

Status: This version of this schedule contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Planning Act (Northern Ireland) 2011, SCHEDULE 2. (See end of Document for details)

SCHEDULES

PROSPECTIVE

SCHEDULE 2

Section 129(1).

REVIEW OF OLD MINERAL PLANNING PERMISSION

Modifications etc. (not altering text)

- C1** Schs. 1-3: transfer of functions (8.5.2016) by [The Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016 \(S.R. 2016/76\)](#), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

Interpretation

1.—(1) In this Schedule—

“dormant site” means a Phase I or Phase II site in, on or under which no minerals development has been carried out to any substantial extent at any time within the period of 15 years ending on the date on which this Schedule comes into operation;

“first list” means, in relation to a council, the list prepared by the council under paragraph 3;

“mineral site” has the meaning given by sub-paragraph (2);

“Phase I site” and “Phase II site” have the meanings given by paragraph 2;

“relevant planning permission” means any planning permission for minerals development; and

“second list” means, in relation to a council, the list prepared by the council under paragraph 4.

(2) For the purposes of this Schedule “mineral site” means—

- (a) in a case where it appears to the council to be expedient to treat as a single site the aggregate of the land to which any two or more relevant planning permissions relate, the aggregate of the land to which those permissions relate; and

- (b) in any other case, the land to which a relevant planning permission relates.

Status: This version of this schedule contains provisions that are prospective.

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(3) In determining whether it appears to it to be expedient to treat as a single site the aggregate of land to which two or more planning permissions relate a council must have regard to any guidance issued for the purpose by the Department.

(4) Any reference (however expressed) in this Schedule to a relevant planning permission relating to a mineral site is a reference to the mineral site, or some part of it, being the land to which the permission relates; and where any such permission authorises the carrying out of development consisting of the winning and working of minerals but only in respect of any particular mineral or minerals, that permission shall not be taken, for the purposes of this Schedule, as relating to any other mineral in, on or under the land to which the permission relates.

(5) For the purposes of this Schedule, a mineral site which is a Phase I site or a Phase II site is active if it is not a dormant site.

(6) For the purposes of this Schedule, working rights are restricted in respect of a mineral site if any of—

- (a) the size of the area which may be used for the winning and working of minerals or the depositing of mineral waste;
- (b) the depth to which operations for the winning and working of minerals may extend;
- (c) the height of any deposit of mineral waste;
- (d) the rate at which any particular mineral may be extracted;
- (e) the rate at which any particular mineral waste may be deposited;
- (f) the period at the expiry of which any winning or working of minerals or depositing of mineral waste is to cease; or
- (g) the total quantity of minerals which may be extracted from, or of mineral waste which may be deposited on, the site,

is restricted or reduced in respect of the mineral site in question.

(7) For the purposes of this Schedule, where an application is made under paragraph 9 for the determination of the conditions to which the relevant planning permissions relating to the mineral site to which the application relates are to be subject, those conditions are finally determined when—

- (a) the proceedings on the application have been determined, and
- (b) any time for appealing under paragraph 11(1), or applying or further applying under paragraph 9, (where there is a right to do so) has expired.

Phase I and II sites

2.—(1) This paragraph has effect for the purposes of determining which mineral sites are Phase I sites, which are Phase II sites, and which are neither Phase I nor Phase II sites.

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Planning Act (Northern Ireland) 2011, SCHEDULE 2. (See end of Document for details)

(2) A mineral site is neither a Phase I nor a Phase II site where—

- (a) all the relevant planning permissions which relate to the site have been granted after 31st December 1993; or
- (b) some only of the relevant planning permissions which relate to the site have been granted after 31st December 1993, and the parts of the site to which those permissions relate constitute the greater part of that site.

(3) With the exception of those mineral sites which, by virtue of sub-paragraph (2), are neither Phase I nor Phase II sites, every mineral site is either a Phase I site or a Phase II site.

(4) Subject to sub-paragraph (2), where—

- (a) all the relevant planning permissions which relate to a mineral site were granted before 31st December 1980; or
- (b) some only of the relevant planning permissions which relate to the site were granted before 31st December 1980 and the parts of the site to which those permissions relate constitute the greater part of that site,

that mineral site is a Phase I site.

(5) Subject to sub-paragraphs (2) and (4), where—

- (a) all the relevant planning permissions which relate to a mineral site were granted after 31st December 1980 but before 31st December 1993; or
- (b) some only of the relevant planning permissions which relate to the site were granted after 31st December 1980 but before 31st December 1993, and the parts of the site to which those permissions relate constitute the greater part of the site,

the mineral site is a Phase II site.

(6) In ascertaining, for the purposes of sub-paragraph (2) or (5), whether any parts of a mineral site constitute the greater part of that site, or whether a part of a mineral site is greater than any other part, that mineral site shall be treated as not including any part of the site which is a part where minerals development has been (but is no longer being) carried out and which has, in the opinion of the council, been satisfactorily restored; but no part of a site shall be treated as being not so included in the site unless the council is satisfied that any after care conditions which relate to that part have, so far as relating to that part, been complied with.

The “first list”

3.—(1) A council must, in accordance with the following provisions of this paragraph, prepare a list of mineral sites in its district (“the first list”).

(2) A site shall, but shall only, be included in the first list if it is a mineral site in the council's district and is either—

- (a) an active Phase I site;

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(b) an active Phase II site; or

(c) a dormant site.

(3) In respect of each site included in the first list, the list shall indicate whether the site is an active Phase I site, an active Phase II site or a dormant site.

(4) In respect of each active Phase I site included in the first list, that list must specify the date by which an application is to be made to the council under paragraph 9.

(5) Any date specified pursuant to sub-paragraph (4) must be a date not earlier than the date upon which expires the period of 12 months from the date on which the first list is first advertised in accordance with paragraph 5.

The “second list”

4.—(1) A council must, in accordance with the following provisions of this paragraph, prepare a list of active Phase II sites in its district (“the second list”).

(2) The second list must include each mineral site in the council's district which is an active Phase II site.

(3) In respect of each site included in the second list, that list must specify the date by which an application is to be made to the council under paragraph 9.

(4) Any date specified pursuant to sub-paragraph (3) must be a date not earlier than the date upon which expires the period of 12 months from the date on which the second list is first advertised in accordance with paragraph 5.

Advertisement of the first and second lists

5.—(1) This paragraph makes provision for the advertisement of the first and second lists by a council.

(2) The council must advertise each of the first and second lists by causing to be published, in each of two successive weeks, in one or more newspapers circulating throughout Northern Ireland, notice of the list having been prepared.

(3) In respect of each of those lists, such notice must—

(a) state that the list has been prepared by the council; and

(b) specify one or more places within the council's district at which the list may be inspected, and in respect of each such place specify the times (which must be reasonable times) during which facilities for inspection of the list will be afforded.

(4) In respect of the first list, such notice must—

(a) explain the general effect of a mineral site being classified as a dormant site or, as the case may be, as an active Phase I site or an active Phase II site;

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Changes to legislation: There are currently no known outstanding effects for the Planning Act (Northern Ireland) 2011, SCHEDULE 2. (See end of Document for details)

- (b) explain the consequences which will occur if no application is made under paragraph 9 in respect of an active Phase I site included in the list by the date specified in the list for that site;
 - (c) explain the effects for any dormant or active Phase I or II site not included in the list of its not being included in the list and—
 - (i) set out the right to make an application to the council for that site to be included in the list;
 - (ii) set out the date by which such an application must be made; and
 - (iii) state that the owner of such a site has a right of appeal against any decision of the council upon such an application; and
 - (d) explain that the owner of an active Phase I site has a right to apply for postponement of the date specified in the list for the making of an application under paragraph 9, and set out the date by which an application for such postponement must be made.
- (5) In respect of the second list, such notice must explain the consequences which will occur if no application is made under paragraph 9 in respect of an active Phase II site included in the list by the date specified in the list for that site.

Applications for inclusion in the first list of sites not included in that list as originally prepared and appeals from decisions upon such applications

6.—(1) Any person who is the owner of any land, or is entitled to an interest in a mineral, may, if that land or interest is not a mineral site included in the first list and does not form part of any mineral site included in that list, apply to the council for that land or interest to be included in that list.

(2) An application under sub-paragraph (1) must be made no later than the day upon which expires the period of 3 months from the day when the first list was first advertised in accordance with paragraph 5.

(3) Where the council considers that—

- (a) the land or interest is, or forms part of, any dormant site or active Phase I or II site, it must accede to the application; or
- (b) part only of the land or interest is, or forms part of, any dormant or active Phase I or II site, it must accede to the application so far as it relates to that part of the land or interest,

but it must otherwise refuse the application.

(4) On acceding, whether in whole or in part, to an application made under sub-paragraph (1), the council must amend the first list as follows—

- (a) where it considers that the land or interest, or any part of the land or interest, is a dormant site or an active Phase I or II site, it must add the mineral site consisting of the land or interest or, as the case may be, that

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part, to the first list and must cause the list to indicate whether the site is an active Phase I site, an active Phase II site or a dormant site;

- (b) where it considers that the land or interest, or any part of the land or interest, forms part of any mineral site included in the first list, it must amend the entry in the first list for that site accordingly.

(5) Where the council amends the first list in accordance with sub-paragraph (4), it must also—

- (a) in a case where an active Phase I site is added to the first list pursuant to paragraph (a) of that sub-paragraph, cause that list to specify, in respect of that site, the date by which an application is to be made to the council under paragraph 9;
- (b) in a case where—
 - (i) the entry for an active Phase I site included in the first list is amended pursuant to paragraph (b) of that sub-paragraph; and
 - (ii) the date specified in that list in respect of that site as the date by which an application is to be made to the council under paragraph 9 is a date falling less than 12 months after the date upon which the council makes its decision upon the application in question,

cause that date to be amended so as to specify instead the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) of the council's decision upon the application.

(6) Any date specified pursuant to sub-paragraph (5)(a) must be a date not earlier than the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) of the council's decision upon the application.

(7) On acceding, whether in whole or in part, to an application made under sub-paragraph (1), the council must, if the second list has been first advertised in accordance with paragraph 5 prior to the time at which it makes its decision on the application, amend the second list as follows—

- (a) where it considers that the land or interest, or any part of the land or interest, is an active Phase II site, it must add the mineral site consisting of the land or interest or, as the case may be, that part, to the second list;
- (b) where it considers that the land or interest, or any part of the land or interest, forms part of any active Phase II site included in the second list, it must amend the entry in that list for that site accordingly.

(8) Where the council amends the second list in accordance with sub-paragraph (7), it must also—

- (a) in a case where an active Phase II site is added to the second list pursuant to paragraph (a) of that sub-paragraph, cause that list to specify, in respect

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Changes to legislation: There are currently no known outstanding effects for the Planning Act (Northern Ireland) 2011, SCHEDULE 2. (See end of Document for details)

of that site, the date by which an application is to be made to the council under paragraph 9;

(b) in a case where—

(i) the entry for an active Phase II site included in the second list is amended pursuant to paragraph (b) of that sub-paragraph; and

(ii) the date specified in that list in respect of that site as the date by which an application is to be made to the council under paragraph 9 is a date falling less than 12 months after the date upon which the council makes its decision upon the application in question,

cause that date to be amended so as to specify instead the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) of the council's decision upon the application.

(9) Any date specified pursuant to sub-paragraph (8)(a) must be a date not earlier than the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) of the council's decision upon the application.

(10) When the council determines an application made under sub-paragraph (1) it must notify the applicant in writing of its decision and, in a case where it has acceded to the application, whether in whole or in part, must supply the applicant with details of any amendment to be made to the first or second list in accordance with sub-paragraph (4) or (8).

(11) Where the council—

(a) refuses an application made under sub-paragraph (1); or

(b) accedes to such an application only so far as it relates to part of the land or interest in respect of which it was made,

the applicant may by notice appeal to the planning appeals commission.

(12) A person who has made such an application may also appeal to the planning appeals commission if the council has not given notice to the applicant of its decision on the application within such period as may be prescribed or within such extended period as may at any time be agreed upon in writing between the applicant and the council.

(13) An appeal under sub-paragraph (11) or (12) must be made by giving notice of appeal in writing to the planning appeals commission before the end of the period of 6 months beginning with—

(a) in the case of an appeal under sub-paragraph (11), the determination, or

(b) in the case of an appeal under sub-paragraph (12), the end of the first period mentioned in that sub-paragraph or, as the case may be, the end of the extended period mentioned in that sub-paragraph.

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Postponement of the date specified in the first or second list for review of the permissions relating to a Phase I or II site in cases where the existing conditions are satisfactory

7.—(1) Any person who is the owner of any land, or of any interest in any mineral, comprised in—

- (a) an active Phase I site included in the first list; or
- (b) an active Phase II site included in the second list,

may apply to the council for the postponement of the date specified in that list in respect of that site as the date by which an application is to be made to the council under paragraph 9 (in this paragraph referred to as “the specified date”).

(2) Subject to sub-paragraph (3), an application under sub-paragraph (1) must be made no later than the day upon which expires the period of 3 months from the day when—

- (a) in the case of an active Phase I site, the first list; or
- (b) in the case of an active Phase II site, the second list,

was first advertised in accordance with paragraph 5.

(3) In the case of—

- (a) an active Phase I site—
 - (i) added to the first list in accordance with paragraph 6(4)(a); or
 - (ii) in respect of which the entry in the first list was amended in accordance with paragraph 6(4)(b);

or

- (b) an active Phase II site—
 - (i) added to the second list in accordance with paragraph 6(7)(a); or
 - (ii) in respect of which the entry in the second list was amended in accordance with paragraph 6(7)(b),

an application under sub-paragraph (1) must be made no later than the day upon which expires the period of 3 months from the day on which notice was given under paragraph 6(10) of the council's decision to add the site to or, as the case may be, so to amend the list in question.

(4) An application under sub-paragraph (1) must be in writing and must—

- (a) set out the conditions to which each relevant planning permission relating to the site is subject;
- (b) set out the applicant's reasons for considering those conditions to be satisfactory;
- (c) set out the date which the applicant wishes to be substituted for the specified date; and

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Changes to legislation: There are currently no known outstanding effects for the Planning Act (Northern Ireland) 2011, SCHEDULE 2. (See end of Document for details)

(d) be accompanied by the appropriate certificate (within the meaning of sub-paragraph (5)).

(5) For the purposes of sub-paragraph (4), the appropriate certificate is such a certificate—

(a) as would be required, under section 42 (notification of applications to certain persons), to accompany the application if it were an application for planning permission for minerals development, but

(b) with such modifications as are required for the purposes of this paragraph, and section 42(6) (offences) shall also have effect in relation to any certificate purporting to be the appropriate certificate.

(6) Where the council receives an application made under sub-paragraph (1)—

(a) if it considers the conditions referred to in sub-paragraph (4)(a) to be satisfactory it must agree to the specified date being postponed in which event the council must determine the date to be substituted for that date;

(b) in any other case it must refuse the application.

(7) Where the council agrees to the specified date being postponed it must cause the first or, as the case may be, the second list to be amended accordingly.

(8) When the council determines an application made under sub-paragraph (1) it must notify the applicant in writing of its decision and, in a case where it has agreed to the postponement of the specified date, must notify the applicant of the date which it has determined should be substituted for the specified date.

(9) Where, within 3 months of the council having received an application under sub-paragraph (1), or within such extended period as may at any time be agreed upon in writing between the applicant and the council, the council has not given notice, under sub-paragraph (8), to the applicant of its decision upon the application, the council shall be treated as—

(a) having agreed to the specified date being postponed; and

(b) having determined that the date referred to in sub-paragraph (4)(c) be substituted for the specified date,

and sub-paragraph (7) shall apply accordingly.

Service on owners etc. of notice of preparation of the first and second lists

8.—(1) The council must, no later than the date upon which the first list is first advertised in accordance with paragraph 5, serve notice in writing of the first list having been prepared on each person appearing to it to be the owner of any land, or entitled to an interest in any mineral, included within a mineral site included in the first list, but this sub-paragraph is subject to sub-paragraph (7).

(2) A notice required to be served by sub-paragraph (1) must—

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Changes to legislation: There are currently no known outstanding effects for the Planning Act (Northern Ireland) 2011, SCHEDULE 2. (See end of Document for details)

- (a) indicate whether the mineral site in question is a dormant site or an active Phase I or II site; and
- (b) where that site is an active Phase I site—
 - (i) indicate the date specified in the first list in relation to that site as the date by which an application is to be made to the council under paragraph 9;
 - (ii) explain the consequences which will occur if such an application is not made by the date so specified; and
 - (iii) explain the right to apply to have that date postponed, and indicate the date by which such an application must be made.
- (3) Where, in relation to any land or mineral included in an active Phase I site, the council—
 - (a) has served notice on any person under sub-paragraph (1); and
 - (b) has received no application under paragraph 9 from that person by the date falling 8 weeks before the date specified in the first list as the date by which such applications should be made in respect of the site in question, the council must serve a written reminder on that person, and such a reminder must—
 - (i) indicate that the land or mineral in question is included in an active Phase I site;
 - (ii) comply with the requirements of sub-paragraph (2)(b)(i) and (ii); and
 - (iii) be served on that person on or before the date falling 4 weeks before the date specified in the first list in respect of that site as the date by which an application is to be made to the council under paragraph 9.
- (4) The council must, no later than the date upon which the second list is first advertised in accordance with paragraph 5, serve notice in writing of the second list having been prepared on each person appearing to it to be the owner of any land, or entitled to an interest in any mineral, included within an active Phase II site included in the second list, but this sub-paragraph is subject to sub-paragraph (7).
- (5) A notice required to be served by sub-paragraph (4) must—
 - (a) indicate that the mineral site in question is an active Phase II site; and
 - (b) indicate the date specified in the second list in relation to that site as the date by which an application is to be made to the council under paragraph 9;
 - (c) explain the consequences which will occur if such an application is not made by the date so specified; and
 - (d) explain the right to apply to have that date postponed, and indicate the date by which such an application must be made.

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Changes to legislation: There are currently no known outstanding effects for the Planning Act (Northern Ireland) 2011, SCHEDULE 2. (See end of Document for details)

(6) Where, in relation to any land or mineral included in an active Phase II site, the council—

- (a) has served notice on any person under sub-paragraph (4), and
- (b) has received no application under paragraph 9 from that person by the date falling 8 weeks before the date specified in the second list as the date by which such applications should be made in respect of the site in question,

the council must serve a written reminder on that person, and such a reminder must—

- (i) comply with the requirements of sub-paragraph (5)(a) to (c); and
- (ii) be served on that person on or before the date falling 4 weeks before the date specified in the second list in respect of that site as the date by which an application is to be made to the council under paragraph 9.

(7) Sub-paragraph (1) or (4) shall not require the council to serve notice under that sub-paragraph upon any person whose identity or address for service is not known to and cannot practicably, after reasonable inquiry, be ascertained by it, but in any such case the council must cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the notice which it would (apart from the provisions of this sub-paragraph) have had to serve under that sub-paragraph on the owner of that land or interest.

(8) If, in a case where sub-paragraph (7) applies, no person makes an application to the council under paragraph 9 in respect of the active Phase I or II site which includes the land or interest in question by the date falling 8 weeks before the date specified in the first or, as the case may be, the second list as the date by which such applications should be made in respect of that site, the council must cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the written reminder that would, in a case not falling within sub-paragraph (7), have been served under sub-paragraph (3) or (6).

(9) Where by sub-paragraph (7) or (8) a copy of any notice is required to be affixed to an object on any land that copy must—

- (a) be displayed in such a way as to be easily visible and legible;
- (b) be first displayed—
 - (i) in a case where the requirement arises under sub-paragraph (7), no later than the date upon which the first or, as the case may be, the second list is first advertised in accordance with paragraph 5; or
 - (ii) in a case where the requirement arises under sub-paragraph (8), no later than the date falling 4 weeks before the date specified in the first or, as the case may be, the second list in respect of the site in

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Changes to legislation: There are currently no known outstanding effects for the Planning Act (Northern Ireland) 2011, SCHEDULE 2. (See end of Document for details)

question as the date by which an application is to be made to the council under paragraph 9; and

- (c) be left in position for at least the period of 21 days from the date when it is first displayed, but where the notice is, without fault or intention of the council, removed, obscured or defaced before that period has elapsed, that requirement shall be treated as having been complied with if the council has taken reasonable steps for protection of the notice and, if need be, its replacement.

(10) In sub-paragraphs (7) and (8), any reference to a conspicuous object on any land includes, in a case where the person serving a notice considers that there are no or insufficient such objects on the land, a reference to a post driven into or erected upon the land by the person serving the notice for the purpose of having affixed to it the notice in question.

(11) Where the council, being required—

- (a) by sub-paragraph (3) or (6) to serve a written reminder on any person; or
- (b) by sub-paragraph (8) to cause a copy of such a reminder to be displayed in the manner set out in that sub-paragraph,

fails to comply with that requirement by the date specified for the purpose, it may at any later time serve or, as the case may be, cause to be displayed, such a written reminder and, in any such case, the date by which an application in relation to the mineral site in question is to be made under paragraph 9 is the date upon which expires the period of 3 months from the date when the reminder was served or posted in accordance with the provisions of this sub-paragraph.

Applications for approval of conditions and appeals in cases where the conditions approved are not those proposed

9.—(1) Any person who is the owner of any land, or who is entitled to an interest in a mineral, may, if that land or mineral is or forms part of a dormant site or an active Phase I or II site, apply to the council to determine the conditions to which the relevant planning permissions relating to that site are to be subject.

(2) An application under this paragraph must be in writing and must—

- (a) identify the mineral site to which the application relates;
- (b) specify the land or minerals comprised in the site of which the applicant is the owner or, as the case may be, in which the applicant is entitled to an interest;
- (c) identify any relevant planning permission relating to the site;
- (d) identify, and give a postal address for, each other person that the applicant knows or, after reasonable inquiry, has cause to believe to be an owner of any land, or entitled to any interest in any mineral, comprised in the site;

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(e) set out the conditions to which the applicant proposes the permissions referred to in paragraph (c) should be subject; and

(f) be accompanied by the appropriate certificate (within the meaning of sub-paragraph (3)).

(3) For the purposes of sub-paragraph (2), the appropriate certificate is such a certificate—

(a) as would be required, under section 42 (notification of applications for planning provisions to certain persons) to accompany the application if it were an application for planning permission for minerals development, but

(b) with such modifications as are required for the purposes of this paragraph, and section 42(6) (offences) shall also have effect in relation to any certificate purporting to be the appropriate certificate.

(4) Section 41 shall have effect, with any necessary modifications, in relation to an application under this paragraph as it has effect in relation to an application for planning permission.

(5) Where the council receives an application under this paragraph in relation to a dormant site or an active Phase I or II site it must determine the conditions to which each relevant planning permission relating to the site is to be subject; and any such permission shall, from the date when the conditions to which it is to be subject are finally determined, have effect subject to the conditions which are determined under this Schedule as being the conditions to which it is to be subject.

(6) The conditions imposed by virtue of a determination under sub-paragraph (5)—

(a) may include any conditions which may be imposed on a grant of planning permission for minerals development;

(b) may be in addition to, or in substitution for, any existing conditions to which the permission in question is subject.

(7) In determining that a relevant planning permission is to be subject to any condition relating to development for which planning permission is granted by a development order, the council must have regard to any guidance issued by the Department.

(8) Subject to sub-paragraph (10), where, within the period of 6 months from the council having received an application under this paragraph, or within such extended period as may at any time be agreed upon in writing between the applicant and the council, the council has not—

(a) given notice to the applicant of its decision upon the application; or

(b) given notice to the applicant that the application has been referred to the Department in accordance with directions given under paragraph 13,

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the council shall be treated as having at the end of that period or, as the case may be, that extended period, determined that the conditions to which any relevant planning permission to which the application relates is to be subject are those specified in the application as being proposed in relation to that permission; and any such permission shall, from that time, have effect subject to those conditions.

(9) Where the council, having received an application under this paragraph, is of the opinion that it is unable to determine the application unless further details are supplied to it, it must within the period of one month from having received the application give notice to the applicant—

- (a) stating that it is of such opinion; and
- (b) specifying the further details which it requires,

and where the council so serves such a notice the period of 6 months referred to in sub-paragraph (8) shall run not from the council having received the application but from the time when the council has received all the further details specified in the notice.

(10) Without prejudice to the generality of sub-paragraph (9), the further details which may be specified in a notice under that sub-paragraph include any—

- (a) information, plans or drawings; or
- (b) evidence verifying any particulars of details supplied to the council in respect of the application in question,

which it is reasonable for the council to request for the purpose of enabling it to determine the application.

*Notice of determination of conditions to be
accompanied by additional information in certain cases*

10.—(1) This paragraph applies in a case where—

- (a) on an application made to the council under paragraph 9 in respect of an active Phase I or II site the council determines under that paragraph the conditions to which the relevant planning permissions relating to the site are to be subject;
- (b) those conditions differ in any respect from the proposed conditions set out in the application; and
- (c) the effect of the conditions, other than any restoration or aftercare conditions, so determined by the council, as compared with the effect of the conditions, other than any restoration or aftercare conditions, to which the relevant planning permissions in question were subject immediately prior to the council making the determination, is to restrict working rights in respect of the site.

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(2) In a case where this paragraph applies, the council must, upon giving to the applicant notice of the conditions determined by the council under paragraph 9, also give to the applicant notice—

- (a) stating that the conditions determined by the council differ in some respect from the proposed conditions set out in the application;
- (b) stating that the effect of the conditions, other than any restoration or aftercare conditions, determined by the council, as compared with the effect of the conditions, other than any restoration or aftercare conditions, to which the relevant planning permissions relating to the site in question were subject immediately prior to the making of the council's determination, is to restrict working rights in respect of the site;
- (c) identifying the working rights so restricted; and
- (d) stating whether, in the opinion of the council, the effect of that restriction of working rights would be such as to prejudice adversely to an unreasonable degree—
 - (i) the economic viability of operating the site; or
 - (ii) the asset value of the site.

(3) In this paragraph, “the applicant” means the person who made the application in question under paragraph 9.

Right to appeal against council's determination of conditions etc.

11.—(1) Where the council—

- (a) on an application under paragraph 9 determines under that paragraph conditions that differ in any respect from the proposed conditions set out in the application; or
- (b) gives notice, under paragraph (d) of paragraph 10(2), stating that, in its opinion, the restriction of working rights in question would not be such as to prejudice adversely to an unreasonable degree either of the matters referred to in sub-paragraphs (i) and (ii) of paragraph (d),

the person who made the application may appeal to the planning appeals commission.

(2) An appeal under sub-paragraph (1) shall be made by giving notice of appeal in writing to the planning appeals commission before the end of the period of 6 months beginning with the date on which the council gives notice to the applicant of its determination or, as the case may be, stating its opinion.

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Permissions ceasing to have effect

12.—(1) Subject to paragraph 8(11), where no application under paragraph 9 in respect of an active Phase I or II site has been served on the council by the date specified in the first or, as the case may be, the second list as the date by which applications under that paragraph in respect of that site are to be made, or by such later date as may at any time be agreed upon in writing between the applicant and the council, each relevant planning permission relating to the site shall cease to have effect, except insofar as it imposes any restoration or aftercare condition, on the day following the last date on which such an application may be made.

(2) The reference in sub-paragraph (1) to the date specified in the first or, as the case may be, the second list as the date by which applications under paragraph 9 are to be made in respect of any Phase I or II site is a reference to the date specified for that purpose in respect of that site in that list as prepared by the council or, where that date has been varied by virtue of any provision of this Schedule, to that date as so varied.

(3) Subject to sub-paragraph (4), no relevant planning permission which relates to a dormant site shall have effect to authorise the carrying out of minerals development unless—

- (a) an application has been made under paragraph 9 in respect of that site; and
- (b) that permission has effect in accordance with sub-paragraph (5) of that paragraph.

(4) A relevant planning permission which relates to a Phase I or II site not included in the first list shall cease to have effect, except insofar as it imposes any restoration or aftercare condition, on the day following the last date on which an application under sub-paragraph (1) of paragraph 6 may be made in respect of that site unless an application has been made under that sub-paragraph by that date in which event, unless the site is added to that list, such a permission shall cease to have effect when the following conditions are met—

- (a) the proceedings on that application have been determined, and
- (b) any time for appealing under paragraph 6(11) or (12), or applying or further applying under paragraph 6(1), (where there is a right to do so) has expired.

Call in of applications to Department

13.—(1) The Department may give directions requiring applications under paragraph 9 to any council to be referred to it for determination instead of being dealt with by the council.

(2) A direction under sub-paragraph (1)—

- (a) may be given either to a particular council or to councils generally; and

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- (b) may relate either to a particular application or to applications of a class specified in the direction.

(3) Where an application is referred to the Department in accordance with such a direction, the following provisions of this Schedule—

- (a) paragraph 9(5) and (6),

- (b) paragraph 10, and

(c) paragraph 14 so far as relating to applications under paragraph 9, shall apply, with any necessary modifications, as they apply to applications which fall to be determined by the council.

(4) For the purpose of considering representations made in respect of an application referred to it under this paragraph, the Department may cause a public local inquiry to be held by—

- (a) the planning appeals commission; or

- (b) a person appointed by the Department for the purpose.

(5) Where a public local inquiry is not held under sub-paragraph (4), the Department must, before determining the application, serve a notice on the applicant and the appropriate council indicating the decision which it proposes to make on the application; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service of the notice), the applicant or the council so requests in writing, the Department must afford to each of them an opportunity of appearing before and being heard by—

- (a) the planning appeals commission; or

- (b) a person appointed by the Department for the purpose.

(6) In determining an application referred to it under this paragraph, the Department must, where any inquiry or hearing is held, take into account any report of the planning appeals commission or a person appointed by the Department for the purposes of the inquiry or hearing, as the case may be.

(7) The decision of the Department on an application referred to it under this paragraph shall be final.

Two or more applicants

14.—(1) Where the council has received from any person a duly made application under paragraph 7(1) or 9—

- (a) that person may not make any further application under the paragraph in question in respect of the same site; and

- (b) if the application has been determined, whether or not in the case of an application under paragraph 9 it has been finally determined, no other

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person may make an application under the paragraph in question in respect of the same site.

(2) Where—

- (a) the council has received from any person in respect of a mineral site a duly made application under paragraph 7(1) or 9; and
- (b) the council receives from another person a duly made application under the paragraph in question in respect of the same site,

then for the purpose of the determination of the applications and any appeal against such a determination, this Schedule shall have effect as if the applications were a single application received by the council on the date on which the later application was received by the council and references to the applicant shall be read as references to either or any of the applicants.

Compensation

15.—(1) This paragraph applies in a case where—

- (a) an application made under paragraph 9 in respect of an active Phase I or II site is finally determined; and
- (b) the requirements of sub-paragraph (2), (3) or (4) are satisfied.

(2) The requirements, referred to in sub-paragraph (1)(b), of this sub-paragraph are—

- (a) that the conditions to which the relevant planning permissions relating to the site are to be subject were determined by the council;
- (b) no appeal was made under paragraph 11(1)(a) in respect of that determination or any such appeal was withdrawn or dismissed; and
- (c) the council gave notice under paragraph (d) of paragraph 10(2) and either—
 - (i) that notice stated that, in the council's opinion, the restriction of working rights in question would be such as to prejudice adversely to an unreasonable degree either of the matters referred to in sub-paragraphs (i) and (ii) of paragraph (d); or
 - (ii) that notice stated that, in the council's opinion, the restriction in question would not be such as would so prejudice either of those matters but an appeal under paragraph 11(1)(b) in respect of the giving of the notice has been allowed.

(3) The requirements, referred to in sub-paragraph (1)(b), of this sub-paragraph are that the conditions to which the relevant planning permissions are to be subject were determined by the Department and the Department gave notice under paragraph (d) of paragraph 10(2) stating that, in its opinion, the restriction of working rights in question would be such as to prejudice adversely to an

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unreasonable degree either of the matters referred to in sub-paragraphs (i) and (ii) of paragraph (d).

(4) The requirements, referred to in sub-paragraph (1)(b), of this sub-paragraph are that the conditions to which the relevant planning permissions are to be subject were determined by the planning appeals commission upon an appeal under paragraph 11(1)(a) and either—

- (a) the council gave notice under paragraph (d) of paragraph 10(2) stating that, in its opinion, the restriction of working rights in question would be such as to prejudice adversely to an unreasonable degree either of the matters referred to in sub-paragraphs (i) and (ii) of paragraph (d); or
- (b) the council gave a notice under paragraph (d) stating that, in its opinion, the restriction in question would not be such as would so prejudice either of those matters but an appeal under paragraph 11(1)(b) in respect of the giving of that notice has been allowed.

(5) In a case to which this paragraph applies, section 26 of the Act of 1965 shall have effect as if an order having effect under section 68 of this Act had effect to modify those permissions to the extent specified in sub-paragraph (6).

(6) For the purposes of sub-paragraph (5), the order which is treated by virtue of that sub-paragraph as having effect under section 68 is one whose only effect adverse to the interests of any person having an estate or interest in the land or minerals comprised in the mineral site is to restrict working rights in respect of the site to the same extent as the relevant restriction.

Appeals: general procedural provisions

16.—(1) This paragraph applies to appeals under any of the following provisions of this Schedule—

- (a) paragraph 6(11) or (12); or
- (b) paragraph 11(1).

(2) Subsections (4) and (5) of section 58 (appeals) shall apply to an appeal to which this paragraph applies as those subsections apply to an appeal under that section.

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