

*Status: Point in time view as at 27/05/1997.*

**Changes to legislation:** Town and Country Planning (Scotland) Act 1997, SCHEDULE 3 is up to date with all changes known to be in force on or before 18 May 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 3 **S**

Sections 41(6) and 65(5).

#### CONDITIONS RELATING TO MINERAL WORKING

#### PART I **S**

##### CONDITIONS IMPOSED ON GRANT OF PERMISSION

###### *Duration of development*

- 1 (1) Every planning permission for development—
  - (a) consisting of the winning and working of minerals, or
  - (b) involving the depositing of mineral waste,shall be subject to a condition as to the duration of the development.
- (2) Except where a condition is specified under sub-paragraph (3), the condition in the case of planning permission granted or deemed to be granted after 22nd February 1982 is that the winning and working of minerals or the depositing of mineral waste must cease not later than the expiration of the period of 60 years beginning with the date of the permission.
- (3) An authority granting planning permission after that date or directing after that date that planning permission shall be deemed to be granted may specify a longer or shorter period than 60 years, and if they do so, the condition is that the winning and working of minerals or the depositing of mineral waste must cease not later than the expiration of a period of the specified length beginning with the date of the permission.
- (4) A longer or shorter period than 60 years may be prescribed for the purposes of sub-paragraphs (2) and (3).
- (5) The condition in the case of planning permission granted or deemed to have been granted before 22nd February 1982 is that the winning and working of minerals or the depositing of mineral waste must cease not later than the expiration of the period of 60 years beginning with that date.
- (6) A condition to which planning permission for development is subject by virtue of this paragraph—
  - (a) is not to be regarded for the purposes of the planning Acts as a condition such as is mentioned in section 41(1)(b), but
  - (b) is to be regarded for the purposes of sections 47 and 48 as a condition imposed by a decision of the planning authority, and may accordingly be the subject of an appeal under section 47.

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### *Power to impose aftercare conditions*

- 2 (1) Where—
- (a) planning permission for development consisting of the winning and working of minerals or involving the depositing of refuse or waste materials is granted, and
  - (b) the permission is granted subject to a restoration condition,
- it may be granted subject also to any such aftercare condition as the planning authority think fit.
- (2) In this Act—
- “restoration condition” means a condition requiring that after the winning and working is completed or the depositing has ceased, the site shall be restored by the use of any or all of the following, namely, subsoil, topsoil and soil-making material; and
  - “aftercare condition” means a condition requiring that such steps shall be taken as may be necessary to bring land to the required standard for whichever of the following uses is specified in the condition, namely—
    - (a) use for agriculture,
    - (b) use for forestry, or
    - (c) use for amenity.
- (3) An aftercare condition may either—
- (a) specify the steps to be taken, or
  - (b) require that the steps be taken in accordance with a scheme (in this Schedule referred to as an “aftercare scheme”) approved by the planning authority.
- (4) A planning authority may approve an aftercare scheme in the form in which it is submitted to them or may modify it and approve it as modified.
- (5) The steps that may be specified in an aftercare condition or an aftercare scheme may consist of planting, cultivating, fertilising, watering, draining or otherwise treating the land.
- (6) Where a step is specified in a condition or a scheme, the period during which it is to be taken may also be specified, but no step may be required to be taken after the expiry of the aftercare period.
- (7) In sub-paragraph (6) “the aftercare period” means a period of 5 years from compliance with the restoration condition or such other maximum period after compliance with that condition as may be prescribed; and in respect of any part of a site, the aftercare period shall commence on compliance with the restoration condition in respect of that part.
- (8) The power to prescribe maximum periods conferred by sub-paragraph (7) includes power to prescribe maximum periods differing according to the use specified.
- (9) In this paragraph “forestry” means the growing of a utilisable crop of timber.

### *Meaning of “required standard”*

- 3 (1) In a case where—
- (a) the use specified in an aftercare condition is a use for agriculture,

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- (b) the land was in use for agriculture at the time of the grant of the planning permission or had previously been used for that purpose and had not at the time of the grant 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.
- (2) 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.
  - (3) Where the use specified in an aftercare condition is a use for forestry, the land is brought to the required standard when it is reasonably fit for that use.
  - (4) Where the use specified in an aftercare condition is a use for amenity, the land is brought to the required standard when it is suitable for sustaining trees, shrubs or other plants.
  - (5) In this paragraph—
    - “authorised” means authorised by planning permission; and
    - “forestry” has the same meaning as in paragraph 2.

#### *Consultations*

- 4 (1) Before imposing an aftercare condition specifying a use for forestry, the planning authority shall consult the Forestry Commission as to whether it is appropriate to specify that use.
- (2) Where after consultations required by sub-paragraph (1) the planning authority are satisfied that the use that they ought to specify is a use for forestry, they shall consult the Forestry Commission with regard to whether the steps to be taken should be specified in the aftercare condition or in an aftercare scheme.
- (3) The planning authority shall also consult the Forestry Commission—
  - (a) as to the steps to be specified in an aftercare condition which specifies a use for agriculture or for forestry, and
  - (b) before approving an aftercare scheme submitted in accordance with an aftercare condition which specifies such a use.
- (4) The planning authority shall also, from time to time as they consider expedient, consult the Forestry Commission as to whether the steps specified in an aftercare condition or an aftercare scheme are being taken.
- (5) In this paragraph “forestry” has the same meaning as in paragraph 2.

#### *Certificate of compliance*

- 5 If, on the application of any person with an interest in land in respect of which an aftercare condition has been imposed, the planning authority are satisfied that the condition has been complied with they shall issue a certificate to that effect.

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### *Recovery of expenses of compliance*

- 6 A person who has complied with an aftercare condition but who has not himself won and worked minerals or deposited refuse or waste materials shall be entitled, subject to any condition to the contrary contained in a contract which is enforceable against him by the person who last carried out such operations, to recover from that person any expenses reasonably incurred in complying with the aftercare condition.

## **PART II S**

### CONDITIONS IMPOSED ON REVOCATION OR MODIFICATION OF PERMISSION

- 7 An order under section 65 may, in relation to planning permission for development consisting of the winning and working of minerals or involving the depositing of refuse or waste materials, include such aftercare condition as the planning authority think fit if—
- (a) it also 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.
- 8 Paragraphs 2(3) to (9) and 3 to 6 shall apply in relation to an aftercare condition so imposed as they apply in relation to such a condition imposed under paragraph 2.

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