

## SCHEDULES

### SCHEDULE 13

Section 96.

#### REVIEW OF OLD MINERAL PLANNING PERMISSIONS

##### *Interpretation*

1 (1) In this Schedule—

“dormant site” means a Phase I or Phase II site in, on or under which no minerals development has been carried out to any substantial extent at any time in the period beginning on 22nd February 1982 and ending with 6th June 1995 otherwise than by virtue of a planning permission which is not a relevant planning permission relating to the site;

“first list”, in relation to a mineral planning authority, means the list prepared by them pursuant to paragraph 3 below;

“mineral planning authority”—

- (a) as respects England and Wales, means a mineral planning authority within the meaning of the 1990 Act, and
- (b) as respects Scotland, means a planning authority for the purposes of the 1972 Act;

“mineral site” has the meaning given by sub-paragraph (2) below;

“National Park” means an area designated as such under section 5(3) of the National Parks and Access to the Countryside Act 1949;

“old mining permission” has the meaning given—

- (a) as respects England and Wales, by section 22(1) of the 1991 Act, and
- (b) as respects Scotland, by section 49H(1) of the 1972 Act;

“owner”, in relation to any land—

- (a) as respects England and Wales, means any person who—
  - (i) is the estate owner in respect of the fee simple, or
  - (ii) is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remains unexpired; and
- (b) as respects Scotland, has the meaning given by paragraph 10(1) of Schedule 10A to the 1972 Act;

“Phase I site” and “Phase II site” have the meaning given by paragraph 2 below;

“relevant planning permission” means any planning permission, other than an old mining permission or a planning permission granted by a development order, granted after 30th June 1948 for minerals development; and

“second list”, in relation to a mineral planning authority, means the list prepared by them pursuant to paragraph 4 below.

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- (2) For the purposes of this Schedule, but subject to sub-paragraph (3) below, “mineral site” means—
- (a) in a case where it appears to the mineral planning authority to be expedient to treat as a single site the aggregate of the land to which any two or more relevant planning permissions relate, the aggregate of the land to which those permissions relate; and
  - (b) in any other case, the land to which a relevant planning permission relates.
- (3) In determining whether it appears to them to be expedient to treat as a single site the aggregate of the land to which two or more relevant planning permissions relate a mineral planning authority shall have regard to any guidance issued for the purpose by the Secretary of State.
- (4) Any reference (however expressed) in this Schedule to an old mining permission or a relevant planning permission relating to a mineral site is a reference to the mineral site, or some part of it, being the land to which the permission relates; and where any such permission authorises the carrying out of development consisting of the winning and working of minerals but only in respect of any particular mineral or minerals, that permission shall not be taken, for the purposes of this Schedule, as relating to any other mineral in, on or under the land to which the permission relates.
- (5) For the purposes of this Schedule, a mineral site which is a Phase I site or a Phase II site is active if it is not a dormant site.
- (6) For the purposes of this Schedule, working rights are restricted in respect of a mineral site if any of—
- (a) the size of the area which may be used for the winning and working of minerals or the depositing of mineral waste;
  - (b) the depth to which operations for the winning and working of minerals may extend;
  - (c) the height of any deposit of mineral waste;
  - (d) the rate at which any particular mineral may be extracted;
  - (e) the rate at which any particular mineral waste may be deposited;
  - (f) the period at the expiry of which any winning or working of minerals or depositing of mineral waste is to cease; or
  - (g) the total quantity of minerals which may be extracted from, or of mineral waste which may be deposited on, the site,
- is restricted or reduced in respect of the mineral site in question.
- (7) For the purposes of this Schedule, where an application is made under paragraph 9 below for the determination of the conditions to which the relevant planning permissions relating to the mineral site to which the application relates are to be subject, those conditions are finally determined when—
- (a) the proceedings on the application, including any proceedings on or in consequence of an application under section 288 of the 1990 Act or, as the case may be, section 233 of the 1972 Act, have been determined, and
  - (b) any time for appealing under paragraph 11(1) below, or applying or further applying under paragraph 9 below, (where there is a right to do so) has expired.

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*Phase I and II sites*

- 2 (1) This paragraph has effect for the purposes of determining which mineral sites are Phase I sites, which are Phase II sites, and which are neither Phase I nor Phase II sites.
- (2) A mineral site is neither a Phase I site nor a Phase II site where—
- (a) all the relevant planning permissions which relate to the site have been granted after 21st February 1982; or
  - (b) some only of the relevant planning permissions which relate to the site have been granted after 21st February 1982, and the parts of the site to which those permissions relate constitute the greater part of that site.
- (3) With the exception of those mineral sites which, by virtue of sub-paragraph (2) above, are neither Phase I nor Phase II sites, every mineral site is either a Phase I site or a Phase II site.
- (4) Subject to sub-paragraph (2) above, where any part of a mineral site is situated within—
- (a) a National Park;
  - (b) a site in respect of which a notification under section 28 of the Wildlife and Countryside Act 1981 (sites of special scientific interest) is in force;
  - (c) an area designated under section 87 of the National Parks and Access to the Countryside Act 1949 as an area of outstanding natural beauty;
  - (d) an area designated as a National Scenic Area under section 262C of the 1972 Act; or
  - (e) an area designated as a Natural Heritage Area under section 6 of the Natural Heritage (Scotland) Act 1991,
- that site is a Phase I site.
- (5) Subject to sub-paragraphs (2) and (4) above, where—
- (a) all the relevant planning permissions which relate to a mineral site, and which were not granted after 21st February 1982, were granted after the relevant day in 1969; or
  - (b) the parts of a mineral site to which relate such of the relevant planning permissions relating to the site as were granted after the relevant day in 1969 but before 22nd February 1982 constitute a greater part of the site than is constituted by those parts of the site to which no such relevant planning permission relates but to which a relevant planning permission granted on or before the relevant day in 1969 does relate,
- the mineral site is a Phase II site.
- (6) In sub-paragraph (5) above, “the relevant day in 1969” means—
- (a) as respects England and Wales, 31st March 1969; and
  - (b) as respects Scotland, 7th December 1969.
- (7) Every other mineral site, that is to say any mineral site other than one—
- (a) which is, by virtue of sub-paragraph (2) above, neither a Phase I nor a Phase II site; or
  - (b) which is a Phase I site by virtue of sub-paragraph (4) above; or
  - (c) which is a Phase II site by virtue of sub-paragraph (5) above,
- is a Phase I site.

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- (8) In ascertaining, for the purposes of sub-paragraph (2) or (5) above, whether any parts of a mineral site constitute the greater part of that site, or whether a part of a mineral site is greater than any other part, that mineral site shall be treated as not including any part of the site—
- (a) to which an old mining permission relates; or
  - (b) which is a part where minerals development has been (but is no longer being) carried out and which has, in the opinion of the mineral planning authority, been satisfactorily restored;
- but no part of a site shall be treated, by virtue of paragraph (b) above, as being not included in the site unless the mineral planning authority are satisfied that any aftercare conditions which relate to that part have, so far as relating to that part, been complied with.

*The “first list”*

- 3
- (1) A mineral planning authority shall, in accordance with the following provisions of this paragraph, prepare a list of mineral sites in their area (“the first list”).
  - (2) A site shall, but shall only, be included in the first list if it is a mineral site in the area of the mineral planning authority and is either—
    - (a) an active Phase I site;
    - (b) an active Phase II site; or
    - (c) a dormant site.
  - (3) In respect of each site included in the first list, the list shall indicate whether the site is an active Phase I site, an active Phase II site or a dormant site.
  - (4) In respect of each active Phase I site included in the first list, that list shall specify the date by which an application is to be made to the mineral planning authority under paragraph 9 below.
  - (5) Any date specified pursuant to sub-paragraph (4) above shall be a date—
    - (a) not earlier than the date upon which expires the period of 12 months from the date on which the first list is first advertised in accordance with paragraph 5 below, and
    - (b) not later than the date upon which expires the period of three years from the date upon which the provisions of this Schedule come into force.
  - (6) The preparation of the first list shall be completed before the day upon which it is first advertised in accordance with paragraph 5 below.

*The “second list”*

- 4
- (1) A mineral planning authority shall, in accordance with the following provisions of this paragraph, prepare a list of the active Phase II sites in their area (“the second list”).
  - (2) The second list shall include each mineral site in the mineral planning authority’s area which is an active Phase II site.
  - (3) In respect of each site included in the second list, that list shall indicate the date by which an application is to be made to the mineral planning authority under paragraph 9 below.

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- (4) Subject to paragraph (5) below, any date specified pursuant to sub-paragraph (3) above shall be a date—
  - (a) not earlier than the date upon which expires the period of 12 months from the date on which the second list is first advertised in accordance with paragraph 5 below, and
  - (b) not later than the date upon which expires the period of six years from the date upon which the provisions of this Schedule come into force.
- (5) The Secretary of State may by order provide that sub-paragraph (4)(b) above shall have effect as if for the period of six years referred to in that paragraph there were substituted such longer period specified in the order.
- (6) The power of the Secretary of State to make an order under sub-paragraph (5) above shall be exercisable by statutory instrument; and any statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) The preparation of the second list shall be completed before the day upon which it is first advertised in accordance with paragraph 5 below.

*Advertisement of the first and second lists*

- 5 (1) This paragraph makes provision for the advertisement of the first and second lists prepared by a mineral planning authority.
- (2) The mineral planning authority shall advertise each of the first and second lists by causing to be published, in each of two successive weeks, in one or more newspapers circulating in its area, notice of the list having been prepared.
- (3) In respect of each of those lists, such notice shall—
  - (a) state that the list has been prepared by the authority; and
  - (b) specify one or more places within the area of the authority at which the list may be inspected, and in respect of each such place specify the times (which shall be reasonable times) during which facilities for inspection of the list will be afforded.
- (4) In respect of the first list, such notice shall—
  - (a) be first published no later than the day upon which expires the period of three months from the date upon which the provisions of this Schedule come into force;
  - (b) explain the general effect of a mineral site being classified as a dormant site or, as the case may be, as an active Phase I site or an active Phase II site;
  - (c) explain the consequences which will occur if no application is made under paragraph 9 below in respect of an active Phase I site included in the list by the date specified in the list for that site;
  - (d) explain the effects for any dormant or active Phase I or II site not included in the list of its not being included in the list and—
    - (i) set out the right to make an application to the authority for that site to be included in the list;
    - (ii) set out the date by which such an application must be made; and
    - (iii) state that the owner of such a site has a right of appeal against any decision of the authority upon such an application; and

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- (e) explain that the owner of an active Phase I site has a right to apply for postponement of the date specified in the list for the making of an application under paragraph 9 below, and set out the date by which an application for such postponement must be made.
- (5) In respect of the second list, such notice shall—
- (a) be first published no later than the day upon which expires the period of three years, or such longer period as the Secretary of State may by order specify, from the date upon which the provisions of this Schedule come into force; and
  - (b) explain the consequences which will occur if no application is made under paragraph 9 below in respect of an active Phase II site included in the list by the date specified in the list for that site.
- (6) The power of the Secretary of State to make an order under sub-paragraph (5) above shall be exercisable by statutory instrument; and any statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Applications for inclusion in the first list of sites not included in that list  
as originally prepared and appeals from decisions upon such applications*

- 6 (1) Any person who is the owner of any land, or is entitled to an interest in a mineral, may, if that land or interest is not a mineral site included in the first list and does not form part of any mineral site included in that list, apply to the mineral planning authority for that land or interest to be included in that list.
- (2) An application under sub-paragraph (1) above shall be made no later than the day upon which expires the period of three months from the day when the first list was first advertised in accordance with paragraph 5 above.
- (3) Where the mineral planning authority consider that—
- (a) the land or interest is, or forms part of, any dormant or active Phase I or II site, they shall accede to the application; or
  - (b) part only of the land or interest is, or forms part of, any dormant or active Phase I or II site, they shall accede to the application so far as it relates to that part of the land or interest,
- but shall otherwise refuse the application.
- (4) On acceding, whether in whole or in part, to an application made under sub-paragraph (1) above, the mineral planning authority shall amend the first list as follows—
- (a) where they consider that the land or interest, or any part of the land or interest, is a dormant site or an active Phase I or II site, they shall add the mineral site consisting of the land or interest or, as the case may be, that part, to the first list and shall cause the list to indicate whether the site is an active Phase I site, an active Phase II site or a dormant site;
  - (b) where they consider that the land or interest, or any part of the land or interest, forms part of any mineral site included in the first list, they shall amend the entry in the first list for that site accordingly.
- (5) Where the mineral planning authority amend the first list in accordance with sub-paragraph (4) above, they shall also—

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- (a) in a case where an active Phase I site is added to the first list pursuant to paragraph (a) of that sub-paragraph, cause that list to specify, in respect of that site, the date by which an application is to be made to the mineral planning authority under paragraph 9 below;
  - (b) in a case where—
    - (i) the entry for an active Phase I site included in the first list is amended pursuant to paragraph (b) of that sub-paragraph; and
    - (ii) the date specified in that list in respect of that site as the date by which an application is to be made to the mineral planning authority under paragraph 9 below is a date falling less than 12 months after the date upon which the authority make their decision upon the application in question,cause that date to be amended so as to specify instead the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) below of the authority's decision upon his application.
- (6) Any date specified pursuant to sub-paragraph (5)(a) above shall be a date—
- (a) not earlier than the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) below of the mineral planning authority's decision upon his application, and
  - (b) not later than the later of—
    - (i) the date upon which expires the period of three years from the date upon which the provisions of this Schedule come into force; and
    - (ii) the date mentioned in paragraph (a) above.
- (7) On acceding, whether in whole or in part, to an application made under sub-paragraph (1) above, the mineral planning authority shall, if the second list has been first advertised in accordance with paragraph 5 above prior to the time at which they make their decision on the application, amend the second list as follows—
- (a) where they consider that the land or interest, or any part of the land or interest, is an active Phase II site, they shall add the mineral site consisting of the land or interest or, as the case may be, that part, to the second list;
  - (b) where they consider that the land or interest, or any part of the land or interest, forms part of any active Phase II site included in the second list, they shall amend the entry in that list for that site accordingly.
- (8) Where the mineral planning authority amend the second list in accordance with sub-paragraph (7) above, they shall also—
- (a) in a case where an active Phase II site is added to the second list pursuant to paragraph (a) of that sub-paragraph, cause that list to specify, in respect of that site, the date by which an application is to be made to the authority under paragraph 9 below;
  - (b) in a case where—
    - (i) the entry for an active Phase II site included in the second list is amended pursuant to paragraph (b) of that sub-paragraph; and
    - (ii) the date specified in that list in respect of that site as the date by which an application is to be made to the authority under paragraph 9 below is a date falling less than 12 months after the date upon which the authority make their decision upon the application in question,

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cause that date to be amended so as to specify instead the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) below of the authority's decision upon his application.

- (9) Any date specified pursuant to sub-paragraph (8)(a) above shall be a date—
- (a) not earlier than the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) below of the mineral planning authority's decision upon his application, and
  - (b) not later than the later of—
    - (i) the date upon which expires the period of six years from the date upon which the provisions of this Schedule come into force; and
    - (ii) the date mentioned in paragraph (a) above.
- (10) When a mineral planning authority determine an application made under sub-paragraph (1) above, they shall notify the applicant in writing of their decision and, in a case where they have acceded to the application, whether in whole or in part, shall supply the applicant with details of any amendment to be made to the first or second list in accordance with sub-paragraph (4) or (8) above.
- (11) Where a mineral planning authority—
- (a) refuse an application made under sub-paragraph (1) above; or
  - (b) accede to such an application only so far as it relates to part of the land or interest in respect of which it was made,
- the applicant may by notice appeal to the Secretary of State.
- (12) A person who has made such an application may also appeal to the Secretary of State if the mineral planning authority have not given notice to the applicant of their decision on the application within eight weeks of their having received the application or within such extended period as may at any time be agreed upon in writing between the applicant and the authority.
- (13) An appeal under sub-paragraph (11) or (12) above must be made by giving notice of appeal to the Secretary of State before the end of the period of six months beginning with—
- (a) in the case of an appeal under sub-paragraph (11) above, the determination; or
  - (b) in the case of an appeal under sub-paragraph (12) above, the end of the period of eight weeks mentioned in that sub-paragraph or, as the case may be, the end of the extended period mentioned in that sub-paragraph.

*Postponement of the date specified in the first or second list for review of the permissions relating to a Phase I or II site in cases where the existing conditions are satisfactory*

- 7 (1) Any person who is the owner of any land, or of any interest in any mineral, comprised in—
- (a) an active Phase I site included in the first list; or
  - (b) an active Phase II site included in the second list,
- may apply to the mineral planning authority for the postponement of the date specified in that list in respect of that site as the date by which an application is to be made to the authority under paragraph 9 below (in this paragraph referred to as “the specified date”).



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- (2) Subject to sub-paragraph (3) below, an application under sub-paragraph (1) above shall be made no later than the day upon which expires the period of three months from the day when—
- (a) in the case of an active Phase I site, the first list; or
  - (b) in the case of an active Phase II site, the second list,
- was first advertised in accordance with paragraph 5 above.
- (3) In the case of—
- (a) an active Phase I site—
    - (i) added to the first list in accordance with paragraph 6(4)(a) above; or
    - (ii) in respect of which the entry in the first list was amended in accordance with paragraph 6(4)(b) above;
  - or
  - (b) an active Phase II site—
    - (i) added to the second list in accordance with paragraph 6(7)(a) above;
    - or
    - (ii) in respect of which the entry in the second list was amended in accordance with paragraph 6(7)(b) above,
- an application under sub-paragraph (1) above shall be made no later than the day upon which expires the period of three months from the day on which notice was given under paragraph 6(10) above of the mineral planning authority's decision to add the site to or, as the case may be, so to amend the list in question.
- (4) An application under sub-paragraph (1) above shall be in writing and shall—
- (a) set out the conditions to which each relevant planning permission relating to the site is subject;
  - (b) set out the applicant's reasons for considering those conditions to be satisfactory;
  - (c) set out the date which the applicant wishes to be substituted for the specified date; and
  - (d) be accompanied by the appropriate certificate (within the meaning of sub-paragraph (5) or (6) below).
- (5) For the purposes of sub-paragraph (4) above, as respects England and Wales the appropriate certificate is such a certificate—
- (a) as would be required, under section 65 of the 1990 Act (notice etc. of applications for planning permission) and any provision of a development order made by virtue of that section, to accompany the application if it were an application for planning permission for minerals development, but
  - (b) with such modifications as are required for the purposes of this paragraph, and section 65(6) of that Act (offences) shall also have effect in relation to any certificate purporting to be the appropriate certificate.
- (6) For the purposes of sub-paragraph (4) above, the appropriate certificate is, as respects Scotland, each of the certificates which would be required, under or by virtue of sections 23 and 24 of the 1972 Act (notice etc. of applications for planning permission), to accompany the application if it were an application for planning permission for minerals development, but with such modifications as are required for the purposes of this paragraph; and sections 23(3) and 24(5) of that Act (offences)

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shall have effect in relation to any certificate purporting to be the appropriate certificate.

- (7) Where the mineral planning authority receive an application made under sub-paragraph (1) above—
- (a) if they consider the conditions referred to in sub-paragraph (4)(a) above to be satisfactory they shall agree to the specified date being postponed in which event they shall determine the date to be substituted for that date;
  - (b) in any other case they shall refuse the application.
- (8) Where the mineral planning authority agree to the specified date being postponed they shall cause the first or, as the case may be, the second list to be amended accordingly.
- (9) When a mineral planning authority determine an application made under sub-paragraph (1) above, they shall notify the applicant in writing of their decision and, in a case where they have agreed to the postponement of the specified date, shall notify the applicant of the date which they have determined should be substituted for the specified date.
- (10) Where, within three months of the mineral planning authority having received an application under sub-paragraph (1) above, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority have not given notice, under sub-paragraph (9) above, to the applicant of their decision upon the application, the authority shall be treated as—
- (a) having agreed to the specified date being postponed; and
  - (b) having determined that the date referred to in sub-paragraph (4)(c) above be substituted for the specified date,
- and sub-paragraph (8) above shall apply accordingly.

*Service on owners etc. of notice of preparation of the first and second lists*

- 8 (1) The mineral planning authority shall, no later than the date upon which the first list is first advertised in accordance with paragraph 5 above, serve notice in writing of the first list having been prepared on each person appearing to them to be the owner of any land, or entitled to an interest in any mineral, included within a mineral site included in the first list, but this sub-paragraph is subject to sub-paragraph (7) below.
- (2) A notice required to be served by sub-paragraph (1) above shall—
- (a) indicate whether the mineral site in question is a dormant site or an active Phase I or II site; and
  - (b) where that site is an active Phase I site—
    - (i) indicate the date specified in the first list in relation to that site as the date by which an application is to be made to the mineral planning authority under paragraph 9 below;
    - (ii) explain the consequences which will occur if such an application is not made by the date so specified; and
    - (iii) explain the right to apply to have that date postponed, and indicate the date by which such an application must be made.
- (3) Where, in relation to any land or mineral included in an active Phase I site, the mineral planning authority—
- (a) has served notice on any person under sub-paragraph (1) above; and

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- (b) has received no application under paragraph 9 below from that person by the date falling eight weeks before the date specified in the first list as the date by which such applications should be made in respect of the site in question, the authority shall serve a written reminder on that person, and such a reminder shall—
  - (i) indicate that the land or mineral in question is included in an active Phase I site;
  - (ii) comply with the requirements of sub-paragraph (2)(b)(i) and (ii) above; and
  - (iii) be served on that person on or before the date falling four weeks before the date specified in the first list in respect of that site as the date by which an application is to be made to the authority under paragraph 9 below.
- (4) The mineral planning authority shall, no later than the date upon which the second list is first advertised in accordance with paragraph 5 above, serve notice in writing of the second list having been prepared on each person appearing to them to be the owner of any land, or entitled to an interest in any mineral, included within an active Phase II site included in the second list, but this sub-paragraph is subject to sub-paragraph (7) below.
- (5) A notice required to be served by sub-paragraph (4) above shall—
  - (a) indicate that the mineral site in question is an active Phase II site; and
  - (b) indicate the date specified in the second list in relation to that site as the date by which an application is to be made to the mineral planning authority under paragraph 9 below;
  - (c) explain the consequences which will occur if such an application is not made by the date so specified; and
  - (d) explain the right to apply to have that date postponed, and indicate the date by which such an application must be made.
- (6) Where, in relation to any land or mineral included in an active Phase II site, the mineral planning authority—
  - (a) has served notice on any person under sub-paragraph (4) above; and
  - (b) has received no application under paragraph 9 below from that person by the date falling eight weeks before the date specified in the second list as the date by which such applications should be made in respect of the site in question, the authority shall serve a written reminder on that person, and such a reminder shall—
    - (i) comply with the requirements of sub-paragraph (5)(a) to (c) above; and
    - (ii) be served on that person on or before the date falling four weeks before the date specified in the second list in respect of that site as the date by which an application is to be made to the authority under paragraph 9 below.
- (7) Sub-paragraph (1) or (4) above shall not require the mineral planning authority to serve notice under that sub-paragraph upon any person whose identity or address for service is not known to and cannot practicably, after reasonable inquiry, be ascertained by them, but in any such case the authority shall cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the notice which they would (apart from the provisions of this sub-paragraph) have had to serve under that sub-paragraph on the owner of that land or interest.

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- (8) If, in a case where sub-paragraph (7) above applies, no person makes an application to the authority under paragraph 9 below in respect of the active Phase I or II site which includes the land or interest in question by the date falling eight weeks before the date specified in the first or, as the case may be, the second list as the date by which such applications should be made in respect of that site, the authority shall cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the written reminder that would, in a case not falling within sub-paragraph (7) above, have been served under sub-paragraph (3) or (6) above.
- (9) Where by sub-paragraph (7) or (8) above a copy of any notice is required to be affixed to an object on any land that copy shall—
- (a) be displayed in such a way as to be easily visible and legible;
  - (b) be first displayed—
    - (i) in a case where the requirement arises under sub-paragraph (7) above, no later than the date upon which the first or, as the case may be, the second list is first advertised in accordance with paragraph 5 above; or
    - (ii) in a case where the requirement arises under sub-paragraph (8) above, no later than the date falling four weeks before the date specified in the first or, as the case may be, the second list in respect of the site in question as the date by which an application is to be made to the authority under paragraph 9 below; and
  - (c) be left in position for at least the period of 21 days from the date when it is first displayed, but where the notice is, without fault or intention of the authority, removed, obscured or defaced before that period has elapsed, that requirement shall be treated as having been complied with if the authority has taken reasonable steps for protection of the notice and, if need be, its replacement.
- (10) In sub-paragraphs (7) and (8) above, any reference to a conspicuous object on any land includes, in a case where the person serving a notice considers that there are no or insufficient such objects on the land, a reference to a post driven into or erected upon the land by the person serving the notice for the purpose of having affixed to it the notice in question.
- (11) Where the mineral planning authority, being required—
- (a) by sub-paragraph (3) or (6) above to serve a written reminder on any person; or
  - (b) by sub-paragraph (8) above to cause a copy of such a reminder to be displayed in the manner set out in that sub-paragraph,
- fail to comply with that requirement by the date specified for the purpose, they may at any later time serve or, as the case may be, cause to be displayed, such a written reminder and, in any such case, the date by which an application in relation to the mineral site in question is to be made under paragraph 9 below is the date upon which expires the period of three months from the date when the reminder was served or posted in accordance with the provisions of this sub-paragraph.

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*Applications for approval of conditions and appeals in cases where the conditions approved are not those proposed*

- 9 (1) Any person who is the owner of any land, or who is entitled to an interest in a mineral, may, if that land or mineral is or forms part of a dormant site or an active Phase I or II site, apply to the mineral planning authority to determine the conditions to which the relevant planning permissions relating to that site are to be subject.
- (2) An application under this paragraph shall be in writing and shall—
- (a) identify the mineral site to which the application relates;
  - (b) specify the land or minerals comprised in the site of which the applicant is the owner or, as the case may be, in which the applicant is entitled to an interest;
  - (c) identify any relevant planning permissions relating to the site;
  - (d) identify, and give an address for, each other person that the applicant knows or, after reasonable inquiry, has cause to believe to be an owner of any land, or entitled to any interest in any mineral, comprised in the site;
  - (e) set out the conditions to which the applicant proposes the permissions referred to in paragraph (c) above should be subject; and
  - (f) be accompanied by the appropriate certificate (within the meaning of sub-paragraph (3) or (4) below).
- (3) For the purposes of sub-paragraph (2) above, as respects England and Wales the appropriate certificate is such a certificate—
- (a) as would be required, under section 65 of the 1990 Act (notice etc. of applications for planning permission) and any provision of a development order made by virtue of that section, to accompany the application if it were an application for planning permission for minerals development, but
  - (b) with such modifications as are required for the purposes of this paragraph, and section 65(6) of that Act (offences) shall also have effect in relation to any certificate purporting to be the appropriate certificate.
- (4) For the purposes of sub-paragraph (2) above, the appropriate certificate is, as respects Scotland, each of the certificates which would be required, under or by virtue of sections 23 and 24 of the 1972 Act (notice etc. of applications for planning permission), to accompany the application if it were an application for planning permission for minerals development, but with such modifications as are required for the purposes of this paragraph; and sections 23(3) and 24(5) of that Act (offences) shall have effect in relation to any certificate purporting to be the appropriate certificate.
- (5) Section 65 of the 1990 Act or, as respects Scotland, section 24 of the 1972 Act (by virtue of which a development order may provide for publicising applications for planning permission) shall have effect, with any necessary modifications, as if subsection (1) of that section also authorised a development order to provide for publicising applications under this paragraph.
- (6) Where the mineral planning authority receive an application under this paragraph in relation to a dormant site or an active Phase I or II site they shall determine the conditions to which each relevant planning permission relating to the site is to be subject; and any such permission shall, from the date when the conditions to which it is to be subject are finally determined, have effect subject to the conditions which are determined under this Schedule as being the conditions to which it is to be subject.

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- (7) The conditions imposed by virtue of a determination under sub-paragraph (6) above—
- (a) may include any conditions which may be imposed on a grant of planning permission for minerals development;
  - (b) may be in addition to, or in substitution for, any existing conditions to which the permission in question is subject.
- (8) In determining that a relevant planning permission is to be subject to any condition relating to development for which planning permission is granted by a development order, the mineral planning authority shall have regard to any guidance issued for the purpose by the Secretary of State.
- (9) Subject to sub-paragraph (10) below, where, within the period of three months from the mineral planning authority having received an application under this paragraph, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority have not given notice to the applicant of their decision upon the application, the authority shall be treated as having at the end of that period or, as the case may be, that extended period, determined that the conditions to which any relevant planning permission to which the application relates is to be subject are those specified in the application as being proposed in relation to that permission; and any such permission shall, from that time, have effect subject to those conditions.
- (10) Where a mineral planning authority, having received an application under this paragraph, are of the opinion that they are unable to determine the application unless further details are supplied to them, they shall within the period of one month from having received the application give notice to the applicant—
- (a) stating that they are of such opinion; and
  - (b) specifying the further details which they require,
- and where the authority so serve such a notice the period of three months referred to in sub-paragraph (9) above shall run not from the authority having received the application but from the time when the authority have received all the further details specified in the notice.
- (11) Without prejudice to the generality of sub-paragraph (10) above, the further details which may be specified in a notice under that sub-paragraph include any—
- (a) information, plans or drawings; or
  - (b) evidence verifying any particulars of details supplied to the authority in respect of the application in question,
- which it is reasonable for the authority to request for the purpose of enabling them to determine the application.

*Notice of determination of conditions to be  
accompanied by additional information in certain cases*

- 10 (1) This paragraph applies in a case where—
- (a) on an application made to the mineral planning authority under paragraph 9 above in respect of an active Phase I or II site the authority determine under that paragraph the conditions to which the relevant planning permissions relating to the site are to be subject;
  - (b) those conditions differ in any respect from the proposed conditions set out in the application; and

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- (c) the effect of the conditions, other than any restoration or aftercare conditions, so determined by the authority, as compared with the effect of the conditions, other than any restoration or aftercare conditions, to which the relevant planning permissions in question were subject immediately prior to the authority making the determination, is to restrict working rights in respect of the site.
- (2) In a case where this paragraph applies, the mineral planning authority shall, upon giving to the applicant notice of the conditions determined by the authority under paragraph 9 above, also give to the applicant notice—
- (a) stating that the conditions determined by the authority differ in some respect from the proposed conditions set out in the application;
  - (b) stating that the effect of the conditions, other than any restoration or aftercare conditions, determined by the authority, as compared with the effect of the conditions, other than any restoration or aftercare conditions, to which the relevant planning permissions relating to the site in question were subject immediately prior to the making of the authority’s determination, is to restrict working rights in respect of the site;
  - (c) identifying the working rights so restricted; and
  - (d) stating whether, in the opinion of the authority, the effect of that restriction of working rights would be such as to prejudice adversely to an unreasonable degree—
    - (i) the economic viability of operating the site; or
    - (ii) the asset value of the site.
- (3) In determining whether, in their opinion, the effect of that restriction of working rights would be such as is mentioned in sub-paragraph (2)(d) above, a mineral planning authority shall have regard to any guidance issued for the purpose by the Secretary of State.
- (4) In this paragraph, “the applicant” means the person who made the application in question under paragraph 9 above.

*Right to appeal against mineral planning authority’s determination of conditions etc.*

- 11 (1) Where the mineral planning authority—
- (a) on an application under paragraph 9 above determine under that paragraph conditions that differ in any respect from the proposed conditions set out in the application; or
  - (b) give notice, under paragraph (d) of paragraph 10(2) above, stating that, in their opinion, the restriction of working rights in question would not be such as to prejudice adversely to an unreasonable degree either of the matters referred to in sub-paragraphs (i) and (ii) of the said paragraph (d),
- the person who made the application may appeal to the Secretary of State.
- (2) An appeal under sub-paragraph (1) above must be made by giving notice of appeal to the Secretary of State before the end of the period of six months beginning with the date on which the authority give notice to the applicant of their determination or, as the case may be, stating their opinion.

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*Permissions ceasing to have effect*

- 12 (1) Subject to paragraph 8(11) above, where no application under paragraph 9 above in respect of an active Phase I or II site has been served on the mineral planning authority by the date specified in the first or, as the case may be, the second list as the date by which applications under that paragraph in respect of that site are to be made, or by such later date as may at any time be agreed upon in writing between the applicant and the authority, each relevant planning permission relating to the site shall cease to have effect, except insofar as it imposes any restoration or aftercare condition, on the day following the last date on which such an application may be made.
- (2) The reference in sub-paragraph (1) above to the date specified in the first or, as the case may be, the second list as the date by which applications under paragraph 9 above are to be made in respect of any Phase I or II site is a reference to the date specified for that purpose in respect of that site in that list as prepared by the mineral planning authority or, where that date has been varied by virtue of any provision of this Schedule, to that date as so varied.
- (3) Subject to sub-paragraph (4) below, no relevant planning permission which relates to a dormant site shall have effect to authorise the carrying out of minerals development unless—
- (a) an application has been made under paragraph 9 above in respect of that site; and
  - (b) that permission has effect in accordance with sub-paragraph (6) of that paragraph.
- (4) A relevant planning permission which relates to a Phase I or II site not included in the first list shall cease to have effect, except insofar as it imposes any restoration or aftercare condition, on the day following the last date on which an application under sub-paragraph (1) of paragraph 6 above may be made in respect of that site unless an application has been made under that sub-paragraph by that date in which event, unless the site is added to that list, such a permission shall cease to have effect when the following conditions are met—
- (a) the proceedings on that application, including any proceedings on or in consequence of the application under section 288 of the 1990 Act or, as the case may be, section 233 of the 1972 Act, have been determined, and
  - (b) any time for appealing under paragraph 6(11) or (12) above, or applying or further applying under paragraph 6(1) above, (where there is a right to do so) has expired.

*Reference of applications to the Secretary of State*

- 13 (1) The Secretary of State may give directions requiring applications under paragraph 9 above to any mineral planning authority to be referred to him for determination instead of being dealt with by the authority.
- (2) Any such direction may relate either to a particular application or to applications of a class specified in the direction.
- (3) Where an application is referred to the Secretary of State in accordance with such a direction—
- (a) subject to paragraph (b) below, the following provisions of this Schedule—
    - (i) paragraph 9(6) and (7),



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- (ii) paragraph 10, and
  - (iii) paragraph 14 so far as relating to applications under paragraph 9 above,
- shall apply, with any necessary modifications, as they apply to applications which fall to be determined by the mineral planning authority;
- (b) before determining the application the Secretary of State must, if either the applicant or the mineral planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose; and
  - (c) the decision of the Secretary of State on the application shall be final.

*Two or more applicants*

- 14 (1) Where a mineral planning authority has received from any person a duly made application under paragraph 7(1) or 9 above—
- (a) that person may not make any further application under the paragraph in question in respect of the same site; and
  - (b) if the application has been determined, whether or not in the case of an application under paragraph 9 above it has been finally determined, no other person may make an application under the paragraph in question in respect of the same site.
- (2) Where—
- (a) a mineral planning authority has received from any person in respect of a mineral site a duly made application under paragraph 7(1) or 9 above; and
  - (b) the authority receives from another person a duly made application under the paragraph in question in respect of the same site,
- then for the purpose of the determination of the applications and any appeal against such a determination, this Schedule shall have effect as if the applications were a single application received by the authority on the date on which the later application was received by the authority and references to the applicant shall be read as references to either or any of the applicants.

*Compensation*

- 15 (1) This paragraph applies in a case where—
- (a) an application made under paragraph 9 above in respect of an active Phase I or II site is finally determined; and
  - (b) the requirements of either sub-paragraph (2) or (3) below are satisfied.
- (2) The requirements, referred to in sub-paragraph (1)(b) above, of this sub-paragraph are—
- (a) that the conditions to which the relevant planning permissions relating to the site are to be subject were determined by the mineral planning authority;
  - (b) no appeal was made under paragraph 11(1)(a) above in respect of that determination or any such appeal was withdrawn or dismissed; and
  - (c) the authority gave notice under paragraph (d) of paragraph 10(2) above and either—
    - (i) that notice stated that, in the authority's opinion, the restriction of working rights in question would be such as to prejudice adversely

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- to an unreasonable degree either of the matters referred to in sub-paragraphs (i) and (ii) of the said paragraph (d); or
- (ii) that notice stated that, in the authority’s opinion, the restriction in question would not be such as would so prejudice either of those matters but an appeal under paragraph 11(1) above in respect of the giving of the notice has been allowed.
- (3) The requirements, referred to in sub-paragraph (1)(b) above, of this sub-paragraph are that the conditions to which the relevant planning permissions are to be subject were determined by the Secretary of State (whether upon an appeal under paragraph 11(1)(a) above or upon a reference under paragraph 13 above) and—
- (a) in a case where those conditions were determined upon an appeal under paragraph 11(1)(a) above either—
- (i) the mineral planning authority gave notice under paragraph (d) of paragraph 10(2) above stating that, in their opinion, the restriction of working rights in question would be such as to prejudice adversely to an unreasonable degree either of the matters referred to in sub-paragraphs (i) and (ii) of the said paragraph (d), or
- (ii) the authority gave a notice under the said paragraph (d) stating that, in their opinion, the restriction in question would not be such as would so prejudice either of those matters but an appeal under paragraph 11(1)(b) above in respect of the giving of that notice has been allowed;
- or
- (b) in a case where those conditions were determined upon a reference under paragraph 13 above, the Secretary of State gave notice under paragraph (d) of paragraph 10(2) above stating that, in his opinion, the restriction of working rights in question would be such as to prejudice adversely to an unreasonable degree either of the matters referred to in sub-paragraphs (i) and (ii) of the said paragraph (d).
- (4) In a case to which this paragraph applies—
- (a) as respects England and Wales, Parts IV and XI of the 1990 Act, or
- (b) as respects Scotland, Parts VIII and XI of the 1972 Act,
- shall have effect as if an order made under section 97 of the 1990 Act or, as the case may be, section 42 of the 1972 Act, had been confirmed by the Secretary of State under section 98 of the 1990 Act or, as the case may be, section 42 of the 1972 Act at the time when the application in question was finally determined and, as so confirmed, had effect to modify those permissions to the extent specified in sub-paragraph (5) below.
- (5) For the purposes of sub-paragraph (4) above, the order which is treated by virtue of that sub-paragraph as having been made under section 97 of the 1990 Act or section 42 of the 1972 Act is one whose only effect adverse to the interests of any person having an interest in the land or minerals comprised in the mineral site is to restrict working rights in respect of the site to the same extent as the relevant restriction.
- (6) For the purposes of section 116 of the 1990 Act and section 167A of the 1972 Act and of any regulations made under those sections, the permissions treated as being modified by the order mentioned in sub-paragraph (4) above shall be treated as if they

were planning permissions for development which neither consists of nor includes any minerals development.

*Appeals: general procedural provisions*

- 16 (1) This paragraph applies to appeals under any of the following provisions of this Schedule—
- (a) paragraph 6(11) or (12) above; or
  - (b) paragraph 11(1) above.
- (2) Notice of appeal in respect of an appeal to which this paragraph applies shall be given on a form supplied by or on behalf of the Secretary of State for use for that purpose, and giving, so far as reasonably practicable, the information required by that form.
- (3) Paragraph 6 of Schedule 2 to the 1991 Act (determination of appeals) shall, as respects England and Wales, apply to an appeal to which this paragraph applies as it applies to an appeal under paragraph 5 of that Schedule.
- (4) As respects England and Wales, sections 284 to 288 of the 1990 Act (validity of certain decisions and proceedings for questioning their validity) shall have effect as if the action mentioned in section 284(3) of that Act included any decision of the Secretary of State—
- (a) on an appeal to which this paragraph applies; or
  - (b) on an application under paragraph 9 above referred to him under paragraph 13 above.
- (5) Paragraph 6 of Schedule 10A to the 1972 Act (determination of appeals) shall, as respects Scotland, apply to an appeal to which this paragraph applies as it applies to appeals under paragraph 5 of that Schedule.
- (6) As respects Scotland, sections 231 to 233 of the 1972 Act (validity of certain decisions and proceedings for questioning their validity) shall have effect as if the action mentioned in section 231(3) included any decision of the Secretary of State—
- (a) on an appeal to which this paragraph applies; or
  - (b) on an application under paragraph 9 above referred to him under paragraph 13 above.
- (7) As respects Scotland, Schedule 7 to the 1972 Act shall apply to appeals to which this paragraph applies.