



## Impact Assessment of regulations to progress stalled reviews of mineral planning permissions





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Department for Communities and Local Government  
Eland House  
Bressenden Place  
London  
SW1E 5DU  
Telephone: 020 7944 4400  
Website: [www.communities.gov.uk](http://www.communities.gov.uk)

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PO Box 236  
Wetherby  
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Tel: 08701 226 236  
Fax: 08701 226 237  
Textphone: 08701 207 405  
Email: [communities@capita.co.uk](mailto:communities@capita.co.uk)  
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## Summary: Intervention & Options

Department/Agency:

**DCLG**

Title:

**Impact Assessment of regulations to progress stalled reviews of mineral planning permissions**

**Stage:** Final proposal

**Version:** 7

**Date:** 2 April 2008

**Related Publications:** The Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendment) (England) Regulations 2008; explanatory memorandum; accompanying guidance

**Available to view or download at:**

<http://www.communities.gov.uk/planningandbuilding/>

**Contact for enquiries:** Kevin Embrey

**Telephone:** 020 7944 3876

**What is the problem under consideration? Why is government intervention necessary?**

The requirements of the Environmental Impact Assessment (EIA) Directive were applied by regulations to applications for the review of mineral planning permissions received after 15 November 2000. A few applications for initial review of old mineral permissions pre-dating 15 November 2000 are stalled because information to comply with the Directive has not been provided voluntarily. The Directive is legally binding on the UK Government and failure to fully transpose it to the stalled reviews will lead ultimately to European Court of Justice action and fines (see Annex 4 on details of fines on other Member States).

**What are the policy objectives and the intended effects?**

To provide a 'level playing field' for the minerals industry through the application of EIA to all relevant mineral permission reviews. The threat or triggering of sanctions for failure to provide, within reasonable timescales, environmental statements (ESs) or further information will ensure that the necessary information is provided and reviews are completed, enabling mineral working to be carried out in accordance with modern operating conditions, with consequential benefit to the environment and local communities.

**What policy options have been considered? Please justify any preferred option.**

(1) Do nothing (and ultimately incur fines from the ECJ) if information continues not to be provided voluntarily. (2) Bring forward the first periodic review for sites where reviews are stalled (inadvertently 'rewarding' operators) – see paragraphs 13/14/15 of evidence base. (3) Apply to stalled reviews the 2000 Regulations, leaving potential environmental problems at suspended sites where information continues not to be provided-see paragraphs 16/17. (4) Proceed as in option (3) with additional sanctions to prevent potential problems-see paragraph 18.

Option (4) is preferred as it will avoid ECJ fines and avoid the requirement for compensation to be provided to operators for conditions adversely affecting working rights.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** Costs and benefits of the regulations should be reviewed in three years time.

Mineral planning authorities (mpas) will be asked periodically about the completion of the stalled initial reviews.

**Ministerial Sign-off** For  Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

**Signed by the responsible Minister:**

..... Date:

## Summary: Analysis & Evidence

**Policy Option:**  
amended 4

**Description:** Apply EIA and suspension sanction to stalled mineral reviews. Provide additional sanction and procedural amendments for all EIA reviews

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£1m to £3m		
	Average Annual Cost (excluding one-off)		
£0		<b>Total Cost (PV)</b>	£1m to £3m
<p><b>Other key non-monetised costs by 'main affected groups'.</b> Mineral Operators: Lost production/restoration costs due to suspension or permanent cessation of operations (very rare, vary by site). Mpas: enforcing rare cases of suspension and rarely making orders. Government: very rarely, confirming and funding orders.</p>			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
£		<b>Total Benefit (PV)</b>	£
<p><b>Other key non-monetised benefits by 'main affected groups'.</b> Public: environmental benefit from prompt and effective updating of operating conditions, and prevention of potentially indefinite suspension. Social benefits from certainty of completion of stalled reviews and restoration of sites where prohibition orders are confirmed. Mineral operators: raised public perception.  <b>Taxpayer: saving of restoration costs of sites subjected to prohibition orders.</b></p>			

**Key Assumptions/Sensitivities/Risks.** Suspension and additional sanctions for non-provision of information will have similar deterrent effect as has been the case since suspension was introduced in 2000 for non-provision of ESs. Envisage suspension very rare and prohibition orders even rarer.

Price Base	Time Period	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
Year	Years 2008	£ -1m to -3m	£ See Range

What is the geographic coverage of the policy/option?	England			
On what date will the policy be implemented?	July 2008			
Which organisation(s) will enforce the policy?	Mpas/Government			
What is the total annual cost of enforcement for these organisations?	£ see assumptions			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase – Decrease)	
Increase of	£ 0	Decrease of	£ 0
		<b>Net Impact</b>	<b>£ 0</b>

Key: **Annual costs and benefits: Constant Prices**

**(Net) Present Value**

## Summary: Analysis & Evidence

**Policy Option:** 3

**Description:** Apply EIA and suspension sanction to stalled mineral reviews

<b>COSTS</b>	<b>ANNUAL COSTS</b>		<b>Description and scale of key monetised costs by 'main affected groups'</b> Mineral Operators One-Off Cost of producing Environmental Statements for Environmental Impact Assessments. Calculation based on consultation responses. See Annex 1 for assumptions.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£1m to £3m		
	<b>Average Annual Cost</b> (excluding one-off)		
	£		<b>Total Cost (PV)</b> £1m to £3m
<b>Other key non-monetised costs by 'main affected groups'.</b> Mineral Operators: Lost production/site management costs due to suspension of operations (vary by site). Mpas: enforcing rare cases of suspension.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		<b>Description and scale of key monetised benefits by 'main affected groups'.</b> Taxpayers: saving of litigation costs nationally and ultimately potentially substantial fines from ECJ for non-transposition of Directive. This cannot be quantified but Annex 4 shows indicative fines of other Member States.
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£		<b>Total Benefit (PV)</b> £
<b>Other key non-monetised benefits by 'main affected groups'.</b> Public: environmental benefit from prompt and effective updating of operating conditions. Social benefits from certainty of completion of stalled reviews. Mineral operators: raised public perception.			

**Key Assumptions/Sensitivities/Risks.** Suspension for non-provision of information will have similar deterrent effect as has been the case since sanction was introduced in 2000 for non-provision of ESs. Envisage suspension very rare.

Price Base Year	Time Period Years 2008	<b>Net Benefit Range (NPV)</b> £ -1m to -3m	<b>NET BENEFIT (NPV Best estimate)</b> £ See Range
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What is the geographic coverage of the policy/option?		England		
On what date will the policy be implemented?		July 2008		
Which organisation(s) will enforce the policy?		Mpas/Government		
What is the total annual cost of enforcement for these organisations?		£ see assumptions		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	<b>Micro</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase – Decrease)		
Increase of	<b>£ 0</b>	Decrease of	<b>£ 0</b>	<b>Net Impact</b> <b>£ 0</b>

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**



## Summary: Analysis & Evidence

**Policy Option: 2**

**Description:** Bring forward first periodic review at sites where initial review is stalled and apply existing EIA regulations

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£1m to £3m		
	Average Annual Cost (excluding one-off)		Total Cost (PV) £1m to £3m
£			
<p><b>Other key non-monetised costs by 'main affected groups'.</b> As option 3 plus costs to mpas of compensating operators for conditions adversely affecting working rights. Costs to taxpayers of making order(s) bringing forward the reviews, potential litigation costs and ultimately potentially substantial fines from the ECJ for delay in transposition of Directive (see Annex 4-indicative fines of other Member States).</p>			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		Total Benefit (PV) £
£			
<p><b>Other key non-monetised benefits by 'main affected groups'.</b> Mineral operators: compensation for conditions which adversely restrict working rights (vary by site). Public: environmental benefit from updating of operating conditions albeit more slowly than in options 3 or amended 4. Social benefits from certainty of completion of reviews albeit delayed compared to options 3 or amended 4. Mineral operators: raised public perception</p>			

**Key Assumptions/Sensitivities/Risks.** As in option 3

Price Base Year	Time Period Years	Net Benefit Range (NPV)	NET BENEFIT (NPV Best estimate)
	2008	£ -1m to -3m	£ See Range

What is the geographic coverage of the policy/option?	England			
On what date will the policy be implemented?	Orders made 2009			
Which organisation(s) will enforce the policy?	Mpas/Government			
What is the total annual cost of enforcement for these organisations?	£ see assumptions			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	Yes			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

**Impact on Admin Burdens Baseline** (2005 Prices) (Increase – Decrease)  
 Increase of £ 0      Decrease of £ 0      **Net Impact** £ 0

Key: **Annual costs and benefits: Constant Prices**      **(Net) Present Value**

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### Objectives of proposed regulations

1. The application of (1) environmental impact assessment (EIA) to stalled initial reviews of old mineral permissions, including providing sanctions for continuing non-provision of environmental information; and (2) additional sanctions, to all EIA reviews of mineral permissions to facilitate the reviews and ensure the achievement of the objectives of the EIA Directive.

### Background

2. Many mineral sites are operating under (Interim Development Order) consents or permissions granted many years ago which contained few, if any, conditions to mitigate the impact of mineral extraction. The consents and permissions can last for many decades (until 2042). Unusually, and uniquely within the planning system, legislation was introduced in the Planning and Compensation Act 1991 (the 1991 Act) and Environment Act 1995 (the 1995 Act) to review and update to modern environmental standards, respectively, these old consents and permissions. The review legislation provides for an initial review of these old consents and permissions (pre-dating 21 February 1982), and also the periodic (15 year) review of all mineral permissions, irrespective of when they were granted.
3. The environmental impact assessment Directive requires that, before granting 'development consent' for projects, including development proposals, authorities should carry out a procedure known as environmental impact assessment (EIA) of any project which is likely to have significant effects on the environment. The aim of the Directive is to ensure that the authority giving consent for a project makes its decision in the knowledge of any likely significant effects on the environment. Development consent cannot be granted until all information on the likely environmental effects in the form of an ES has been provided.
4. Following the introduction in 1991 and 1995 of the review legislation, court judgments established that reviews of Interim Development Order and old mineral permissions constituted "development consent" as defined in the EIA Directive. The effect of these judgements was that the Directive had not, therefore, been fully transposed. As a result, the Town and Country Planning (Environmental Impact Assessment)(England and Wales)(Amendment)

Regulations 2000 (the EIA Regulations 2000)<sup>1</sup> were introduced applying the EIA Directive to these reviews, with the sanction of automatic suspension of planning permission for mineral operations where an operator fails to provide an ES on the request of the mineral planning authority (mpa). The EIA Regulations 2000 amended the principal Regulations made in 1999 (the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999<sup>2</sup>) which apply EIA to development proposals under the Town and Country Planning Act 1990.

5. Guidance issued by the former Department for Environment, Transport and the Regions when the regulations were implemented advised that the EIA Regulations 2000 applied only to applications for new operating conditions made after their coming into force on 15 November 2000. It emphasised that suspension of development would be minimised if mpas and operators are co-operative and constructive in their approach to determining and meeting reasonable deadlines. The Secretary of State subsequently became aware that in 2006 there were 41 initial review applications in England which were “stalled” for a variety of reasons, including some where operators are refusing to provide ESs or further information when requested to do so by mpas. There is currently no sanction to encourage operators to provide the information and, at active (i.e. working sites) operations can continue under the terms of the old permissions with little or no mitigation of the environmental impacts.
6. The Secretary of State has taken action to address these cases by offering a final opportunity to operators to provide the outstanding information voluntarily but also warning that, without voluntary co-operation, regulations would be prepared which would statutorily require provision of the necessary environmental information, with a sanction of automatic suspension of operations in the event of non-compliance.

## Rationale for government intervention

7. The Secretary of State is firmly of the view that it is unreasonable for reviews of conditions to be delayed, in some cases for a considerable number of years simply because information has not been provided by the applicant. Several approaches have been made to operators of sites where reviews are ‘stalled’ encouraging the provision of outstanding environmental information. Some of the initial reviews which are currently still outstanding are stalled because environmental information has not been provided. Delays to reviews at active mineral sites mean that mineral operations are continuing under old permissions with few, if any, conditions to mitigate the environmental impacts of mineral working, contrary to the objectives of the review legislation introduced in the 1990s and subsequent clarification that the EIA Directive should be applied to these reviews. This has an unacceptable impact on local environments and communities and is unfair to mineral operators at other sites who have produced the requested environmental information voluntarily. It is understood

<sup>1</sup> <http://www.legislation.hmso.gov.uk/si/si20002867.htm>

<sup>2</sup> <http://www.legislation.hmso.gov.uk/si/si1999293.htm>

that Welsh Ministers are to make separate but similar regulations to apply in Wales as are now proposed in England.

8. Failure to fully transpose EC Directives is likely to lead ultimately to proceedings in the European Court of Justice (ECJ) and may lead to a risk of challenges to the non application of the EIA Directive within the UK courts.

## Policy Options from Consultation

9. Four options for enabling the stalled reviews to be concluded have been considered. These are described in paragraphs 10 to 19 below. The costs and benefits of each option were included in a partial regulatory impact assessment which accompanied consultation (see paragraph 20 below) on the Secretary of State's preferred option (4). These four options also form the basis of the consideration of costs and benefits in paragraphs 27 to 59 of this Impact Assessment.

### ***Option 1: 'Do nothing'/ voluntary provision of the environmental information***

10. Continued non-application of the EIA Directive in respect of the small number of stalled initial reviews may result in further infraction proceedings by the European Commission and ultimately the ECJ imposing substantial daily fines on the UK Government. These fines could amount to several million pounds. Additionally, continued non-transposition may provoke challenges in the UK courts.
11. The Secretary of State has written to operators and owners of sites where initial reviews are stalled encouraging them for a final time to provide the required environmental information voluntarily. In addition, the British Aggregates Association and the Quarry Products Association sought to encourage their members with outstanding initial reviews which are stalled for want of environmental information to provide this information as soon as possible voluntarily. This encouragement has resulted in progress with some of the reviews.
12. The amended 1999 EIA Regulations provide no sanction for failure to provide sufficient information to enable mpas to determine whether EIA is required. They do, however, provide for indefinite suspension of operations if the required environmental statement or further information is not provided. This potential indefinite inactivity could result in a lack of certainty for local communities about future working and sites remaining unrestored, with potentially damaging environmental consequences.

***Option 2: Regulations to bring forward periodic reviews of conditions where initial reviews are 'stalled'***

13. It had initially been the intention to deal with reviews which are "stalled" for want of the provision of the necessary environmental information by use of Schedule 14 to the 1995 Act, as amended by the Planning and Compulsory Purchase Act 2004, to bring forward the date of the first periodic (15 year) review of conditions at the relevant sites. This would mean that the permission which was the subject of a stalled initial review would be updated instead by a brought-forward periodic review. As the application for any brought-forward review would post-date the implementation of the 2000 EIA Regulations, those regulations would apply, with the sanction of suspension where the necessary information was not provided within a specified period. However, there appeared to be several potential problems with this approach.
14. First, the Secretary of State would need to make regulations bringing forward any periodic reviews. Given the time needed to draft, consult on and bring into effect the necessary regulations to bring forward the periodic reviews and the statutory 12 month period of notification to a mineral operator of a periodic review, it could be two to three years more before new operating conditions for these 'stalled' applications were finally determined by mpas. Secondly, and most importantly, the 2004 Act route to resolution of the 'stalled' cases could, because of the compensation provisions for periodic reviews in the 1995 Act, inadvertently reward operators of the sites where reviews were "stalled" because of non-provision or incomplete provision of environmental information. Operators of these sites, unlike the majority of operators with initial reviews outstanding in November 2000, have not voluntarily complied with requests from the mpas for environmental information. The Government considers it to be unreasonable both that they have not provided the information voluntarily and also that regulations under these powers would potentially provide a financial "reward" (because of the compensation provisions applying to periodic reviews in Schedule 14 to the 1995 Act) for not doing so.
15. In addition, this option would not provide an opportunity to resolve the problem with the amended 1999 EIA Regulations in respect of the lack of a sanction to require the provision of information to enable mpas to determine whether EIA is required when review applications are submitted. Nor would it provide for the possible sanctions of suspension and prohibition orders (where information continues not to be provided) to deal with any environmental problems caused by potentially indefinite suspension.

***Option 3: Regulations to apply the EIA Directive specifically to initial conditions reviews which are 'stalled' because the relevant environmental information has not been provided voluntarily***

16. The proposed regulations would put beyond doubt that the EIA Regulations 1999, as amended, apply to all reviews of mineral operating conditions irrespective of the date of application. They would fully transpose the EIA Directive, provide for a more efficient, effective and straightforward control system and are intended to be Human Rights Act-compliant. This approach would be similar to that achieved in Scotland. The Environmental Impact

Assessment (Scotland) Amendment Regulations 2002 (SSI No. 324)<sup>3</sup> contain a transitional provision applying the Regulations, including the sanction of automatic suspension of operations for non-compliance with requests for ESs, to applications made and not determined before the coming into force of the Regulations (i.e. 23 September 2002).

17. This option though would not provide a sanction for failure to provide sufficient information to enable mpas to determine whether EIA is required. In addition, it would leave in place potentially indefinite suspension of operations if the required information for environmental statements is not provided. This potentially indefinite inactivity could result in a lack of certainty for local communities about future working, and may result in environmental damage and sites remaining unrestored, with potentially damaging environmental consequences.

***Option 4: Regulations to apply the EIA Directive specifically to initial conditions reviews which are 'stalled' because the relevant environmental information has not been provided voluntarily and to provide sanctions to make environmental impact assessment more effective and avoid potential environmental problems***

18. Under this option, regulations are proposed as in option 3, but to include additional provisions relating to sanctions in the event of non-compliance with requests for information. The additional sanctions are:
  - automatic suspension to apply to all mineral permission reviews if insufficient information (called screening information) was provided to enable an mpa to determine if remaining mineral operations are "EIA development" (as defined by the EIA Regulations 1999) and thus whether an ES is or is not required;
  - a requirement that at the end of 12 months automatic suspension for non-provision of screening or environmental information, mpas must consider in every case whether there is a need to make a suspension order to enable any environmental damage during the period of suspension to be remedied; and
  - a requirement at the end of a period of two years automatic suspension for non-provision of screening or environmental information, for mpas to make prohibition orders that would prohibit the resumption of mineral operations, subject to certain procedural safeguards.
19. These additional sanctions would apply to all EIA reviews, to prevent reviews becoming and staying stalled for want of the necessary environmental and other information. The last two were proposed in recognition of the fact that automatic suspension alone could potentially apply indefinitely. Suspension of mineral workings without appropriate restoration may cause environmental damage with few means of ensuring remediation, except at taxpayers' expense. The additional sanctions would provide effective remedies for the potential environmental problems caused by the potentially indefinite suspension of

<sup>3</sup> <http://www.England-legislation.hmso.gov.uk/legislation/scotland/s-200203.htm>

operations and to ensure restoration of sites where the necessary screening or environmental information continues to be withheld.

## Consultation

20. Proposed regulations as in option 4 above to apply EIA to the stalled initial reviews of mineral permissions, the sanction of suspension of operations for non-provision of the necessary information, and additional sanctions to all EIA reviews, were the subject of a public consultation exercise, in England from 18 December 2006 to 12 March 2007. The consultation paper was sent to around 300 organisations. There were 52 respondents; 4 of whom made no comment on the proposals. Responses came from 20 individual mpas and one local authority association. 10 mineral operators or their agents, and 5 industry trade associations representing a high proportion of the industry's operators also responded. Thirdly, there were responses from 16 environmental and professional organisations, Government departments and non departmental public bodies. A detailed summary of the consultation responses is at:

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/environmentalsummaryconsultation>

## Changes as a result of the consultation comments

21. As a result of the consultation comments, the Government has decided to make regulations as proposed in option 4, but with some changes, one addition and one exception. The changes are to:
- Apply the sanction of automatic suspension of operations to all mineral permission reviews, including those which are stalled, for non-provision of sufficient information not just to enable screening to be carried out (to determine whether EIA is needed) but, for completeness, also to enable scoping to be carried out (to determine the information to be included in an ES); and
  - Impose a duty on mineral planning authorities (mpas) to make prohibition orders for all EIA mineral permission reviews to cease permission(s) where sites remain in automatic suspension for two years for want of the necessary screening or scoping or environmental information or confirmation of its provision; and to amend the criteria for making such orders to enable them, if necessary in relation to sites in multiple operation, to focus cessation of permissions only on development by those operators who have failed to provide the necessary information.
  - The additional provision resulting from the consultation comments is a time-limited information procedure to be applied to each of the stalled reviews to ensure that all parties are clear as to what information needs to be provided in a new ES, the timescale for its provision and the sanctions for its

continuing non-provision beyond that period. This replaces the consultation proposal of a period of three months (or such longer period agreed with the mpa) following commencement of the regulations before the automatic suspension sanction would be triggered if information continued not to be provided.

22. In addition, guidance to accompany the proposed regulations will advise on focussed enforcement of the automatic suspension sanction to address the situation on sites in multiple operation where one (or more) operator(s) have provided the necessary information and one (or more) operator(s) have not.
23. As a result of the consultation comments, the proposed duty on mpas to consider making suspension orders (to remedy environmental damage arising from the suspension of mineral operations) after 12 months of automatic suspension of operations for non-provision of the necessary information will not be progressed. This is because suspension orders can only be made if an mpa believes that working will resume (in the context of these regulations, that the information will be provided). Such an order could therefore inadvertently penalise an operator just about to provide the information. However, guidance to accompany the proposed regulations will encourage mpas to consider using their powers to make suspension orders following automatic suspension for the non-provision of information where there would be an environmental benefit.
24. Taken together, the Government believes that the package of provisions to be included in the proposed regulations and described in paragraph 18, and the changes and additions described in paragraphs 21 and 22, appropriately transpose the EIA Directive to the stalled initial reviews of mineral permissions and provide effective sanctions to secure the proper progress of reviews of mineral permissions which are subject to EIA. It also believes that the provisions represent a fair and reasonable balance of interests between mineral operators and the general public.
25. The costs and benefits of the provisions to be included in the proposed regulations (called amended option 4 below) and of options 1 to 3 (as described in paragraphs 10 to 17) are set out below. They include the costs of the production of ESs and administration costs of mpas in making prohibition orders estimated by those responding to the consultation proposals (the latter have also been quoted in the summary analysis sheet for amended option 4).

## Costs and benefits of each policy option

### ***Sectors and groups affected***

26. The following organisations and individuals will be affected:

- Certain mineral operators and owners
- Certain MPAs
- The Government
- Local interest groups and the general public
- Environmental and amenity organisations



## Assessment of Costs and Benefits of Options

### ***Assessment of the costs and benefits of option 1***

#### **Economic benefits**

27. The only benefit would be to the operators of the 'stalled' sites who would not have to pay for the preparation and publication of new ESs or further information.

#### **Economic costs**

28. There would be significant (but at this stage, unquantifiable) costs to the Government arising from the failure to comply with any ECJ ruling following successful infraction proceedings against the UK and through possible litigation nationally.

#### **Environmental benefits**

29. None have been identified.

#### **Environmental costs**

30. Mineral sites without modern working conditions because of the absence of EIA can potentially have an adverse impact on the environment and on local communities as operations can continue under the terms of the old permissions with little or no mitigation of the environmental impacts.

#### **Social benefits**

31. This option would prevent possible suspension of operations at stalled review sites if environmental or other information continues not to be provided and hence ensure employment opportunities at working sites.

#### **Social costs**

32. This option would maintain the status quo and result in continuation of environmental impacts of the works at these sites on local communities without conditions reflecting up to date environmental standards.

### ***Assessment of the costs and benefits of option 2***

#### **Economic benefits**

33. The main benefit will be to the operators of the sites where conditions reviews are 'stalled' who would be able to claim compensation under Schedule 14 to the 1995 Act on the brought forward first periodic review where the mpa determines different conditions from those submitted by the applicant and the effect of the determined conditions (other than restoration and aftercare conditions) is to restrict working rights. Working rights are likely to be restricted because there would not have been an initial review and the new conditions determined in the brought forward review would differ significantly from those (if any) attached to the original permission.

### **Economic costs**

34. There will be one off costs of the operators providing the information. This has been estimated at between £1 million and £3 million. This calculation was based on information provided at consultation and a review of the 41 stalled applications and 5 stalled appeals in England. See Annex 1 for details of the assumptions underlying the calculation.
35. Conversely there will be an economic cost on mpas if they have to pay compensation to operators because, as seems likely, they determine conditions which have an adverse impact on the working of the 'stalled' sites. The amount of compensation cannot be calculated at this stage as this would be subject to the type and number of conditions determined by the mpas. The operators of the sites where conditions reviews are 'stalled' would be required to produce an ES earlier than the normal 15 years after conditions were finally determined on initial review ie in 2010. However, the costs of providing a statement are in other respects no different to those falling to operators of any mineral site where the mpa has requested an ES.
36. In addition, the costs to operators of the management time involved in preparing conditions for the first periodic review would occur in 2009/10 rather than later. But again, these costs are no different from the costs falling on all mineral operators now that, under Schedule 14 to the 1995 Act, all mineral permissions are being periodically reviewed every 15 years. The costs to the mpas of determining conditions under brought forward first periodic reviews at sites where initial reviews are stalled would fall in 2009/10 rather than the end of the standard 15 year period.
37. Under this option, the European Commission may still progress infraction proceedings for the delay in applying the EIA Directive to the 'stalled' reviews because, following the making of the regulations, operators require a period of notice of at least 12 months before they must apply for the new conditions. Although it is not possible to quantify the scale of these fines Annex 4 discusses indicative fines that have been levied on other Member States.

### **Environmental benefits**

38. Full environmental information will assess the impact of continued mineral working on residents, wildlife and landscape. Conditions determined following the submission of an ES could help to improve local amenity by reflecting up-to-date environmental standards against which the environmental assessment had been made.

### **Environmental costs**

39. The delay in producing new conditions under this option (see paragraph 14 above) would inevitably result in mineral working at active sites continuing under the existing, unmodified, planning conditions with no assessment of environmental impacts for a longer period than under options 3 or amended 4.

**Social benefits**

40. Completion of periodic reviews of the conditions for these sites at which conditions reviews are 'stalled' would alleviate any local resident concerns and uncertainty over the environmental impact caused by these sites. It would enable the sites to operate with new conditions, continuing to generate employment opportunities and producing material for economic use.

**Social costs**

41. No social costs have been identified from this option.

***Assessment of the costs and benefits of option 3*****Economic benefit**

42. Introduction of regulations putting beyond doubt that the EIA Regulations 1999, as amended, applied EIA to all reviews of conditions, irrespective of the date of application, including reviews 'stalled' for want of full environmental information, would avoid any costs to Government arising from possible litigation nationally and potential future infraction proceedings. Measures intended to mitigate the impact of mineral working on the environment are likely to be cheaper and more effective if considered as part of the design stage of each application for new conditions, rather than through more ad hoc considerations. The Secretary of State also believes that EIA is a useful tool in helping to achieve sustainable development, by ensuring that regard is paid to environmental considerations at all stages in the minerals review process.
43. This option will save the potentially large fines that could be levied by the ECJ for the non-transposition of the Directive. See annex 4 for details.

**Economic costs**

44. There will be one off costs of the operators providing the information. This has been estimated at between £1m and £3m. This calculation was based on information provided at consultation and a review of the 41 stalled applications and five stalled appeals in England. See annex 1 for details of the assumptions underlying the calculation.
45. Failure to comply with a requirement to carry out EIA where the remaining development is considered to have significant environmental effects will result in the automatic suspension of the right to win and work minerals or deposit mineral waste until the necessary requirements have been complied with. There would be a cost to both operators and the local economy if the sanction of automatic suspension was imposed on any of the sites. It is difficult to quantify this as each case will depend on the size of operation, the need for the mineral, number of people employed and turnover.

**Environmental benefits**

46. The benefit of complete environmental information will be a more effective consideration of the need to mitigate adverse environmental impacts at the relevant sites where conditions reviews are 'stalled', and as a result deliver

better decisions on the modernising of these permissions. This in turn should provide benefits to minerals operators, mpas and the general public, as well as for the physical environment.

### **Environmental costs**

47. One inevitable disbenefit of the requirement is that formal, mandatory EIA is a process which can take a number of months. During this time, mineral working at active sites can continue under the existing, unmodified, planning conditions. But, overall, the Secretary of State considers that there will be long term environmental benefits from the systematic application of EIA in these cases where the mpa believes the operations still to be carried out under existing planning permissions at mineral sites will have significant environmental impacts.

### **Social benefits**

48. Local residents will benefit from knowing that where reviews are currently stalled for want of full environmental information sites will in future meet the required environmental standards. Individual operators and the mining industry as a whole will benefit from the updating of permissions to meet environmental standards in terms of, respectively, local communities and wider public perception.

### **Social costs**

49. There may be wider social costs to local communities if there are job losses as a result of non-compliance with the regulations and site operations are automatically suspended.

## ***Assessment of the costs and benefits of amended option 4***

50. Amended option 4 would entail some **additional** costs and benefits to those identified in relation to option 3. Note the costs of providing the ESs as described in annex 1 are included in this option. The savings of the potential fines that could be levied in option 4 are also included in this option.

### **Economic benefits**

51. Economic benefits would accrue from the, hopefully, deterrent effect of the sanctions of automatic suspension and cessation of permissions (through the making and confirmation of prohibition orders) which would encourage the provision of the necessary information to enable reviews to be completed, jobs retained and continuity of mineral supply. The proposed sanction of cessation of permission(s), through the making and confirmation of prohibition orders, provides a means to ensure the greater protection of the environment than would otherwise be possible if the sanction of, potentially indefinite, automatic suspension of operations alone was triggered. If any prohibition order is confirmed then the operator would be responsible for restoring the site after two years of automatic suspension. There would be an economic benefit to council taxpayers since the mpa could otherwise be responsible for these costs. There would also be economic benefits in relation to sites in multiple operation from the focussing of enforcement of suspension and any cessation

of permission(s) only on defaulting operators. Benefits would accrue from the continued mineral working by compliant operators.

### **Economic costs**

52. There would be minimal costs to operators of providing additional information to the mpa at 'screening' and 'scoping' stage to determine whether environmental impact assessment of the remaining mineral operations was necessary and, if so, what should be included in the ES. Most operators provide this information willingly and voluntarily at present and so the proposed additional sanction may only need to be used rarely. This proposed sanction simply ensures that the information will be provided in every case; thus 'levelling the playing field' for all mineral operators.
53. An informal survey of mpas in 2006 found that the automatic suspension sanction had not been used in England since its introduction in 2000 (although the threat of it had been successful in bringing forward outstanding environmental information). Although it is envisaged that the proposed sanction of automatic suspension will, in future be used only rarely, and the sanction of cessation of permission(s) even more rarely, there would be costs for operators and the relevant mpa if a prohibition order was confirmed by the Secretary of State following two years automatic suspension for non-provision of necessary information. For operators, there would be administrative costs associated with responses to the order, including the cost of presenting a case at an inquiry if any party wished to contest the order.
54. However, the major costs to operators would be those arising from lost production as a result of automatic suspension and, if the environmental or other information continued not to be provided, prohibition of operations after confirmation of a prohibition order by the Secretary of State. In the event of confirmation of a prohibition order, there could be costs to operators of restoring the site. These costs, which are impossible to estimate since they will vary according to site conditions, would be avoided (in the case of restoration until the planned cessation of working) if the necessary environmental or other information was provided and the proposed sanctions will help to ensure that it is.
55. For mpas, there would be the costs of making and justifying an order, including the possible additional cost of presenting a case at an inquiry into any objections to it. The proposed regulations will impose a duty on mpas to make prohibition orders after two years of automatic suspension for non provision of ESs, further or other information. This is to prevent sites remaining in suspension potentially indefinitely.
56. Mpas would need to pay compensation to operators if a prohibition order is confirmed by the Secretary of State (although the level of compensation is abated according to compensation regulations made in 1997). The Government anticipates that any such orders will be very rare. It is impossible to estimate the amount of compensation which may be payable to operators if such an order was ever confirmed. That would depend upon the circumstances of the particular site and what, if any, work would be necessary which is not classed as

restoration or aftercare which the operator is obliged to fund. With prohibition orders, no compensation is payable for the value of mineral reserves, mineral waste not deposited or void space not filled. Estimates of the administration costs of making prohibition orders from mpas responding to the consultation proposals ranged from £30,000 to around £50,000 per order.

57. The proposed duty for prohibition orders to be made in the very specific and, the Government believes very infrequent, circumstances where mineral sites remain in automatic suspension for two years for want of the necessary information to carry out EIA, constitutes a potential new burden on mpa finances. The Government does not believe that this potential new burden would be felt by all mpas and with any kind of frequency. On the contrary, it thinks that the proposed provision, intended to avoid the potential environmental problems arising from a site remaining in suspension indefinitely, is likely to have a deterrent effect and to be used very rarely and only by a few mpas, if at all. The Government will seek additional resources to meet any quantified additional financial burden on any mpa which might arise because of the making of a prohibition order in the very special circumstances provided for in the proposed regulations.

### **Environmental benefits**

58. The proposed information procedure (see paragraph 22) ensures that there is clarity about, and a time limit for, the provision of a new ES to enable the stalled reviews to be completed. This will provide clarity and certainty and a route to the timely implementation of modern operating conditions in accordance with up to date environmental standards. The proposed sanctions of automatic suspension and, if necessary, cessation of permission(s) to encourage operators to provide additional information at 'screening' and 'scoping' stage has the benefit of ensuring that mineral development which is likely to have a significant environmental effect on the environment is identified and new operating conditions are determined which have been fully informed by an environmental assessment. The proposal for cessation of permission(s) would ensure that suspension did not carry on potentially indefinitely and sites were appropriately and promptly restored.

### **Environmental costs**

59. No additional environmental costs than those applying to option 3 have been identified for amended option 4.

### **Social benefits**

60. Under this option, local communities would benefit from the hopefully deterrent effect of sanctions for non-provision of information which, like applicant substitution, would help ensure that reviews were progressed in a timely fashion and jobs and mineral supply protected as a result. Local communities would also benefit from certainty that environmental problems at suspended sites would be addressed promptly and sites would be restored following the confirmation of any prohibition order.

### **Social costs**

61. Marginal additional social costs to those identified under option 3 will arise if a suspended site which had been expected to resume operations permanently ceases production, and jobs are permanently lost, because of the confirmation of a prohibition order.

## Conclusions

62. Option (4) is preferred as it will avoid the potentially large fines from the ECJ (see annex 4). In addition, it will avoid mpas having to pay compensation for conditions adversely affecting working rights. It should also keep suspension of sites to a minimum.

## Specific Impact Tests

### **Competition Assessment**

63. It is currently competitively unfair that most mineral operators have voluntarily produced environmental information while a minority have refused to provide the information.
64. There are no competition issues arising under amended option 4 because after the proposed regulations come into force EIA will be applied consistently to all minerals conditions reviews, and the operators of the sites where reviews are 'stalled' because of the failure to provide all or some environmental information are being treated no differently than any other firm in the same circumstances. Similarly, the proposed sanctions would, if imposed, apply equally to all mineral operators.

### **Small Firms' Impact Test (SFIT)**

65. Full details of the SFIT are in annex 2 to this Impact Assessment.
66. In England a telephone survey was conducted in 2006 of a sample of four small firms operating at sites where reviews were 'stalled'. Each firm confirmed that there would be a 'significant' financial impact, including in one case the possibility of going 'bankrupt' if an ES was required. While none of the operators could be precise on the cost of providing the information at that stage, they estimated that the cost would range from £10,000 to over £100,000 which reflected the scope of information requested by the mpas.
67. The average cost of producing an ES was estimated by respondents to the consultation proposals in 2007 as between £50,000 and £100,000. Taking the mid-point of £75,000, this figure is estimated to be around six per cent of the average turnover of small firms engaged in mining and quarrying except energy producing materials and the mining of metal ores. **[Source of average turnover figures: data from the Annual Business Inquiry 2006]**

**(provisional): Office of National Statistics]** The proposed regulations will bring the operators of 'stalled' review sites into line with the rest of the sector who have already provided the environmental information to inform initial conditions reviews. Similarly, the sanctions described under amended option 4 would apply equally to all mineral operators who chose not to provide the necessary environmental information. While the costs of producing ESs will be significant for individual small firms with low turnovers, the requirements of the EIA Directive have to be applied consistently.

### ***Legal Aid assessment***

68. We do not believe that the proposals in amended option 4 will have any impact on Legal Aid.

### ***Sustainable Development assessment***

69. We do not believe that the proposals in amended option 4 will have any impact on sustainable development.

### ***Carbon assessment***

70. We do not believe that the proposals in amended option 4 will have any impact on quantities of carbon.

### ***Other Environment assessment***

71. We do not believe that the proposals in amended option 4 will have any other impact on the environment additional to those impacts identified in paragraphs 55 and 56.

### ***Health impact assessment***

72. The provision of an ES under options 2, 3 and amended 4 to inform the mpa's consideration of new conditions would assess the impact of continued mineral working on residents, wildlife and landscape. Its provisions could help to reduce the health impact of future mineral working to a greater degree than if no EIA was carried out.

### ***Race, Disability and Gender Equality assessments***

73. We do not believe that the proposals in amended option 4 will have any impact on race, disability and gender equality.

### ***Human Rights assessment***

74. Full details of the Human Rights assessment are in annex 3 to this Impact Assessment.



75. To the extent that the proposed regulations might engage Article 1 of Protocol 1, the Secretary of State's view is that any control of use of land would be necessary and proportionate to ensure compliance with the EIA Directive and for the protection of the environment. Automatic suspension for non-provision of environmental information, as provided for in the EIA Regulations 2000, has had a deterrent effect in England (see paragraph 51). It is reasonable that it should be in place to encourage, if necessary, the provision of outstanding information to enable the stalled initial reviews to be completed. The Government considers that the proposed further sanction of cessation of permission(s) after two years automatic suspension for non-provision of the necessary environmental or other information is necessary and proportionate to address the environmental problems which could result from the otherwise potentially indefinite suspension.
76. The proposed regulations and accompanying guidance make provision to ensure that innocent operators on sites in multiple operations are not unreasonably prevented from working due to the failure of other operators to provide the necessary information to support EIA.
77. The information procedure (see paragraph 22 above) provides for independent screening and scoping directions by the Secretary of State at the request of applicants with stalled reviews. The prohibition order sanction incorporates provision for confirmation by the Secretary of State. Overall, the proposed regulations strike an appropriate balance between the interests of the operator and the wider public interest in ensuring that the stalled initial reviews are now completed as quickly as possible and to ensure that minerals development is carried out in accordance with modern conditions which adequately protect the environment.

### ***Rural assessment***

78. Minerals can only be worked where they are found and most mineral working takes place in rural areas. However if environmental information to determine conditions is not forthcoming this may have a deleterious effect on the landscape. When working, all stalled review sites would provide employment opportunities for local communities.

### ***Implementation, Enforcement, Sanctions and Monitoring***

79. It is proposed that the regulations will come into effect in 22 July 2008. Under amended option 4, the proposed regulations impose on mpas, the Secretary of State and operators of sites where reviews are stalled a time-limited notification procedure. Operators will be formally notified whether the remaining permitted development is subject to EIA (and so whether an ES needs to be provided). If so, they will be notified what should be included in the ES and by when it should be provided. The accompanying guidance will encourage mpas to identify any information provided prior to the commencement of the proposed regulations which is still up to date and relevant and can be included in the new ES. Operators will be required to confirm that the information will be provided by the specified date, if necessary, having sought screening (to

determine whether EIA is required) and scoping (to determine the scope of an ES) directions from the Secretary of State. If the information is not provided by the date agreed with the mpa, mineral development on the site will be automatically suspended until it is provided.

80. Under amended option 4, mpas will be advised in guidance to accompany the proposed regulations on their powers to take action under Part VII of the Town and Country Planning Act 1990 to enforce (where necessary) against development in breach of automatic suspension. In this way, mpas may, where appropriate, in relation to sites in multiple operation, focus enforcement only on the defaulting operator. Similarly, the guidance will advise that mpas can consider using their existing powers to make a suspension order to require remediation of any environmental problems after 12 months of automatic suspension for non provision of the necessary environmental information. The proposed regulations include a duty on mpas requiring them to make a prohibition order to cease the permission(s) if the environmental or other information is still not forthcoming after two years of automatic suspension. The proposed regulations provide, where necessary for an order to be focussed so that only the permission relating to the defaulting operator is ceased.

### ***Monitoring and review***

81. Monitoring and review will be needed to ensure that the proposed regulations are appropriately and proportionately implemented in respect of the 'stalled' and other EIA reviews. Mpas will be asked periodically about the progress in completing the stalled reviews, including any triggering of the sanctions.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	Yes
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	Yes
Rural Proofing	Yes	No

## Annexes

### Annex 1: Assumptions for Calculation of Costs of Providing Environmental Statements

- The stalled review applications and appeals have been sorted into 5 categories:
  1. No ES needed due to reduction in site area or mineral development since the application was submitted (2)
  2. Part of the ES completed no alternative development proposed (12)
  3. Part of the ES completed and an alternative development proposed (4)
  4. None of the ES completed no alternative development proposed (16)
  5. None of the ES completed and an alternative development proposed (12)
- The numbers of each category have been taken from our monitoring of the progress of the stalled applications in England (last checked comprehensively in August 2007) and the current situation on stalled appeals. This breakdown therefore represents a 'worst case' scenario. We would expect at least some of the reviews to have progressed in recent months.
- The regulations will result in applicants providing a new ES in all cases, including those where applications for planning permission for alternative development are unsuccessful.
- The average cost of an ES is assumed to be £50,000–£100,000 as estimated by those responding to the consultation in England on draft regulations.
- The chance that an alternative site will be granted planning permission (or approval given to consolidation of permissions) is assumed to be 78 per cent. This is the figure from development control statistics 2006/07 for England for change of use category. Particular circumstances of the stalled review sites mean that this proportion will only be an estimate.
- The proportion of the cost of producing a new ES that may be saved by including information from any ES produced prior to the commencement of the proposed regulations assumed to range from 80 per cent to 10 per cent.

### Annex 2: Small Firms' Impact Test (SFIT)

1. In April 2006 the Secretary of State wrote to the 25 operators of the 41 sites in England where initial condition reviews were then 'stalled' asking that they voluntarily provide the outstanding environmental information. Some responded that the cost of providing the environmental information would be prohibitive as their mineral operations were small and low key, and in some cases mineral operations had ceased making the provision of an ES unnecessary. It was also clear from the responses that the applications were 'stalled' for a variety of

reasons, not always simply because environmental information has not been provided to enable new conditions to be determined. For example, the site may currently be dormant and a new use of the site is being promoted, eg. housing, through a new planning permission.

2. The April 2006 letter was followed up with telephone interviews of a sample of four small firms operating at 'stalled' sites. Each firm confirmed that there would be a 'significant' financial impact, including in one case the possibility of going 'bankrupt' if an ES was required. While none of the operators could be precise on the cost of providing the information at that stage, they estimated that the cost would range from £10,000 to over £100,000 which reflected the scope of information requested by the mpas. In the latter case, an operator was hoping to re-negotiate with the mpa on the requirements for information in order to reduce the cost. The work of producing the information would also draw staff away from the day to day operation of the business.
3. The vast majority of mineral extraction operations can be termed small or medium sized businesses from the point of view of numbers of employees. However, identifying mineral businesses as SMEs does not reveal the ability of operators to produce and pay for ESs. Depending on the nature and quantity of mineral being extracted, turnover and profits can be substantial, compared to the number of people employed. While the requirement to produce an ES will tend to bear more heavily on smaller businesses as a proportion of turnover, it is a requirement that has been applied to the mineral industry in general since 2000, with the overwhelming majority of operators complying. There is no provision in environmental regulations for smaller firms to operate to lower environmental standards than larger ones and the Government has a duty to fully transpose the EIA Directive or face proceedings in the ECJ.
4. The Government recognises that the cost of producing an ES may be significant for small mining companies with low turnover and acknowledges the concerns from some of the smaller firms on the likely impact this will have on their operations. The average cost of producing an ES was estimated by respondents to the consultation proposals as between £50,000 and £100,000. Taking the mid-point of £75,000, this figure is estimated to be around six per cent of the average turnover of small firms engaged in mining and quarrying except energy producing materials and the mining of metal ores. **[Source of average turnover figures: data from the Annual Business Inquiry 2006 (provisional): Office of National Statistics]**. The cost of producing ESs will have a significant impact on some of the small businesses in the sector with individually lower turnovers. The information procedure (paragraph 22 of Evidence Base), with at least four months (or an extended period as agreed by the mpa) for the provision of a new ES from the date of scoping opinions or directions, will help to mitigate the impact of the proposed regulations on firms with a lower turnover which have reviews stalled for the want of the necessary information.
5. However, the requirements of the EIA Directive have to be applied consistently; they make no distinction in terms of ability to pay. The proposed regulations will bring the operators of 'stalled' review sites into line with the rest of the sector

who have already provided the environmental information to inform initial conditions reviews. For those few operators who might continue to default after a two year period of automatic suspension, mpas will be required to make a prohibition order which, if confirmed, will cease their planning permission(s) and restore the whole or part of the site permanently.

6. The sanctions described under amended option 4 above would apply equally to all mineral operators who chose not to provide the necessary environmental information and the information procedure (for stalled reviews) and prohibition orders (potentially for all EIA reviews) include safeguards in terms of independent confirmation by the Secretary of State . In the case of a prohibition order, the Secretary of State is required to consider any objections from operators before confirming any order and to provide for the payment of limited compensation.

## Annex 3: Human Rights assessment

1. The provisions in the proposed regulations (paragraphs 18, 20 and 21 of the Evidence Base) have been assessed for compliance with Article 1 of Protocol 1 (right to enjoy property) and Article 6 (right to a fair trial) of the European Convention on Human Rights (ECHR). To the extent that the proposed regulations might engage Article 1 of Protocol 1, the Secretary of State's view is that any control of use of land would be necessary and proportionate to ensure compliance with the EIA Directive and for the protection of the environment. In particular, the proposed 4 month period (or such longer period as the mpa agrees in a particular case) before automatic suspension is triggered for submission of a new ES following scoping opinions or directions, strikes an appropriate balance between the interests of the operator and the wider public interest in ensuring that the stalled initial conditions reviews are now completed as quickly as possible and to ensure that minerals development is carried out in accordance with modern conditions which adequately protect the environment.
2. An informal survey of mpas in 2006 found that automatic suspension for non-provision of environmental information, as provided for in the EIA Regulations 2000, has had a deterrent effect in England (paragraph 52 of Evidence Base). It is reasonable that it should be in place to encourage, if necessary, the provision of environmental information to enable the stalled initial reviews to be completed. The Government considers that the proposed further sanction of cessation of permission(s) after two years automatic suspension for non-provision of the necessary environmental or other information is necessary and proportionate to address the environmental problems which could result from the otherwise potentially indefinite suspension. Any such orders though are likely to be very rare indeed. Although mpas will be under a duty to make them after two years automatic suspension, confirmation will only follow after independent consideration by the Secretary of State of objections to such orders. In addition, compensation (although expected to be minimal) may be paid if a prohibition order is confirmed by the Secretary of State.

3. The Government has also assessed the ECHR implications of suspension being triggered, and where necessary, cessation of permission(s) by prohibition order, on mineral sites in multiple operation where some operators might have provided the necessary environmental or other information, and others have not. Whilst automatic suspension would deprive a compliant operator of planning permission for their operations until the information was provided by the defaulting operator, mpas have discretion about whether to take enforcement action in these circumstances and who to take enforcement action against. Guidance to accompany the proposed regulations will provide advice on focused enforcement of suspension in order that as far as possible only defaulting operators are targeted and compliant operators are not unreasonably prevented from working.
4. The objective of the proposed prohibition order sanction is to prevent mineral permission reviews becoming and remaining stalled and to deal with the environmental dereliction resulting from otherwise potentially indefinite suspension through the long-term failure to provide information. A prohibition order enables the imposition of restoration and aftercare conditions to deal with the potential environmental problems. The Government has concluded that the imposition of a duty on mpas to make prohibition orders, enabling restoration and aftercare conditions to be imposed to prevent dereliction, would be a legitimate aim in support of the EIA Directive and within the vires of the powers under which the regulations will be made and also a proportionate means of achieving the objective described above. The criteria for making any of these orders (which will, the Government believes, be very rare indeed) will be modified so that an mpa could focus an order relating to a site in multiple operation on ceasing that part of the mineral permission(s) that applies to the defaulting operator. In addition, the Secretary of State would have full discretion to consider objections to orders and could refuse to confirm any order if the defaulting operator has a reasonable excuse for the delay in providing the information or if the Secretary of State felt that a compliant operator was affected.

## Annex 4: Fines levied by ECJ on non compliant Member States

1. Article 228 of the European Community (EC) Treaty concerns the final stages of infringements of Community law (EC Directives). Since the implementation of the Maastricht Treaty in 1996 the European Court of Justice (ECJ) has been able to impose financial sanctions on any Member State which fails to implement a judgement from the ECJ establishing an infringement of Community law. While the final decision on the imposition of financial sanctions lies with the Court, the European Commission initiates Article 228 procedure and has published details of the principles on which it will base its recommendations to the Court for a financial penalty to be imposed. These principles can be viewed at:

[http://ec.europa.eu/community\\_law/docs/docs\\_infringements/sec\\_2005\\_1658\\_en.pdf](http://ec.europa.eu/community_law/docs/docs_infringements/sec_2005_1658_en.pdf)

2. The Commission's recommendations are based on the following three criteria:
  - the seriousness of the infringement;
  - its duration; and
  - the need to ensure that the penalty itself is a deterrent to further infringements.
3. From 2005, the Commission has warned that it will usually recommend both a penalty for each day between the judgement of the Court that there has been an infringement and compliance with the Directive, together with a lump sum penalising the continuation of the infringement between the first judgement on non-compliance and the judgement delivered under Article 228. Subject to ratification by Member States of the Treaty of Lisbon, it is expected that in 2009 the Article 228 procedure will change. As a result, the Commission will be able, more quickly than at present, to refer cases of non-compliance to the Court with a recommendation for a fine.
4. Since 2000, three Member States have been fined. None of these related to any infringement of the EIA Directive. However, in each case the fines were large and successive cases were subject to progressively greater fines. In the first case, a fine of €20,000 was imposed for each day of delay in implementing measures required by a Directive. In the second case, a fine of €624,150 per year and per one per cent of bathing areas not conforming to the Bathing Waters Directive for the year in question. Finally, in the most recent case, the fine was €57,761,250 for each period of 6 months from the date of the judgement, together with a lump sum penalty of €20,000,000.





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