee. This indicates a cost of between £50/hour and £70/hour. We have taken the mid-point of £60/hour or £420 per day for purposes of the IA. The higher cost compared to the public sector reflects the likely requirement to use consultants to collect, collate and present much of the information.

Non-Staff Time Costs by Option, Actor and Type of Site

5.20 The non-staff time costs associated with the options relates to the need for changes to planning conditions and related EIAs (generating costs of consultation and consultants) and for undertaking a HRA Screening assessment. Provision for the costs of legal fees for assisting with the negotiation of guarantees is also included.

5.21 These costs are calculated on a site basis using the assumptions in **Table 5.4**, applied to the following site costs:

- Costs to operators of specific waste characterisation studies: £4,000
- Costs of Screening HRA: £6,000 per site for the MWPA for those sites that lead to a change in the planning conditions i.e. 35%, 20%, 20% for Options 1, 2a and 2b, respectively
- Costs of application fee to operators of the application for a change to planning conditions: £135
- Costs to the MWPA of adverts associated with consultation on EIA: £400 per site
- Costs of EIA to operators: £20,000 per site (assuming an addendum to previous EIA is required)
- Costs to operators and MWPA of legal fees to assist with the negotiation of guarantees: £10,000 and £2,000, respectively.

Total Costs per Site, by Option, Actor and Type of Site

5.22 The total costs per site of the time and other costs for each option, broken down by the type of site, are summarised in **Table 5.6a and 5.6b**. These costs include the combined costs to operators and to the public sector. The costs to operators and the public sector are summarised separately in **Tables 5.6c** and **5.6d** respectively.

Table 5.6a: Total costs per site by Option and type of site (£)

	1	2a	2b	3
Existing Sites – Article 5				
Application	18,719	16,236	16,236	18,719
Subsistence	4,343	4,343	4,343	4,343
Existing Sites – Article 7				
Application	42,751	41,264	39,650	39,650
Subsistence	4,511	4,511	4,511	4,511
New Sites – Article 5				
Application	3,510	3,014	3,014	3,510
Subsistence	4,343	4,343	4,343	4,343
New Sites - Article 7				
Application	12,714	11,324	10,073	10,073
Subsistence	4,511	4,511	4,511	4,511

Note: Application Cost includes up-front costs (divided by total number of type of site), pre-application, application, and determination activity. The costs of planning reviews for existing sites are also included. Subsistence Cost covers annual monitoring and enforcement and (on an annualised basis) the cost of the 5 yearly review. The costs include a proportion of the costs of arranging guarantees, based on the ratio of hazardous waste sites to all non-inert waste sites (non-inert non hazardous and hazardous).

Table 5.6b: Total application costs for Article 7 sites, adjusted for the guarantee by Option (£)

	1	2a	2b	3
Existing Sites				
Non-Inert Non-Hazardous	35,589	34,102	33,738	33,738
Hazardous	52,599	51,112	47,778	47,778
New Sites				
Non-Inert Non-Hazardous	5,551	4,161	4,161	4,161
Hazardous	22,562	21,171	18,201	18,201

Note: See Table 5.6a but adjusted for the exclusion or inclusion of the costs of arranging guarantees

Table 5.6c: Total operator costs per site by Option and type of site (£)

	1	2a	2b	3
Existing Sites – Article 5				
Application	13,189	12,858	12,858	13,189
Subsistence	3,276	3,276	3,276	3,276
Existing Sites – Article 7				
Application	27,300	27,510	27,510	27,510
Subsistence	3,444	3,444	3,444	3,444
New Sites – Article 5				
Application	1,680	1,680	1,680	1,680
Subsistence	3,276	3,276	3,276	3,276
New Sites – Article 7				
Application	7,615	7,195	7,195	7,195
Subsistence	3,444	3,444	3,444	3,444

Note: See Table 5.6a

Table 5.6d: Total public sector costs per site by Option and type of site (£)

	1	2a	2b	3
Existing Sites – Article 5				
Application	5,530	3,378	3,378	5,530
Subsistence	1,067	1,067	1,067	1,067
Existing Sites – Article 7				
Application	15,452	13,754	12,140	12,140
Subsistence	1,067	1,067	1,067	1,067
New Sites – Article 5				
Application	1,830	1,334	1,334	1,830
Subsistence	1,067	1,067	1,067	1,067
New Sites – Article 7				
Application	5,099	4,129	2,878	2,878
Subsistence	1,067	1,067	1,067	1,067

Note: See Table 5.6a

5.23 In all cases the costs for existing sites is greater than new sites reflecting the potential need for changes to planning conditions. In all cases the costs for Article 7 sites is greater than Article 5 sites reflecting the additional tasks that have to be undertaken. Subsistence costs are estimated to be the same between all types of sites under all the options, reflecting the significant current baseline level of site monitoring. The costs of application are by far the most significant; of which the planning option is higher than the EP, reflecting the additional time required.

5.24 As an indicative comparison of the likely costs to the EA of the use of EP (Option 2b), it has been suggested that the costs at the low end of the range for an EP for a landfill site provides an approximation to the likely cost under option 2b. These costs, provided by the EA, are around £3,000 for an application and £1,500 to cover annual subsistence. This is broadly in line with the full public sector costs estimated for new sites with only applications for Article 7 sites exceeding these guide values (**Table 5.6d**). In the case of applications for existing sites the costs exceed this range. However, this cost includes the costs of possible changes to planning conditions which would not be covered by the licence, as well as the costs of other public sector

agencies. **Tables 5.6e, 5.6f** and **5.6g** indicate the total costs per site for the MWPA, EA and HSE respectively.

Table 5.6e: Total MWPA costs per site by Option and type of site (£)

	1	2a	2b	3
Existing Sites - Article 5				
Application	5,063	3,064	2,093	5,063
Subsistence	582	582	243	582
Existing Sites - Article 7				
Application	14,021	12,445	9,043	9,043
Subsistence	582	582	243	243
New Sites - Article 5				
Application	1,455	970	364	1,455
Subsistence	582	582	243	582
New Sites - Article 7				
Application	4,250	3,401	364	364
Subsistence	582	582	243	243

Note: See Table 5.6a

Table 5.6f: Total EA costs per site by Option and type of site (£)

	1	2a	2b	3
Existing Sites - Article 5				
Application	294	159	1,129	294
Subsistence	243	243	582	243
Existing Sites - Article 7				
Application	776	655	2,442	2,442
Subsistence	243	243	582	582
New Sites - Article 5				
Application	248	243	728	248
Subsistence	243	243	582	243
New Sites - Article 7				
Application	485	364	2,029	2,029
Subsistence	243	243	582	582

Note: See Table 5.6a

Table 5.6g: Total HSE costs per site by Option and type of site (£)

	1	2a	2b	3
Existing Sites - Article 5				
Application	173	156	156	173
Subsistence	243	243	243	243
Existing Sites - Article 7				
Application	655	655	655	655
Subsistence	243	243	243	243
New Sites - Article 5				
Application	127	121	243	127
Subsistence	243	243	243	243

New Sites - Article 7				
Application	364	364	485	485
Subsistence	243	243	243	243

Note: See Table 5.6a.

Aggregate Costs (All sites in England & Wales) by Option, Actor and Type of Site

Estimated Number of Sites

5.25 The estimated number of existing sites, distinguishing Article 5 sites and Article 7 sites are based on the 2006 CLG report [see paragraph 3.3 and table 3.1], adjusted for England & Wales and excluding peat extraction sites (which are excluded under the terms of the MWD).

5.26 The estimated number of new sites per year is based on the records of mineral planning applications (including applications for extensions) that receive permission each year and that would fall within the remit of the MWD. The number of sites is divided between inert and non-inert waste on the basis of the mineral type.

5.27 The number of sites by type is summarised in **Table 5.7**. It has been suggested by the MWPA that although producing only inert wastes, a small number of the Article 5 sites (in the order of 50 to 100 sites) may accommodate a Category A waste facility, and therefore would be regulated under Article 7. The effects of this are examined as a sensitivity of the estimated costs to the allocation of sites between Article 5 and Article 7 sites (**paragraph 5.36**).

Table 5.7: Estimated number of active mineral extraction sites, by type, by Country

England & Wales	Inert	Non-Inert	Total
Existing Sites	1528	57	1585
New / Extended Sites per Year	205	17	222
England			
Existing Sites	1366	46	1412
New / Extended Sites per Year	183	14	197
Wales			
Existing Sites	162	11	173
New / Extended Sites per Year	22	3	25

Sources:

- Study to Assess the Nature of Waste Produced by Active Mineral Workings in the UK, A Report for DCLG, BGS, December 2006
- *MINERALplanning*, Number 92 September 2002 to Number 109 December 2006

Note: Division of new sites between England and Wales is based on the balance of existing sites. Inert sites exclude peat, as per the exclusions of the MWD.

Aggregate Costs by Option, Actor and Type of Site

5.28 The estimated aggregate costs of the options for each type of site are based on the total costs per site, multiplied by the number of sites of each type. **Table 5.8a** includes the combined costs to operators and to the public sector. The costs to operators and the public sector are summarised separately in **Tables 5.8b** and **5.8c** respectively.

Table 5.8a: Aggregate costs by Option and type of site (£m)

	1	2a	2b	3
Existing Sites – Article 5				
Application	28.6	24.8	24.8	28.6
Subsistence	6.6	6.6	6.6	6.6
Existing Sites – Article 7				
Application	2.4	2.4	2.3	2.3
Subsistence	0.3	0.3	0.3	0.3
New Sites – Article 5				
Application	0.7	0.6	0.6	0.7
Subsistence	0.9	0.9	0.9	0.9
New Sites - Article 7				
Application	0.2	0.2	0.2	0.2
Subsistence	0.1	0.1	0.1	0.1

Note: Application Cost includes up-front costs, pre-application, application and determination activity. The costs of planning reviews for existing sites are also included. Subsistence Cost covers annual monitoring and enforcement and (on an annualised basis) the cost of the 5 yearly review. The costs include a proportion of the costs of arranging guarantees, based on the ratio of hazardous waste sites to all non-inert waste sites (non-inert non hazardous and hazardous).

Table 5.8b: Aggregate operator costs by Option and type of site (£m)

	1	2a	2b	3
Existing Sites – Article 5				
Application	20.2	19.6	19.6	20.2
Subsistence	5.0	5.0	5.0	5.0
Existing Sites – Article 7				
Application	1.6	1.6	1.6	1.6
Subsistence	0.2	0.2	0.2	0.2
New Sites – Article 5				
Application	0.3	0.3	0.3	0.3
Subsistence	0.7	0.7	0.7	0.7
New Sites – Article 7				
Application	0.1	0.1	0.1	0.1
Subsistence	0.1	0.1	0.1	0.1

Note: See Table 5.8a

Table 5.8c: Aggregate public sector costs by Option and type of site (£m)

	1	2a	2b	3
Existing Sites – Article 5				
Application	8.4	5.2	5.2	8.4
Subsistence	1.6	1.6	1.6	1.6
Existing Sites – Article 7				
Application	0.9	0.8	0.7	0.7
Subsistence	0.1	0.1	0.1	0.1
New Sites – Article 5				
Application	0.4	0.3	0.3	0.4
Subsistence	0.2	0.2	0.2	0.2
New Sites – Article 7				
Application	0.1	0.1	0.0	0.0
Subsistence	0.0	0.0	0.0	0.0

Note: See Table 5.8a

One-off and Recurring Aggregate Costs

5.29 The aggregate costs comprise a one-off cost which relates to the retrospective consenting of existing Article 5 and Article 7 sites and a recurring annual cost for the application of new sites and the annual subsistence cost for existing and new sites. However, since it is assumed that the number of new site openings approximately balances the number of site closures the number of sites incurring subsistence costs is indicated by the current number of existing sites. These are summarised for combined Article 5 and Article 7 sites in **Table 5.9a**, with individual summaries provided in **Tables 5.9b and 5.9c** respectively.

[Note: In the following tables and associated comments taken from the study report, the consultants have also included 'total costs', that is, one-off costs plus one year's recurring costs. It is more pertinent to focus on the one-off costs or the annual recurring costs for the purposes of the impact analysis, except where net present values have been calculated (see Summary sheets) using total costs over a ten year period].

Table 5.9a: Aggregate costs, all sites, England & Wales, (£m)

	1	2a	2b	3
One-Off Cost				
Application – Existing Sites	**31.0**	**27.2**	**27.1**	**30.9**
Recurring Cost				
Annual Application – New Sites	0.9	0.8	0.8	0.9
Total Subsistence Cost – Existing Sites	6.9	6.9	6.9	6.9
Annual Recurring Cost	**7.8**	**7.7**	**7.7**	**7.8**
(Total Cost – England & Wales)	38.9	34.9	34.8	38.6
(Total Cost – England only)	34.5	30.9	30.8	34.3
(Total Cost – Wales only)	4.4	3.9	3.9	4.3

Note: Subsistence cost excludes subsistence costs for new sites. On the assumption that the total number of new sites will be off-set by the number of closed sites, the level of subsistence activity should remain fairly constant. (Figures may not sum due to rounding)

5.30 The total costs (England and Wales) range from £34.8m for Option 2b to £38.9m for Option 1, largely determined by the costs of retrospective consenting of existing sites. Both the one-off cost and the application cost for new sites are lowest for Option 2b. Subsistence costs are the same across all options.

5.31 The analysis also allows an appreciation of the effect of any subsequent change in the definitions of waste used to define the coverage of the MWD. If it were the case for example that material stored for use for restoration was excluded from the waste definition, then the number of Article 5 sites regulated under the MWD would be effectively zero, and may also reduce the number of sites requiring Article 7 permits. In this case the aggregate costs are very substantially reduced. On the basis of the relative costs of Article 5 and Article 7 sites, such a change would reduce costs by 93%.

Table 5.9b: Aggregate costs, Article 5 sites, England & Wales, (£m)

	1	2a	2b	3
One-Off Cost				
Application – Existing Sites	**28.6**	**24.8**	**24.8**	**28.6**
Recurring Cost				
Annual Application - New Sites	0.7	0.6	0.6	0.7
Total Subsistence Cost - Existing Sites	6.6	6.6	6.6	6.6
Annual Recurring Cost	**7.4**	**7.3**	**7.3**	**7.4**
(Total Cost - England & Wales)	36.0	32.1	32.1	36.0
(Total Cost - England only)	32.1	28.7	28.7	32.1
(Total Cost - Wales only)	3.8	3.4	3.4	3.8

Note: See note to Table 5.9a

Table 5.9c: Aggregate costs, Article 7 sites, England & Wales, (£m)

	1	2a	2b	3
One-Off Cost				
Application – Existing Sites	**2.4**	**2.4**	**2.3**	**2.3**
Recurring Cost				
Annual Application - New Sites	0.2	0.2	0.2	0.2
Total Subsistence Cost - Existing Sites	0.3	0.3	0.3	0.3
Annual Recurring Cost	**0.5**	**0.5**	**0.4**	**0.4**
(Total Cost - England & Wales)	2.9	2.8	2.7	2.7
(Total Cost - England only)	2.4	2.3	2.2	2.2
(Total Cost - Wales only)	0.6	0.5	0.5	0.5

Note: See note to Table 5.9a

5.32 The total aggregate costs for each of the actors has also been summarised (**Table 5.9d**). This indicates the relative costs of the options for each of the actors. The total direct cost to operators is approximately £27m, accounting for between two thirds and three quarters of total costs. Cost recovery of public sector costs will increase the overall costs to operators. Costs to the MWPA and EA vary in accordance with the options as would be expected. The HSE costs are uniform across the options.

Table 5.9d: Aggregate costs, by actor, England & Wales, (£m)

Actor	1	2a	2b	3
Operators	**27.4**	**26.9**	**26.9**	**27.4**
MWPA	9.8	6.6	4.2	9.5
EA	0.9	0.7	3.0	1.1
HSE	0.7	0.7	0.7	0.7
Public Sector	**11.5**	**8.0**	**7.9**	**11.3**
(Total Cost - England & Wales)	38.9	34.9	34.8	38.6
(Total Cost - England only)	34.5	30.9	30.8	34.3
(Total Cost - Wales only)	4.4	3.9	3.9	4.3

Note: This table shows the breakdowns by operator of 'total cost that is, one-off costs plus one year's recurring costs.

Relative Costs of the Different Options

5.33 The costs presented above are the absolute costs of transposition, compared to a baseline of current activity. The relative costs of the different options can be calculated by the cost differentials of the options. Using the costs of Option 1 as the benchmark **Tables 5.10a to 5.10c** summarise the cost differentials of Options 2a, 2b and 3 compared to Option 1. **Table 5.10a** includes the combined costs to Article 5 and Article 7 sites. The costs of Article 5 sites and Article 7 sites are summarised individually in **Tables 5.10b** and **5.10c** respectively.

5.34 In all cases there are cost savings, ranging from £0.2m (1%) for Option 3 to £4.1m (11%) for Option 2b. These cost savings occur for both Article 5 and Article 7 sites.

Table 5.10a: Relative cost savings of Options 2a, 2b and 3 compared to Option 1, all sites (£m)

	2a		2b		3	
One-Off Cost						
Application – Existing Sites	**3.9**	**12%**	**4.0**	**13%**	**0.2**	**1%**
Recurring Cost						
Annual Application - New Sites	0.1	13%	0.1	16%	0.0	5%
Total Subsistence Cost - Existing Sites	0.0	0%	0.0	0%	0.0	0%
Annual Recurring Cost	**0.1**	**2%**	**0.1**	**2%**	**0.0**	**1%**
Total Cost	4.0	10%	4.1	11%	0.2	1%

Table 5.10b: Relative cost savings of Options 2a, 2b and 3 compared to Option 1, Article 5 sites (£m)

	2a		2b		3	
One-Off Cost						
Application – Existing Sites	**3.8**	**13%**	**3.8**	**13%**	**0.0**	**0%**
Recurring Cost						
Annual Application - New Sites	0.1	14%	0.1	14%	0.0	0%
Total Subsistence Cost - Existing Sites	0.0	0%	0.0	0%	0.0	0%
Annual Recurring Cost	**0.1**	**1%**	**0.1**	**1%**	**0.0**	**0%**
Total Cost	3.9	11%	3.9	11%	0.0	0%

Table 5.10c: Relative cost savings of Options 2a, 2b and 3 compared to Option 1, Article 7 sites (£m)

	2a		2b		3	
One-Off Cost						
Application – Existing Sites	**0.1**	**3%**	**0.2**	**7%**	**0.2**	**7%**
Recurring Cost						
Annual Application - New Sites	0.0	11%	0.0	21%	0.0	21%
Total Subsistence Cost - Existing Sites	0.0	0%	0.0	0%	0.0	0%
Annual Recurring Cost	**0.0**	**5%**	**0.0**	**10%**	**0.0**	**10%**
Total Cost	0.1	4%	0.2	8%	0.2	8%

Net Present Value of One-off Costs

[Note: The consultants had calculated the net present value (NPV) of the one-off costs by each option over the four-year transitional period (2008 – 2011) for implementing the Directive and set out the resulting figures in table 5.11 of their report. These figures have effectively been superseded by the NPV figures included in the summary sheets of this IA which, in line with usual practice, have been calculated using total (i.e. one-off and recurring) costs over a ten-year period. The consultant's figures have therefore not been included here.]

Sensitivity of Cost Estimate to Allocation of Sites between Article 5 and Article 7

5.36 The possibility that a small number of inert sites may be regulated as Article 7 sites (through classification as Category A waste facilities) has been examined by reclassifying 100 Article 5 sites as Article 7 sites. The effect overall (**Table 5.12**) is to increase costs by approximately 7%.

Table 5.12: Change in costs (%) due to reclassification of 100 Article 5 sites as Article 7 sites

	1	2a	2b	3
One-Off Cost				
Application – Existing Sites	**2.4**	**2.5**	**2.3**	**2.1**
Recurring Cost				
Annual Application - New Sites	0.0	0.0	0.0	0.0
Total Subsistence Cost - Existing Sites	0.0	0.0	0.0	0.0
Annual Recurring Cost	**0.0**	**0.0**	**0.0**	**0.0**
Additional Cost (£m)	2.4	2.5	2.4	2.1
Change (%)	6%	7%	7%	5%

Note: Change in Cost Based on Total Aggregate Costs (Table 5.9a)

Sensitivity of Cost Estimate to the Assumed Level of Changes to Planning Conditions

5.37 The assumed level of changes to planning conditions (summarised in **Table 5.4**) influences the cost of the options. For Article 5 sites, two alternative sets of assumptions have been tested. The first is that the number of sites requiring changes to planning conditions under Option 2 will be the same as Option 1, i.e. 35% of sites, raising the cost of Option 2. The second is that the number of sites requiring changes to planning conditions will be even less under Option 2, say 5% instead of 20%, reducing the cost of Option 2. The absolute number of sites requiring EIA is assumed to be the same for both Option 1 and Option 2.

5.38 The effect of the first set of assumptions is to increase the cost of Option 2 by 10%. However, Option 1 still remains more expensive, but Option 2 is now only 2% cheaper. The effect of the second set of assumptions is to reduce the cost of Option 2 by 10%. Option 2 becomes 19% cheaper than Option 1."

COMPETITION AND SMALL FIRM ASSESSMENT

[The following text is also taken from Chapter 5 of the study report.]

"Competition Assessment

5.39 For the purpose of the competition assessment, the effects of the higher costs need to distinguish between the one-off cost and the recurring annual cost. The major impact is likely to be the one-off cost, even though it may be spread over four years. The recurring costs comprise the application cost for a new site (which for an individual site is a one-off and modest in relation to broader site development /extension proposals), and the annual subsistence charges. Neither of these is of a scale sufficient to impact on international competition.

5.40 The one-off cost for existing businesses can be approximated for industry by comparing the value of output and the likely industry level cost. Output data is available by mineral type (with a few exceptions), as illustrated in **Table 5.13**. The costs by mineral sector are based on the one-off application cost per site, multiplied by the number of sites in the sector. Since the public sector cost should be fully reflected in charges to operators, (excluding the costs of the initial planning review which is non-chargeable) the assessment is based on the total cost per site not just the direct operator costs. The assessment also takes into account that the costs of negotiating

and arranging the guarantee is assumed only to relate to sites with hazardous waste (i.e. open-cast and deep mine coal).

5.41 The assessment indicates that on an annual basis, in the period to 2012, the additional costs under Option 1 (the highest cost option) represent less than 1% of the output by sector, with two exceptions. The first is common clay and shale where the costs represent 2.6% of output and vein minerals where the cost also represents 2.6%. We suggest that given the limit to international competition in these sectors because of high transport costs that these additional costs are unlikely to have a significant impact on UK competitiveness.

Table 5.13: One-off costs as share of sector output, 2007, England & Wales

				Transposition Options			
Mineral	**Waste**	**Sites**	**Output (£m)**	**1**	**2a**	**2b**	**3**
Sand & Gravel	Inert	532	575	0.4%	0.3%	0.3%	0.4%
Limestone	Inert	342	756	0.2%	0.2%	0.2%	0.2%
Chalk	Inert	68	116	0.2%	0.2%	0.2%	0.2%
Igneous Rock	Inert	58	120	0.2%	0.2%	0.2%	0.2%
Sandstone	Inert	245	131	0.7%	0.7%	0.7%	0.7%
Common Clay & Shale	Inert	165	25	2.6%	2.4%	2.4%	2.6%
Opencast Coal	Hazardous	9	306	0.0%	0.0%	0.0%	0.0%
Deep Mine Coal	Hazardous	15	306	0.1%	0.1%	0.0%	0.0%
Silica sand	Inert	40	61	0.3%	0.2%	0.2%	0.3%
Slate	Inert	36	n/a				
China Clay	Inert	15	215	0.0%	0.0%	0.0%	0.0%
Ball Clay	Inert	22	51	0.2%	0.2%	0.2%	0.2%
Vein Minerals	Non Inert	19	5	2.6%	2.4%	2.4%	2.4%
Salt	Non Inert	6	205	0.0%	0.0%	0.0%	0.0%
Potash	Non Inert	1	75	0.0%	0.0%	0.0%	0.0%
Gypsum	Non Inert	7	21	0.2%	0.2%	0.2%	0.2%
Peat	Inert	62	not applicable				
Talc	Inert	0	not applicable				
Iron Ore	Inert	5	n/a				

Source: UK Minerals Yearbook 2005

Note: Published data on output refers to the UK for 2004. The output has been estimated for England & Wales on the basis of the number of sites, assuming that the average size of site in terms of tonnes of output is similar between England & Wales and the UK. The value of output has been held constant, but inflated to 2007 prices.

Small Firms

5.42 The impact of the transposition options on small firms (employing less than 50 employees) is likely to be greater than for larger firms because of the lack of economies of scale in for example establishing protocols for establishing waste management plans, or for negotiating financial guarantees. Small firms will also have less opportunity to spread the cost over the transition period. However, much of the information, negotiation and costs will be incurred on a site specific basis for small or larger firms.

5.43 There is little data on the ownership structure of the industry (as opposed to workplace statistics) and the share of output accounted for by small firms. It is therefore difficult to establish the specific impacts. The costs as a share of output (**Table 5.13**) represent, in the absence of any further data, an indication of impact on individual firms as well as sectors.

5.44 There is also a potential cost to small firms from the operation of different implementation arrangements between England and Wales and other parts of the UK. However, since small firms are unlikely to operate many sites across the different countries, then the risk is considered to be small. Moreover, the industry, including small firms, is used to operating in compliance with the needs of different regulators and their respective regimes; the differences potentially created for firms operating in more than one country are likely to be no more significant than existing differences between regulatory frameworks."

ANNEX 2

Fines levied by the European Court of Justice on non-compliant Member States

1. Article 228 of the European Community (EC) Treaty concerns the final stages of infringements of Community law (EC Directives). Since the implementation of the Maastricht Treaty in 1996 the European Court of Justice (ECJ) has been able to impose financial sanctions on any Member State which fails to implement a judgement from the ECJ establishing an infringement of Community law. While the final decision on the imposition of financial sanctions lies with the Court, the European Commission initiates Article 228 procedure and has published details of the principles on which it will base its recommendations to the Court for a financial penalty to be imposed. These principles can be viewed at:
   http://ec.europa.eu/community_law/docs/docs_infringements/sec_2005_1658_en.pdf

2. The Commission's recommendations are based on the following three criteria:
   - the seriousness of the infringement;
   - its duration; and
   - the need to ensure that the penalty itself is a deterrent to further infringements.

3. From 2005, the Commission has warned that it will usually recommend both a penalty for each day between the judgement of the Court that there has been an infringement and compliance with the Directive, together with a lump sum penalising the continuation of the infringement between the first judgement on non-compliance and the judgement delivered under Article 228. Subject to ratification by member states of the Treaty of Lisbon, it is expected that in 2009 the Article 228 procedure will change. As a result, the Commission will be able, more quickly than at present, to refer cases of non-compliance to the Court with a recommendation for a fine.

4. In three cases of Member States being fined since 2000, substantial and progressively greater penalties were imposed. In the first case, a fine of Eur 20,000 was imposed for each day of delay in implementing measures required by a Directive. The second case resulted in a fine of Eur 624,150 per year and per 1% of bathing areas not conforming to the Bathing Waters Directive for the year in question. In the third case, the fine was Eur 57,761,250 for each period of six months from the date of the judgement, together with a lump sum penalty of Eur 20,000,000.

ANNEX 3

Summary of responses to the consultation on options for transposing the Mining Waste Directive in England and Wales

1. Public consultation on all the transposition options identified by the Government took place between January and April 2008. In total forty-one responses were received to the Government's consultation paper issued on 17 January 2008, including two responses from Welsh bodies and one (offering no comments) from a Scottish body. The largest number of responses (15) were received from the extractive industries, including from representative bodies and industry affiliations. The next highest number of responses (12, including one from a Welsh authority) were received from planning authorities. Other responses came from a variety of national representative bodies and other public and private sector bodies.

2. Of the forty responses from English and Welsh bodies, the numbers in favour of each of the main options (as identified in the Consultation Paper and IA) were as follows:
   - Option 1 (the planning and existing consents option): 5
   - Option 2 (EPP): 30
   - Option 3 (the hybrid option): 2

3. Three respondents did not express a clear preference for any specific option.

4. Therefore, 81% of responses that expressed a clear view on this issue favoured transposition through EPP. However, the strength of support for this option varied. Whilst there was clear support from a number of respondents, most responses from the extractive industries described EPP as 'the least-worst' option, and only with the mineral planning authority as the principal competent authority.

5. Of the thirty responses expressing a preference for transposition through EPP, the breakdown in favour of either the Environment Agency (EA) or the mineral planning authority (MPA) acting as competent authority was:
   - MPA (option 2a): 12 (40%)
   - EA (option 2b): 17 (57%)

   (One response did not express a clear preference on this issue).

6. Support for option 2a came entirely from industry and other private sector respondents, while support for option 2b – the Government's preferred option - was spread amongst planning authorities, other public sector and private sector bodies and other representative organisations. Those supporting option 2b largely agreed with the Government's views set out in the consultation paper. In contrast, in supporting option 2a, the industry responses argued that mineral planning authorities already have considerable knowledge and experience of regulating mining and quarrying operations, of which extractive waste operations form one part; questioned whether the EA had the necessary awareness and experience of mining and quarrying operations; and suggested that having the planning authority with responsibility for planning controls and the EA

with responsibility for implementing the Mining Waste Directive would be confusing and result in fragmented, inefficient regulation.

7. The industry responses also stressed that the cost differences between the options as recorded in the IA were marginal. Given also the uncertainty over key issues, including whether certain residues will be classified as 'extractive waste, and the interpretation of the definition of inert waste, industry respondents considered that the conclusions drawn on the comparative costs of the different options had to be viewed with caution, and could not be given weight in deciding the preferred option.

8. Only a few respondents commented specifically on other aspects of the IA. There were some concerns about the assumptions made on the number of low cost, 'standard' EP permits that could be issued, in comparison with the numbers of higher cost, bespoke permits that may actually be required, for example, because of proximity to environmentally sensitive sites. Another suggested there may be additional costs to a particular industry sector as a result of the number of assumed 'Article 5' sites (only requiring a waste management plan) being classified as 'Article 7' (requiring a waste facility permit). However, no alternative cost/benefit analysis or cost figures were provided.

9. Very few responses from mineral planning authorities/planning representatives commented directly on the IA, other than a general view that additional resources would be required by the regulatory authority to undertake any new duties and responsibilities imposed by the Directive, though no quantification of these additional resources was provided.