

# **Consultation analysis and the Scottish Governments response to the consultation:**

## **Fees for Monitoring Surface Coal Mines**

**November 2017**

## **Content**

Background

Consultation analysis

The Scottish Government response

Conclusion and next steps

## BACKGROUND

1. After the collapse of Scottish Coal and ATH Resources in 2013, the report by the [Opencast Coal Task Force](#) revealed a number of issues that had arisen from an unsystematic approach to compliance monitoring by planning authorities, as well as historic practice by certain operators. Among the recommendations outlined in the report was one for a consultation on monitoring fees, that should take place in the future. The introduction of a monitoring fee would provide for the recovery of some of the costs associated with monitoring from operators by the planning authority.
2. The Consultation on monitoring fees for surface coal mining ran from January to April 2017 and all those with an interest were invited to comment. The main points discussed within the public consultation were:
  - Whether allowing planning authorities to start charging for monitoring visits was supported;
  - To confirm certain definitions associated within the surface coal mining industry to be used within the new Regulations and guidance, if the proposal was supported;
  - If a fee of £500 for each monitoring visit to an active site and £250 for an inactive site was appropriate;
  - To allow planning authorities some level of flexibility when gauging the number of site visits required each year;
  - To establish if operators should be responsible for paying the monitoring fee;
  - Whether the principle of monitor reports being issued within 10 days of the date of the site visit was appropriate.

## CONSULTATION ANALYSIS: FEES FOR MONITORING SURFACE COAL MINES

### Profile of respondents

3. The Scottish Government received 12 responses to the consultation, 3 from individuals and 9 from organisations. In terms of those organisations that responded, these included planning authorities, an environmental Non-Government Organisation (eNGO), a Non Departmental Public Body (NDPB) and private industry.

### Summary of responses

4. The table below briefly summarises the overall responses received.

Main point	Views expressed
Agree definitions associated with the surface coal mining industry to be used within the new Regulations and guidance	<p>7 out of 10 who responded to these questions supported the definitions to be used in the new Regulations and the guidance to describe surface coal mining.</p> <p>A few respondents expressed that they would also like to see these Regulations extended to the mineral industry too.</p>
Fee of £500 for each monitoring visit to an active site and £250 for an inactive site	<p>5 out of 9 agreed with the proposed monitoring fee levels.</p> <p>However, a few of those who disagreed with the level, did so on the basis they would like to see the fee set higher to include specialised reports or that there shouldn't be a difference between the two types of site.</p>
Allow planning authorities some level of flexibility when gauging the number of site visits required each year	<p>6 out of 11 disagreed with flexibility but only on the basis that the frequency of visits should not differ between active and inactive sites.</p>
Operator should be responsible for paying the monitoring fee	<p>8 out of 10 supported the proposal that the operator should be responsible for the fee.</p>
Monitoring reports being issued within 10 days of the date of the site visit	<p>This was an even split with 5 out of 10 in favour of the 10 day report turnaround. The majority of planning authorities thought the timescale was too tight, as did not allow for mitigating factors, such as seeking additional information or awaiting reports.</p>

## **Summary of main points by sector**

### **Industry**

5. One respondent wanted to see certain work exempt from the monitoring fee regulations, in order to avoid the potential for duplication between monies secured through Section 75 agreements. Another was concerned that it may be difficult to be able to establish what was an active or inactive site in certain circumstances.

### **Individuals**

6. Some would like to see Regulations extended to minerals and thought that active and inactive sites should be treated the same, both in terms of the chargeable fee and the frequency of visits.

### **Planning authorities**

7. Planning authorities all made similar comments, which included extending the Regulations to include minerals extraction, treating active and inactive sites in the same way to minimise confusion and concerns about being able to achieve a 10 day turn around for reports, which did not appear to take account of mitigating factors.

### **eNGO/NDPB**

8. Respondents raised concerns about being able to define what was an active or inactive site and felt that the level of fee recovery should be greater, to allow planning authorities to source professional support. There was a reference to the 10 day turn around for monitoring reports but only in so far as it may jeopardise the ability of the planning authority to recover the fee in what can be a complex undertaking.

## THE SCOTTISH GOVERNMENT RESPONSE

9. Although only a limited number of responses to the consultation were received, overall respondents were supportive of the introduction of these new Regulations and the comments received can help the Scottish Government to shape the final Regulations. The responses to the main points in the consultation are set out below under each heading.

### **Terminology to be used within new Regulations if supported**

10. The majority of those who responded supported the definitions outlined within the Regulations and the supporting guidance. There were however a few responders who outlined at this point that the monitoring fee should be extended to mineral extraction sites too.
- **Scottish Government response:** Agreeing terminology was an important step in the preparation of the Regulations. In terms of extending the fee to the mineral sites, following a separate consultation, a new revised maximum planning application fee of £125k came into force on 1 June 2017. The Scottish Government aims to consult on further changes to the fees system after the Planning Bill has been considered by Parliament, to ensure we have a clear idea of the resource implications arising from the finalised changes to the planning system. There is therefore no proposal to extend the monitoring fee to mineral extraction sites at this time.

### **Allow planning authorities to start charging for monitoring visits**

11. Respondents were supportive of the principles behind the proposal of introducing a fee for monitoring opencast coal sites.
- **Scottish Government response:** The support for the proposal is welcomed and we can now aim to introduce the new Regulations to Parliament in Autumn 2017. The ability of planning authorities to recover some of the costs associated with monitoring of these sites should provide some certainty in the future around availability of resources involved in monitoring.

### **Fee of £500 for each monitoring visit to an active site and £250 for an inactive site**

12. Five out of nine of those who responded to this question agreed with the proposed fee level. However, those who disagreed thought that this fee level would not cover the costs associated with specialised input or reports or that the costs of inspecting an inactive site could be comparable to those of an active site.
- **Scottish Government response:** The support for the proposed fees structure is welcomed. The aim of these new Regulations is to allow planning authorities to start to recover some of the costs associated with

monitoring surface coal sites. The proposed fees levels in the consultation paper are similar to those set in England and Wales, where the fee is £331 for active sites and £109 for inactive sites - albeit their fees apply across the whole of the extractive sector.

### **Allow planning authorities some level of flexibility when gauging the number of site visits required each year**

13. Six out of eleven respondents disagreed with this element of the proposal. When looking at individual responses the principle of allowing planning authorities to flexibly gauge how many site visits were required, was agreed. There was however concern about being able to define what is an active or inactive site or that an inactive site may require just as much careful monitoring as an active site. Especially if only recently inactive, with future restoration requirements.

- **Scottish Government response:** As it's evident some respondents had concerns about flexibility, this element of the Regulations has been altered. The amendment will permit planning authorities to gauge, based on their experience, what level of monitoring is required on a case by case basis, whether the site is active or inactive. The number of visits in any 12 month period, which a planning authority can charge for, will range from 1 to 8 as per the proposal, but will cover both active and inactive sites. The expectation would be that the majority of inactive sites would only require a single visit in a 12 month period, a point that will be reflected in guidance, but that additional chargeable visits could be undertaken, if a planning authority believes they are merited.

### **Operator should be responsible for paying the monitoring fee**

14. This was widely agreed through the consultation responses with minimum comment.

- **Scottish Government response:** Support for this approach was noted.

### **Monitoring reports being issued within 10 days of the date of the site visit**

15. This was an area where planning authorities raised some concern, especially about the lack of flexibility for what could be mitigating factors, such as requesting additional information or further work or research being required or undertaken.

- **Scottish Government response:** This element of the Regulations has been amended to accommodate extensions to the 10 day time period, where required, providing greater flexibility whilst aiming to maintain the overall objective of the Regulations to ensure site inspection reports are undertaken timeously.

## CONCLUSION AND NEXT STEPS

- 16.** The coal industry in Scotland has been in a decline for a number of years, even before the collapse of Scottish Coal and ATH Resources, it was therefore unlikely this consultation would attract lots of attention. Despite the low number of responses, those who did respond have offered some important and helpful input that has been used to help shape the Regulations, prior to their submission to Parliament.
- 17.** It is clear from responses received that the concept of planning authorities being able to charge a fee for monitoring is one that is widely accepted.
- 18.** Setting a fee level that reflects the full cost of monitoring for a planning authority was not the intention of these Regulations and could be an economic burden to certain elements of the industry if implemented. Rather, the aim was to allow planning authorities to recover some of the costs associated with monitoring surface coal mines sites. This is an important step, as resources are stretched and the ability to recover a fee can help to support effective monitoring in the future.
- 19.** The concern of those who responded about the frequency of visits for active and inactive sites has been addressed in the finalised Regulations. Allowing a planning authority the means to gauge how many times they need to visit a site i.e. between 1 and 8 over a 12 month period, can allow visits to be tailored to individual needs and encourage good practices within the sector. We intend to bring forward guidance, in the form of a planning circular, to support the introduction of the Regulations, which will set out expectations on the frequency of visits.
- 20.** The Regulations will be introduced into Parliament in Autumn 2017. The planning circular for The Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017, will be made available in time for when the Regulations come into force on the 1<sup>st</sup> January 2018.





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Any enquiries regarding this publication should be sent to us at  
The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-78851-396-8 (web only)

Published by The Scottish Government, November 2017

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA PPDAS322006  
(11/17)

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