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2017

THE TOWN AND COUNTRY PLANNING (FEES FOR MONITORING  
SURFACE COAL) (SCOTLAND) REGULATIONS 2017

# ■ circular

**Scottish Planning Series**

**PLANNING CIRCULAR**

**THE TOWN AND COUNTRY  
PLANNING (FEES FOR MONITORING  
SURFACE COAL) (SCOTLAND)  
REGULATIONS 2017**



## **PLANNING SERIES:**

**Scottish Planning Policy (SPP)** is the statement of Scottish Government policy on nationally important land use planning matters.

**National Planning Framework (NPF)** is the Scottish Government's strategy for Scotland's long term spatial development.

**Circulars** contain Scottish Government policy on the implementation of legislation or procedures.

Statements of Scottish Government policy in the SPP, NPF and Circulars may be material considerations to be taken into account in development plans and development management decisions.

Designing Places and the West Edinburgh Planning Framework have the same status in decision making as the SPP and NPF.

**Planning Advice Notes** provide advice and information on technical planning matters.

Further information in the Scottish Government's role in the planning system is available on <https://beta.gov.scot/policies/planning-architecture/>

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## Background

1. The Town and Country Planning (Fees for Monitoring Surface Coal Mining Sites) (Scotland) Regulations 2017<sup>1</sup> introduce new provision for planning authorities to be paid a fee for monitoring surface coal mining sites.
2. Surface coal mining sites are typically subject to a number of detailed conditions and associated legal agreements, aimed at controlling potentially negative impacts on neighbouring communities and the environment. Effective monitoring of a site and the conditions that are attached to it is vital, in order to ensure that on-going operations are in line with the planning permission and conditions, including those relating to any financial guarantees for restoration purposes, ensuring they provide sufficient funds to undertake the restoration work if it ever has to be called upon.
3. Regular site visits can help maintain an on-going dialogue between the planning authority and the operator of a site, allowing any issues to be discussed openly and constructively. Although site specific monitoring measures can be tailored to individual sites, the outcome should always be to put in place a systematic, documented, transparent, periodic and objective evaluation of how each site is performing.
4. The purpose of this guidance is to outline how the regime might work in order to achieve its purpose of securing good practice monitoring. However, final decisions on implementing a monitoring scheme rests with the relevant planning authority and should be tailored to local needs.

## Preliminary considerations

5. When considering monitoring requirements planning authorities should consider what internal staffing resources are necessary to enable effective monitoring to take place. For example, considering whether; adapting existing staffing structures; widening the responsibilities of existing staff; employing new staff (if possible); or appointing consultants, is merited or necessary.
6. Planning authorities are not restricted from undertaking joint monitoring requirements, with a team potentially operating across different local authority boundaries. On the other hand, if a planning authority intends to appoint a private consultant to undertake their monitoring requirements, it important to note that the fees to be recovered from the operator would be capped at the level set out in the 2017 Regulations.
7. Operators and local communities are entitled to expect their local planning authority to carry out their monitoring duties to a good standard. To achieve this planning authorities should consider the following good practice recommendations:
  - those undertaking monitoring requirements should have the appropriate expertise and experience,
  - a review of the range of skills needed to undertake effective monitoring should be undertaken regularly,

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<sup>1</sup> SSI 2017/350 – came into force 1 January 2018

- 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 them an appreciation of operational issues and what is involved in monitoring work,
  - consider whether adequate supporting staff resources are available (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 any breaches of planning control.
8. Early consideration can also be given to how best to involve local communities in the monitoring process. The need for doing so is likely to vary from site to site and be influenced by the presence of both formal and informal community groups, representing the interests of those living nearby, which may include established site liaison groups. The intention should be for local groups and individuals to be aware of opportunities to contribute to the monitoring process. Local involvement can foster positive relationships between communities and operators, which may be further enhanced by providing opportunities for a community representative to attend site visits.

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

9. Planning authorities should contact surface mining site operators to discuss and agree with them the number of visits to be undertaken over a 12 month period and publicise that on the local authority website in an easily accessible and recognisable format. The following factors can be taken into account when agreeing the number of visits:
- size and type of development,
  - whether its active or in-active,
  - number and complexity of any planning conditions, including those related to the mining waste facilities and financial guarantees relating to restoration,
  - operator has a proven track record of compliance with planning conditions and/or Eco-Management and Audit Scheme (EMAS) or ISO14001<sup>2</sup>.
  - 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,
  - sensitivity of sites in relation to local communities and environmental designations,

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<sup>2</sup> <https://www.iso.org/iso-14001-environmental-management.html>

- any breaches of planning control observed,
- complaints received for the site which have proven to be justified.

10. When discussing how these factors relate to individual sites, planning authorities may wish to consider adopting indicative thresholds for establishing the number of visits to all sites within their area.

11. The table below sets out the Scottish Government's recommendations for the number of site visits to be undertaken based on the phase of operation at an individual site. As this listing is not exhaustive planning authorities may wish to consider setting their own guide, which could be passed to operators within their area to manage expectations.

<b>Category</b>	<b>No. of visits recommended in a 12 month period</b>
<b>Category 1</b> Small site with low output and good track record of being compliant with planning permission	2 - 4
<b>Category 2</b> Completely dormant or inactive site, with no active restoration being undertaken	1
<b>Category 3</b> Site undergoing active restoration and aftercare	4 – 8
<b>Category 4</b> Medium or large active site	4 - 8
<b>Category 5</b> Active site, which has not been operating in accordance with planning permission and there has been substantiated complaints or enforcement action is being considered or has been taken	8 <sup>3</sup>

12. 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 of monitoring visits, 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.

13. When setting the number of site visits over a 12 month period, past performance by the operator should be factored in. Planning authorities however reserve the right to adjust the number of visits in a 12 month period, if serious and justifiable complaints, accidents, incidents or serious occurrences of non-compliance start to arise.

14. The number of annual site visits can be decreased or increased to take account of the outcome of previous visits. Planning authorities should consider undertaking more visits for sites where risk of non-compliance is higher. Where breaches of planning permission are identified, planning

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<sup>3</sup> Note – although the planning authority can only recover a fee for 8 monitoring visits, this is not to say if additional visits are required that these cannot be undertaken

authorities should consider whether enforcement procedures may be appropriate<sup>4</sup>. While the Regulations specify a maximum of 8 chargeable site visits within a 12 month period, additional visits can be undertaken but fees will not be payable by the operator.

15. The Scottish Government expect active sites should, on average, be inspected at least 4 times in a 12 month period. However, the actual number of visits should be determined on the basis of a number of factors. The Scottish Government also expect consistently compliant sites to receive fewer monitoring visits than those sites where breaches of planning control have been a feature, including where complaints about operations have revealed breaches of planning control.
16. More than 4 visits in a year should 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 should not normally attract an increased frequency of visits in the following year.
17. It is likely an inactive site would require no more than one monitoring visit within a 12 month period, although further visits up to a maximum of 8, are at the discretion of the planning authority based on circumstances.

### **Supportive reasons for a reduction in number of site visits required**

18. Section 75D of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc. (Scotland) Act 2006) introduced provisions relating to good neighbour agreements (GNA). These are voluntary agreements entered into by operators and community bodies such as a community council<sup>5</sup>. Although GNA do not remove the need for effective monitoring of planning conditions they can 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.
19. GNA 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.
20. 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. Accreditation with schemes such as these should be considered a relevant factor when agreeing the number of annual monitoring visits. The Scottish Government is supportive of such initiatives.

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<sup>4</sup> Guidance on planning enforcement is set out in [Planning Circular 10/2009: Planning Enforcement](#)

<sup>5</sup> Guidance on Good Neighbour agreements can be found in Planning Circular 3/2012: [Planning obligations and Good Neighbour Agreements](#)



## What should be monitored?

21. 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 relating to:

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

22. The amount of time spent on monitoring a site is likely to depend on the site, the number and type of planning conditions and the aspect of the operations that are being monitored. Individual visits may be tailored to monitor specific aspects of operations but, over a 12 month period, planning authorities should aim to include a review of:

- the site, establish whether there is or has been any breach of planning control on the site and if any enforcement action is required,
- the planning conditions, including those related to the operation of mining waste facilities and the adequacy of any financial guarantees relating to restoration,
- any development permitted under the provisions of the Town and Country Planning (General Permitted Development) (Scotland) Order 1995,
- the boundary limits.

23. In terms of the scope of monitoring visits planning authorities will want to 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 authorities should not seek to duplicate monitoring required through other regimes not least as this would effectively mean operators being billed twice for monitoring the same matters. This may require liaison between regulators to ensure that there is no duplication of regulatory control or monitoring effort.

24. The final visit in a 12 month period should include a meeting to discuss operational progress over the year and to set and agree the number of chargeable monitoring visits for the following year, in light of the previous year findings.

## Drafting a monitoring report

25. A written site monitoring report should be completed by the planning authority and sent to the operator after each visit. The 2017 Regulations provide that a fee is only payable if a monitoring report is sent to the operator within 10 days of the site visit. 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.

26. In most instances, the completion of a pro-forma may be appropriate. A suggested template for a surface coal mine site pro-forma is provided at Annex A. The use of this template is not mandatory and planning authorities can therefore opt to develop their own pro-forma, based on their experience and circumstances.
27. Where a planning authority opt to use a traffic light approach to reporting i.e. red, amber, green to indicate what action will be taken, it is helpful if a description of the actions and timing underlying the red and amber factors should be provided. 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 will occur within a month or after the next available planning committee cycle. Whatever is chosen, it should be clear to the reader what parameters apply to proposed actions.
28. In terms of transparency, planning authorities are encourage to seek the approval of a site operator, for them to publish relevant elements of monitoring report on their website, soon after submission. This can support ensure local communities are kept fully aware of how sites are being operated and how their views or concerns have potentially been addressed.

### **Invoicing the operator**

29. A fee for a site visit should only be charged after the visit has occurred and a monitoring report has been provided to the operator. The report should be provided within 10 days of the site visit, although if additional information or input is required this may not be possible so a reasonable longer period is allowed. In these circumstances the planning authority should notify the operator immediately indicating when they expect the report to be submitted. When submitting a monitoring report, it would be helpful if the planning authority highlighted the monitoring fee requirements in a covering letter.
30. An operator should aim to pay a monitoring fee within 28 days of receipt of the monitoring report.
31. In terms of non-payment it is for the planning authority to determine the best course of action but it is likely they should have already established procedures for taking action against those who default on required payments.

## SURFACE COAL MINE SITE - MONITORING PRO-FORMA

<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 &amp; 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		



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