

Status: Point in time view as at 06/11/2012.

Changes to legislation: Town and Country Planning Act 1990, SCHEDULE 5 is up to date with all changes known to be in force on or before 15 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 5 **E+W** Sections 72(5), 79(4), 97(5) and Schedule 9.

CONDITIONS RELATING TO MINERAL WORKING

PART I **E+W**

CONDITIONS IMPOSED ON GRANT OF PERMISSION

Duration of development

- 1 (1) Every planning permission for development [^{F1}—
 - (a) consisting of the winning and working of minerals; or
 - (b) involving the depositing of mineral waste,]shall be subject to a condition as to the duration of the development.
- (2) Except where a condition is specified under sub-paragraph (3), the condition in the case of planning permission granted or deemed to be granted after 22nd February 1982 is that the [^{F2}winning and working of minerals or the depositing of mineral waste] must cease not later than the expiration of the period of 60 years beginning with the date of the permission.
- (3) An authority granting planning permission after that date or directing after that date that planning permission shall be deemed to be granted may specify a longer or shorter period than 60 years, and if they do so, the condition is that the [^{F2}winning and working of minerals or the depositing of mineral waste] must cease not later than the expiration of a period of the specified length beginning with the date of the permission.(4)A longer or shorter period than 60 years may be prescribed for the purposes of sub-paragraphs (2) and (3).
- (5) The condition in the case of planning permission granted or deemed to have been granted before 22nd February 1982 is that the [^{F2}winning and working of minerals or the depositing of mineral waste] must cease not later than the expiration of the period of 60 years beginning with that date.
- (6) A condition to which planning permission for development [^{F3}consisting of the winning and working of minerals] is subject by virtue of this paragraph—
 - (a) is not to be regarded for the purposes of the planning Acts as a condition such as is mentioned in section 72(1)(b); but
 - (b) is to be regarded for the purposes of sections 78 and 79 as a condition imposed by a decision of the local planning authority, and may accordingly be the subject of an appeal under section 78.

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Textual Amendments

- F1** Words in Sch. 5 para. 1(1) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 14\(1\)](#) (with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to art. 4)
- F2** Words in Sch. 5 para. 1(2)(3)(5) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 14\(2\)](#)(with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to art. 4)
- F3** Words in Sch. 5 para. 1(6) repealed (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), ss. 21, 84(6), [Sch. 1 para. 14\(3\)](#), [Sch. 19 Pt.I](#) (with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to art. 4)

Power to impose aftercare conditions

- 2 (1) Where—
- (a) planning permission for development consisting of the winning and working of minerals [^{F4}or involving the depositing of refuse or waste materials] is granted, and
 - (b) the permission is subject to a condition requiring that after [^{F5}the winning and working is completed or the depositing has ceased], the site shall be restored by the use of any or all of the following, namely, subsoil, topsoil and soil-making material,
- it may be granted subject also to any such condition as the mineral planning authority think fit requiring that such steps shall be taken as may be necessary to bring land to the required standard for whichever of the following uses is specified in the condition, namely—
- (i) use for agriculture;
 - (ii) use for forestry; or
 - (iii) use for amenity.
- (2) In this Act—
- (a) a condition such as is mentioned in paragraph (b) of sub-paragraph (1) is referred to as “a restoration condition”; and
 - (b) a condition requiring such steps to be taken as are mentioned in that sub-paragraph is referred to as “an aftercare condition”.
- (3) An aftercare condition may either—
- (a) specify the steps to be taken; or
 - (b) require that the steps be taken in accordance with a scheme (in this Act referred to as an “aftercare scheme”) approved by the mineral planning authority.
- (4) A mineral planning authority may approve an aftercare scheme in the form in which it is submitted to them or may modify it and approve it as modified.
- (5) The steps that may be specified in an aftercare condition or an aftercare scheme may consist of planting, cultivating, fertilising, watering, draining or otherwise treating the land.
- (6) Where a step is specified in a condition or a scheme, the period during which it is to be taken may also be specified, but no step may be required to be taken after the expiry of the aftercare period.

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- (7) In sub-paragraph (6) “the aftercare period” means a period of five years from compliance with the restoration condition or such other maximum period after compliance with that condition as may be prescribed; and in respect of any part of a site, the aftercare period shall commence on compliance with the restoration condition in respect of that part.
- (8) The power to prescribe maximum periods conferred by sub-paragraph (7) includes power to prescribe maximum periods differing according to the use specified.
- (9) In this paragraph “forestry” means the growing of a utilisable crop of timber.

Textual Amendments

- F4** Words in Sch. 5 para. 2(1)(a) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 14\(4\)\(a\)](#) (with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to art. 4)
- F5** Words in Sch. 5 para. 2(1)(b) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 14\(4\)\(b\)](#) (with s. 84(5)); S.I. 1991/2067, [art. 3](#) (subject to art. 4)

Meaning of “required standard”

- 3 (1) In a case where—
- (a) the use specified in an aftercare condition is a use for agriculture; and
 - (b) the land was in use for agriculture at the time of the grant of the planning permission or had previously been used for that purpose and had not at the time of the grant been used for any authorised purpose since its use for agriculture ceased; and
 - (c) the Minister has notified the mineral planning authority of the physical characteristics of the land when it was last used for agriculture,
- the land is brought to the required standard when its physical characteristics are restored, so far as it is practicable to do so, to what they were when it was last used for agriculture.
- (2) In any other case where the use specified in an aftercare condition is a use for agriculture, the land is brought to the required standard when it is reasonably fit for that use.
- (3) Where the use specified in an aftercare condition is a use for forestry, the land is brought to the required standard when it is reasonably fit for that use.
- (4) Where the use specified in an aftercare condition is a use for amenity, the land is brought to the required standard when it is suitable for sustaining trees, shrubs or other plants.
- (5) In this paragraph—
- “authorised” means authorised by planning permission;
 - “forestry” has the same meaning as in paragraph 2; and
 - “the Minister” means—
- (a) in relation to England, the Minister of Agriculture, Fisheries and Food; and
 - (b) in relation to Wales, the Secretary of State.

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Consultations

- 4 (1) Before imposing an aftercare condition, the mineral planning authority shall consult—
- (a) the Minister, where they propose that the use specified in the condition shall be a use for agriculture; and
 - (b) the Forestry Commission, where they propose that the use so specified shall be a use for forestry,
- as to whether it is appropriate to specify that use.
- (2) Where after consultations required by sub-paragraph (1) the mineral planning authority are satisfied that the use that they ought to specify is a use for agriculture or for forestry, they shall consult—
- (a) where it is for agriculture, the Minister; and
 - (b) where it is for forestry, the Forestry Commission,
- with regard to whether the steps to be taken should be specified in the aftercare condition or in an aftercare scheme.
- (3) The mineral planning authority shall also consult the Minister or, as the case may be, the Forestry Commission—
- (a) as to the steps to be specified in an aftercare condition which specifies a use for agriculture or for forestry; and
 - (b) before approving an aftercare scheme submitted in accordance with an aftercare condition which specifies such a use.
- (4) The mineral planning authority shall also, from time to time as they consider expedient, consult the Minister or the Commission, as the case may be, as to whether the steps specified in an aftercare condition or an aftercare scheme are being taken.
- [^{F6}(4A) Without prejudice to the application of this paragraph in relation to consultation with the Forestry Commission, where the Minister is consulted pursuant to any provision of this paragraph—
- (a) he is not required to inspect any land or to express a view on any matter or question; and
 - (b) he is not precluded from responding in general terms or otherwise in terms which are not specific to the land in question.]
- (5) In this paragraph “forestry” and “the Minister” have the same meanings as in paragraph 3.

Textual Amendments

F6 Sch. 5 para. 4(4A) inserted (1.2.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 43** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 2**

Certificate of compliance

- 5 If, on the application of any person with an interest in land in respect of which an aftercare condition has been imposed, the mineral planning authority are satisfied that the condition has been complied with they shall issue a certificate to that effect.

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Recovery of expenses of compliance

- 6 A person who has complied with an aftercare condition but who has not himself [^{F7}won and worked minerals or deposited refuse or waste materials] shall be entitled, subject to any condition to the contrary contained in a contract which is enforceable against him by the person who last carried out such operations, to recover from that person any expenses reasonably incurred in complying with the aftercare condition.

Textual Amendments

- F7** Words in Sch. 5 para. 6 substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 14\(5\)](#)(with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to art. 4)

PART II **E+W**

CONDITIONS IMPOSED ON REVOCATION OR MODIFICATION OF PERMISSION

- 7 An order under section 97 may in relation to planning permission for development consisting of the winning and working of minerals [^{F8}or involving the depositing of refuse or waste materials], include such aftercare condition as the mineral planning authority think fit if—
- (a) it also includes a restoration condition; or
 - (b) a restoration condition has previously been imposed in relation to the land by virtue of any provision of this Act.

Textual Amendments

- F8** Words in Sch. 5 para. 7 inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 14\(6\)](#)(with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to art. 4)

- 8 Paragraphs 2(3) to (9) and 3 to 6 shall apply in relation to an aftercare condition so imposed as they apply in relation to such a condition imposed under paragraph 2.

^{F9}[Interpretation

Textual Amendments

- F9** Sch. 5 para. 9 and cross heading inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 14\(7\)](#) (with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to art. 4)

- ^{F10} 9 In this Schedule any reference to a mineral planning authority shall be construed, in relation to the exercise of functions with respect to the depositing of refuse or waste materials (other than mineral waste), as a reference to the authority entitled to discharge such functions.]

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Textual Amendments

F10 Sch. 5 para. 9 and cross heading inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 14\(7\)](#) (with s. 84(5)); S.I. 1991/ 2067, art.3 (subject to art. 4)

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