

SCHEDULES

SCHEDULE 10

Section 74.

PERIODIC REVIEW OF MINERAL PLANNING PERMISSIONS

Duty to carry out periodic reviews

- 1 The planning authority shall, in accordance with the provisions of this Schedule, cause periodic reviews to be carried out of the mineral permissions relating to a mining site.

Interpretation

- 2 (1) For the purposes of this Schedule—
- “first review date”, in relation to a mining site, shall, subject to paragraph 5, be ascertained in accordance with paragraph 3;
 - “mineral permission” means any planning permission, other than a planning permission granted by a development order, for minerals development;
 - “mining site” means—
 - (a) in a case where it appears to the planning authority to be expedient to treat as a single site the aggregate of the land to which any two or more mineral permissions relate, the aggregate of the land to which those permissions relate; and
 - (b) in any other case, the land to which a mineral permission relates;
 - “old mining permission” has the meaning given by paragraph 10(1) of Schedule 8; and
 - “owner”, in relation to any land, has the meaning given by paragraph 22(1) of Schedule 8.
- (2) 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 mineral permissions relate a planning authority shall have regard to any guidance issued for the purpose by the Secretary of State.
- (3) Any reference (however expressed) in this Schedule to a mining site being a site to which relates—
 - (a) an old mining permission, or
 - (b) a mineral permission,is a reference to the mining site, or some part of it, being the land to which the permission relates.
- (4) For the purposes of this Schedule, an application made under paragraph 6 is finally determined when—
 - (a) the proceedings on the application, including any proceedings on or in consequence of an application under section 239, have been determined, and

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- (b) any time for appealing under paragraph 9(1), or applying or further applying under paragraph 6, (where there is a right to do so) has expired.

The first review date

- 3 (1) Subject to sub-paragraph (7), in a case where the mineral permissions relating to a mining site include an old mining permission, the first review date means—
- (a) the date falling fifteen years after the date upon which, pursuant to an application made under paragraph 14 of Schedule 8, the conditions to which that old mining permission is to be subject are finally determined under that Schedule, or
 - (b) where there are two or more old mining permissions relating to that site, and the date upon which those conditions are finally determined is not the same date for each of those permissions, the date falling fifteen years after the date upon which was made the last such final determination to be so made in respect of any of those permissions,
- and paragraph 22(2) of that Schedule shall apply for the purposes of this sub-paragraph as it applies for the purposes of paragraph 10 and Part II of that Schedule.
- (2) Subject to sub-paragraph (7), in the case of a mining site which is a Phase I or II site within the meaning of Schedule 9, the first review date means the date falling fifteen years after the date upon which, pursuant to an application made under paragraph 9 of that Schedule, there is determined under that paragraph the conditions to which the relevant planning permissions (within the meaning of that Schedule) relating to the site are to be subject.
- (3) Subject to sub-paragraphs (4) and (7), in the case of a mining site—
- (a) which is not a Phase I or II site within the meaning of Schedule 9, and
 - (b) to which no old mining permission relates,
- the first review date is the date falling fifteen years after the date upon which was granted the most recent mineral permission which relates to the site.
- (4) Where, in the case of a mining site falling within sub-paragraph (3), the most recent mineral permission relating to that site relates, or the most recent such permissions (whether or not granted on the same date) between them relate, to part only of the site, and in the opinion of the planning authority it is expedient, for the purpose of ascertaining, under that sub-paragraph, the first review date in respect of that site, to treat that permission or those permissions as having been granted at the same time as the last of the other mineral permissions relating to the site, the first review date for that site shall be ascertained under that sub-paragraph accordingly.
- (5) A planning authority shall, in deciding whether they are of such an opinion as is mentioned in sub-paragraph (4), have regard to any guidance issued by the Secretary of State for the purpose.
- (6) Subject to sub-paragraph (7), in the case of a mining site—
- (a) to which relates a mineral permission in respect of which an order has been made under section 65, or
 - (b) in respect of which, or any part of which, an order has been made under paragraph 1 of Schedule 8,
- the first review date shall be the date falling fifteen years after the date upon which the order took effect or, in a case where there is more than one such order, upon which the last of those orders to take effect took effect.

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- (7) In the case of a mining site for which the preceding provisions of this paragraph have effect to specify two or more different dates as the first review date, the first review date shall be the latest of those dates.

Service of notice of first periodic review

- 4 (1) The planning authority shall, in connection with the first periodic review of the mineral permissions relating to a mining site, no later than 12 months before the first review date, serve notice upon each person appearing to them to be the owner of any land, or entitled to an interest in any mineral, included in that site.
- (2) A notice required to be served under sub-paragraph (1) shall—
- (a) specify the mining site to which it relates,
 - (b) identify the mineral permissions relating to that site,
 - (c) state the first review date,
 - (d) state that the first review date is the date by which an application must be made for approval of the conditions to which the mineral permissions relating to the site are to be subject and explain the consequences which will occur if no such application is made by that date, and
 - (e) explain the right to apply for postponement of the first review date and give the date by which such an application has to be made.
- (3) Where, in relation to any land or mineral included in a mining site, the planning authority—
- (a) have served notice on any person under sub-paragraph (1), and
 - (b) have received no application under paragraph 6 from that person by the date falling eight weeks before the first review date,
- the authority shall serve a written reminder on that person.
- (4) A reminder required to be served under sub-paragraph (3) shall—
- (a) indicate that the land or mineral in question is included in a mining site,
 - (b) comply with the requirements of sub-paragraph (2)(a) to (d), and
 - (c) be served on the person in question on or before the date falling four weeks before the first review date.
- (5) Sub-paragraph (1) shall not require the 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.
- (6) If, in a case where sub-paragraph (5) applies, no person makes an application to the authority under paragraph 6 in respect of the mining site which includes the land or interest in question by the date falling eight weeks before the first review date, 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 (5), have been served under sub-paragraph (3).

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- (7) Where by sub-paragraph (5) or (6) 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 (5), no later than 12 months before the first review date, or
 - (ii) in a case where the requirement arises under sub-paragraph (6), no later than the date falling four weeks before the first review date,
 - 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 have taken reasonable steps for protection of the notice and, if need be, its replacement.
- (8) In sub-paragraphs (5) and (6), 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 a copy of the notice in question.

Application for postponement of the first review date

- 5 (1) Any person who is the owner of any land, or of any interest in any mineral, comprised in a mining site may, no later than the day upon which expires the period of three months from the day upon which notice was served upon him under paragraph 4, apply under this paragraph to the planning authority for the postponement of the first review date.
- (2) An application under this paragraph shall be in writing and shall set out—
- (a) the conditions to which each mineral permission relating to the site is subject,
 - (b) the applicant's reasons for considering those conditions to be satisfactory, and
 - (c) the date which the applicant wishes to have substituted for the first review date.
- (3) Where the planning authority receive an application made under this paragraph—
- (a) if they consider the conditions referred to in sub-paragraph (2)(a) to be satisfactory they shall agree to the first review 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.
- (4) When a planning authority determine an application made under this paragraph, they shall notify the applicant in writing of their decision and, in a case where they have agreed to the postponement of the first review date, shall notify the applicant of the date which they have determined should be substituted for the first review date.
- (5) Where, within the period of three months of the 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, under sub-paragraph (4), to the applicant of their decision

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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—

- (a) agreed to the first review date being postponed, and
- (b) determined that the date referred to in sub-paragraph (2)(c) be substituted for the first review date.

Application to determine the conditions to which the mineral permissions relating to a mining site are to be subject

- 6 (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 mining site, apply to the planning authority to determine the conditions to which the mineral permissions relating to that site are to be subject.
- (2) An application under this paragraph shall be in writing and shall—
- (a) identify the mining site in respect of which the application is made and state that the application is made in connection with the first periodic review of the mineral permissions relating to that site,
 - (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 the mineral 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) should be subject, and
 - (f) be accompanied by the appropriate certificate.
- (3) For the purposes of sub-paragraph (2), the appropriate certificate is each of the certificates which would be required, under or by virtue of sections 34 and 35, 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 34(3) and(4) and 35(5) shall have effect in relation to any certificate purporting to be the appropriate certificate.
- (4) Where the planning authority receive an application under this paragraph in relation to a mining site they shall determine the conditions to which each mineral permission relating to the site is to be subject.
- (5) The conditions imposed by virtue of a determination under sub-paragraph (4)—
- (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.
- (6) In determining that a mineral permission is to be subject to any condition relating to development for which planning permission is granted by a development order, the planning authority shall have regard to any guidance issued for the purpose by the Secretary of State.
- (7) Subject to sub-paragraph (8), where, within the period of three months of the 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

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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 mineral 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.

- (8) Where a 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 (7) 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.

- (9) Without prejudice to the generality of sub-paragraph (8), 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.

Permissions ceasing to have effect

- 7 Where no application under paragraph 6 in respect of a mining site has been served on the planning authority by the first review date, or by such later date as may at any time be agreed upon in writing between the applicant and the authority, each mineral permission—

- (a) relating to the site, and
- (b) identified in the notice served in relation to the site under paragraph 4,

shall cease to have effect, except in so far as it imposes any restoration or aftercare condition, on the day following the first review date or, as the case may be, such later agreed date.

Reference of applications to the Secretary of State

- 8 (1) The Secretary of State may give directions requiring applications made under paragraph 6 to any planning authority to be referred to him for determination instead of being dealt with by the authority.

- (2) A direction under sub-paragraph (1) 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 a direction under sub-paragraph (1)—

- (a) subject to paragraph (b), paragraph 6(4) and (5), and paragraph 11 so far as relating to applications under paragraph 6, shall apply, with any necessary

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- modifications, to his determination of the application as they apply to the determination of applications by the planning authority,
- (b) before determining the application the Secretary of State must, if either the applicant or the 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.

Appeals

- 9
- (1) Where on an application under paragraph 6 the planning authority determine conditions that differ in any respect from the proposed conditions set out in the application, the applicant may appeal to the Secretary of State.
 - (2) An appeal under sub-paragraph (1) 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 determination, 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 18 of Schedule 8 shall apply to appeals under sub-paragraph (1) as it applies to appeals under paragraph 17 of that Schedule.
 - (4) Sections 237 to 239 shall have effect as if the action mentioned in section 237(3) included any decision of the Secretary of State—
 - (a) on an appeal under sub-paragraph (1), or
 - (b) on an application under paragraph 6 referred to him under paragraph 8.
 - (5) Schedule 4 shall apply to appeals under sub-paragraph (1).

Time from which conditions determined under this Schedule are to take effect

- 10
- (1) Where an application has been made under paragraph 6 in respect of a mining site, each of the mineral permissions relating to the site shall, from the time when the application is finally determined, have effect subject to the conditions to which it is determined under this Schedule that that permission is to be subject.
 - (2) Sub-paragraph (1) is without prejudice to paragraph 6(7).

Two or more applicants

- 11
- (1) Where a planning authority have received from any person a duly made application under paragraph 5 or 6—
 - (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 6 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 planning authority have received from any person in respect of a mineral site a duly made application under paragraph 5 or 6; and

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(b) the authority receive 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.

Second and subsequent periodic reviews

- 12 (1) In this paragraph, in relation to a mining site, but subject to paragraph 5 as applied by sub-paragraph (2), “review date” means—
- (a) in the case of the second periodic review, the date falling fifteen years after the date upon which was finally determined an application made under paragraph 6 in respect of the site, and
 - (b) in the case of subsequent periodic reviews, the date falling fifteen years after the date upon which there was last finally determined under this Schedule an application made in respect of that site under paragraph 6 as applied by sub-paragraph (2).
- (2) Paragraphs 4 to 11 shall apply in respect of the second or any subsequent periodic review of the mineral permissions relating to a mining site as they apply to the first such periodic review, but as if—
- (a) any reference in those paragraphs to the “first review date” were a reference to the review date, and
 - (b) the references in paragraphs 4(1) and 6(2)(a) to the first periodic review were references to the periodic review in question.

Compensation

- 13 (1) This paragraph applies where—
- (a) an application made under paragraph 6 in respect of a mining site is finally determined,
 - (b) the conditions to which the mineral permissions relating to the site are to be subject, as determined under this Schedule, differ in any respect from the proposed conditions set out in the application, and
 - (c) the effect of the new conditions, except in so far as they are restoration or aftercare conditions, as compared with the effect of the existing conditions, except in so far as they were restoration or aftercare conditions, is to restrict working rights in respect of the site.
- (2) For the purposes of this paragraph—
- “the new conditions”, in relation to a mining site, means the conditions, determined under this Schedule, to which the mineral permissions relating to the site are to be subject; and
- “the existing conditions”, in relation to a mining site, means the conditions to which the mineral permissions relating to the site were subject immediately prior to the final determination of the application made under paragraph 6 in respect of that site.
- (3) For the purposes of this paragraph, working rights are restricted in respect of a mining site if any of—

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- (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 mining site in question.
- (4) In a case to which this paragraph applies, but subject to sub-paragraph (6), Parts IV and X of this Act shall have effect as if an order made under section 65—
- (a) had been confirmed by the Secretary of State under section 66 at the time when the application in question was finally determined, and
 - (b) as so confirmed, had effect to modify those permissions to the extent specified in sub-paragraph (6).
- (5) For the purposes of this paragraph, the order referred to in sub-paragraph (4) 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 Schedule 13 and of any regulations made under that Schedule, the permissions treated as being modified by the order mentioned in sub-paragraph (4) shall be treated as if they were planning permissions for development which neither consists of nor includes any minerals development.