

# **Fees for monitoring surface coal mines**

**January 2017**

# FEES FOR MONITORING SURFACE COAL MINES

## Introduction

1. This consultation seeks views on the Scottish Government's proposal to enable planning authorities to charge operators for undertaking monitoring of surface coal mining permissions, including planning conditions; legal agreements and restoration financial guarantees. The proposal takes account of previous consultations<sup>1</sup> and the work of the Opencast Coal Task Force during 2013-2015. It also fulfils our commitment to consult further with stakeholders on the scope of a new fees regime. The intention is to lay Regulations in the Scottish Parliament in due course.

## Summary

2. The main points to note in this paper are that the proposal:
- is only aimed at surface coal mining;
  - sets a fee of £500 for each monitoring visit to an active site and £250 for an inactive site;
  - allows planning authorities some level of flexibility when gauging the number of site visits required each year;
  - limits the amount of chargeable visits to 8 per year for an active site and to once a year for an inactive site;

## Policy context

3. The Scottish Government's five strategic objectives – to make Scotland *wealthier and fairer; smarter; healthier; safer and stronger; and greener* – focus on increasing sustainable economic growth. Activity in the surface coal mining industry across the UK remains modest whilst coal prices remain depressed. Coal continues to be extracted in Scotland principally providing fuel for specialist industrial and domestic markets. Whilst employment related to coal production has declined the restoration of former surface coal mines continues to provide valuable local employment in areas such as Ayrshire, Dumfries & Galloway, South Lanarkshire and Fife. With a focus on site restoration, the consultation supports the national outcome that '[We value and enjoy our built and natural environment and protect it and enhance it for future generations](#)'. Coal extraction must be carefully managed so that impacts on local communities and the environment are minimised.

4. The role of development planning and development management is to guide development to appropriate locations and then to regulate those operations whilst they are being undertaken. Planning application procedures provide an important

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<sup>1</sup> <http://www.gov.scot/Publications/2013/12/7688>

opportunity to ensure that those most likely to be affected by coal extraction are involved in decisions that affect them

5. If approved, this type of development would normally be subject to planning conditions and associated legal agreements, which seek to minimise impacts on local communities and the environment. Responsibility for ensuring development complies with conditions ultimately rests with the landowner. Operators too should comply with conditions and planning authorities should monitor conditions to ensure they are met and if necessary, appropriate enforcement action is taken. The Planning etc. (Scotland) Act 2006 includes provisions that strengthen the powers of planning authorities to take effective enforcement action where it is in the public interest to remediate a breach of planning control.

6. In order to establish that the developer meets the conditions of their consent, they may be monitored. In the past, routine and comprehensive monitoring has not been fully funded because the planning application fee has not been sufficient to cover both the processing and post-consent costs. As recommended in the final report to the Opencast Coal Task Force (2015) introducing Monitoring fees would provide for the partial recovery of monitoring costs from operators, in order to meet the monitoring expectations placed on a planning authority. It would also include a commitment to provide publicly available site visit reports.

7. Planning permissions issued for surface coal mining operations are often associated with a legal agreement under section 75 of the Town and Country Planning (Scotland) Act 1997 ('the 1997 Act') which provides for matters that cannot be dealt with by condition. The legal agreement is commonly the "vehicle" used to secure a financial restoration guarantee. It is important that both the terms of the agreement and of the guarantee are also monitored during the life of the development.

## **Background**

8. The Scottish Government's 2003 consultation paper *Monitoring and Enforcing Mineral Permissions*<sup>2</sup> recognised that mineral planning permissions are unique in that they are implemented progressively as minerals are extracted. Development often lasts many years and can have a range of environmental, economic and social impacts if not regulated and controlled through a comprehensive suite of planning conditions and legal agreements. These conditions must be carefully monitored. Planning authorities cannot currently charge fees for undertaking this monitoring. This consultation paper signals the Scottish Government's intention to enable planning authorities to recover some of these costs from operators ensuring that they have sufficient resources to undertake monitoring duties effectively.

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<sup>2</sup> <http://www.gov.scot/Publications/2003/10/18360/28106>

## Conclusions from 2003 consultation

9. The Scottish Government's 2003 proposals were widely welcomed by planning authorities and communities. However, concern was expressed by the wider minerals industry that the proposals were neither proportionate nor flexible enough to deal with the broad range of minerals developments. The main issues arising from responses to the consultation, which are still relevant today, include:

- section 75 agreements have an important, and continuing, contribution to make to securing adequate arrangements for monitoring new proposals;
- best practice suggestions made in the overview of responses to the 2003 consultation paper including the need for community engagement, were broadly welcomed;
- dormant/inactive sites and those at the restoration and aftercare stage should be monitored less frequently;
- views differed over what action should be taken against operators that fail to pay the fee;
- support for the fees regime to be extended to other forms of development, particularly waste facilities/landfill sites;
- costs should recognise the need to balance effective monitoring activity with ensuring that unnecessary burdens are not imposed on operators.

10. The 2003 proposals were overtaken by an increase in planning application fees across the board, to focus on raising performance. Nevertheless the points raised remain relevant.

11. Following the collapse of Scottish Coal and ATH Resources in 2013, the report by the Opencast Coal Task Force into the operation of the planning system revealed issues arising from an unsystematic approach to compliance monitoring as well as practice by operators which had fallen far short of the expectations placed upon them. Recommendations in a report to the Scottish Opencast Coal Task Force sub group concluded that a consultation on monitoring fees should take place. The report stated:

Benefits include:

- cost-recovery for planning authority monitoring input,
- potential lump sum available for specialist services,
- an assurance to communities that the Scottish Government is prepared to act – proportionately,
- across the board - a strengthened regulatory approach to environmental stewardship,
- partial parity in monitoring and inspection control between England and Scotland that the polluter pays.

Disbenefits include:

- Risk (potentially low) of a fees regime turning away future surface coal mine investment,
- The time it would take to implement a regulatory instrument,
- The regulatory burden upon operators,
- More effective arrangements can be secured through existing planning legislation (Section 75 agreements).

### **Scope of monitoring regime**

12. Many forms of development such as waste management facilities, other minerals sites and onshore wind farms can benefit from regular monitoring during their lifetime and it is recognised that this can place pressure upon local authority resources. However, there are particular benefits of phased monitoring for complex developments like surface coal mining operations and this, together with the recent failures in the surface coal mining sector, has led to this consultation.

13. At present the Scottish Government considers that fees for monitoring are merited in order to recover some of the on-going costs of ensuring that conditions imposed to mitigate impacts are properly implemented and monitored. This includes associated legal agreements and financial guarantees including restoration bonds. The Scottish Government has no current plans at this time to widen the scope of the proposed regime beyond surface coal mining operations. However, there is a wider consultation on planning fees as part of independent review of planning.

### **Way forward**

14. In response to the Coal Task Force, the Scottish Government believes that a limited statutory fees regime for surface coal mining operations should be introduced. The proposed fee regime is not intended to replace other measures, such as those set out in extant Section 75 agreements, that are put in place to ensure that activities at surface coal mining sites are properly monitored. For example, the appointment of a compliance assessor, paid for by the developer but accountable to the planning authority, provides a means of ensuring that compliance is tailored to the needs of a particular site.

15. Conditions should also be used to require an operator to monitor specific on-site activities, maintain records and report findings to the planning authority. However it may also be that legal agreements require monitoring, where it is essential that operational or restoration provisions have the potential to result in significant adverse effects if not properly implemented. In the case of a financial guarantee containing review milestones and a flexible value linked to the cost of restoration over time, it is right to expect parties to be open about its accuracy in case it needs to be recalculated, supplemented by additional financial provision or called in. It is evident that monitoring has become a complex operation, requiring appropriate resourcing and experienced professionals. However, it is considered that a dedicated fees regime, and associated site visits by planning officials, will not only provide additional assurances but ensure that robust monitoring takes place.

16. The intention is to keep regulatory burdens to a minimum, enabling planning authorities to undertake their monitoring functions with consistency and certainty while allowing a certain level of flexibility for different monitoring requirements at individual sites. New on-line guidance would be required once the proposal for a monitoring regime has been established. Draft guidance is referred to in Part II of this consultation.

17. Powers in the Planning etc. (Scotland) Act 2006 enable the Scottish Ministers to make regulations which provide for the payment of fees to be made to planning authorities for the performance of their functions. It is therefore intended to use these powers to make the Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017.

- Part I of this consultation considers, and seeks comments on the Scottish Government's draft legislative proposals.
- Part II considers what further guidance should be given to planning authorities and operators to support the implementation of the new regime.
- Part III presents a Business and Regulatory Impact Assessment (BRIA).

## PART I: LEGISLATIVE PROVISIONS

18. The intention is to lay Regulations - Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017 (the “draft Regulations”) before the Scottish Parliament setting out how certain components of the fees regime would operate. A copy of the draft regulations is provided in Annex A.

19. This part of the consultation paper explains the intention of the Scottish Government’s proposed legislative provisions. The provisions are limited to those considered necessary to ensure planning authorities have the appropriate means to undertake monitoring visits whilst allowing for some level of flexibility and discretion to recognise that scrutiny levels may vary from site to site.

20. It is proposed that the following definitions are covered in the Regulations:

- A. Surface coal mining permission;
- B. Surface coal mining site;
- C. Site Monitoring visit;
- D. Monitoring report;
- E. Active and inactive sites;

<b>Question 1: Do you agree with the list definitions that are to be included in the Regulations?</b>
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<b>Question 2: If not, on what basis do you disagree?</b>
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### **A Surface coal mining permission**

21. The intention is to define “**surface coal mining permission**” as “*planning permission for development consisting of the winning and working of coal and associated minerals, including the depositing of mineral waste, and the restoration and re-establishment of a beneficial after-use consisting of the planning permission certificate and planning conditions; associated with Section 75 legal agreements and restoration financial guarantee/s*”

22. The “winning and working of minerals” is not defined in the Regulations or other planning legislation but has come to be known as the extraction and primary processing (e.g. grading and crushing) of minerals. The “depositing of mineral waste” is defined in the Town and Country Planning (Scotland) Act 1997 as “any process whereby a mineral working deposit is created or enlarged and “depositing of refuse or waste materials” includes the depositing of mineral waste.”

**Question 3: Do you agree with the proposed definition of surface coal mining permissions?**

**Question 4: If not, what amendments do you consider necessary?**

## **B Surface coal mining sites**

23. The intention is to define “**surface coal mining site**” as “*land to which either a single surface coal mining permission relates or the aggregate of land to which two or more permissions relate where the aggregate of the land is worked as a single site or would be treated as a single site for the purposes of a review under Schedules 9 or 10 of the Town and Country Planning (Scotland) Act 1997*”.

24. This definition provides the means to allow an area of land, irrespective of the number of planning permissions relating to it, to be defined as a single site, and therefore subject to a single monitoring visit. It is expected that the vast majority, if not all, of the surface coal mining sites to be monitored under this regime would be those where there are one or more specific planning permissions granted subject to a number of planning conditions. These sites may also have the benefit of limited permitted development rights, i.e. for ancillary working rights.

25. Some surface coal mining operations may rely for supply on one or more “satellite” sites at which coal is extracted and at which waste may be deposited. The resulting coal may then be sent to a dedicated processing facility for secondary treatment i.e. Wash plant. Some “satellite” sites may be active, whilst others may be held in reserve to be brought into production in the future.

26. Whether or not “satellite” sites should be grouped with the main extraction site and regarded as one mining site or several different mining sites depends upon factors such as:

- their location;
- their distance from each other and from the main extraction site;
- whether it is clear that the various sites form part of a co-ordinated surface coal mining operation; and
- whether it makes practical sense to monitor them all at the same time or separately.

27. In most cases, what constitutes a site should be clear from the planning history of the development. Ultimately it is for the planning authority to define the area of the site and the extant permissions to be monitored, having agreed with the operator the most appropriate and efficient aggregation of areas and permissions.

**Question 5: Do you agree with the proposed definition of surface coal mining site?**



**Question 6: If not, what amendments do you consider necessary?**

**C Active and inactive sites**

28. An “**active site**” is one where “*development to which a surface coal mining permission relates or, other works to which a condition attached to the permission relates, is being carried out to any substantial extent*”. An inactive site is any other site and includes dormant sites.

29. An active site can therefore include those sites which are “mothballed” but may be subject to on-going restoration or aftercare. Fees will cease to be charged for monitoring visits on the completion of the period of aftercare required by a condition of the planning permission. An inactive site includes both a dormant surface coal mining site and a “mothballed” site where no restoration and aftercare is being carried out to any substantial extent. Where an active site is “mothballed” but subject to restoration works, then the site should receive fewer monitoring visits than an active site where mineral extraction or processing is being carried out.

30. Planning authorities would have to charge a reduced fee for monitoring visits to inactive sites and could only charge for one site visit in any twelve month period.

**Question 7: Do you agree with the proposal to treat active and inactive sites differently with regards to the required frequency of monitoring visits?**

**Question 8: If not, do you consider they should be subject to the same level of monitoring and why?**

**D Site monitoring visit**

31. The definition of site visit, in terms of the planning authority’s existing powers to enter a site for enforcement purposes, is taken from Section 156 of the Town and Country Planning (Scotland) Act 1997. This states a site visit is restricted to those cases where a planning authority, or any person duly authorised in writing by a planning authority, enters the surface coal mining site to monitor compliance with planning control, to consider whether enforcement action should be taken, and to ensure compliance with any such action. Whilst the definition of a site visit provides the legal basis for officers entering a surface coal mining site, the rationale for monitoring visits is for authorities and operators to work together constructively to review compliance with permissions in the light of the stage of development reached and possible changing operational circumstances and needs. In this way problems can be avoided and formal enforcement action is less likely to be necessary.

32. Planning authorities undertaking a site visit should check compliance with surface coal mining permissions. Monitoring the alignment of the restoration financial guarantee with the progress through the coal mining operation is a specialist area requiring expertise. The monitoring report should contain sufficient information relating to the extent of the void (quantum of the void) created by the mining operations and overburden material stored for use in the final restoration that will enable an assessment of maximum financial exposure to be determined and

ensure that the guarantee can provide sufficient resources in the event of a default. Those matters are best addressed by specialist compliance officers retained by the planning authority and funded by the operator. The site visit should also provide the opportunity to record any actual or potential material variations to working methods in order that the mine programme or progress plans can be amended and where necessary, new or amended financial guarantees secured. This can be seen as a de-risking exercise.

33. A fee is only payable when planning authorities enter a surface coal mining site for the purpose of monitoring compliance with surface coal mining permissions and a monitoring report identifying the outcome of any visit is provided to the operator within 10 working days of the visit. A “drive by” assessment or any assessment by a planning authority or appointed agent at a site which is not followed by entry to that site would not be deemed a site visit for which a fee is charged.

**Question 9: Do you agree with the proposed definition of site monitoring visit?**

**Question 10: If not, what other definition do you consider necessary?**

## **E Fees**

34. The fees regulations in England are not considered to provide an appropriate benchmark for the calculation of fees that would apply in Scotland. In England the current fee for a site visit is £331 where the whole or part of the site is active, or £110 in any other case. However, the true costs of undertaking the monitoring of surface mining sites exceeds £331. It is considered that a more appropriate fee level is £500 for a site visit where the whole or part of the site is active and £250 in any other case.

35. In the Scottish Government’s view, this is considered the best approach for setting an appropriate fee levels in Scotland where the costs of monitoring sites is likely to vary considerably depending on the complexity of individual sites and length and complexity of associated legal agreement content and financial guarantees. The time invested in a site monitoring visit are outlined in the partial Business and Regulatory Impact Assessment that forms part of this consultation. The suggested fee level may or may not represent full cost-recovery of the monitoring process but needs to take into account the time spent on the visit, the size of the site, the seniority of the official making the visit and the time it takes to write up the monitoring report. A ‘time sheet’ is suggested at the end of the model form for a surface coal mine site visit (Annex C).

**Question 11: Do you agree with the proposed fee levels?**

**Question 12: If not, what level do you consider to be appropriate?**

**Question 13: What mechanisms should be put in place to ensure that future fee levels recover the costs of planning authorities’ monitoring functions?**

## **F Who is liable to pay the fee?**

36. Ownership and operation of mining sites can be complicated. There may be one or more owners of the land who may or may not also be owners of the extraction interest and who may or may not be the site operator. Planning permission may be sought by either an owner of the land or of the mineral interest, or an operator. It is also possible that there might be one or more operators with an interest in respect of a planning permission (e.g. through subletting). Monitoring is intended to ensure compliance with operating conditions attached to permissions and with planning agreements. In addition, there is a need to ensure that no unauthorised development is taking place. As a result, the **operator** should pay the fee for the monitoring, even though it is possible that, in some cases, the permission will have been granted to a different person – e.g. the owner – and that it is the owner against whom the authority has ultimate sanction in enforcement proceedings.

37. The proposed definition of an “operator” confirms that a single operator of a surface coal mine is liable to pay the monitoring fee. Alternatively, where there is more than one operator on a site then the operator in overall control of the site, which may be the head lessee or head licensee, would be liable to pay the fee. In most cases, there is either one operator or one person in overall control of the site. For sites in multiple operation, any operator in overall control may choose to make separate arrangements for recouping a contribution towards the fees from subsidiary operators. Subsidiary operators include any person who is carrying out surface coal mining development but is not in overall control of the site.

38. The proposed definition of “operator” also confirms that if there is no person who falls within the definition of operator (as described above), liability to pay the monitoring fee rests with the owner.

**Question 14: Do you agree with proposals to make the operator responsible, in the first instance, for paying the fee?**

**Question 15: If not, who in the first instance do you consider should pay the fee?**

## **G Monitoring Reports**

39. Better awareness of surface coal mining activity, and greater transparency of monitoring processes, is clearly in the public interest. Enhanced reporting processes are therefore proposed within the draft regulations which, define “monitoring report” as a report prepared by a planning authority setting out the results of a site visit. Regulation 5 connects the ability of a planning authority to charge a fee with the provision of a monitoring report to the operator within 10 days of the site visit. Regulation 4 requires the planning authority to provide a copy of this report to the Scottish Environment Protection Agency (SEPA), the Coal Authority, the Health and Safety Executive and to the Scottish Ministers and to make it publicly available. Such reports should provide confirmation to operators of the outcome of site visits. Draft Regulation 3(1) confirms that the operator must pay the fee within 28 days of receipt of the monitoring report.

**Question 16: Do you agree that monitoring reports should be issued within 10 days of the site visit to the parties set out above and that this should be the trigger for generating a fee paid by the operator?**

**Question 17: If not, what other time period do you suggest for submission of monitoring reports and what alternative mechanism for triggering a fee invoice do you recommend?**

## **PART II: DRAFT GUIDANCE ON IMPLEMENTING THE FEES REGIME**

### *Preface*

*The Scottish Government intends to produce online guidance in 2017 to support the implementation of the Regulations. It is recognised that new legislation has to provide the necessary flexibility to allow planning authorities to take account of the different requirements for specific sites. This part of the paper therefore seeks views on what should be included in this guidance.*

### **Introduction**

40. The Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017 provide an important opportunity to secure improved arrangements for monitoring surface coal mining permissions. These permissions are generally subject to a considerable number of detailed conditions and associated legal agreements that are intended to control potentially negative impacts on neighbouring communities and the environment. Effective monitoring of conditions is necessary to ensure on-going operations are in line with the planning permission and to encourage high environmental standards. The associated legal agreements and financial guarantees for restoration purposes also require routine monitoring in order to ensure that they too are sufficient and capable of providing the necessary funds to undertake the restoration of the mining operations in the event of a default by the site operator.

41. The aim of the Regulations is to support the development of local procedures that promote a positive relationship between planning authorities, operators and communities. Regular site visits can support an atmosphere of on-going dialogue where issues can be discussed openly and constructively. This should enable difficulties to be addressed quickly and increase the potential for identifying and addressing any problems before they escalate and lead to conflict. Site specific measures should be tailored to individual sites but measures should always aim to put in place a systematic, documented, periodic and objective evaluation of how well each site is performing.

42. The Regulations do not prescribe how monitoring is to be undertaken in practice given that there is a need for flexibility to take into account of the specific circumstances of individual sites. The purpose of this guidance is to consider how the regime might work in order to achieve its purpose of securing good practice in undertaking monitoring. However, final decisions on implementing the scheme would rest locally with planning authorities and should be tailored to the specific requirements of individual sites. Planning authorities may wish, therefore, to produce their own guidance on local operational issues to supplement this more general guidance.

## **Preliminary considerations**

43. Prior to implementing the requirement of the new regulations, planning authorities should consider what internal staffing resources are necessary to enable effective monitoring to take place (i.e. adapting existing staffing structures; changing the responsibilities of existing staff; employing new staff or appointing consultants). The Regulations do not prevent authorities from working jointly so that monitoring functions could be carried out by a team operating across planning authority boundaries. If an authority intends to appoint a private consultant to undertake monitoring, then fees that can be recovered from the operator would be capped at the level set out in the Regulations.

44. The Scottish Government is working with Heads of Planning Scotland and the local authority Improvement Service on training, joint working, benchmarking and options concerning the best use of available skills and expertise. Operators and local communities are entitled to expect that functions are carried out to a high standard and authorities should, therefore, consider the following good practice recommendations:

- authorities should regularly review the range of skills needed to monitor compliance effectively;
- monitoring should be undertaken by either planning authority staff or consultants with appropriate expertise and experience;
- senior staff should visit problem sites and be involved in discussions with operators;
- planning committee members should be given opportunities to accompany monitoring officers to give an appreciation of operational issues and what is involved in monitoring work;
- adequate supporting staff resources should be provided (e.g. clerical and technical);
- specialist advice may need to be sought to monitor more complex issues such as noise, hydrology or landscape impacts;
- adequate powers should be delegated to officers to act promptly on breaches of planning control.

45. Early consideration should also be given to how best to involve local communities in the monitoring process. The need for doing so, including liaison and complaints mechanisms, is likely to vary from site to site and influenced by the presence of both formal and informal community groups representing the interests of those living nearby, including already established site liaison groups. The intention should be for local groups and individuals (including political representatives) to be aware of opportunities to contribute to the monitoring process. Such involvement should foster positive relationships between communities and operators which could

be enhanced by providing opportunities for a community representative to attend site visits.

**Question SG1: What guidance should be given on the arrangements needed to ensure effective structures and mechanisms are in place to support monitoring activities?**

### **Agreeing the number of visits**

46. Planning authorities should contact surface mining site operators to discuss and agree with them the number of visits to be undertaken annually and publicise that on local authority websites on their Planning homepage in an easily accessible and recognisable format. The following factors should be taken into account when agreeing this:

- size and type of development;
- number and complexity of conditions;
- number of issues, including any relevant Section 75 agreement or restoration financial guarantee that require monitoring;
- stage of development. For example, more frequent visits to surface coal mines are likely to be needed during initial site preparation (e.g. construction of site access and wheel washing equipment, installation and commissioning of processing plant/offices), soil stripping and replacement and the creation of soil storage and screening mounds, restoration planting and the final removal of plant equipment on completion of restoration;
- progressive nature of working/restoration;
- sensitivity of sites in relation to local communities and environmental designations;
- breaches of planning control observed;
- complaints received for a site which has proven to be justified.

47. When discussing how these factors relate to individual sites, planning authorities may wish to consider adopting indicative thresholds to be applied for establishing the number of visits to all sites within their area. The consultation paper sets out the Scottish Government's recommendations for the initial number of site visits to be undertaken in the first year dependent on the phase of operation at individual sites. Authorities should consider sending their own guide to operators within their areas with an indication of how they propose to categorise their site. Clear reasons should be given and the operator's agreement to the assessment should be sought. The planning authority has ultimate responsibility for setting the number of visits. If an operator considers that they are being subjected to an excessive number, their recourse would be to follow the planning authority's

complaints procedures. Where the operator is unhappy with the outcome, it may ask the Scottish Public Services Ombudsman to investigate.

48. When setting the number of annual site visits, past performance can be taken into account. Whilst it is only one of a number of factors that could be considered, it would clearly be justifiable for planning authorities to increase the number of visits in cases of serious and justifiable complaints, accidents, incidents or serious occurrences of non-compliance that arise throughout the year.

49. The number of annual site visits can be decreased or increased to take account of the outcome of visits. Planning authorities should consider undertaking more visits to sites where the risk of non-compliance is higher, or where operators fail to comply with certain planning conditions e.g. geotechnical instabilities requiring emergency remedial action, without agreement in advance with planning authorities. While the Regulations specify a maximum of 8 chargeable annual site visits to active sites (additional visits can be undertaken but fees would not be payable by the operator), it is likely that, on average, active sites should be inspected at least quarterly. However, the actual number of visits should be determined on the basis of an assessment of a number of factors. Consistently compliant sites should expect fewer visits than those sites where breaches of planning control have been a feature, including where complaints about operations have revealed a number of breaches of planning control.

50. More than 4 visits in a year would only be needed at particularly sensitive stages of a site's development, or where the authority has concerns about compliance. Minor breaches of control at an otherwise consistently compliant site would not normally attract an increased frequency of visits in the following year. A general guide on the recommended initial frequency of site visits is provided in Annex B.

51. Inactive sites require no more than one visit for which a fee will be payable each year. Any additional visits cannot be charged.

**Question SG2: Is the proposed guidance on setting the number of site visits appropriate?**

**Question SG3: If not, what other guidance would you welcome?**



## Reduction in number of site visits

52. Section 24 of the Planning etc. (Scotland) Act 2006 introduced provisions relating to good neighbour agreements (GNAs). These are voluntary agreements entered into by operators and community bodies and in some instances individuals. Although GNAs do not remove the need for effective monitoring of planning conditions they could be considered as relevant when setting the number of annual visits and be used to reaffirm the operator's obligations in relation to the community and to ensure that local people have an on-going role in site activities. These objectives are consistent with the Scottish Government's desire for engagement between communities and operators; delivering higher environmental standards; and providing communities with the capacity to resolve local issues. In such circumstances, good neighbour agreements may be able to provide local communities with a transparent and accountable route that gives important reassurances that site activities comply with planning permissions.

53. Many operators belong to trade associations which require their members to adhere to Environmental Codes of Practice. Many larger minerals companies also operate Environmental Management Schemes both for their organisations and for individual operations for example ISO 14001<sup>3</sup> accreditation with schemes such as these should be considered a relevant factor when agreeing the number of annual monitoring visits. The Scottish Government supports these initiatives.

**Question SG4: Should the annual number of site visits be reduced if good neighbour agreements and/or self-regulating schemes such as ISO 14001 are in place?**

**Question SG5: If so, please explain your reasoning and recommendation.**

## Undertaking monitoring

54. Fees are chargeable for site visits to monitor surface coal mining permissions (from their initial implementation to the end of the period of aftercare required by a condition of the planning permission) and any planning agreements or restoration financial guarantees relating to:

- the winning and working of coal by surface mining methods and associated ancillary operations.

55. The amount of time spent on monitoring a site can depend on the number and type of planning conditions or aspect of the operations that are being monitored. Individual visits may be tailored to monitor specific aspects of operations but, over the year, planning authorities should ensure that all the following (where applicable) are monitored:

- all planning conditions;

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<sup>3</sup> <http://www.iso.org/iso/home/standards/management-standards/iso14000.htm>

- development permitted under the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1995;
- the operation of mining waste facilities;
- planning agreements;
- good neighbour agreements;
- the adequacy of the financial guarantee to address restoration;
- compliance with Environmental Management Schemes such as ISO 14001;
- boundary limits;

56. Planning authorities should ensure appropriate arrangements are in place to avoid as far as possible duplication with the responsibilities of the Scottish Environment Protection Agency and the Health and Safety Executive. The assumption should be that other control regimes are being properly applied and enforced and should not be controlled or monitored using planning conditions. Operators should not be billed twice for monitoring the same matters. This may require liaison between planning authority and SEPA to ensure that there is no duplication of regulatory control or monitoring effort.

57. The final annual visit should include a meeting to discuss operational progress over the year and to set the number of chargeable monitoring visits for the following year.

**Question SG6: Is the proposed guidance on monitoring appropriate?**

**Question SG7: If not, what do you consider would be appropriate?**

## **Reporting**

58. A written site monitoring report should be completed by the planning authority and sent to the operator after every visit. The draft Regulations require that site visit reports must be made available to the operator within 10 days of the inspection visit and subsequently made available to the Scottish Environment Protection Agency, the Coal Authority, the Health and Safety Executive and to the Scottish Ministers within a further 10 days. Thereafter they should be publicly available. This can be achieved routinely on local authority website planning pages. The report should detail the matters reviewed, the points arising, including identifying agreed improvements in working practices, any breaches of conditions, and the action required by both the operator and the planning authority, including timescales.

59. In most cases therefore the site visit report should be available to the public (allowing for 5 working days to upload onto websites) no more than 25 days in arrears from the date of the site visit.

60. The completion of a proforma may be appropriate. A suggested model form for a surface coal mine site is provided at Annex C. Where a red, amber, green code is used to indicate what action can be taken, a description of the actions and timing underlying red and amber factors should be given. For example if enforcement action, such as a stop notice is intended it should be clear that red indicates immediate action. Amber might indicate an activity would most likely occur within a month or on the next available committee cycle. Whatever is chosen, it should be clear to the reader what parameters apply to proposed actions.

**Question SG8: Is the proposed guidance on reporting appropriate?**

**Question SG9: If not, what do you consider would be appropriate?**

### **Invoicing**

61. A fee for a site visit should only be charged after the visit has occurred. A monitoring report should be provided to the operator within 10 days of the site visit. The fee should be paid by the operator within 28 days of receipt of the monitoring report. All local authorities should have established procedures for taking action against those who default on required payments and these should be used in relation to non-payment of monitoring fees. If an invoice is not issued within 28 days of the issue of the monitoring report then the planning authority is effectively waiving the right to charge a fee.

**Question SG10: Is the proposed guidance on invoicing appropriate?**

**Question SG 11: If not, what do you consider would be appropriate?**

**PARTIAL BUSINESS AND REGULATORY IMPACT ASSESSMENT  
TOWN AND COUNTRY PLANNING (FEES FOR MONITORING SURFACE COAL  
MINING SITES) (SCOTLAND) REGULATIONS 2016**

**Question BR1: Do you have any comments on the Partial Business and Regulatory Impact Assessment?**

**1. TITLE OF PROPOSAL**

1.1 This is a Partial Business and Regulatory Impact Assessment of proposals to introduce the Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017 (“the Regulations”).

1.2 This partial BRIA assesses the likely impacts of the proposals in the 2016 consultation paper. The proposals in the Regulations and this assessment may be revised to take account of comments received as a result of this consultation.

**2. PURPOSE AND INTENDED EFFECT**

**Objectives**

2.1 The new Regulations would enable planning authorities to recover the costs of carrying out their functions relating to the monitoring of surface coal mine permissions. The absence of charging powers contrasts with other regimes (Building Regulation, Scottish Environment Protection Agency) where a separate monitoring fee is paid. Monitoring functions, if undertaken, are currently funded from local authorities’ general revenue budgets and, in most instances, insufficient resources are committed to enable these duties to be undertaken to an appropriate standard.

2.2 The powers within the new Regulations are intended to provide a higher standard of monitoring at surface coal mines, in the most efficient way possible, without any unnecessary complexity or imposing significant burdens on planning authorities and site operators.

2.3 The Regulations affect operators of surface coal mines since they will be paying for a regulatory activity which may currently costs them nothing, unless provision has been secured through a Section 75 Agreement associated with the planning permission.

**Background**

2.4 The Scottish Government is committed to ensuring that planning performance is reflected through the level and frequency of monitoring fees. Planning authorities are currently not empowered to recover the costs of post-consent monitoring and enforcement of planning conditions. It is unclear whether this may have been the main reason in those cases where monitoring has not been conducted as effectively as it might have been in the past, but it is likely to have contributed.

## **Rationale for Government Intervention**

2.5 Surface coal mine sites are unlike other forms of development since their impacts on local communities and the environment can take place over many years. Whilst the past experience of shortcomings in the monitoring of surface coal mining sites, as evidenced following the demise of the two largest surface coal mine operators in 2013 is behind us, non-compliance with existing permissions or default on restoration obligations is an on-going risk of potential national importance. Planning permission for such sites is subject to a substantial number of complex and technical planning conditions which seek to address these impacts.

2.6 Monitoring of surface coal mine permissions (and, where necessary, enforcement) is crucial if local communities are to be provided with reassurances that their interests have been properly factored into decisions and that on-going impacts on both communities and the environment are carefully considered and addressed. However, planning authorities are not funded for these costs. The Scottish Government's view is that such costs should be borne by operators and not by the public and that any charging regime must provide a clear indication of the standard of performance of individual sites.

### **3. CONSULTATION**

3.1 Within Government, the proposals have been subject to consultation with the Directorate of Planning and Environmental Appeals, and the Energy and Finance Directorates. Public consultation took place in 2003 on the principles of a fees regime and comments are reflected in the new Regulations. The Regulations were subject to further consultation in 2008 and have been discussed with representatives from the minerals industry and Scottish planning authorities during 2014 and 2015 through the Scottish Opencast Coal Task Force.

3.2 Prior to undertaking this consultation we have sought the views of several stakeholders through informal discussions. The parties approached represented a variety of stakeholders including Heads of Planning Scotland, the Scottish Mines Restoration Trust and several surface mine operators. The views expressed during these informal consultations have been used to influence the final version of this consultation document.

3.3 After the consultation we will aim to develop a full BRIA to assess the costs and benefits of the proposed monitoring fees regime.

## 4. OPTIONS

4.1 This BRIA reflects on consultation that took place in 2003 which highlighted a range of possible options on how fees could be calculated. Those options raised concerns in relation to fairness, complexity and outputs. It is considered that those matters, whilst raised some 13 years ago remain relevant today. It is therefore considered that, for the purpose of this assessment, the following 3 options represent the most appropriate way forward:

- Option 1: **Do nothing.** Under this option, planning authorities would continue monitoring at the same level as at present and without making a charge although, in some instances, arrangements may be in place whereby operators have agreed to fund independent monitoring of sites.
- Option 2: **Self-regulation by operators.** This option would remove, to some extent but not all, responsibility of planning authorities to carry out the monitoring function in respect of sites with operators that have a good record of compliance with planning conditions and are accredited to industry schemes. Planning authorities would need to continue to monitor unaccredited sites and those with poorer performance.
- Option 3: **A fee regime** based on an average charge per visit, with planning authorities determining the frequency of visits. This option would enable planning authorities to tailor the number of monitoring visits to the monitoring requirements of individual sites.

### Pros and Cons of the three options

5. The following benefits have been identified:

- Option 1: The only benefit of this option would be to operators, who would continue to be regulated without having to pay the cost of site visits. The present inadequate resourcing of monitoring for certain sites would continue. This could lead to impacts on local communities and the environment that might otherwise could have been resolved and addressed through regular monitoring visits.
- Option 2: Under this option operators with a proven track record of compliance with planning conditions and/or EMAS or ISO14001 accreditation would be entrusted with self-regulation. Planning authorities would need to carry out occasional quality control checks on these sites, and would need to respond to complaints, but the burden of the monitoring function and some of the associated costs would be lifted to some extent from planning authorities who could then devote more time and effort to monitoring and enforcement of unaccredited operations and poorer performers.

There would be financial implications for those operators entrusted with self-regulation, as they would need to establish transparent systems for monitoring their performance, which would need to be available to

planning authorities for checking as required. Sites run by unaccredited operators would need to be monitored by planning authorities and those run by poorer performers would be subjected to a higher level of monitoring but the costs for this would continue to be borne by planning authorities.

The option would be of benefit to reliable and accredited operators, who would not need to arrange a schedule of visits with planning authorities and would not need to pay the proposed fees. In 2003 there was insufficient evidence that EMAS and ISO14001 accreditation on its own is a clear guide to operational effectiveness, expressed as conformity with planning conditions. However, more recently documentation provided by operators demonstrates that an open and transparent approach to self-regulation consistent with ISO 14001 could be undertaken. It is clear that this option could present some difficulties and be complex to administer on a part self-regulation, part planning authorities monitoring basis. Yet this could be resolved through the proposal in Option 3 which would enable accreditation to be one of the factors that planning authorities could take into consideration when determining the number of site visits.

Planning authorities could then concentrate their efforts on monitoring those unaccredited sites and those with poorer performing operators with the resources freed up by not having to frequently monitor accredited sites. But there is a risk that the quality of self-regulating operator performance could gradually decline without regular independent planning authority monitoring, which could result in unacceptable impacts in some cases.

Option 3: The benefits of this preferred option are that it would place the financial burden of this regulatory function on operators, supporting the 'polluter pays' principle. Although industry representatives have expressed the view that mineral and landfill waste operators are already paying for environmental improvements to their operations through, for example, the Landfill Tax and Aggregates Levy, these charges were not introduced to encourage environmental improvements at mineral and waste sites, which is the objective of monitoring. At Opencast Coal Task Force meetings, operators spoke about how statutory monitoring fees could be seen as a disincentive to invest any further in coal. The option would however ensure that planning authorities were able to recover some costs of a best practice level of monitoring in their areas and would bring about savings which could be used for other purposes. It would also support local community interests, ensuring potential future issues were identified earlier and addressed. Poorer performing operators would require higher levels of monitoring visits to ensure full compliance with conditions. Consequently a system that charged for each site visit could encourage poorer performers to improve their performance, thus reducing the number of visits and total costs, and freeing up more planning authority time to

devote to other issues. A regime based on a nationally-set fee for each visit has the merit of simplicity and equity.

Monitoring to a best practice level would lead to an improvement in compliance with planning permissions, particularly amongst any poorer performing operators. This should ensure that the unacceptable impact of surface coal mines could be minimised.

## Costs

6. For the purpose of costs, it is estimated that there are approximately 24<sup>4</sup> surface coal mining sites in Scotland that may be eligible for site visits attracting a monitoring fee under the new Regulations. The Regulations are likely to lead to an average cost, assuming a best practice approach in line with the Scottish Government's proposed guidance, of just over £2,000 per site per annum, making a total cost of around £48,000 to the various operators in the industry. Costs at individual sites may, however, vary to reflect the amount of monitoring that is considered necessary.

Option 1: This option would mean that the costs of the current, variable, level of monitoring would continue to be met through a planning authority's budget, thereby in theory saving individual operators £2,000 per annum, per site. As planning authorities can sometimes find themselves inadequately resourced to perform monitoring to a satisfactory level, it is likely that monitoring would remain below the level that would be reasonably expected. This could result in non-compliance with conditions with subsequent risk of negative impacts on communities and the environment. As there would be no regular liaison between authorities and operators there would be no incentive for operators to potentially raise their environmental standards.

Option 2: Under this option, planning authorities would still continue to fund the cost of monitoring. They would also need to carry out occasional quality control checks on accredited operators, and would need to respond to complaints concerning sites where operators are accredited, but the burden of the monitoring function would be lifted to some extent, resulting in some financial and time savings for local authorities, albeit unquantifiable for this purpose. This option would allow local authorities to devote more time and effort to the monitoring of unaccredited and poorer performing operators. Clearly there would be some costs implications for operators, arising from this approach and the carrying out of monitoring that had previously been performed by planning authorities. Greater self-regulation by accredited operators (if internalised) with less independent scrutiny by planning authorities run the risk of being accused of a lack of transparency/independent scrutiny.

Option 3: It is estimated that there are approximately 24 surface coal mining sites in Scotland in various stages of coaling, abandonment or restoration. It is estimated that the maximum cost of a best practice approach to

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<sup>4</sup> Active sites and those requiring restoration



monitoring these sites would be just over £4,000 per site per annum, making a total maximum cost of £96,000. There are a large number of inactive sites which are likely in practice to reduce the estimated business impact but as requirements can vary site to site this would be impossible to quantify. Basing a fee regime on a flat fee level would impact more on smaller sites although the expectation is that such sites would be visited less frequently. There would also be an incentive for operators to improve performance since this could lead to a reduction in monitoring visits and therefore costs.

## **Issues of equity and fairness**

7.1 In this section, Option 1 has not been further explored, as it does not achieve the objective, but forms the baseline from which other impacts are measured.

7.2 Option 2 would allow operators, with a proven track record of compliance with planning conditions and/or EMAS or ISO14001 accreditation, to self-regulate, thus removing them from close planning authority monitoring, although there would be a residual requirement for quality control checks. Unaccredited operations would still need to be monitored to a best practice level and less compliant operators could be subjected to closer scrutiny by planning authorities, with the extra resources which would then be at their disposal. This option would only be acceptable and equitable if all parties, including planning authorities and local communities, had confidence that accreditation was an acceptable substitute for independent monitoring to a best practice level. Even with evidence of operators who conduct internal environmental audits this may not be the case.

7.3 The wider mineral and waste industry's view is that ISO14001 and EMAS accreditation are good measures of performance. Accreditation demonstrates the commitment of the operator to a high standard of performance and should be taken into account. Those with accreditation are audited both internally and externally and any non-compliance with planning conditions is flagged up. Planning authorities are more sceptical about the value of accreditation of management systems as a proxy for monitoring compliance with planning permissions. They feel that there is insufficient evidence that accreditation equates with operational effectiveness and compliance with planning conditions. There is clearly a relationship but one does not equal the other.

7.4 Under this option, the cost of quality checks at accredited sites and the cost of monitoring at unaccredited sites would remain with planning authorities, so in theory any polluter would not pay.

7.5 Option 3 would transfer the cost of monitoring compliance with planning conditions, legal agreements and restoration financial guarantees from the planning authority to the operator. Where the operator could demonstrate, through continued satisfactory compliance, that it was discharging its responsibilities in a reasonable manner, the planning authority could visit the site less often than those of less reliable operators and associated monitoring costs would reduce as consequence.

7.6 All conditions attached to a surface coal mine permission and matters arising from legal agreements and restoration financial guarantees should be complied with

in order to avoid unacceptable environmental or social impacts. Poorer performing operators would therefore receive more visits to ensure compliance and thereby incur more costs. A flat rate of charge, irrespective of the size of the operation and the level of turnover of the company, would impact more on smaller operators but would be deemed modest.

7.7 The proposed flat rate charge based on average costs, would be administratively easier to operate than a system based on actual costs, which would impact slightly differently on different types of operation. For example, smaller sites may take less time to monitor and require less frequent monitoring visits, whereas larger sites or more complex operations are likely to take longer and required more frequently due to the fact that the pace of change is often more rapid. Under the proposal, both the rationale for a flat rate charge based on average costs and its level would be kept under review.

7.8 There are no issues of equity and fairness arising in respect of rural areas or race equality. However the option is likely to have an impact on health and well-being because best practice monitoring can help to ensure full compliance with planning conditions. This, in turn, should ensure that polluting emissions, such as dust and noise, are minimised and that restoration progresses are in line with mine progress plans and programmes to the benefit of local communities and the environment.

#### **SMALL FIRMS IMPACT TEST**

8. There are a number of sites that are relevant to this proposal in Scotland and it is likely that those with tighter margins and lower turnover could find the costs of monitoring fees heavier than larger operators. However, in certain instances, these sites are likely to be quicker and easier to monitor so can keep costs down. The intention is to accompany the new Regulations with guidance which would recommend that such sites, where possible, could be monitored in a proportionate manner in line with their performance. In most instances, planning authorities will have a discretionary power whether to visit a site or not so long as it is conducted at least annually: a minimum which would also apply to inactive sites.

#### **LEGAL AID IMPACT TEST**

9. This test is not considered relevant to these Regulations.

#### **“TEST RUN” OF BUSINESS FORMS**

10. The Regulations do not contain business forms. A draft “monitoring report” was included with the Regulations and this will be included in Scottish Government guidance being issued to accompany the Regulations. It will take account of comments made during the consultation process.

## **COMPETITION ASSESSMENT**

11. The surface coal extraction industry contains a limited range of operators of various sizes. Turnover can vary considerably, depending on the size of the site and the amount of winnable coal and associated minerals and the rate of extraction. The proposals subject all sites in Scotland to a flat-rate charge. Given the relatively small scale of the proposed charge per visit (£500) and the scope for minimising costs through a reduction in scheduled site visits as a result of compliance with the planning conditions, we would not expect the proposal to have a significantly adverse impact on the competitiveness of operators. Operators in England are already subject to a similar fees regime.

## **ENFORCEMENT SANCTIONS AND MONITORING**

12. Each of the options would be dependent on planning authorities having a right of entry to land in order to carry out the monitoring function. They would be able to rely on the powers in primary legislation to do so. Enforcement of planning conditions would continue as at present, under planning legislation. A material divergence between the cost of restoration and the value of the financial guarantee is one of the most significant risks which robust monitoring can help alleviate. In the event of serious breaches of conditions, it would be possible for the planning authority to suspend operations. In the event of non-payment by the operator, recovery would be expected to be pursued by the planning authority as part of existing day-to-day debt recovery powers. Any disagreements between planning authorities and operators about the proposed number of monitoring visits each year could be resolved by the planning authority's internal complaints procedure.

## **MONITORING AND REVIEW**

13. Charging for monitoring of surface coal mine permissions is a new concept within the planning system and the Scottish Government recognises that there would be a need to monitor the progress of the regime, to ensure that it operated effectively and to see if it needed to be improved in any way. Major indications of the effectiveness of any of the options are the level of compliance with planning permissions and the reduction in the number of complaints which prove to be justified. The appropriateness of the fee and whether it should be raised from time to time to take account of inflation will also need to be reviewed.

2017 No. (C. )

**TOWN AND COUNTRY PLANNING**

**The Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017**

<i>Made</i> - - - -	2017
<i>Laid before the Scottish Parliament</i>	2017
<i>Coming into force</i> - -	2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 252 of the Town and Country Planning (Scotland) Act 1997<sup>(5)</sup> and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Town and Country Planning (Fees for Monitoring Surface Coal Mining) (Scotland) Regulations 2017 and come into force on [2017].

**Interpretation**

2. In these Regulations—

“the Act” means the Town and Country Planning (Scotland) Act 1997;

“active site” means a mining site where development or works relating to a mineral permission are being carried out to a substantial extent;

“inactive site” means a mining site which is not an active site;

“mineral permission” means planning permission for development consisting of, or including, surface coal mining;

“mining site” means—

(a) where two or more mineral permissions relate to one area of land, the area of land which is being—  
worked as a single site; or

treated as a single site for the purposes of schedule 9 (review of old mineral planning permissions) or 10 (periodic review of mineral planning permissions) to the Act; and

(b) in any other case, the land to which a mineral permission relates;

“monitoring report” means a report prepared by a planning authority setting out the results of a site visit;

“operator” means—

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<sup>(5)</sup> 1997 c.8; section 252 was amended by section 31 of the Planning etc. (Scotland) Act 2006 (asp 17) and by section 55 of the Regulatory Reform (Scotland) Act 2014 (asp 3).

- (a) the person carrying out any development or works on the land to which a mineral permission relates;
- (b) where there is more than one person carrying out development or works, the person in overall control of the site; or
- (c) where there is no person who falls within the descriptions in sub-paragraph (a) or (b), the owner of the site; and

“site visit” means entry by a planning authority, or a person authorised in writing by a planning authority, on to a mining site to—

- (a) ascertain whether there is or has been any breach of planning control on the site;
- (b) determine whether, or to what extent, any of the powers conferred on a planning authority by Part 6 of the Act (enforcement) should be exercised in relation to the site;
- (c) ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the site;

“surface coal mining” means winning and working of coal by means of the extraction of coal from the earth by removal from an open pit or borrow.

3. —(1) Where a site visit is made to a mining site by a planning authority, the operator of the site must within 30 days of receipt of a monitoring report in respect of that site visit pay to the authority a fee in accordance with these Regulations.

- (2) The fee payable is—
  - where the site is an active site, £500; and
  - where the site is an inactive site, £250.

(3) The maximum number of site visits in respect of which a fee is payable under paragraph (1) during any period of twelve months is—

- (a) where the site is an active site, eight; and
- (b) where the site is an inactive site, one.

### Exceptions

4. Regulation 3 does not apply where the planning authority has not within 10 days of the date of the site visit issued a monitoring report to the operator of the site in respect of that site visit.

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh

2017

## **EXPLANATORY NOTE**

*2.(This note is not part of the Regulations)*

These Regulations provide for fees to be paid to planning authorities in relation to site visits made for the purpose of monitoring compliance with surface coal mineral permissions.

Regulation 3 sets out the operator's obligation to pay. It provides for the fee amount and the maximum number of visits where a fee is payable in relation to active and inactive sites. Provision is made to account for situations where there is more than one operator and where two or more sites are grouped together for the purpose of monitoring.

Regulation 4 sets out the conditions under which the operator is exempt from having to pay a fee.

## GENERAL GUIDE TO RECOMMENDED INITIAL FREQUENCY OF SITE VISITS

Category and description	Annual Visits
<b>Category 1</b> – small sites with de minimis output that are compliant with planning permission.	1
<b>Category 2</b> – dormant or inactive sites.	1
<b>Category 3</b> – sites undergoing restoration and aftercare.	8
<b>Category 4</b> – active sites.	8
<b>Category 5</b> – active sites not operating in accordance with planning permission, particularly if there have been substantiated complaints or enforcement action is being considered/has been taken <b>or</b> those at initial preparation stage.	8

<b>SITE NAME</b>		<b>DATE</b>	<b>TIME</b>
<b>OPERATOR</b>			
<b>CONTACT NAME AND PHONE NUMBER</b>			
<b>PLANNING PERMISSION No./Nos</b>		<b>WASTE FACILITY</b>	<b>Y / N</b>
<b>STATUS</b>	<b>NOT COMMENCED</b>	<b>SITE PREP</b>	<b>OPERATIONAL</b>
	<b>RESTORATION</b>	<b>AFTERCARE</b>	<b>INACTIVE</b>
<b>TYPE OF VISIT (ANNOUNCED/ UNANNOUNCED)</b>		<b>DATE AND TIME OF VISIT AND WEATHER</b>	

### CONDITIONS & SECTION 75 AGREEMENT

<b>C = Compliant</b>		<b>R = Requires further investigation</b>		<b>X = Not Applicable</b>	
<b>N1, 2 or 3 = Non-compliant (1 = significant breach, 2 = material breach, 3 = minor breach)</b>					
<b>Pre commencement</b>		<b>Dust &amp; litter control</b>		<b>Overburden storage</b>	
<b>End date</b>		<b>Sheeting of vehicles</b>			
<b>Site sign at gate</b>		<b>Noise control</b>			
<b>Hours of working</b>					
<b>HGV No. limits</b>		<b>Blasting</b>		<b>Soil placement</b>	
<b>Lorry routing</b>		<b>Bunding &amp; planting</b>		<b>Restoration</b>	
<b>Mud on roads</b>		<b>Landscaping</b>		<b>Aftercare</b>	
<b>Access surface/drainage</b>		<b>Extent of consent/working</b>		<b>Restoration bond monitoring (appraisal of adequacy) and compliance</b>	
<b>Junction location/design</b>		<b>Soil stripping &amp; storage</b>			
<b>Vehicle/wheel cleaning</b>		<b>Phasing/working direction</b>			
<b>Buildings and plant</b>		<b>Area &amp; depth of working</b>			
<b>Display conditions/plans</b>		<b>Associated mineral types</b>			
<b>Lighting</b>		<b>Landscape maintenance</b>			
<b>Stockpiles</b>		<b>Restoration materials</b>			
<b>Permitted Development</b>		<b>Levels &amp; landform</b>			
<b>Protection of features: Nature conservation, archaeology, footpaths, utilities, trees</b>					



**DESCRIPTION OF SITE VISIT MATTERS REQUIRING ATTENTION (applies to R, N1, N2 and N3 issues)**

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**NON-COMPLIANCE**

<b>Issue</b>	<b>Action to be taken by operator including timescales</b>
	<p>A red, amber, green code can be applied to action that may be required to comply with conditions.</p> <p>If any form of enforcement action is envisaged this should be documented in the report with a likely timeline.</p>

<b>Planning officer</b>	<b>Signature</b>	<b>Phone number</b>	<b>Date</b>

<b>Activity</b>	<b>Time spent</b>	<b>Cost</b>
Travel time		
Duration on site		
Preparation of report		

## **RESPONDING TO THIS CONSULTATION**

We are inviting responses to this consultation by **6<sup>th</sup> April 2017**

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.scotland.gov.uk/special-projects/fees-for-monitoring-surface-coal-mines/>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 6<sup>th</sup> April 2017.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

Planning and Architecture  
Area 2-H(South)  
Victoria Quay  
Edinburgh  
EH6 6QQ

### **Handling your response**

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

### **Comments and complaints**

## **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to [surfacecoalmines@gov.scot](mailto:surfacecoalmines@gov.scot)

## **Scottish Government consultation process**

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



## FEES FOR MONITORING SURFACE COAL MINES RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name  
 Publish response only (without name)  
 Do not publish response

### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes  
 No



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