
STATUTORY INSTRUMENTS

1994 No. 2586 (S.122)

TOWN AND COUNTRY PLANNING, SCOTLAND

The Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 1994

<i>Made</i>	- - - -	<i>5th October 1994</i>
<i>Laid before Parliament</i>		<i>10th October 1994</i>
<i>Coming into force</i>	- -	<i>31st October 1994</i>

The Secretary of State, in exercise of the powers conferred on him by sections 21 and 273(3) of the Town and Country Planning (Scotland) Act 1972((1)) and section 54 of the Coal Industry Act 1994((2)) and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 1994 and shall come into force on 31st October 1994.

(2) In this Order “the 1992 Order” means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992((3)).

Amendment of General Permitted Development Order

2. In article 2(1) of the 1992 Order (interpretation), for the definition of “minerals”, substitute “minerals” includes coal won or worked during the course of operations which are carried on exclusively for the purpose of exploring for coal or confined to the digging or carrying away of coal that it is necessary to dig or carry away in the course of activities carried on for purposes which do not include the getting of coal or any product of coal, but does not include any other coal;.

3. In Part 16 of Schedule 1 to the 1992 Order (development ancillary to mining operations), in Class 57(2) (development required for maintenance or safety) for “British Coal Corporation, or any lessee or licensee of theirs”, substitute “Coal Authority or any licensed operator within the meaning of section 65(1) of the Coal Industry Act 1994”.

(1) 1972 c. 52; section 21 was amended by the Local Government (Scotland) Act 1973 (c. 65), section 172(2), was extended by the Local Government, Planning and Land Act 1980 (c. 65), section 148(2) and amended by the Telecommunications Act 1984 (c. 12), Schedule 4, paragraph 54(2); section 21(1) to (3) was substituted by the Planning and Compensation Act 1991 (c. 34), Schedule 13, paragraph 5.

(2) 1994 c. 21.

(3) S.I.1992/223; amended by S.I. 1992/1078, 1992/2084, 1993/1036 and 1994/1442.

4. In Part 17 of Schedule 1 to the 1992 Order (British Coal Corporation Mining Development)–
- (a) for the heading “BRITISH COAL CORPORATION MINING DEVELOPMENT”, substitute “COAL MINING DEVELOPMENT BY THE COAL AUTHORITY AND ITS LICENSEES”;
 - (b) for Class 58 (underground development) substitute–

“Class 58.

(1) Development by a licensee of the Coal Authority, in a mine started before 1st July 1948, consisting of–

- (a) the winning and working underground of coal or coal-related minerals in a designated seam area; or
- (b) the carrying out of development underground which is required in order to gain access to and work coal or coal-related minerals in a designated seam area.

(2) Development is permitted by this class subject, except where sub-paragraph (3) applies, to the conditions that–

- (a) except in a case where there is an approved restoration scheme or mining operations have permanently ceased, the developer shall, before 31st December 1995 or before any later date which the planning authority may agree in writing, apply to the planning authority for approval of a restoration scheme;
- (b) where there is an approved restoration scheme, reinstatement, restoration and aftercare shall be carried out in accordance with that scheme;
- (c) if an approved restoration scheme does not specify the periods within which reinstatement, restoration or aftercare should be carried out, it shall be subject to the conditions that–

- (i) reinstatement or restoration, if any, shall be carried out before the end of the period of 24 months from either the date when the mining operations have permanently ceased or the date when any application for approval of a restoration scheme under sub-paragraph (2)(a) has been finally determined, whichever is later, and

- (ii) aftercare, if any, in respect of any part of a site, shall be carried out throughout the period of five years from either the date when any reinstatement or restoration in respect of that part is completed or the date when any application for approval of a restoration scheme under sub-paragraph (2)(a) has been finally determined, whichever is later;

- (d) where there is no approved restoration scheme–

- (i) all buildings, plant, machinery, structures or erections used at any time for in connection with any previous coal-mining operations at that mine shall be removed from any land which is an authorised site unless the planning authority have otherwise agreed in writing, and

- (ii) that land shall, so far as practicable, be restored to its condition before any previous coal-mining operations at that mine took place or to such condition as may have been agreed in writing between the planning authority and the developer,

before the end of the period specified in sub-paragraph (2)(e);

- (e) the period referred to in sub-paragraph (2)(d) is–

- (i) the period of 24 months from the date when the mining operations have permanently ceased or, if an application for approval of a restoration scheme has been made under sub-paragraph (2)(a) before that date, 24 months from the date when that application has been finally determined, whichever is later, or
 - (ii) any longer period which the planning authority have agreed in writing;
- (f) for the purposes of sub-paragraph (2), an application for approval of a restoration scheme has been finally determined when the following conditions have been met:–
 - (i) any proceedings on the application, including any proceedings on or in consequence of an application under section 233 of the Act((4)), have been determined, and
 - (ii) any time for appealing under section 33((5)), or applying or further applying under section 233, of that Act (where there is a right to do so) has expired.
- (3) Sub-paragraph (2) shall not apply to land in respect of which there is an extant planning permission which–
 - (a) has been granted on an application under Part III of the Act, and
 - (b) has been implemented.
- (4) For the purposes of this class–
 - “a licensee of the Coal Authority” means any person who is for the time being authorised by a licence under Part II of the Coal Industry Act 1994 to carry on coal-mining operations to which section 25 of that Act applies;
 - “approved restoration scheme” means a restoration scheme which is approved when an application made under sub-paragraph (2)(a) is finally determined, as approved (with or without conditions), or as subsequently varied with the written approval of the planning authority (with or without conditions);
 - “coal-related minerals” means minerals other than coal which are, or may be, won and worked by coal-mining operations;
 - “designated seam area” means land identified, in accordance with paragraph (a) of the definition of “seam plan”, in a seam plan which was deposited with the planning authority before 1st September 1994;
 - “previous coal-mining operations” has the same meaning as in section 54(3) of the Coal Industry Act 1994 and references in this class to the use of anything in connection with any such operations shall include references to its use for or in connection with activities carried on in association with, or for purposes connected with, the carrying on of those operations;
 - “restoration scheme” means a scheme which makes provision for the reinstatement, restoration or aftercare (or a combination of these) of any land which is an authorised site and has been used at any time for or in connection with any previous coal-mining operations at that mine;
 - “seam plan” means a plan or plans on a scale of not less than 1 to 25,000 showing–

(4) Section 233(3) was amended by the Housing and Planning Act 1986 (c. 63), Schedule 12, Part IV.

(5) Section 33 was amended by the Local Government and Planning (Scotland) Act 1982 (c. 43), Schedule 2, paragraph 11; by the said Act of 1986, Schedule 11, paragraphs 55 and 56 and by the Planning and Compensation Act 1991 (c. 34), section 50 and Schedule 13, paragraph 11.

- (a) land comprising the maximum extent of the coal seam or seams that can be worked from shafts or drifts existing at a mine at 29th June 1994, without further development on an authorised site other than development permitted by Class 59 of Schedule 1 to this Order;
 - (b) any active access used in connection with the land referred to in paragraph (a) of this definition;
 - (c) the National Grid lines and reference numbers shown on Ordnance Survey maps;
 - (d) a typical stratigraphic column showing the approximate depths of the coal seams referred to in paragraph (a) of this definition.”;
 - (c) in classes 59 and 60 (development required for purposes of a mine)—
 - (i) for “the British Coal Corporation, their lessees or licensees”, substitute “a licensed operator” in each place where it occurs;
 - (ii) for “coal industry activities”, substitute “coal-mining operations” in each place where it occurs;
 - (d) in class 62 (development required for maintenance or safety), for “British Coal Corporation, their lessees or licensees” substitute “Coal Authority or a licensed operator”; and
 - (e) in the interpretation of Part 17—
 - (i) for the definition of “coal industry activities”, substitute ““coal-mining operations” has the same meaning as in section 65(1) of the Coal Industry Act 1994 and references to any development or use in connection with coal-mining operations shall include references to development or use for or in connection with activities carried on in association with, or for purposes connected with, the carrying on of those operations;”;
 - (ii) after the definition of “coal-mining operations”, as inserted by sub-paragraph (i), insert ““licensed operator” has the same meaning as in section 65 of the Coal Industry Act 1994;”;
 - (iii) for “coal industry activities”, substitute “coal-mining operations” in each place where it occurs.
5. In Part 18 of Schedule 1 to the 1992 Order (waste tipping at a mine)—
- (a) in Class 64(1) (deposit of waste from colliery production activities), for “colliery production activities”, substitute “coal-mining operations”; and
 - (b) in the interpretation of Part 18, for the definition of “colliery production activities”, substitute ““coal-mining operations” has the same meaning as in section 65 of the Coal Industry Act 1994;”.

Transitional and saving

6.—(1) Class 58 of Schedule 1 to the 1992 Order, as substituted by article (4)(b) of this Order, shall not apply with respect to development by licensees of the British Coal Corporation, and accordingly the provisions of Class 58 shall continue to apply to such development in the form in which they were in force immediately before the date of the coming into force of this Order subject to the amendments in paragraph 2 below.

(2) For the purposes of paragraph (1) of this article, Class 58, in the form in which it was in force immediately before the date of the coming into force of this Order, is amended as follows;—

- (i) in sub-paragraph (1), for “the british coal corporation, their lessees or licensees”, substitute “a licensee of the British Coal Corporation”;
- (ii) in sub-paragraph (3), in the definition of “coal related minerals”, for “referred to in paragraph 1(2) of Schedule 1 to the Coal Industry Nationalisation Act 1946((6))”, substitute “which can only be economically worked in association with the working of coal or which can only be economically brought to the surface by the use of a mine of coal;”;
- (iii) in sub-paragraph (3), after the definition of “coal related minerals”, insert ““a licensee of the British Coal Corporation” means any person who is for the time being authorised by virtue of section 25(3) of the Coal Industry Act 1994 to carry on coal-mining operations to which section 25 of that Act applies;”.

(3) In paragraph (1) of this article “licensees of the British Coal Corporation” means persons who are for the time being authorised by virtue of section 25(3) of the Coal Industry Act 1994 to carry on coal-mining operations to which section 25 of that Act applies.

St Andrew’s House,
Edinburgh
5th October 1994

Allan Stewart
Parliamentary Under Secretary of State, Scottish
Office

(6) 1946 c. 59; Schedule 1 was repealed by section 67 of, and Part II of Schedule 11 to, the Coal Industry Act 1994 (c. 21) on the restructuring date, within the meaning of section 7 of that Act.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the 1992 Order”).

Most of the amendments are consequent upon restructuring of the coal industry, and establishment of the Coal Authority (CA) and a new licensing system, by the Coal Industry Act 1994.

Article 2 substitutes a new definition of “minerals” in Article 2(1) of the 1992 Order. The effect of this is to preclude licensees of CA from access to Part 16 of the 1992 Order because they will have their own permitted development rights in Part 17 as did British Coal Corporation (BCC) before. Article 3 amends references to BCC to CA.

Article 4 amends Part 17 of Schedule 1 of the 1992 Order (coal mining development). It substitutes a new class 58, providing new permitted development rights for certain underground coal mining development by Coal Authority licensees. It includes provisions for the reinstatement, restoration or aftercare (or a combination of these) of any land which is an authorised site and has been used at any time in connection with previous coal-mining operations at the mine. The developer must apply to the planning authority for approval of a restoration scheme (unless there is an existing approved restoration scheme or an implemented, extant planning permission), and restore the land in accordance with the scheme. Provision is made for restoration where no restoration scheme has been approved. There are transitional provisions, which do not include restoration provisions, for underground coal mining development by British Coal licensees (article 6).

Article 4 also makes minor amendments to classes 59, 60 and 62 in line with the Coal Industry Act 1994.

Article 5 makes minor amendments to Part 18 of the 1992 Order (waste tipping at a mine).