

Status: Point in time view as at 12/08/2012.

Changes to legislation: Town and Country Planning Act 1990, SCHEDULE 9 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 9

Section 102(8).

REQUIREMENTS RELATING TO DISCONTINUANCE OF MINERAL WORKING

Modifications etc. (not altering text)

- C1** Sch. 9 modified (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [ss. 22\(6\)\(b\)\(7\)](#) (with [s. 84\(5\)](#)); [S.I. 1991/2067](#), [art.3](#) (subject to [art. 4](#))
- C2** Sch. 9 modified (W.) (8.1.2010) by [The Town and Country Planning \(Environmental Impact Assessment\) \(Undetermined Reviews of Old Mineral Permissions\) \(Wales\) Regulations 2009 \(S.I. 2009/3342\)](#), [reg. 51](#)

Orders requiring discontinuance of mineral working

- 1 (1) If, having regard to the development plan and to any other material considerations, it appears to a mineral planning authority that it is expedient in the interests of the proper planning of their area (including the interests of amenity)—
- ^{F1}[(a) that any use of land for—
- (i) development consisting of the winning and working of minerals; or
- (ii) the depositing of refuse or waste materials,
- should be discontinued or that any conditions should be imposed on the continuance of the winning and working or the depositing;]
- (b) that any buildings or works on land so used should be altered or removed; or
- ^{F2}[(c) that any plant or machinery used for the winning and working or the depositing should be altered or removed,]
- the mineral planning authority may by order require the discontinuance of that use, or impose such conditions as may be specified in the order on the continuance of it or, as the case may be, require such steps as may be so specified to be taken for the alteration or removal of the buildings or works or plant or machinery.
- ^{F3}[(2) An order under this paragraph may grant planning permission for any development of the land to which the order relates, subject to such conditions as may be—
- (a) required by paragraph 1 of Schedule 5; or
- (b) specified in the order.
- (3) Subsections (3) to (5) and (7) of section 102 and section 103 apply to orders under this paragraph as they apply to orders under section 102, but as if—
- (a) references to the local planning authority were references to the mineral planning authority; and
- (b) the reference in section 103(2)(a) to subsection (2) of section 102 were a reference to sub-paragraph (2).]

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Textual Amendments

- F1** Sch. 9 para. 1(1)(a) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 15\(1\)](#)(with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to art. 4)
- F2** Sch. 9 para. 1(1)(c) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 15\(2\)](#)(with s. 84(5)); S.I. 1991/2067, [art. 3](#) (subject to art. 4)
- F3** Sch. 9 para. 1(2)(3) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 15\(3\)](#) (with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to art. 4)

2 ^{F4}[(1) An order under paragraph 1 may impose a restoration condition]

(2) If such an order—

- (a) 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,

the order may also include any such aftercare condition as the mineral planning authority think fit.

(3) Paragraphs 2(3) to (9) and 3 to 6 of Schedule 5 shall apply in relation to an aftercare condition imposed under this paragraph as they apply in relation to such a condition imposed under paragraph 2 of that Schedule, but with the substitution for sub-paragraphs (1) and (2) of paragraph 3 of that Schedule of sub-paragraphs (4) and (5) below.

(4) In a case where—

- (a) the use specified in the aftercare condition is a use for agriculture;
- (b) the land was in use for agriculture immediately [^{F5}before the development began], 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 Minister has notified the mineral planning authority of the physical characteristics of the land when it was last used for agriculture,

the land is brought to the required standard when its physical characteristics are restored, so far as it is practicable to do so, to what they were when it was last used for agriculture.

(5) In any other case where the use specified in the aftercare condition is a use for agriculture, the land is brought to the required standard when it is reasonably fit for that use.

Textual Amendments

- F4** Sch. 9 para. 2(1) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 15\(4\)](#)(with s. 84(5)); S.I. 1991/2067, [art.3](#)
- F5** Words in Sch. 9 para. 2(4)(b) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 15\(5\)](#)(with s. 84(5)); S.I. 1991/2067, [art.3](#)

Prohibition of resumption of mineral working

3 ^{F6}[(1) Where it appears to the mineral planning authority—

- (a) that development of land—
 - (i) consisting of the winning and working of minerals; or

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- (ii) involving the depositing of mineral waste,
has occurred; but
 - (b) the winning and working or depositing has permanently ceased,
the mineral planning authority may by order—
 - (i) prohibit the resumption of the winning and working or the depositing; and
 - (ii) impose, in relation to the site, any such requirement as is specified in sub-paragraph (3).
- (2) The mineral planning authority may assume that the winning and working or the depositing has permanently ceased only when—
 - (a) no winning and working or depositing has occurred, to any substantial extent, at the site for a period of at least two years; and
 - (b) it appears to the mineral planning authority, on the evidence available to them at the time when they make the order, that resumption of the winning and working or the depositing to any substantial extent at the site is unlikely.
- (3) The requirements mentioned in sub-paragraph (1) are—
 - (a) a requirement to alter or remove plant or machinery which was used for the purpose of the winning and working or the depositing 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 or depositing, other than injury due to subsidence caused by underground mining operations;
 - (c) a requirement that any condition subject to which planning permission for the development was granted or which has been imposed by virtue of any provision of this Act shall be complied with; and
 - (d) a restoration condition.]
- (4) If—
 - (a) an order under this paragraph 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,the order under this paragraph may include any such aftercare condition as the mineral planning authority think fit.
- (5) Paragraphs 2(3) to (9) and 3 to 6 of Schedule 5 apply in relation to an aftercare condition imposed under this paragraph as they apply to such a condition imposed under paragraph 2 of this Schedule.

Textual Amendments

- F6** Sch. 9 para. 3(1)-(3) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [ss. 21, 84\(2\)-\(4\)\(5\)](#), Sch. 1 para. 15(6)(with s. 84(5)); [S.I. 1991/2067](#), [art. 3](#) (subject to art. 4)

Modifications etc. (not altering text)

- C3** Sch. 9 para. 3 modified (22.7.2008) by [The Town and Country Planning \(Environmental Impact Assessment\) \(Mineral Permissions and Amendment\) \(England\) Regulations 2008 \(S.I. 2008/1556\)](#), [reg. 4\(3\)-\(5\)](#)

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| C4 | Sch. 9 para. 3 modified (E.) (24.8.2011) by The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (S.I. 2011/1824) , regs. 1(1), 52(3) |
| C5 | Sch. 9 para. 3(1) modified (E.) (24.8.2011) by The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (S.I. 2011/1824) , regs. 1(1), 52(4) |
| C6 | Sch. 9 para. 3(2)(a)(b) modified (E.) (24.8.2011) by The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (S.I. 2011/1824) , regs. 1(1), 52(5) |

- 4 (1) An order under paragraph 3 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.
- (2) Where a mineral planning authority submit such an order to the Secretary of State for his confirmation under this paragraph, the authority shall serve notice of the order—
- (a) on any person who is an owner or occupier of any of the land to which the order relates, and
 - (b) on any other person who in their opinion will be affected by it.
- (3) The notice shall specify the period within which any person on whom the notice is served may require the Secretary of State to give him an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for that purpose.
- (4) If within that period such a person so requires, before the Secretary of State confirms the order he shall give such an opportunity both to him and to the mineral planning authority.
- (5) The period referred to in sub-paragraph (3) must not be less than 28 days from the service of the notice.
- (6) Where an order under paragraph 3 has been confirmed by the Secretary of State, the mineral planning authority shall serve a copy of the order on every person who was entitled to be served with notice under sub-paragraph (2).
- (7) When an order under paragraph 3 takes effect any planning permission for the development to which the order relates shall cease to have effect.
- (8) Sub-paragraph (7) is without prejudice to the power of the mineral planning authority, on revoking the order, to make a further grant of planning permission for development consisting of the winning and working of minerals [^{F7}or involving the depositing of mineral waste].

Textual Amendments

- F7** Words in Sch. 9 para. 4(8) inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, **Sch. 1 para. 15(7)**(with s. 84(5)); S.I. 1991/2067, **art. 3** (subject to art. 4)

Modifications etc. (not altering text)

- C7** Sch. 9 para. 4(7) modified (22.7.2008) by [The Town and Country Planning \(Environmental Impact Assessment\) \(Mineral Permissions and Amendment\) \(England\) Regulations 2008 \(S.I. 2008/1556\)](#), **reg. 4(6)**
- C8** Sch. 9 para. 4(7) modified (E.) (24.8.2011) by [The Town and Country Planning \(Environmental Impact Assessment\) Regulations 2011 \(S.I. 2011/1824\)](#), regs. 1(1), **52(6)**

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Orders after suspension of winning and working of minerals

- 5 ^{F8}[(1) Where it appears to the mineral planning authority—
- (a) that development of land—
 - (i) consisting of the winning and working of minerals; or
 - (ii) involving the depositing of mineral waste, has occurred; but
 - (b) the winning and working or depositing has been temporarily suspended, the mineral planning authority may by order require that steps be taken for the protection of the environment.]
- (2) An order under sub-paragraph (1) is in this Act referred to as a “suspension order”.
- ^{F9}[(3) The mineral planning authority may assume that the winning and working or the depositing has been temporarily suspended only when—
- (a) no such winning and working or depositing has occurred, to any substantial extent, at the site for a period of at least twelve months; but
 - (b) it appears to the mineral planning authority, on the evidence available to them at the time when they make the order, that a resumption of such winning and working or depositing to a substantial extent is likely.
- (4) 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 the winning and working or the depositing is 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.]
- (5) A suspension order shall specify a period, commencing with the date on which it is to take effect, within which any required step for the protection of the environment is to be taken and may specify different periods for the taking of different steps.

Textual Amendments

- F8** Sch. 9 para. 5(1) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 15\(8\)](#)(with s. 84(5)); [S.I. 1991/2067](#), [art.3](#) (subject to art. 4
- F9** Sch. 9 para. 5(3)(4) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 15\(9\)](#)(with s. 84(5)); [S.I. 1991/2067](#), [art.3](#) (subject to art. 4)

Supplementary suspension orders

- 6 (1) At any time when a suspension order is in operation the mineral planning authority may by 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 order under this sub-paragraph specified as required to be taken; or
 - (b) that the suspension order or any order under this sub-paragraph shall cease to have effect.

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- (2) An order under sub-paragraph (1) is in this Act referred to as a “supplementary suspension order”.

Confirmation and coming into operation of suspension orders

- 7 (1) Subject to sub-paragraph (2), a suspension order or a supplementary suspension order 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.
- (2) 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 take effect without confirmation.
- (3) Sub-paragraphs (2) to (5) of paragraph 4 shall have effect in relation to a suspension order or supplementary suspension order submitted to the Secretary of State for his confirmation as they have effect in relation to an order submitted to him for his confirmation under that paragraph.
- (4) Where a suspension order or supplementary suspension order has been confirmed by the Secretary of State, the mineral planning authority shall serve a copy of the order on every person who was entitled to be served with notice of the order by virtue of sub-paragraph (3).

Registration of suspension orders as local land charges

- 8 A suspension order or a supplementary suspension order shall be a local land charge.

Review of suspension orders

- 9 (1) It shall be the duty of a mineral planning authority—
- (a) to undertake in accordance with the following provisions of this paragraph 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 paragraph 3; 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 mineral 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 suspension order or supplementary suspension order, the authority shall undertake reviews of the supplementary suspension order in accordance with sub-paragraphs (6) and (7).

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- (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 duties to undertake reviews imposed by this paragraph are in addition to and not in substitution for the duties imposed by section 105.

Resumption of mineral working after suspension order

- 10 (1) Subject to sub-paragraph (2), nothing in a suspension order or a supplementary suspension order shall prevent the recommencement of development consisting of the winning and working of minerals [^{F10}or involving the depositing of mineral waste at the site] in relation to which the order has effect.
- (2) No person shall recommence such development without first giving the mineral planning authority notice of his intention to do so.
- (3) A notice under sub-paragraph (2) shall specify the date on which the person giving the notice intends to recommence [^{F11}the development].
- ^{F12}[(4) The mineral planning authority shall revoke the order if the winning and working of minerals or the depositing of mineral waste has recommenced to a substantial extent at the site in relation to which the order has effect.]
- (5) 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 sub-paragraph (2), the person who gave that notice may apply to the Secretary of State for the revocation of the order.
- (6) Notice of an application under sub-paragraph (5) shall be given by the applicant to the mineral planning authority.
- (7) If he is required to do so by the person who gave the notice or by the mineral planning authority, the Secretary of State shall, before deciding whether to revoke the order, give him and the mineral planning authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- ^{F13}[(8) If the Secretary of State is satisfied that the winning and working of minerals or the depositing of mineral waste has recommenced to a substantial extent at the site in relation to which the order has effect, he shall revoke the order.]
- (9) If the Secretary of State revokes an order by virtue of sub-paragraph (8), he shall give notice of its revocation—
 - (a) to the person who applied to him for the revocation, and
 - (b) to the mineral planning authority.

Textual Amendments

F10 Words in Sch. 9 para. 10(1) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 15\(10\)](#) (with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to art. 4)

F11 Words in Sch. 9 para. 10(3) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 15](#) (11) (with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to art. 4)

F12 Sch. 9 para. 10(4) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 15\(12\)](#)(with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to art. 4)

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F13 Sch. 9 para. 10(8) substituted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 15\(13\)](#)(with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to [art. 4](#))

Default powers of Secretary of State

- 11 (1) If it appears to the Secretary of State to be expedient that any order under paragraph 1, 3, 5 or 6 should be made, he may himself make such an order.
- (2) Such an order which is made by the Secretary of State shall have the same effect as if it had been made by the mineral planning authority and confirmed by the Secretary of State.
- (3) The Secretary of State shall not make such an order without consulting the mineral planning authority.
- (4) Where the Secretary of State proposes to make an order under paragraph 1 he shall serve a notice of the proposal on the mineral planning authority.
- (5) The notice shall specify the period (which must not be less than 28 days from the date of its service) within which the authority may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (6) If within that period the authority so require, before the Secretary of State makes the order he shall give the authority such an opportunity.
- (7) The provisions of this Schedule and of any regulations made under this Act with respect to the procedure to be followed in connection with the submission by the mineral planning authority of any order to which sub-paragraph (1) applies, its confirmation by the Secretary of State and the service of copies of it as confirmed shall have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State to make such an order, its making by him and the service of copies of it.

Modifications etc. (not altering text)

C9 Sch. 9 para. 11 : power to apply conferred (10.11.1993) by [1993 c. 28, s. 171\(4\)\(a\)](#); S.I. 1993/2762, [art. 3](#)

^{F14} Interpretation

Textual Amendments

F14 Sch. 9 para. 12 and cross heading inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 15\(14\)](#) (with s. 84(5)); S.I. 1991/2067, [art.3](#) (subject to [art. 4](#))

- ^{F15} 12 In this Schedule any reference to a mineral planning authority shall be construed, in relation to the exercise of functions with respect to the depositing of refuse or waste materials (other than mineral waste), as a reference to the authority entitled to discharge such functions.]

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Textual Amendments

F15 Sch. 9 para. 12 and cross heading inserted (25.9.1991) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 21, [Sch. 1 para. 15\(14\)](#) (with s. 84(5)); S.I. 1991/2067, [art. 3](#) (subject to [art. 4](#))

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