

*Status: Point in time view as at 24/01/1992.*

*Changes to legislation: There are currently no known outstanding effects for the Planning and Compensation Act 1991, SCHEDULE 9. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 9

Section 52.

#### REGISTRATION OF OLD MINING PERMISSIONS

##### Commencement Information

**II** Sch. 9 wholly in force at 24.1.1992 see s. 84(2) and S.I. 1992/71, art. 2

The following Schedule shall be inserted as Schedule 10A to the 1972 Act—

#### “ REGISTRATION OF OLD MINING PERMISSIONS

##### *Application for registration*

- 1 (1) Any person who is an owner of any land to which an old mining permission relates, or is entitled to an interest in a mineral to which such a permission relates, may apply to the planning authority for the permission to be registered.
- (2) The application must specify the development which the applicant claims is authorised by the permission, including the land to which the permission relates, and the conditions (if any) to which the permission is subject.
- (3) The application must be served on the planning authority before the end of the period of six months beginning with the day on which this Schedule comes into force.
- (4) On an application under this paragraph, the planning authority must—
  - (a) if they are satisfied that (apart from section 49H(3) of this Act) the permission authorises development consisting of the winning and working of minerals or involving the depositing of mineral waste, ascertain—
    - (i) the area of land to which the permission relates, and
    - (ii) the conditions (if any) to which the permission is subject,and grant the application; and
  - (b) in any other case, refuse the application.
- (5) Where—
  - (a) application has been made under this paragraph, but
  - (b) the planning authority have not given the applicant notice of their determination within the period of three months beginning with the service of notice of the application (or within such extended period as may at any time be agreed upon in writing between the applicant and the authority),the application is to be treated for the purposes of section 49H of this Act and this Schedule as having been refused by the authority.

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### *Determination of conditions*

- 2 (1) The conditions to which an old mining permission is to be subject—
- (a) may include any conditions which may be imposed on a grant of planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste,
  - (b) may be imposed in addition to, or in substitution for, any conditions ascertained under paragraph 1(4)(a) above, and
  - (c) must include a condition that the winning and working of minerals or depositing of mineral waste must cease not later than 21st February 2042.
- (2) Where an application for the registration of an old mining permission has been granted, any person who is an owner of any land to which the permission relates, or is entitled to an interest in a mineral to which the permission relates, may apply to the planning authority to determine the conditions to which the permission is to be subject.
- (3) The application must set out proposed conditions.
- (4) The application must be served on the planning authority—
- (a) after the date mentioned in sub-paragraph (5) below, and
  - (b) except where section 49H(3) of this Act applies, before the end of the period of twelve months beginning with that date or such extended period as may at any time be agreed upon in writing between the applicant and the authority.
- (5) The date referred to in sub-paragraph (4) above is—
- (a) the date on which the application for registration is granted by the planning authority, if no appeal is made to the Secretary of State under paragraph 5 below, and
  - (b) in any other case, the date on which the application for registration is finally determined.
- (6) On an application under this paragraph—
- (a) the planning authority must determine the conditions to which the permission is to be subject, and
  - (b) if, within the period of three months beginning with the service of notice of the application (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 the applicant notice of their determination, the authority shall be treated for the purposes of section 49H of this Act and this Schedule as having determined that the permission is to be subject to the conditions set out in the application.
- (7) The condition to which an old mining permission is to be subject by reason of sub-paragraph (1)(c) above is not to be regarded for the purposes of the planning Acts as a condition such as is mentioned in section 27(1)(b) of this Act (planning permission granted for a limited period).
- (8) This paragraph does not apply to an old mining permission which has ceased to have effect since the application under paragraph 1 above was granted.

### *Registration*

- 3 (1) Where an application for the registration of an old mining permission is granted, the permission must be entered in the appropriate part of the register kept under section 31

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of this Act and the entry must specify the area of land ascertained under paragraph 1(4)(a) above.

- (2) Where an application to determine the conditions to which an old mining permission is to be subject is finally determined, the conditions must be entered in the appropriate part of that register.
- (3) The matters required to be entered in the register under this paragraph must be entered as soon as reasonably practicable.

#### *General provisions about applications*

- 4 (1) An application under paragraph 1 or 2 above is an application which is—
  - (a) made on an official form, and
  - (b) accompanied by an appropriate certificate.
- (2) The applicant must, so far as reasonably practicable, give the information required by the form.
- (3) Where the planning authority receive an application under paragraph 1 or 2 above, they must as soon as reasonably practicable give to the applicant a written acknowledgement of the application.
- (4) Where the planning authority determine an application under either of those paragraphs, they must as soon as reasonably practicable give written notice of their determination to the applicant.
- (5) An appropriate certificate is such a certificate—
  - (a) as would be required under sections 23 or 24 of this Act to accompany the application if it were an application for planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste; but
  - (b) with such modifications as are required for the purposes of this Schedule.
- (6) Sections 23(3) and 24(6) of this Act (offences) shall also have effect in relation to any certificate purporting to be an appropriate certificate.

#### *Right of appeal*

- 5 (1) Where the planning authority—
  - (a) refuse an application under paragraph 1 above, or
  - (b) in granting such an application, ascertain an area of land, or conditions, which differ from those specified in the application,the applicant may appeal to the Secretary of State.
- (2) Where on an application under paragraph 2 above, the planning authority determine conditions that differ in any respect from the conditions set out in the application, the applicant may appeal to the Secretary of State.
- (3) An appeal under this paragraph must be made by giving notice of appeal to the Secretary of State.
- (4) In the case of an appeal under sub-paragraph (1) above, the notice must be given to the Secretary of State before the end of the period of three months beginning with the determination or, in the case of an application treated as refused by virtue of

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paragraph 1(5) above, beginning at the end of the period or extended period referred to in paragraph 1(5)(b).

- (5) In the case of an appeal under sub-paragraph (2) above, the notice must be given to the Secretary of State before the end of the period of six months beginning with the determination.
- (6) A notice of appeal under this paragraph is a notice which—
  - (a) is made on an official form, and
  - (b) is accompanied by an appropriate certificate.
- (7) The appellant must, so far as reasonably practicable, give the information required by the form.
- (8) Paragraph 4(5) and (6) above shall apply for the purposes of sub-paragraph (7) above as it applies for the purposes of paragraph 4(1) above.

#### *Determination of appeal*

- 6 (1) On an appeal under paragraph 5 above the Secretary of State may—
  - (a) allow or dismiss the appeal, or
  - (b) reverse or vary any part of the decision of the planning authority (whether the appeal relates to that part of it or not),
 and may deal with the application as if it had been made to him in the first instance.
- (2) Before determining such an appeal the Secretary of State must, if either the appellant 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.
- (3) If at any time before or during the determination of such an appeal it appears to the Secretary of State that the appellant is responsible for undue delay in the progress of the appeal, he may—
  - (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal, and
  - (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.
- (4) The decision of the Secretary of State on such an appeal shall be final.

#### *Reference of applications to Secretary of State*

- 7 (1) The Secretary of State may give directions requiring applications under this Schedule to any planning authority to be referred to him for determination instead of being dealt with by the authority.
- (2) The 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 him under this paragraph—
  - (a) subject to paragraph (b) and sub-paragraph (4) below, the following provisions of this Schedule—
    - (i) paragraph 1(1) to (4),
    - (ii) paragraph 2(1) to (6)(a), (7) and (8),

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- (iii) paragraphs 3 and 4, and
  - (iv) paragraphs 8 to 10,
- shall apply, with any necessary modifications, as they apply to applications which fall to be determined 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.
- (4) Where an application under paragraph 1 above is so referred to him, paragraph 2(5) above shall apply as if for paragraphs (a) and (b) there were substituted “the date on which the application for registration is finally determined”.

*Two or more applicants*

- 8 (1) Where a person has served an application under paragraph 1 or 2 above in respect of an old mining permission—
- (a) he may not serve any further application under the paragraph in question in respect of the same permission, and
  - (b) if the application has been determined, whether or not it has been finally determined, no other person may serve an application under the paragraph in question in respect of the same permission.
- (2) Where—
- (a) a person has served an application under paragraph 1 or 2 above in respect of an old mining permission, and
  - (b) another person duly serves an application under the paragraph in question in respect of the same permission,
- 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 served on the date on which the later application was served and references to the applicant shall be read as references to either or any of the applicants.

*Application of provisions relating to planning permission*

- 9 (1) Subject to paragraph 3 above, section 31 of this Act (registers of applications, etc.), and any provision of regulations under this Act or a development order made by virtue of that section, shall have effect with any necessary modifications as if references to applications for planning permission included applications under paragraph 1 or 2 above.
- (2) Where the planning authority is not the authority required to keep the register under that section, the planning authority must provide the authority required to keep the register with such information and documents as that authority requires to comply with paragraph 3 above and with that section as applied by this paragraph.
- (3) Sections 231 and 233 of this 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 on an appeal under paragraph 5 above or on an application referred to him under paragraph 7 above.

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### *Interpretation*

10 (1) In this Schedule—

“official form” means, in relation to an application or appeal, a document supplied by or on behalf of the Secretary of State for use for the purpose in question, and

“owner” in relation to any land means any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and includes any person entitled to possession of the land as lessee under a lease the unexpired portion of which is not less than seven years.

(2) For the purposes of section 49H of this Act and this Schedule, an application under paragraph 1 or 2 above is finally determined when the following conditions are met—

- (a) the proceedings on the application, including any proceedings on or in consequence of an application under section 233 of this Act, have been determined, and
- (b) any time for appealing under paragraph 5 above, or applying or further applying under that section, (where there is a right to do so) has expired.”.

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