

Changes to legislation: Town and Country Planning (Scotland) Act 1997, SCHEDULE 9 is up to date with all changes known to be in force on or before 16 April 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) View outstanding changes

SCHEDULES

SCHEDULE 9

Section 74.

REVIEW OF OLD MINERAL PLANNING PERMISSIONS

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 in the period beginning on 22nd February 1982 and ending with 6th June 1995 otherwise than by virtue of a planning permission which is not a relevant planning permission relating to the site;
 - “first list”, in relation to a planning authority, means the list prepared by them pursuant to paragraph 3;
 - “mineral site” has the meaning given by sub-paragraph (2);
 - “old mining permission” has the meaning given by paragraph 10(1) of Schedule 8;
 - “owner”, in relation to any land, has the meaning given by paragraph 22(1) of Schedule 8;
 - “Phase I site” and “Phase II site” have the meaning given by paragraph 2;
 - “relevant planning permission” means any planning permission, other than an old mining permission or a planning permission granted by a development order, granted after 30th June 1948 for minerals development; and
 - “second list”, in relation to a planning authority, means the list prepared by them pursuant to paragraph 4.
- (2) For the purposes of this Schedule, but subject to sub-paragraph (3), “mineral site” means—
- (a) in a case where it appears to the planning authority 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.
- (3) In determining whether it appears to them to be expedient to treat as a single site the aggregate of the land to which two or more relevant planning permissions relate a planning authority shall have regard to any guidance issued for the purpose by the Secretary of State.
- (4) Any reference (however expressed) in this Schedule to an old mining permission or 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

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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, including any proceedings on or in consequence of an application under section 239, 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.
- [^{F1}(8) Where an electronic communication is used to make an application to a planning authority under any of paragraphs 6, 7 or 9 below, the applicant shall be deemed to have agreed—
- (a) to the use of electronic communication for all purposes relating to the application which are capable of being given effect to using such communications; and
 - (b) that the applicant's address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application (or other such address as the applicant may notify in writing to the planning authority),
- unless the applicant gives notice in writing to the planning authority in accordance with sub paragraphs (9) and (10).
- (9) An applicant may give notice that the applicant no longer agrees to the use of electronic communications for the purposes mentioned in paragraphs (a) or (b) of sub-paragraph (8).
- (10) Any such notice shall take effect on the date specified in it as the effective date, being a date occurring after the period of seven days, beginning with the date on which the notice is given.]

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Textual Amendments

- F1** Sch. 9 para. 1(8)-(10) inserted (28.7.2004) by Town and Country Planning (Electronic Communications) (Scotland) Order 2004 (S.S.I. 2004/332), arts. 1(1), 7(2)

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.
- (2) A mineral site is neither a Phase I site nor a Phase II site where—
- (a) all the relevant planning permissions which relate to the site have been granted after 21st February 1982, or
 - (b) some only of the relevant planning permissions which relate to the site have been granted after 21st February 1982, 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 any part of a mineral site is situated within—
- (a) a site in respect of which a notification under section 28 of the ^{M1}Wildlife and Countryside Act 1981 (sites of special scientific interest) is in force,
 - (b) an area designated as a National Scenic Area under section 262C of the 1972 Act, or
 - (c) an area designated as a Natural Heritage Area under section 6 of the ^{M2}Natural Heritage (Scotland) Act 1991,
- that 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, and which were not granted after 21st February 1982, were granted after 7th December 1969, or
 - (b) the parts of a mineral site to which relate such of the relevant planning permissions relating to the site as were granted after 7th December 1969 but before 22nd February 1982 constitute a greater part of the site than is constituted by those parts of the site to which no such relevant planning permission relates but to which a relevant planning permission granted on or before 7th December 1969 does relate,
- the mineral site is a Phase II site.
- (6) Every other mineral site, that is to say any mineral site other than one—
- (a) which is, by virtue of sub-paragraph (2), neither a Phase I nor a Phase II site,
 - (b) which is a Phase I site by virtue of sub-paragraph (4), or
 - (c) which is a Phase II site by virtue of sub-paragraph (5),
- is a Phase I site.
- (7) 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

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site is greater than any other part, that mineral site shall be treated as not including any part of the site—

- (a) to which an old mining permission relates, or
- (b) which is a part where minerals development has been (but is no longer being) carried out and which has, in the opinion of the planning authority, been satisfactorily restored;

but no part of a site shall be treated, by virtue of paragraph (b), as being not included in the site unless the planning authority are satisfied that any aftercare conditions which relate to that part have, so far as relating to that part, been complied with.

Marginal Citations

- M1** 1981 c. 69.
- M2** 1991 c. 28.

The “first list”

- 3
- (1) A planning authority shall, in accordance with the following provisions of this paragraph, prepare a list of mineral sites in their area (the “first list”).
 - (2) A site shall, but shall only, be included in the first list if it is a mineral site in the area of the planning authority and is either—
 - (a) an active Phase I site,
 - (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 shall specify the date by which an application is to be made to the planning authority under paragraph 9.
 - (5) Any date specified pursuant to sub-paragraph (4) shall be a date—
 - (a) 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, and
 - (b) not later than the date upon which expires the period of three years from the date upon which the provisions of this Schedule come into force.
 - (6) The preparation of the first list shall be completed before the day upon which it is first advertised in accordance with paragraph 5.

The “second list”

- 4
- (1) A planning authority shall, in accordance with the following provisions of this paragraph, prepare a list of the active Phase II sites in their area (the “second list”).
 - (2) The second list shall include each mineral site in the planning authority’s area which is an active Phase II site.
 - (3) In respect of each site included in the second list, that list shall indicate the date by which an application is to be made to the planning authority under paragraph 9.

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- (4) Subject to sub-paragraph (5), any date specified pursuant to sub-paragraph (3) shall be a date—
 - (a) 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, and
 - (b) not later than the date upon which expires the period of six years from the date upon which the provisions of this Schedule come into force.
- (5) The Secretary of State may by order provide that sub-paragraph (4)(b) shall have effect as if for the period of six years referred to in that paragraph there were substituted such longer period specified in the order.
- (6) The preparation of the second list shall be completed before the day upon which it 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 prepared by a planning authority.
- (2) The planning authority shall 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 in its area, notice of the list having been prepared.
- (3) In respect of each of those lists, such notice shall—
 - (a) state that the list has been prepared by the authority, and
 - (b) specify one or more places within the area of the authority at which the list may be inspected, and in respect of each such place specify the times (which shall be reasonable times) during which facilities for inspection of the list will be afforded.
- (4) In respect of the first list, such notice shall—
 - (a) be first published no later than the day upon which expires the period of three months from the date upon which the provisions of this Schedule come into force,
 - (b) 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,
 - (c) 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,
 - (d) 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 authority 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 authority upon such an application, and
 - (e) 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.

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- (5) In respect of the second list, such notice shall—
- (a) be first published no later than the day upon which expires the period of three years, or such longer period as the Secretary of State may by order specify, from the date upon which the provisions of this Schedule come into force, and
 - (b) 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 planning authority for that land or interest to be included in that list.
- (2) An application under sub-paragraph (1) shall be made no later than the day upon which expires the period of three months from the day when the first list was first advertised in accordance with paragraph 5.
- (3) Where the planning authority consider that—
- (a) the land or interest is, or forms part of, any dormant or active Phase I or II site, they shall 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, they shall accede to the application so far as it relates to that part of the land or interest,
- but shall otherwise refuse the application.
- (4) On acceding, whether in whole or in part, to an application made under sub-paragraph (1), the planning authority shall amend the first list as follows—
- (a) where they consider 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, they shall add the mineral site consisting of the land or interest or, as the case may be, that part, to the first list and shall 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 they consider that the land or interest, or any part of the land or interest, forms part of any mineral site included in the first list, they shall amend the entry in the first list for that site accordingly.
- (5) Where the planning authority amend the first list in accordance with sub-paragraph (4), they shall also—
- (a) in a case where an active Phase I site is added to the first list pursuant to sub-paragraph (4)(a), cause that list to specify, in respect of that site, the date by which an application is to be made to the planning authority 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 sub-paragraph (4)(b), 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 planning authority under paragraph 9 is a date falling less than 12 months after the date upon

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which the authority make their 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 authority's decision upon his application.

- (6) Any date specified pursuant to sub-paragraph (5)(a) shall be a date—
- (a) 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 planning authority's decision upon his application, and
 - (b) not later than the later of—
 - (i) the date upon which expires the period of three years from the date upon which the provisions of this Schedule come into force; and
 - (ii) the date mentioned in paragraph (a).
- (7) On acceding, whether in whole or in part, to an application made under sub-paragraph (1), the planning authority shall, if the second list has been first advertised in accordance with paragraph 5 prior to the time at which they make their decision on the application, amend the second list as follows—
- (a) where they consider that the land or interest, or any part of the land or interest, is an active Phase II site, they shall add the mineral site consisting of the land or interest or, as the case may be, that part, to the second list;
 - (b) where they consider 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, they shall amend the entry in that list for that site accordingly.
- (8) Where the planning authority amend the second list in accordance with sub-paragraph (7), they shall also—
- (a) in a case where an active Phase II site is added to the second list pursuant to sub-paragraph (7)(a), cause that list to specify, in respect of that site, the date by which an application is to be made to the authority 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 sub-paragraph (7)(b), 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 authority under paragraph 9 is a date falling less than 12 months after the date upon which the authority make their 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 authority's decision upon his application.
- (9) Any date specified pursuant to sub-paragraph (8)(a) shall be a date—
- (a) 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 planning authority's decision upon his application, and
 - (b) not later than the later of—
 - (i) the date upon which expires the period of six years from the date upon which the provisions of this Schedule come into force, and

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- (ii) the date mentioned in paragraph (a).
- (10) When a planning authority determine an application made under sub-paragraph (1), they shall notify the applicant in writing of their decision and, in a case where they have acceded to the application, whether in whole or in part, shall 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 a planning authority—
 - (a) refuse an application made under sub-paragraph (1), or
 - (b) accede 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 Secretary of State.
- (12) A person who has made such an application may also appeal to the Secretary of State if the planning authority have not given notice to the applicant of their decision on the application within eight weeks of their having received the application or within such extended period as may at any time be agreed upon in writing between the applicant and the authority.
- (13) An appeal under sub-paragraph (11) or (12) must be made by giving notice of appeal to the Secretary of State before the end of the period of six 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 period of eight weeks mentioned in that sub-paragraph or, as the case may be, the end of the extended period mentioned in that sub-paragraph.

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 planning authority 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 authority under paragraph 9 (in this paragraph referred to as “the specified date”).
- (2) Subject to sub-paragraph (3), an application under sub-paragraph (1) shall be made no later than the day upon which expires the period of three 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—

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- (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) shall be made no later than the day upon which expires the period of three months from the day on which notice was given under paragraph 6(10) of the planning authority'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) shall be in writing and shall—
 - (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
 - (d) be accompanied by the appropriate certificate.
 - (5) For the purposes of sub-paragraph (4)(d), the appropriate certificate is each of the certificates which would be required, under or by virtue of sections 34 and 35, to accompany the application if it were an application for planning permission for minerals development, but with such modifications as are required for the purposes of this paragraph; and sections 34(3) and (4) and 35(5) shall have effect in relation to any certificate purporting to be the appropriate certificate.
 - (6) Where the planning authority receive an application made under sub-paragraph (1)—
 - (a) if they consider the conditions referred to in sub-paragraph (4)(a) to be satisfactory they shall agree to the specified date being postponed in which event they shall determine the date to be substituted for that date,
 - (b) in any other case they shall refuse the application.
 - (7) Where the planning authority agree to the specified date being postponed they shall cause the first or, as the case may be, the second list to be amended accordingly.
 - (8) When a planning authority determine an application made under sub-paragraph (1), they shall notify the applicant in writing of their decision and, in a case where they have agreed to the postponement of the specified date, shall notify the applicant of the date which they have determined should be substituted for the specified date.
 - (9) Where, within three months of the planning authority 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 authority, the authority have not given notice, under sub-paragraph (8), to the applicant of their decision upon the application, the authority 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 planning authority shall, 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 them to be the owner of any land,

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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) shall—
 - (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 planning authority 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 planning authority—
 - (a) have served notice on any person under sub-paragraph (1), and
 - (b) have received no application under paragraph 9 from that person by the date falling eight 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 authority shall serve a written reminder on that person, and such a reminder shall—
 - (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 four 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 authority under paragraph 9.

- (4) The planning authority shall, 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 them 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) shall—
 - (a) indicate that the mineral site in question is an active Phase II site,
 - (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 planning authority 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.

- (6) Where, in relation to any land or mineral included in an active Phase II site, the planning authority—
 - (a) have served notice on any person under sub-paragraph (4), and
 - (b) have received no application under paragraph 9 from that person by the date falling eight 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,

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- the authority shall serve a written reminder on that person, and such a reminder shall—
- (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 four 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 authority under paragraph 9.
- (7) Sub-paragraph (1) or (4) shall not require the planning authority 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 them, but in any such case the authority shall 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 they 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 authority 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 eight 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 authority shall 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 shall—
- (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 four weeks before the date specified in the first or, as the case may be, the second list in respect of the site in question as the date by which an application is to be made to the authority 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 authority, removed, obscured or defaced before that period has elapsed, that requirement shall be treated as having been complied with if the authority have 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 planning authority, being required—
- (a) by sub-paragraph (3) or (6) to serve a written reminder on any person, or

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- (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,

fail to comply with that requirement by the date specified for the purpose, they 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 three 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 planning authority to determine the conditions to which the relevant planning permissions relating to that site are to be subject.
- (2) An application under this paragraph shall be in writing and shall—
- (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 permissions relating to the site,
 - (d) identify, and give [^{F2}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.
- (3) For the purposes of sub-paragraph (2), the appropriate certificate is each of the certificates which would be required, under or by virtue of sections 34 and 35, to accompany the application if it were an application for planning permission for minerals development, but with such modifications as are required for the purposes of this paragraph; and sections 34(3) and (4) and 35(5) shall have effect in relation to any certificate purporting to be the appropriate certificate.
- (4) Section 35 shall have effect, with any necessary modifications, as if subsection (1) also authorised a development order to provide for publicising applications under this paragraph.
- (5) Where the planning authority receive an application under this paragraph in relation to a dormant site or an active Phase I or II site they shall 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.

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- (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 planning authority shall have regard to any guidance issued for the purpose by the Secretary of State.
- (8) Subject to sub-paragraph (9), where, within the period of three months from the planning authority 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 authority, the authority have not given notice to the applicant of their decision upon the application, the authority 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 a planning authority, having received an application under this paragraph, are of the opinion that they are unable to determine the application unless further details are supplied to them, they shall within the period of one month from having received the application give notice to the applicant—
- (a) stating that they are of such opinion, and
 - (b) specifying the further details which they require,
- and where the authority so serve such a notice the period of three months referred to in sub-paragraph (8) shall run not from the authority having received the application but from the time when the authority have 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 authority in respect of the application in question,
- which it is reasonable for the authority to request for the purpose of enabling them to determine the application.

Textual Amendments

- F2** Words in Sch. 9 para. 9(2)(d) substituted (28.7.2004) by [Town and Country Planning \(Electronic Communications\) \(Scotland\) Order 2004 \(S.S.I. 2004/332\)](#), arts. 1(1), **7(3)**

Modifications etc. (not altering text)

- C1** Sch. 9 para. 9(8) restricted (1.6.2011) by [The Town and Country Planning \(Environmental Impact Assessment\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/139\)](#), regs. 1, **33(17)(a)**

*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 planning authority under paragraph 9 in respect of an active Phase I or II site the authority determine under that paragraph

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- 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 authority, 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 authority making the determination, is to restrict working rights in respect of the site.
- (2) In a case where this paragraph applies, the planning authority shall, upon giving to the applicant notice of the conditions determined by the authority under paragraph 9, also give to the applicant notice—
- (a) stating that the conditions determined by the authority 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 authority, 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 authority’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 authority, 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 determining whether, in their opinion, the effect of that restriction of working rights would be such as is mentioned in sub-paragraph (2)(d), a planning authority shall have regard to any guidance issued for the purpose by the Secretary of State.
- (4) In this paragraph, “the applicant” means the person who made the application in question under paragraph 9.

Right to appeal against planning authority’s determination of conditions etc.

- 11 (1) Where the planning authority—
- (a) on an application under paragraph 9 determine under that paragraph conditions that differ in any respect from the proposed conditions set out in the application, or
 - (b) give notice, under paragraph 10(2)(d), stating that, in their 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 paragraph 10(2)(d)(i) and (ii),
- the person who made the application may appeal to the Secretary of State.
- (2) An appeal under sub-paragraph (1) must be made by giving notice of appeal to the Secretary of State before the end of the period of six months beginning with the date on which the authority give notice to the applicant of their determination or, as the case may be, stating their opinion.

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Modifications etc. (not altering text)

- C2** Sch. 9 para. 11(1) modified (1.6.2011) by The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 (S.S.I. 2011/139), regs. 1, **33(21)(a)**
- C3** Sch. 9 para. 11(1) modified (16.5.2017) by The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (S.S.I. 2017/102), regs. 1, **38(18)**, (22) (with regs. 2(10), 38, 39, 40, 60(7))
- C4** Sch. 9 para. 11(2) modified (1.6.2011) by The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 (S.S.I. 2011/139), regs. 1, **33(21)(b)**
- C5** Sch. 9 para. 11(2) modified (16.5.2017) by The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 (S.S.I. 2017/102), regs. 1, **38(18)**, (22) (with regs. 2(10), 38, 39, 40, 60(7))

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 planning authority 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 authority, each relevant planning permission relating to the site shall cease to have effect, except in so far 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 planning authority 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 paragraph 9(5).
- (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 in so far 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, including any proceedings on or in consequence of the application under section 239, 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.

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Reference of applications to the Secretary of State

- 13 (1) The Secretary of State may give directions requiring applications under paragraph 9 to any planning authority to be referred to him for determination instead of being dealt with by the authority.
- (2) Any such direction 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 Secretary of State in accordance with such a direction—
- (a) subject to paragraph (b), the following provisions of this Schedule—
 - (i) paragraph 9(5) and (6),
 - (ii) paragraph 10, and
 - (iii) 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 planning authority,
 - (b) before determining the application the Secretary of State must, if either the applicant or the planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose, and
 - (c) the decision of the Secretary of State on the application shall be final.

Two or more applicants

- 14 (1) Where a planning authority have 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 person may make an application under the paragraph in question in respect of the same site.
- (2) Where—
- (a) a planning authority have received from any person in respect of a mineral site a duly made application under paragraph 7(1) or 9, and
 - (b) the authority receive 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 authority on the date on which the later application was received by the authority 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 either sub-paragraph (2) or (3) are satisfied.

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- (2) The requirements 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 planning authority,
 - (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 authority gave notice under paragraph 10(2)(d) and either—
 - (i) that notice stated that, in the authority’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 paragraph 10(2)(d)(i) and (ii), or
 - (ii) that notice stated that, in the authority’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) in respect of the giving of the notice has been allowed.
- (3) The requirements of this sub-paragraph are that the conditions to which the relevant planning permissions are to be subject were determined by the Secretary of State (whether upon an appeal under paragraph 11(1)(a) or upon a reference under paragraph 13) and—
- (a) in a case where those conditions were determined upon an appeal under paragraph 11(1)(a) either—
 - (i) the planning authority gave notice under paragraph 10(2)(d) stating that, in their 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 paragraph 10(2)(d)(i) and (ii), or
 - (ii) the authority gave a notice under paragraph 10(2)(d) stating that, in their 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,
 - or
 - (b) in a case where those conditions were determined upon a reference under paragraph 13, the Secretary of State gave notice under paragraph 10(2)(d) stating that, in his 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 paragraph 10(2)(d)(i) and (ii).
- (4) In a case to which this paragraph applies Parts IV and X of this Act shall have effect as if an order made under section 65 had been confirmed by the Secretary of State under section 66 at the time when the application in question was finally determined and, as so confirmed, had effect to modify those permissions to the extent specified in sub-paragraph (5).
- (5) For the purposes of sub-paragraph (4), the order which is treated by virtue of that sub-paragraph as having been made under section 65 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.
- (6) For the purposes of Schedule 13 and of any regulations made under that Schedule, the permissions treated as being modified by the order mentioned in sub-paragraph (4) shall be treated as if they were planning permissions for development which neither consists of nor includes any minerals development.

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Appeals: general procedural provisions

- 16 (1) This paragraph applies to appeals under paragraph 6(11) or (12) or 11(1).
- (2) Notice of appeal in respect of an appeal to which this paragraph applies shall be given on a form supplied by or on behalf of the Secretary of State for use for that purpose, and giving, so far as reasonably practicable, the information required by that form.
- (3) Paragraph 18 of Schedule 8 shall apply to an appeal to which this paragraph applies as it applies to appeals under paragraph 17 of that Schedule.
- (4) Sections 237 to 239 shall have effect as if the action mentioned in section 237(3) included any decision of the Secretary of State—
- (a) on an appeal to which this paragraph applies, or
 - (b) on an application under paragraph 9 referred to him under paragraph 13.
- (5) Schedule 4 shall apply to appeals to which this paragraph applies.

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied by [S.S.I. 2008/189 art. 53\(3\)](#)
- Act power to apply (with or without modifications) conferred by [2021 asp 9 s. 45\(3\)\(b\)\(c\)](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 11A inserted by [2006 asp 17 s. 29](#)
- Pt. 12A inserted by [2006 asp 17 s. 30](#)
- Pt. 12A inserted by [2019 asp 13 s. 46\(2\)](#)
- s. 3CD inserted by [2019 asp 13 s. 4\(2\)](#)
- s. 20AA(4)(a)(iii) inserted by [2019 asp 13 s. 14\(6\)](#)
- s. 29(1)(ca) inserted by [2019 asp 13 Sch. 2 para. 5\(3\)\(b\)](#)
- s. 36(1)(ca) inserted by [2019 asp 13 Sch. 2 para. 5\(4\)\(b\)](#)
- s. 36(5)(6) inserted by [2019 asp 13 s. 36\(2\)](#)
- s. 40A inserted by [2019 asp 13 s. 19\(2\)](#)
- s. 43A-43AD substituted for s. 43A by [2019 asp 13 s. 28\(2\)](#)
- s. 47(2)(aa) inserted by [2019 asp 13 s. 28\(3\)\(a\)](#)
- s. 47(2A) inserted by [2019 asp 13 s. 28\(3\)\(b\)](#)
- s. 47(6) inserted by [2019 asp 13 s. 31\(2\)\(c\)](#)
- s. 54A-54F and cross-heading inserted by [2019 asp 13 s. 15\(2\)](#)
- s. 57(2C)(2D) inserted by [2021 asp 9 s. 44\(2\)](#)
- s. 58(4)(fa) inserted by [2019 asp 13 Sch. 2 para. 5\(5\)\(b\)](#)
- s. 61(1)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(6\)\(b\)](#)
- s. 75(4A) inserted by [2019 asp 13 s. 35\(2\)](#)
- s. 75A(5A) inserted by [2019 asp 13 s. 35\(3\)](#)
- s. 77A inserted by [2019 asp 13 s. 39\(2\)](#)
- s. 135(4A) inserted by [2019 asp 13 s. 43\(2\)\(c\)](#)
- s. 154(1)(c) and word inserted by [2019 asp 13 s. 28\(4\)\(a\)\(ii\)](#)
- s. 154(1A) inserted by [2019 asp 13 s. 28\(4\)\(b\)](#)
- s. 158A(1A) inserted by [2019 asp 13 s. 44\(2\)](#)
- s. 158B-158F and cross-heading inserted by [2019 asp 13 s. 43\(3\)](#)
- s. 183(1)(c) inserted by [2019 asp 13 Sch. 2 para. 5\(7\)\(b\)](#)
- s. 237(1)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(8\)](#)
- s. 238(3)(a)-(c) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(a\)\(ii\)](#)
- s. 238(5)(ba) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(b\)](#)
- s. 238(7) inserted by [2019 asp 13 Sch. 2 para. 5\(9\)\(c\)](#)