

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 3. (See end of Document for details)

SCHEDULES

PROSPECTIVE

SCHEDULE 3

Section 129(1).

PERIODIC REVIEW OF MINERAL PLANNING PERMISSIONS

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))

Duty to carry out periodic reviews

1 The council must, in accordance with the provisions of this Schedule, cause periodic reviews to be carried out of the mineral permissions relating to a mining site.

Interpretation

2.—(1) For the purposes of this Schedule—

“first review date”, in relation to a mining site, shall, subject to paragraphs 4 and 6, be ascertained in accordance with paragraph 3;

“mineral permission” means any planning permission for minerals development;

“mining 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 mineral permissions relate, the aggregate of the land to which those permissions relate; and

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

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

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(3) Any reference (however expressed) in this Schedule to a mining site being a site to which relates a mineral permission, is a reference to the mining site, or some part of it, being the land to which the permission relates.

(4) For the purposes of this Schedule, an application made under paragraph 7 is finally determined when—

- (a) the proceedings on the application have been determined, and
- (b) any time for appealing under paragraph 9(1), or applying or further applying under paragraph 7, (where there is a right to do so) has expired.

The first review date

3.—(1) Subject to sub-paragraph (5), in the case of a mining site which is a Phase I or II site within the meaning of Schedule 2, the first review date means the date falling 15 years after the date upon which, pursuant to an application made under paragraph 9 of that Schedule, there is determined under that paragraph the conditions to which the relevant planning permissions (within the meaning of that Schedule) relating to the site are to be subject.

(2) Subject to sub-paragraphs (3) and (6), in the case of a mining site which is not a Phase I or II site within the meaning of Schedule 2, the first review date is the date falling 15 years after the date upon which was granted the most recent mineral permission which relates to the site.

(3) Where, in the case of a mining site falling within sub-paragraph (2), the most recent mineral permission relating to that site relates, or the most recent such permissions (whether or not granted on the same date) between them relate, to part only of the site, and in the opinion of the council it is expedient, for the purpose of ascertaining, under that sub-paragraph, the first review date in respect of that site, to treat that permission or those permissions as having been granted at the same time as the last of the other mineral permissions relating to the site, the first review date for that site shall be ascertained under that sub-paragraph accordingly.

(4) A council must, in deciding whether it is of such an opinion as is mentioned in sub-paragraph (3), have regard to any guidance issued by the Department for the purpose.

(5) Subject to sub-paragraph (6), in the case of a mining site—

- (a) to which relates a mineral permission in respect of which an order has been made under section 68, or
- (b) in respect of which, or any part of which, an order has been made under section 73,

the first review date shall be the date falling 15 years after the date upon which the order took effect or, in a case where there is more than one such order, upon which the last of those orders to take effect took effect.

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(6) In the case of a mining site for which the preceding provisions of this paragraph have effect to specify two or more different dates as the first review date, the first review date shall be the latest of those dates.

4.—(1) The Department may by order subject to negative resolution specify a first review date different from the first review date found in pursuance of paragraph 3(1).

(2) Sub-paragraph (3) applies if no first review date is found in pursuance of paragraph 3(1).

(3) The Department may by order subject to negative resolution specify a first review date.

Service of notice of first periodic review

5.—(1) The council must, in connection with the first periodic review of the mineral permissions relating to a mining site, no later than 12 months before the first review date, serve notice upon each person appearing to it to be the owner of any land, or entitled to an interest in any mineral, included in that site.

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

- (a) specify the mining site to which it relates;
- (b) identify the mineral permissions relating to that site;
- (c) state the first review date;
- (d) state that the first review date is the date by which an application must be made for approval of the conditions to which the mineral permissions relating to the site are to be subject and explain the consequences which will occur if no such application is made by that date; and
- (e) explain the right to apply for postponement of the first review date and give the date by which such an application has to be made.

(3) Where, in relation to any land or mineral included in a mining site, the council—

- (a) has served notice on any person under sub-paragraph (1); and
- (b) has received no application under paragraph 7 from that person by the date falling 8 weeks before the first review date,

the council must serve a written reminder on that person.

(4) A reminder required to be served under sub-paragraph (3) must—

- (a) indicate that the land or mineral in question is included in a mining site;
- (b) comply with the requirements of sub-paragraph (2)(a) to (d); and
- (c) be served on the person in question on or before the date falling 4 weeks before the first review date.

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(5) Sub-paragraph (1) 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.

(6) If, in a case where sub-paragraph (5) applies, no person makes an application to the council under paragraph 7 in respect of the mining site which includes the land or interest in question by the date falling 8 weeks before the first review date, 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 (5), have been served under sub-paragraph (3).

(7) Where by sub-paragraph (5) or (6) 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 (5), no later than 12 months before the first review date; or

(ii) in a case where the requirement arises under sub-paragraph (6), no later than the date falling 4 weeks before the first review date;

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.

(8) In sub-paragraphs (5) and (6), 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 a copy of the notice in question.

Application for postponement of the first review date

6.—(1) Any person who is the owner of any land, or of any interest in any mineral, comprised in a mining site may, no later than the day upon which expires the period of 3 months from the day upon which notice was served on that person

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under paragraph 5, apply under this paragraph to the council for the postponement of the first review date.

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

- (a) the conditions to which each mineral permission relating to the site is subject;
- (b) the applicant's reasons for considering those conditions to be satisfactory; and
- (c) the date which the applicant wishes to have substituted for the first review date.

(3) Where the council receives an application made under this paragraph—

- (a) if it considers the conditions referred to in sub-paragraph (2)(a) to be satisfactory it must agree to the first review date being postponed in which event it must determine the date to be substituted for that date;
- (b) in any other case it must refuse the application.

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

(5) Where, within the period of 3 months of 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 given notice, under sub-paragraph (4), to the applicant of its decision upon the application, the council shall be treated as having, at the end of that period or, as the case may be, that extended period—

- (a) agreed to the first review date being postponed; and
- (b) determined that the date referred to in sub-paragraph (2)(c) be substituted for the first review date.

Application to determine the conditions to which the mineral permissions relating to a mining site are to be subject

7.—(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 mining site, apply to the council to determine the conditions to which the mineral permissions relating to that site are to be subject.

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

- (a) identify the mining site in respect of which the application is made and state that the application is made in connection with the first periodic review of the mineral permissions relating to that site;

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- (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 the mineral permissions 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;
- (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)(f), the appropriate certificate is such a certificate—

- (a) as would be required, under section 42, 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 mining site it must determine the conditions to which each mineral permission relating to the site 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 mineral 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 for the purpose by the Department.

(8) Subject to sub-paragraph (9), where, within the period of 6 months of 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—

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- (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 10,

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 mineral 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, the council 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.

Permissions ceasing to have effect

8 Where no application under paragraph 7 in respect of a mining site has been served on the council by the first review date, or by such later date as may at any time be agreed upon in writing between the applicant and the council, each mineral permission—

- (a) relating to the site; and
- (b) identified in the notice served in relation to the site under paragraph 5,

shall cease to have effect, except insofar as it imposes any restoration or aftercare condition, on the day following the first review date or, as the case may be, such later agreed date.

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Appeals

9.—(1) Where on an application under paragraph 7 the council determines conditions that differ in any respect from the proposed conditions set out in the application, the applicant 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.

(3) Subsections (4) and (5) of section 58 (determination of appeals) shall apply to appeals under sub-paragraph (1) as those subsections apply to appeals under that section.

Call in of applications to Department

10.—(1) The Department may give directions requiring applications made under paragraph 7 to any council to be referred to the Department for determination instead of being dealt with by the council.

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

- (a) be given either to a particular council or to councils generally; and
- (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 a direction under sub-paragraph (1), paragraph 7(5) and (6), and paragraph 12 so far as relating to applications under paragraph 7, shall apply, with any necessary modifications, to the Department's determination of the application as they apply to the determination of applications 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

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(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.

Time from which conditions determined under this Schedule are to take effect

11.—(1) Where an application has been made under paragraph 7 in respect of a mining site, each of the mineral permissions relating to the site shall, from the time when the application is finally determined, have effect subject to the conditions to which it is determined under this Schedule that that permission is to be subject.

(2) Sub-paragraph (1) is without prejudice to paragraph 7(8).

Two or more applicants

12.—(1) Where the council has received from any person a duly made application under paragraph 6 or 7—

- (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 7 it has been finally determined, no other 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 6 or 7; 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.

Second and subsequent periodic reviews

13.—(1) In this paragraph, in relation to a mining site, but subject to paragraph 6 as applied by sub-paragraph (2) below, “review date” means—

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- (a) in the case of the second periodic review, the date falling 15 years after the date upon which was finally determined an application made under paragraph 7 in respect of the site; and
- (b) in the case of subsequent periodic reviews, the date falling 15 years after the date upon which there was last finally determined under this Schedule an application made in respect of that site under paragraph 7 as applied by sub-paragraph (2) below.

(2) Paragraphs 5 to 12 shall apply in respect of the second or any subsequent periodic review of the mineral permissions relating to a mining site as they apply to the first such periodic review, but as if—

- (a) any reference in those paragraphs to the “first review date” were a reference to the review date; and
- (b) the references in paragraphs 5(1) and 7(2)(a) to the first periodic review were references to the periodic review in question.

Compensation

14.—(1) This paragraph applies where—

- (a) an application made under paragraph 7 in respect of a mining site is finally determined; and
- (b) the conditions to which the mineral permissions relating to the site are to be subject, as determined under this Schedule, differ in any respect from the proposed conditions set out in the application; and
- (c) the effect of the new conditions, except insofar as they are restoration or aftercare conditions, as compared with the effect of the existing conditions, except insofar as they were restoration or aftercare conditions, is to restrict working rights in respect of the site.

(2) For the purposes of this paragraph—

“the new conditions”, in relation to a mining site, means the conditions, determined under this Schedule, to which the mineral permissions relating to the site are to be subject; and

“the existing conditions”, in relation to a mining site, means the conditions to which the mineral permissions relating to the site were subject immediately prior to the final determination of the application made under paragraph 7 in respect of that site.

(3) For the purposes of this paragraph, working rights are restricted in respect of a mining 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;

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- (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 mining site in question.

(4) 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 (5).

(5) For the purposes of this paragraph, the order referred to in sub-paragraph (4) is one whose only effect adverse to the interests of any person having an 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.

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