



# Town and Country Planning (Minerals) Act 1981

1981 CHAPTER 36

## PART II

SCOTLAND

### *Miscellaneous amendments*

#### **21 Notification of applications for planning permission**

(1) The following shall be inserted after paragraph (c) of section 24(1) of the 1972 Act (which precludes a planning authority from entertaining an application for planning permission unless it is accompanied by the appropriate certificate)—

“(cc) in the case of an application for planning permission for development consisting of the winning and working of minerals by underground mining operations, a certificate stating—

- (i) that the applicant has given the requisite notice of the application to such one or more of the persons mentioned in paragraph (b) of this subsection as are specified in the certificate, and setting out the names of those persons, the addresses at which notice of the application was given to them respectively, and the date of service of each such notice ;
- (ii) that there is no person mentioned in paragraph (b) of this subsection whom the applicant knows to be such a person and whose name and address is known to the applicant but to whom he has not given the requisite notice of the application; and
- (iii) that he has complied with subsection (2A) of this section and when he did so ;”.

(2) The following subsections shall be inserted after that subsection—

- “(1A) Subject to subsection (1B) of this section, subsection (1) of this section shall have effect as respects notice of an application for planning permission for development consisting of the winning and working of minerals as if any person entitled to an interest in a mineral in the land to which the application relates were an owner of the land.
- (1B) Subsection (1) of this section shall not have effect as provided by subsection (1A) of this section in relation to a person entitled to an interest in—
- (a) oil, gas or coal; or
  - (b) gold or silver.”.

(3) In subsection (2) of that section, after " (c)" there shall be inserted paragraph (cc) ”.

(4) The following subsections shall be added after that subsection—

“(2A) In an order to comply with this subsection—

    - (a) the applicant must post the requisite notice of the application, sited so as to be easily visible to and legible by members of the public, in at least one place in the district of the planning authority to which the application is being made ; and
    - (b) the notice must be in position for not less than 7 days during the period of 21 days prior to the making of the application.

(2B) At any time before granting an application for planning permission for development consisting of the winning and working of minerals the planning authority dealing with the application may in writing direct the applicant to post copies of the said notice in such places in its district not exceeding 4 in number as may be specified in the direction.

(2C) Where any such direction as is mentioned in subsection (2B) above has been given the planning authority shall not grant the application until the applicant has furnished to the authority a certificate stating—

    - (a) that he has complied with the direction ; and
    - (b) that any notice required by the direction has been in position for not less than 7 days in the period of 21 days prior to the date on which he lodged the certificate with the planning authority.

(2D) The applicant shall not be treated as unable to comply with subsection (2A) or (2C) of this section if the notice or, as the case may be, any copy thereof is, without any fault or intention of his, removed, obscured or defaced before the seven days referred to in subsections (2A) (6) or (2C)(6) of this section have elapsed, so long as he has taken reasonable steps for its protection and, if need be, replacement; and if he has cause to rely on this subsection, his certificate under subsection (1)(cc) of this section shall state the relevant circumstances.

(2E) The notice required by subsection (2A) of this section shall (in addition to any other matters required to be contained in it) name a place within the area of the planning authority to whom the application is made where a copy of the application for planning permission, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during such period as may be specified in the notice, being a period of not less than 21 days beginning with the date on which the notice is first posted.”.

## 22 Imposition of aftercare conditions on planning permission

The following section shall be inserted after section 27 of the 1972 Act—

### **“27A Aftercare conditions on permission for winning and working of minerals.**

- (1) Where planning permission for development consisting of the winning and working of minerals is granted subject to a restoration condition, it may be granted subject also to any such aftercare condition as the planning authority think fit.
- (2) In this Act—
  - " restoration condition" means a condition requiring that after operations for the winning and working of minerals have been completed, the site shall be restored by the use of any or all of the following, namely, subsoil, topsoil and soil-making material; and
  - " aftercare condition" means a condition 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—
    - (a) use for agriculture ;
    - (b) use for forestry; or
    - (c) use for amenity.
- (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 section referred to as an "aftercare scheme") approved by the planning authority.
- (4) A 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.
- (7) In subsection (6) of this section " 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 subsection (7) of this section includes power to prescribe maximum periods differing according to the use specified.
- (9) In a case where—
  - (a) the use specified is a use for agriculture; and

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- (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 planning authority is aware of or can readily ascertain 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.
- (10) In any other case where the use specified is a use for agriculture the land is brought to the required standard when it is reasonably fit for that use.
- (11) Where the use specified is a use for forestry, the land is brought to the required standard when it is reasonably fit for that use.
- (12) Where the use specified is a use for amenity, the land is brought to the required standard when it is suitable for sustaining trees, shrubs or plants.
- (13) Before imposing an aftercare condition in a case where the use specified in the condition is for forestry, the planning authority shall consult the Forestry Commission as to whether it is appropriate to specify that use.
- (14) Where after consultations required by subsection (13) of this section the planning authority are satisfied that the use that they ought to specify is a use for forestry, they shall consult the Forestry Commission with regard to whether the steps to be taken should be specified in the aftercare condition or in an aftercare scheme.
- (15) The planning authority shall also consult the Forestry Commission—
  - (a) as to the steps to be specified in an aftercare condition which specifies a use for forestry; and
  - (b) before approving an aftercare scheme submitted in accordance with an aftercare condition which specifies such a use.
- (16) The planning authority shall also, from time to time as they consider expedient, consult the Commission as to whether the steps specified in an aftercare condition or an aftercare scheme are being taken.
- (17) On the application of any person with an interest in land in respect of which an aftercare condition has been imposed the planning authority, if they are satisfied that the condition has been complied with, shall issue a certificate to that effect.
- (18) A person who has complied with an aftercare condition but who has not himself carried out any operations for the winning and working of minerals in, on or under the land 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 by him in complying with the aftercare condition.
- (19) In this section " authorised " means authorised by planning permission and " forestry " means the growing of a utilisable crop of timber.”

## **23 Exclusion of certain planning permissions for winning and working of minerals from s. 38**

The following paragraph shall be inserted after paragraph (b) of section 38 (3) of the 1972 Act—

“(bb) to any planning permission for development consisting of the winning and working of minerals which is granted (or deemed to be granted) subject to a condition that the development to which it relates must be begun before the expiration of a specified period after the completion of other development consisting of the winning and working of minerals which is already being carried out by the applicant for the planning permission.”.

## **24 Duration of planning permission**

The following section shall be inserted after section 41 of the 1972 Act—

### **“41A Limit of duration of planning permission for winning and working of minerals.**

- (1) Every planning permission for development consisting of the winning and working of minerals shall be subject to a condition as to the duration of the development.
- (2) Except where a condition is specified under subsection (3) of this section the condition in the case of planning permission granted or deemed to be granted after the date of the commencement of section 24 of the Town and Country Planning (Minerals) Act 1981 is that the development must cease not later than the expiration of the period of sixty years beginning with the date of the permission.
- (3) An authority granting planning permission after the date of the commencement of the said section 24 or directing after that date that planning permission shall be deemed to be granted may specify a longer or shorter period than sixty years, and if they do so, the condition is that the development 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 sixty years may be prescribed for the purposes of subsections (2) and (3) of this section.
- (5) The condition in the case of planning permission granted or deemed to have been granted before the commencement of section 24 of the Town and Country Planning (Minerals) Act 1981 is that the development must cease not later than the expiration of the period of sixty years beginning with the date of the commencement of that section.
- (6) A condition to which planning permission for development consisting of the winning and working of minerals is subject by virtue of this section is not to be regarded for the purposes of this Act as a condition such as is mentioned in subsection (1)(b) of section 27 of this Act.
- (7) Where planning permission for development consisting of the winning and working of minerals is granted by the planning authority, any condition to which it is subject by virtue of this section is to be regarded for the purposes

of section 33 of this Act as a condition imposed by a decision of the planning authority, and may accordingly be the subject of an appeal under that section.”.

## 25 Orders revoking or modifying planning permission

The following subsections shall be added at the end of section 42 of the 1972 Act (power to revoke or modify planning permission)—

- “(5) An order under this section may include any such aftercare condition as the 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.
- (6) Subsections (3) to (19) of section 27A of this Act shall apply in relation to an aftercare condition so imposed as they apply in relation to such a condition imposed under that section.”.

## 26 Discontinuance of use

The following subsections shall be inserted after subsection (1) of section 49 of the 1972 Act (which empowers a planning authority to make orders, in the interests of the proper planning of their area, requiring that a use of land shall be discontinued or imposing conditions on the continuance of a use)—

- “(1A) For the purposes of this section development consisting of the winning and working of minerals in, on or under any land is to be treated as a use of that land.
- (1B) Subsection (1) of this section shall have effect as if—
- (a) the words “or
  - (c) that any plant or machinery used for the winning and working of minerals should be altered or removed,” were added at the end of paragraph (b); and
  - (b) the words " or plant or machinery " were inserted after the words " buildings or works " , in the second place where those words occur.
- (1C) Where development consisting of the winning and working of minerals is being carried out in, on or under any land, the conditions which an order under this section may impose include a restoration condition.
- (1D) An order under this section may include any such aftercare condition as the 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.
- (1E) Subsections (3) to (8) and (11) to (19) of section 27A of this Act shall apply in relation to an aftercare condition imposed under this section as they apply in relation to such a condition imposed under that section.
- (1F) In a case where—
- (a) the use specified is a use for agriculture ; and
  - (b) the land was in use for agriculture immediately before development consisting of the winning and working of minerals began to be carried

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out in, on or under it or had previously been used for agriculture and had not been used for any authorised purpose since its use for agriculture ceased ; and

- (c) the planning authority is aware of or can readily ascertain 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.

- (1G) In any other case where the use specified is a use for agriculture the land is brought to the required standard when it is reasonably fit for that use.”.

## 27 Orders prohibiting resumption of operations and orders relating to suspension of operations

The following sections shall be inserted after section 49 of the 1972 Act—

### “49A Prohibition of resumption of winning and working of minerals.

- (1) Where it appears to the planning authority—
- (a) that development consisting of the winning and working of minerals has been carried out in, on or under any land; but
  - (b) that it has permanently ceased,
- the planning authority may by order—
- (i) prohibit the resumption of such development ; and
  - (ii) impose, in relation to the site, any such requirement as is specified in subsection (3) of this section.
- (2) The planning authority may assume that development consisting of the winning and working of minerals has permanently ceased only when—
- (a) no such development has been carried out to any substantial extent anywhere in, on or under the site of which the land forms part for a period of at least two years; and
  - (b) it appears to the planning authority on the evidence available to them at the time when they make the order, that resumption of such development in, on or under the land is unlikely.
- (3) The requirements mentioned in subsection (1) of this section are—
- (a) a requirement to alter or remove plant or machinery which was used for the purpose of the winning and working of minerals or for any purpose ancillary to that purpose ;
  - (b) a requirement to take such steps as may be specified in the order, within such period as may be so specified, for the purpose of removing or alleviating any injury to amenity which has been caused by the winning and working of minerals, other than injury due to subsidence caused by underground mining operations;
  - (c) a requirement that any condition subject to which planning permission for development consisting of the winning and working of minerals was granted or which has been imposed by virtue of any provision of this Act shall be complied with ; and
  - (d) a restoration condition.

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- (4) An order under this section may include any such aftercare condition as the 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 site by virtue of any provision of this Act.
- (5) Subsections (3) to (8) and (11) to (19) of section 27 A of this Act shall apply in relation to an aftercare condition imposed under this section as they apply in relation to such a condition imposed under that section.
- (6) In a case where—
  - (a) the use specified is a use for agriculture; and
  - (b) the land was in use for agriculture immediately before development consisting of the winning and working of minerals began to be carried out in, on or under it or had previously been used for agriculture and had not been used for any authorised purpose since its use for agriculture ceased; and
  - (c) the planning authority is aware of or can readily ascertain 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.
- (7) In any other case where the use specified is a use for agriculture the land is brought to the required standard when it is reasonably fit for that use.
- (8) An order under this section shall not take effect unless it is confirmed by the Secretary of State, either without modification or subject to such modifications as he considers expedient.
- (9) Where a planning authority submit an order under this section to the Secretary of State for his confirmation under this section, that authority shall serve notice of the order on any person who is an owner or occupier of any of the land to which the order relates, and on any other person who in their opinion will be affected by the order; and if within the period specified in that behalf in the notice (not being less than twenty-eight days from the service thereof) any person on whom the notice is served so requires, the Secretary of State, before confirming the order, shall afford to that person and to the planning authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for that purpose.
- (10) Where an order under this section has been confirmed by the Secretary of State, the planning authority shall serve a copy of the order on every person who was entitled to be served with notice under subsection (9) of this section.
- (11) On an order under this section taking effect any planning permission for the development to which the order relates shall cease to have effect but without prejudice to the power of the planning authority, on revoking the order, to make a further grant of planning permission for development consisting of the winning and working of minerals.



#### **49B Orders after suspension of winning and working of minerals.**

- (1) Where it appears to the planning authority—
  - (a) that development consisting of the winning and working of minerals has been carried out in, on or under any land; but
  - (b) that it has been temporarily suspended,the planning authority may by order (in this Act referred to as a "suspension order") require that steps shall be taken for the protection of the environment
- (2) The planning authority may assume that development consisting of the winning and working of minerals has been temporarily suspended only when—
  - (a) no such development has been carried out to any substantial extent anywhere in, on or under the site of which the land forms part for a period of at least twelve months ; but
  - (b) it appears to the planning authority, on the evidence available to them at the time when they make the order, that a resumption of such development in, on or under the land is likely.
- (3) In this Act "steps for the protection of the environment" means steps for the purpose—
  - (a) of preserving the amenities of the area in which the land in, on or under which the development was carried out is situated during the period while operations for the winning and working of minerals in, on or under it are suspended ;
  - (b) of protecting that area from damage during that period; or
  - (c) of preventing any deterioration in the condition of the land during that period.
- (4) A suspension order shall specify a period, commencing with the date on which it is to take effect, within which any step required for the protection of the environment is to be taken, and may specify different periods for the taking of different steps.
- (5) At any time when a suspension order is in operation the planning authority may by order (in this Act referred to as a " supplementary suspension order ") direct—
  - (a) that steps for the protection of the environment shall be taken in addition to or in substitution for any of the steps which the suspension order or a previous supplementary suspension order specified as required to be taken ; or
  - (b) that the suspension order or any supplementary suspension order shall cease to have effect.

#### **49C Confirmation and coming into operation of suspension orders.**

- (1) Without prejudice to section 49D of this Act, a suspension order or supplementary suspension order (other than a supplementary suspension order revoking a suspension order or a previous supplementary suspension order and not requiring that any fresh step shall be taken for the protection of the environment) shall not take effect until it is confirmed by the Secretary of State,

either without modification or subject to such modifications as he considers expedient.

- (2) Subsection (9) of section 49A of this Act shall have effect in relation to a suspension order or supplementary suspension order submitted to the Secretary of State for his confirmation as it has effect in relation to an order submitted to him for his confirmation under that section.
- (3) Where a suspension order or supplementary suspension order has been confirmed by the Secretary of State, the planning authority shall serve a copy of the order on every person who was entitled to be served with notice by virtue of subsection (2) of this section.

#### **49D Registration of suspension orders.**

No order under section 49A or 49B of this Act shall take effect until it is registered either—

- (a) in a case where the land affected by the order is registered in that Register, in the Land Register of Scotland, or
- (b) in any other case, in the appropriate division of the General Register of Sasines.

#### **49E Reviews of suspension orders.**

- (1) It shall be the duty of a planning authority—
  - (a) to undertake in accordance with the following provisions of this section reviews of suspension orders and supplementary suspension orders which are in operation in their area; and
  - (b) to determine whether they should make, in relation to any land to which a suspension order or supplementary suspension order applies.—
    - (i) an order under section 49A of this Act; or
    - (ii) a supplementary suspension order.
- (2) The first review of a suspension order shall be undertaken not more than five years from the date on which the order takes effect.
- (3) Each subsequent review shall be undertaken not more than five years after the previous review.
- (4) If a supplementary suspension order is in operation for any part of the area for which a suspension order is in operation, they shall be reviewed together.
- (5) If a planning authority have made a supplementary suspension order which requires the taking of steps for the protection of the environment in substitution for all the steps required to be taken by a previous order under section 49B of this Act, the authority shall undertake reviews of the supplementary suspension order in accordance with subsections (6) and (7) of this section.
- (6) The first review shall be undertaken not more than five years from the date on which the order takes effect.
- (7) Each subsequent review shall be undertaken not more than five years after the previous review.

- (8) The duty to undertake reviews imposed by this section is in addition to and not in substitution for the duties imposed by section 251A of this Act.

**49F Resumption of winning and working of minerals after suspension order.**

- (1) Nothing in a suspension order or a supplementary suspension order shall prevent the recommencement of development consisting of the winning and working of minerals in, on, or under the land in relation to which the order is in effect; but no person shall recommence such development without first giving the planning authority notice of his intention to do so.
- (2) A notice under subsection (1) of this section shall specify the date on which the person giving the notice intends to recommence development consisting of the winning and working of minerals.
- (3) The planning authority shall revoke the order if development consisting of the winning and working of minerals has recommenced to a substantial extent in, on or under the land in relation to which the order is in effect.
- (4) If the authority do not revoke the order before the end of the period of two months from the date specified in the notice under subsection (1) of this section, the person who gave that notice may apply to the Secretary of State for the revocation of the order.
- (5) Notice of an application under subsection (4) of this section shall be given by the applicant to the planning authority.
- (6) If he is required to do so by the person who gave the notice or by the planning authority, the Secretary of State, before deciding whether or not to revoke the order, shall afford to that person and to the planning authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (7) If the Secretary of State is satisfied that development consisting of the winning and working of minerals in, on or under the land has recommenced to a substantial extent, he shall revoke the order.
- (8) If the Secretary of State revokes an order by virtue of subsection (7) of this section, he shall give notice of its revocation to the person who applied to him for the revocation and to the planning authority.

**49G Powers of regional planning authorities regarding orders under sections 49A or 49B.**

The provisions of section 181 of the Local Government (Scotland) Act 1973 shall apply in relation to the provisions of sections 49A and 49B of this Act as they apply in relation to the provisions of sections 42 and 49 of this Act.”

**28 Enforcement of orders**

The following section shall be substituted for section 100 of the 1972 Act—

**“100 Enforcement of orders under sections 49, 49A and 49B.**

- (1) Any person who, without the grant of planning permission in that behalf.—
- (a) uses land, or causes or permits land to be used.—
    - (i) for any purpose for which an order under section 49 of this Act has required that its use shall be discontinued ; or
    - (ii) in contravention of any condition imposed by such an order by virtue of subsection (1) of that section; or
  - (b) resumes, or causes or permits to be resumed, development consisting of the winning and working of minerals the resumption of which an order under section 49A of this Act has prohibited; or
  - (c) contravenes, or causes or permits to be contravened, any such requirement as is specified in section 49A(3) or (4) of this Act,
- shall be guilty of an offence.
- (2) Any person who contravenes any requirement of a suspension order or a supplementary suspension order or who causes or permits any requirement of such an order to be contravened shall be guilty of an offence.
- (3) Any person guilty of an offence under this section shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum ; and
  - (b) on conviction on indictment, to a fine.
- (4) If —
- (a) any step required by an order under section 49 of this Act to be taken for the alteration or removal of any buildings or works or any plant or machinery; or
  - (b) any step required by an order under section 49A of this Act to be taken—
    - (i) for the alteration or removal of plant or machinery; or
    - (ii) for the removal or alleviation of any injury to amenity ; or
  - (c) any step for the protection of the environment required to be taken by a suspension order or a supplementary suspension order,
- has not been taken within the period specified in the order, or within such extended period as the planning authority may allow, the planning authority may enter the land and take that step, and may recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.
- (5) A planning authority taking any step in terms of subsection (4) of this section may sell any materials removed by them from any land unless those materials are claimed by the owner within three days of their removal by the planning authority; and where such materials have been sold the planning authority shall, after deducting therefrom any expenses recoverable by them from the owner, pay him the proceeds of such sale.
- (6) It shall be a defence for a person charged with an offence under this section to prove that he took all reasonable measures and exercised all due diligence to avoid commission of the offence by himself or by any person under his control.

- (7) If any person charged with an offence under this section alleges that the commission of the offence was due to the act or default of another person or due to reliance on information supplied by another person, the person charged shall not, without the leave of the court, be entitled to rely on the defence unless, within a period ending seven clear days before the hearing, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.”.