

*Status: Point in time view as at 27/05/1997.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part I is up to date with all changes known to be in force on or before 26 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 8

#### OLD MINERAL WORKINGS AND PERMISSIONS

#### PART I

##### REQUIREMENTS RELATING TO DISCONTINUANCE OF MINERAL WORKING

###### *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 planning authority that it is expedient in the interests of the proper planning of their district (including the interests of amenity)—
- (a) that any use of land for development consisting of the winning and working of minerals or involving the deposit of refuse or waste materials in, on or under the land should be discontinued, or that any conditions should be imposed on the continuance of that use of land,
  - (b) that any buildings or works on land so used should be altered or removed, or
  - (c) that any plant or machinery used for the winning and working of or depositing of minerals should be altered or removed,
- the 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.
- (2) Subsections (2) to (5) and (7) of section 71 and section 72 apply to orders under this paragraph as they apply to orders under section 71.
- 2 (1) Where development consisting of the winning and working of minerals or involving the deposit of refuse or waste materials is being carried out in, on or under any land, the conditions which an order under paragraph 1 may impose include a restoration condition.
- (2) If—
- (a) such an order 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 planning authority think fit.
- (3) An order under paragraph 1 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 3, or
  - (b) specified in the order.

*Status: Point in time view as at 27/05/1997.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part I is up to date with all changes known to be in force on or before 26 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)*

- (4) In a case where—
- (a) the use specified in an aftercare condition is a use for agriculture,
  - (b) the land was in use for agriculture immediately 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 planning authority is aware of or can readily ascertain the physical characteristics of the land when it was last used for agriculture,
- the land is brought to the required standard when its physical characteristics are restored, so far as it is practicable to do so, to what they were when it was last used for agriculture.
- (5) In any other case where the use specified in an aftercare condition is a use for agriculture, the land is brought to the required standard when it is reasonably fit for that use.

*Prohibition of resumption of mineral working*

- 3 (1) Where it appears to the planning authority that development of land consisting of the winning and working of minerals or involving the depositing of mineral waste has occurred, but the winning and working or depositing has permanently ceased, the planning authority may by order—
- (a) prohibit the resumption of the winning and working or the depositing, and
  - (b) impose, in relation to the site, any such requirement as is specified in sub-paragraph (3).
- (2) The 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 2 years, and
  - (b) it appears to the planning authority, on the evidence available to them at the time when they make the order, that resumption of 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,

*Status: Point in time view as at 27/05/1997.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part I is up to date with all changes known to be in force on or before 26 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)*

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

- (5) Paragraphs 2(3) to (9), 3(3) and (4) and 4 to 6 of Schedule 3 apply in relation to an aftercare condition imposed under this paragraph as they apply to such a condition imposed under paragraph 2 of that Schedule.
  - (6) In a case where—
    - (a) the use specified in an aftercare condition is a use for agriculture,
    - (b) the land was in use for agriculture immediately before development consisting of the winning and working of minerals began to be carried out in, on, or under it or had previously been used for any authorised purpose since its use for agriculture ceased, and
    - (c) the planning authority is aware of or can readily ascertain the physical characteristics of the land when it was last used for agriculture,  
the land is brought to the required standard when its physical characteristics are restored, so far as it is practicable to do so, to what they were when it was last used for agriculture.
  - (7) In any other case where the use specified is a use for agriculture the land is brought to the required standard when it is reasonably fit for that use.
- 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 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, the Secretary of State shall, before confirming the order, give such an opportunity both to that person and to the 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 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 planning authority, on revoking the order, to make a further grant of planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste.

*Status: Point in time view as at 27/05/1997.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part I is up to date with all changes known to be in force on or before 26 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)*

*Orders after suspension of winning and working of minerals*

- 5 (1) Where it appears to the 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 planning authority may by order (in this Act referred to as a “suspension order”) require that steps be taken for the protection of the environment.
- (2) The 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 12 months, but
  - (b) it appears to the planning authority, on the evidence available to them at the time when they make the order, that a resumption of such winning and working or depositing to a substantial extent is likely.
- (3) In this Act “steps for the protection of the environment” means steps for the purpose of—
- (a) 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) protecting that area from damage during that period, or
  - (c) preventing any deterioration in the condition of the land during that period.
- (4) A suspension order shall specify a period, commencing with the date on which it is to take effect, within which any required step for the protection of the environment is to be taken and may specify different periods for the taking of different steps.

*Supplementary suspension orders*

- 6 (1) At any time when a suspension order is in operation the 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.
- (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) and without prejudice to paragraph 8, 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.

*Status: Point in time view as at 27/05/1997.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part I is up to date with all changes known to be in force on or before 26 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)*

- (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 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*

- 8 An order made under paragraph 3, 5 or 6 shall not take effect until it is registered either—
- (a) in a case where the land affected by the order is registered in that Register, in the Land Register for Scotland, or
  - (b) in any other case, in the appropriate division of the General Register of Sasines.

#### *Review of suspension orders*

- 9 (1) It shall be the duty of a 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 district, 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 5 years from the date on which the order takes effect.
  - (3) Each subsequent review shall be undertaken not more than 5 years after the previous review.
  - (4) If a supplementary suspension order is in operation for any part of the area for which a suspension order is in operation, they shall be reviewed together.
  - (5) If a planning authority have made a supplementary suspension order which requires the taking of steps for the protection of the environment in substitution for all the steps required to be taken by a previous suspension order or supplementary suspension order, the authority shall undertake reviews of the supplementary suspension order in accordance with sub-paragraphs (6) and (7).
  - (6) The first review shall be undertaken not more than 5 years from the date on which the order takes effect.
  - (7) Each subsequent review shall be undertaken not more than 5 years after the previous review.

*Status: Point in time view as at 27/05/1997.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part I is up to date with all changes known to be in force on or before 26 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)*

### *Old mining permissions*

- 10 (1) In this paragraph and Part II of this Schedule, “old mining permission” means any planning permission for development—
- (a) consisting of the winning and working of minerals, or
  - (b) involving the depositing of mineral waste,
- which is deemed to have been granted by virtue of paragraph 77 of Schedule 22 to the 1972 Act (development authorised under interim development orders after 10th November 1943).
- (2) An old mining permission shall, if an application under Part II of this Schedule to determine the conditions to which the permission is to be subject is finally determined, have effect as from the final determination as if granted on the terms required to be registered.
- (3) If no such development has, at any time in the period of 2 years ending with 16th May 1991, been carried out to any substantial extent anywhere in, on or under the land to which an old mining permission relates, that permission shall not authorise any such development to be carried out after 24 January 1992 unless—
- (a) the permission has effect in accordance with sub-paragraph (2), and
  - (b) the development is carried out after such an application is finally determined.
- (4) An old mining permission shall—
- (a) if no application for the registration of the permission is made under Part II of this Schedule, cease to have effect on the day following the last date on which such an application may be made, and
  - (b) if such an application is refused, cease to have effect on the day following the date on which the application is finally determined.
- (5) An old mining permission shall, if—
- (a) such an application is granted, but
  - (b) an application under Part II of this Schedule to determine the conditions to which the permission is to be subject is required to be served before the end of any period and is not so served,
- cease to have effect on the day following the last date on which the application to determine those conditions may be served.
- (6) Subject to sub-paragraph (3), this paragraph—
- (a) shall not affect any development carried out under an old mining permission before an application under Part II of this Schedule to determine the conditions to which the permission is to be subject is finally determined or, as the case may be, the date on which the permission ceases to have effect, and
  - (b) shall not affect any order made or having effect as if made under paragraphs 1 to 9 and 11.

### *Resumption of mineral working after suspension order*

- 11 (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 or involving the depositing of mineral waste at the site in relation to which the order has effect.

*Status: Point in time view as at 27/05/1997.*

*Changes to legislation: Town and Country Planning (Scotland) Act 1997, Part I is up to date with all changes known to be in force on or before 26 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)*

- (2) No person shall recommence such development without first giving the 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 the development.
- (4) The 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 2 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 planning authority.
- (7) If he is required to do so by the person who gave the notice or by the planning authority, the Secretary of State shall, before deciding whether to revoke the order, give him and the planning authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (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 planning authority.

#### *Default powers of Secretary of State*

- 12 (1) If it appears to the Secretary of State that it is expedient that any order should be made under paragraph 1, 3, 5 or 6, he may himself make such an order.
- (2) Such an order made by the Secretary of State shall have the same effect as if it had been made by the planning authority and confirmed by the Secretary of State.
- (3) The Secretary of State shall not make such an order without consulting the 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 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, the Secretary of State shall, before making the order, 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 planning authority of any order under paragraph 1, 3, 5 or 6, as the case may be, its

*Status: Point in time view as at 27/05/1997.*

**Changes to legislation:** *Town and Country Planning (Scotland) Act 1997, Part I is up to date with all changes known to be in force on or before 26 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)*

---

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 by virtue of sub-paragraph (1), its making by him and the service of copies of it.



**Status:**

Point in time view as at 27/05/1997.

**Changes to legislation:**

Town and Country Planning (Scotland) Act 1997, Part I is up to date with all changes known to be in force on or before 26 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.