

# **Minerals Planning Guidance 14: Environment Act 1995: review of mineral planning permissions**

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On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

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**Publication title:** Minerals Planning Guidance 14: Environment Act 1995 - review of mineral planning permissions

**Date published:** September 1995

**ISBN:** 0 11 753175 8

**Price:** £15 (available to view below)

## Summary

Minerals Policy Guidance 14 (MPG14) gives advice to mineral planning authorities and the minerals industry on the statutory procedures to be followed and the approach to be adopted to the preparation and consideration of updated planning conditions in the review process.

## Order

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## **A: Introduction**

The Environment Act 1995 introduces new requirements for an initial review and updating of old mineral planning permissions and the periodic review of all mineral permissions thereafter. The requirements will come into force on 1 November 1995. This guidance note gives advice to mineral planning authorities and the minerals industry on the statutory procedures to be followed and the approach to be adopted to the preparation and consideration of updated planning conditions in the review process. The Secretaries of State attach importance to the effective and speedy implementation of the procedures and policies contained in this guidance note.

**1** The environmental issues relating to old mining permissions are ones which have concerned the Government for a number of years. It has long been recognised that mineral working is different from other forms of development. It can only take place where minerals are found to exist; it is a temporary use of land, although sometimes lasting for many years, and consideration needs to be given to ensuring restoration of the land to a beneficial after-use. The operation of the site can significantly change its impact over its lifetime and the standards of society can also change. There is therefore need for regular review so as to ensure that modern standards are met.

**2** Following the Report of the Stevens Committee (1976), the Government reflected this need for review in the Town and Country Planning (Minerals) Act 1981 ("the 1981 Act" - now incorporated in the Town and Country Planning Act 1990 "the 1990 Act"). That Act placed a duty on mineral planning authorities ("mpas") periodically to review mineral sites in their area, and to make such orders as they considered necessary updating the planning permissions. The Act, and associated regulations, provided that any compensation entitlement following such orders should be reduced provided certain requirements were met. In this way it was intended that the industry should bear reasonable additional costs arising from the modernisation of old mineral planning permissions.

**3** The 1981 Act represented a sea change in the approach to minerals planning, but the proposals for review and updating have not worked as well as intended. The Government therefore undertook in the Environment White Paper (1991) to review the operation of the legislation and the associated compensation arrangements to see how they could be improved.

**4** The first reform steps were taken in the Planning and Compensation Act 1991 ("the 1991 Act") which dealt with the oldest extant mineral consents, Interim Development Order ("IDO") permissions, referred to in the 1991 Act as "old mining permissions". These permissions which were originally granted between 1943 and 1948, have been preserved by successive planning Acts as valid planning permissions in respect of development which had not been carried out by 1 July 1948. Holders of IDO permissions had to register them with the mpa and, subsequently to submit a scheme of operating and restoration conditions for the authority's approval. There was no entitlement to compensation for the cost of complying with the new conditions, but the Act provides a right of appeal to the Secretary of State, and the then Minister for Housing and Planning - Sir George Young - made clear that for working sites a distinction should be drawn between conditions that dealt with the environmental and amenity aspects of working the site, which should not affect asset value, and conditions that would

fundamentally affect the economic structure of the operation.

**5** Having provided for the updating of IDO permissions, it was essential to tackle the review and updating of permissions granted in the 1950s, 60s and 70s both to protect the environment and amenity, and to provide equal treatment between sites and mineral operators. It was also necessary to provide for the future periodic review of all mineral permissions thereafter. Section 96 and Schedules 13 and 14 of the Environment Act 1995 ("the 1995 Act"), which will come into force on 1 November 1995 make provision for this.

**6** Section 96 of the 1995 Act gives effect to Schedules 13 and 14. Schedule 13 provides for an initial review and updating of mineral sites where the predominant mineral permission, or permissions, relating to the site was granted before 22 February 1982. Schedule 14 provides for the periodic review of all mining sites. Section 96(2) provides that the provisions of both Schedules have effect as if they were included in Part III of the 1990 Act. Section 96(4) repeals section 105 of the 1990 Act (Reviews by mineral planning authorities).

**7** The provisions of Schedule 13 do not apply to IDO ("old mining permissions" as defined in section 22(1) of the 1991 Act) permissions because these are already subject to a separate initial review under the provisions of the 1991 Act (see [Minerals Policy Guidance 8: Planning and Compensation Act 1991: Interim Development Order Permissions \(IDOs\) - Statutory Provisions and Procedures \(MPG8\)](#), and [Minerals Policy Guidance 9: Planning and Compensation Act 1991: Interim Development Order Permissions \(IDOs\) - Conditions \(MPG9\)](#)).

**8** Neither the provisions of Schedule 13 nor those of Schedule 14 apply to planning permissions granted by the 1988 General Development Order or its predecessors (the "GDO") for the winning and working of mineral or the depositing of mineral waste. Section 96(5) provides an enabling power to make similar provision for initial and periodic reviews within the 1995 General Permitted Development Order ("GPDO") itself.

**9** The 1995 Act includes provisions for the establishment of an Environment Agency for England and Wales, which will bring together the functions of HM Inspectorate of Pollution, the National Rivers Authority and local waste regulation authorities. It is expected to take over these functions on 1 April 1996. Any reference in this guidance note to these functions, and their relevance to initial reviews, should therefore take account of the setting up of the Agency.

**10** On 1 April 1996 local government reorganisation in Wales, involving the creation of unitary authorities comes into effect. From that date the new authorities as local planning authorities will assume the responsibilities, described in this guidance, of the existing county planning authorities. In the three national parks in Wales the new national park authorities will assume those functions from that date.



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## B: Initial Reviews

### Key points

**11** The requirements for an initial review apply to sites where the predominant minerals permission(s) was granted before 22 February 1982.

- A distinction is made between "dormant" sites (see paragraph 24) and "active" sites. No minerals development may lawfully be carried out at dormant sites until a new scheme of conditions has been submitted to, and approved by, the mpa
- Active sites will be reviewed in two successive phases each of 3 years. Phase I will deal with active sites where the predominant minerals permission(s) was granted after 30 June 1948 and before 1 April 1969.
- Phase II will deal with active sites where the predominant permission(s) was granted after 31 March 1969 and before 22 February 1982.
- However, all initial review sites which are wholly, or partly, within National Parks, AONBs or SSSIs on the date that notice of the first list of sites is first published will be treated as Phase I sites.
- By 31 January 1996 every mpa must prepare a list of all dormant and active Phase I and II mineral sites in their area. The list must distinguish between dormant sites and active Phase I sites and active Phase II sites. For active Phase I sites the list must specify the date by which an application for approval of new conditions must be submitted to the mpa. Mpas must advertise that the list has been prepared, and notify land and relevant mineral owners. Where the mpa cannot identify the owners, they must post a notice on the land.
- If a site, or part of a site, is inadvertently omitted from the list, a land or relevant mineral owner has 3 months from the date of first publication of the list to apply to the mpa for its inclusion, otherwise the planning permissions in respect of the site will cease to have effect.
- Land and relevant mineral owners of active Phase I sites must submit new schemes of conditions for the mpa's approval by the date specified by the authority, or the planning permissions will cease to have effect.
- By 31 October 1998, or such later date as may be specified by order, every mpa must prepare a list of active Phase II sites in their area. The list must specify the date by which an application for approval of new conditions must be submitted to the mpa. Essentially this means taking the first list of active Phase II sites and incorporating specific dates for the submission of revised conditions. Mpas must advertise that the list has been prepared, and notify land and relevant mineral owners. Where the mpa cannot identify the owners, they must post a notice on the land.
- Land or relevant mineral owners of active Phase II sites must submit new schemes of conditions for the mpa's approval by the date specified by the authority, or the planning

permissions will cease to have effect.

- It is for land and minerals owners to demonstrate a commitment to raising standards by operating as good environmental neighbours in an environmentally sustainable manner and submitting sensitive schemes of conditions. Equally mpas should note the Government's expectation that, in relation to active sites, generally conditions should not be imposed which would prejudice adversely to an unreasonable degree either the economic viability of operating the site or the asset value of the site.

## The statutory provisions

### *Definition of site (Section 96 and Schedule 13, paragraphs 1 and 2)*

**12** A "mineral site" is defined by reference to "relevant planning permission". "Relevant planning permission" means any extant planning permission, other than an IDO or GDO permission, for minerals development which was granted after 30 June 1948. In this context "minerals development" means development consisting of the winning and working of minerals, or involving the depositing of mineral waste. Permissions for development consisting of the winning and working of minerals granted prior to 1 April 1969 where the development permitted had not been begun before 1 January 1968 and which had not been implemented on or before 1 April 1979 ceased to have effect on 2 April 1979 and should not be taken into account. Similarly, permissions which have been revoked; permissions which are no longer capable of being implemented; permissions subject to a time limit regarding commencement of the development which have not been begun before the time limit expired; permissions subject to a time limit on the duration of the development and that time limit has expired; and, sites which have been worked out and restored, should also be discounted.

**13** Where a relevant planning permission authorises the carrying out of development consisting of the winning and working of minerals, but only in respect of any particular mineral or minerals, the permission is not to be taken as relating to any other mineral. In other words, only owners of land within a mineral site or persons with an interest in minerals to which the relevant planning permission relates (referred to throughout this document as "relevant mineral owners" or "persons with an interest in relevant minerals" are entitled to make applications or receive notifications under the provisions of Schedule 13. "Owner" in relation to any land means any person who is the estate owner in respect of the fee simple or is entitled to a tenancy for a term of years certain of which not less than seven years remains unexpired.

**14** A mineral site may consist of a single relevant planning permission or, where the mpa consider it expedient, the aggregate of two or more relevant planning permissions. In determining whether a site should consist of a single permission or the aggregate of two or more permissions, mpas must have regard to the following guidance.

### *Aggregation of Two or More Permissions*

**15** In most cases it should be clear from the planning history of the development what constitutes a site. But there may be cases where planning permissions to work the same mineral are severed by some physical barrier - eg a road and whilst the land to which one

permission relates is being worked, the land to which the other permission relates is unworked. In other cases planning conditions may require permissions to be worked and restored in sequence. For some minerals permissions are also granted to provide long term security of supply for processing plant requiring significant capital investment. In all cases, the mpa should have regard to what constitutes a sensible planning unit (having regard to the original intent of the planning permission or permission where known) and whether unworked land comprised in one permission forms part of the mineral reserves for the operation undertaken on the worked land comprised in another permission. Where the unworked land forms part of such reserves, it should be regarded as part and parcel of the same site and should not be separately classified as a dormant site. In any event, where land covered by a single permission is separated by a physical barrier it is not open to the mpa to treat it as more than one site, although different working programmes and different conditions may be applied to different areas of land within the same site.

### *Satellite Sites*

**16** Some mineral operations rely on a number of "satellite" sites serving a central processing facility. These may include dedicated processing operations such as cement works, brickworks and the like requiring long term security of supply and capital investment in plant and machinery. Some of these sites may be active, whilst others may be held in reserve to be brought into production as the market dictates or as other sites are worked out. Whether or not such "satellite" sites should be regarded as one mineral site or several different mineral sites will depend upon factors such as:

- their location;
- their distance from each other and from the central processing facility;
- whether it is clear that the various sites form part of a co-ordinated approach to ensure the sustainability of the processing facility;
- the date of the relevant planning permissions (because these will determine in which phase a site falls to be reviewed or whether it is subject to initial review at all); and,
- whether it makes sense to review them all at the same time or separately.

However, permissions should not be separated so as to ensure that some land is classified as a dormant site when the sensible approach is to treat the various permissions as a single operation, albeit separated by some distance.

### *Cross-Boundary Sites*

**17** There may be some instances where a single minerals operation straddles mpa boundaries. Legally, mpas only have administrative responsibility for land within their administrative area. An old permission which now straddles more than one mpa area as a result of later boundary changes is treated as two (or more) permissions, one covering each area as appropriate, by virtue of regulation 4 of the Local Government Changes for England Regulations 1994 [SI 1994 No 867]. (With regard to local government reorganisation in Wales,

section 53 of the Local Government (Wales) Act 1994 has similar effect). Accordingly, the development will have to be treated as two (or more) sites, and the appropriate area entered as such in each mpa's list of sites. Mpas should coordinate their approach so that the respective "sites" are reviewed at the same time and may wish to make use of section 101 of the Local Government Act 1972 which provides powers for two or more local authorities to make arrangements to discharge any of their functions jointly.

**18** There may be cases where, as a result of such apportionment, the different parts of the same operation fall into different Phases - eg a site with a planning permission granted between 1969 and 1982 would fall to be reviewed in Phase II, but if part of the operation falls within the administrative area of a National Park authority, that part would fall to be reviewed in Phase I. In such cases, the authorities and operator should seek to review the Phase II part of the operation at the same time as the Phase I part of the operation, unless both parts fall to be classified as "dormant" sites.

**19** Mineral sites where either the whole or the greater part of the site is subject to relevant planning permissions granted after 21 February 1982, are neither Phase I nor Phase II sites and are therefore not subject to initial review.

#### *Phase 1 Sites*

**20** A Phase I site is a mineral site where either the whole or the greater part of the site is subject to relevant planning permissions granted after 30 June 1948 and before 1 April 1969. Mineral sites wholly or partly within National Parks, Sites of Special Scientific Interest and Areas of Outstanding Natural Beauty, are Phase I sites where either the whole or the greater part of the land is subject to relevant planning permissions granted after 30 June 1948 and before 22 February 1982.

#### *Phase II Sites*

**21** A Phase II site is a mineral site where either the whole or the greater part of the site is subject to relevant planning permissions granted after 31 March 1969 and before 22 February 1982.

#### *Greater Part of the Land*

**22** Where a site comprises two or more planning permissions granted at different times, in deciding whether a site is a Phase I or Phase II site, or is neither and therefore not subject to initial review, mpas must ascertain whether any parts of a mineral site constitute the greater part of that site for the purpose of the date of the relevant planning permissions. In doing so, mpas should discount:

- a. any part of the site to which an IDO permission relates; and,
- b. any part of the site where minerals development has been (but is no longer being) carried out and which, in the opinion of the mpa, has been satisfactorily restored and, where aftercare conditions were imposed, the mpa judge that those conditions have been satisfactorily complied with.

**23** This means where a working site is subject to progressive restoration, and part of the site has been satisfactorily restored and any aftercare conditions imposed have been satisfactorily complied with, that part of the site should be discounted from the calculation. Such land will still form part of a mineral site for the purposes of an initial review, but it should be unnecessary to impose revised restoration and aftercare conditions in respect of such land.

### *Dormant Sites*

**24** The Act provides that a Phase I or Phase II site is a "dormant" site if no minerals development has been carried out to any substantial extent in, on, or under the site at any time in the period beginning on 22 February 1982 and ending with 6 June 1995. After 1 November 1995 it will not be lawful to carry on working a dormant site until full modern planning conditions have been approved by the mineral planning authority (mpa). "Substantial extent" is not defined in the statute and, in the absence of case law, the words have their common or everyday meaning. It will therefore be a matter of fact and degree in each case as to whether development has taken place to a substantial extent in the relevant period, but any development that has taken place after 6 June 1995 should be discounted. "Substantial" clearly means more than token or cosmetic working to keep a permission active and there will need to be evidence of production (or depositing of mineral waste) over a reasonable period of time within the relevant period. Where part of the reserves of the quarry is physically detached from the main operation, if the detached part has planning permission and the main quarry is active, it should not be necessary for there to have been substantial extraction from the detached part for it to be included within the whole operation as an active site.

**25** However, there may be borderline cases where an owner or operator might object if a site is classified as dormant. There is no right of appeal against an mpa's classification. Where therefore it is clear to the mpa that there could be a difference of opinion as to whether or not a site is to be classified as dormant, they should discuss the issues with the owners and operators of the site and should take into account all material evidence and representations before reaching their decision as to whether to classify the site as dormant in the first list of sites. Equally, owners and operators who are in any doubt as to whether or not their site will be classified as dormant should consult the mpa at the earliest opportunity. Mpas are reminded of their duty to act reasonably on the basis of the factual evidence in reaching their decision. In borderline cases where, after consultation with the land and relevant mineral owners, a mpa decide to classify a site as dormant against the owners representations they should give reasons for their decision in writing.

### *Duty to prepare "first" list of dormant sites, and Active Phase I and II sites (Schedule 13, paragraphs 3 and 5)*

**26** By 31 January 1996 mpas must prepare the first list of mineral sites in their area. A site is only to be included in the list if it is an active Phase I site, an active Phase II site, or a dormant site. The list must specify into which category each site falls and, in respect of each active Phase I site, the date by which an application for determination of new conditions must be made to the mpa. The date must be not less than 12 months after the list is first advertised and not later than 31 October 1998. Within that period, different dates may be set for different sites. Mpas should use this flexibility to give priority to those sites which are of particular concern because of their environmental impact or potential environmental impact and, so far as possible, to achieve an even spread of applications and workload for both authorities and

operators over the relevant period. It would also make good administrative sense for mpas to prepare a separate list of all sites which are not subject to an initial review. This will help both in ensuring that sites are not inadvertently omitted from the list and identify sites which will be subject to their first periodic review in due course.

**27** For each site, the list should be accompanied by a site plan and reference sheet showing the extent and dates of the relevant planning permission(s) relating to the site. For areas subject to local government reorganisation it would be helpful for the list to identify the successor planning authority.

**28** By 31 January 1996 mpas must advertise in two successive weeks in one or more local newspapers giving notice that the first list has been prepared and specifying one or more places in the mpa's area where and when the list can be inspected. The notice of the first list must:

- a. explain the general effect of the classification of the site;
- b. explain the consequences of failure to submit an application for determination of conditions in respect of a Phase I site by the date specified in the list for that site;
- c. explain the effects for any dormant or Phase I or Phase II active site not included in the list of its non inclusion and -
  - i. set out the right to make an application to the authority for that site to be included in the list and the date by which an application must be made; and,
  - ii. state that the landowner, or person with an interest in a relevant mineral, has a right of appeal against the mpa's determination;
- d. explain that the landowner of, or any person with an interest in a relevant mineral in, a Phase I active site has a right to apply for postponement of the date for submission of an application for determination of conditions and the date by which any application for postponement must be made.

A suggested form of notice is set out in Annex A (see link to the right).

### *Duty to prepare "second" list of Active Phase II sites (Schedule 13, Paragraphs 4 and 5)*

**29** By 31 October 1998 mpas must prepare a second list of active Phase II sites in their area. Essentially this will be an update of the first list of active Phase II sites. The list must specify in respect of each Phase II site the date by which an application for determination of new conditions must be made. The date must be not less than 12 months after the second list is first advertised and not later than 31 October 2001, or such later date as may be prescribed by order.

**30** By 31 October 1998, or such later date as the Secretary of State may prescribe by order, mpas must advertise in two successive weeks in one or more local newspapers giving notice that the second list has been prepared and specifying one or more places in the mpa's area where and when the list can be inspected. The notice of the second list must explain the consequences of failure to submit an application for determination of conditions in respect of

an active Phase II site by the date specified in the list for that site. A suggested form of notice is set out in Annex B (see link to the right).

#### *Applications for inclusion of site in first list (Schedule 13, paragraph 6)*

**31** Any owner of land, or person with an interest in relevant minerals, in a Phase I or Phase II mineral site which should have been included in the first list of sites but was not, may apply to the mpa for the site to be included. Applications must be made within 3 months of the date on which notice of the first list was first published. If no application is made by that date, the minerals permissions relating to that site will cease to have effect. Applications should state why the applicant considers that the site should be included in the list and be accompanied by supporting evidence.

**32** On receipt of an application for inclusion of a site in the first list, if the mpa considers that the site or part of the site is a dormant or active Phase I or II site, they must accede to the application, otherwise they must refuse it. Where the mpa grant the application they must amend the list accordingly. In the case of a Phase I site they must specify or amend the date by which an application for determination of conditions must be submitted to the mpa. An mpa must notify the applicant in writing of their decision on an application for inclusion of a site in the list and supply the applicant with details of any amendments made to the first or second list as appropriate.

**33** Where part of an active Phase I site is added to an existing site on the first list, if the date already specified in the list for submission of new conditions is less than 12 months from the date the mpa determined the application for inclusion of the site in the list, the specified date must be extended to 12 months from the date they notified the applicant of their determination.

**34** Where a new Phase I site is added to the first list, the date for submission of new conditions must be not less than 12 months from the date the mpa notified the applicant of their determination and not later than 31 October 1998 or 12 months from the date of notification of the determination, whichever is the later.

**35** Where the mpa consider that part of a site, or a new site, to be included in the list is an active Phase II site, and the second list has already been advertised prior to the mpa's determination, the date for submission of new conditions must be not less than 12 months from the date the mpa notified the applicant of their determination and not later than 31 October 2001 (unless varied by order by the Secretary of State) or 12 months from the date of notification of the determination, whichever is the later.

**36** Where the mpa refuse an application for inclusion of a site in the first list, or have not given notice of their determination within 8 weeks (or such longer period as may have been agreed in writing between the mpa and the applicant) of their receipt of the application, the applicant may appeal to the Secretary of State. Appeals must be made by giving notice to the Secretary of State within 6 months of the date of determination or deemed refusal.

#### *Applications for postponement of review date (Schedule 13, paragraph 7)*

**37** A land or relevant mineral owner of an active Phase I or Phase II site may apply to the mpa

for postponement of the date specified in the first or second list for the submission of new conditions on the grounds that the existing planning conditions are satisfactory. Applications must be made within 3 months of the date on which notice of the appropriate list was first advertised, or, where the list has been amended as a result of a successful application for inclusion of a site in the first or second list, within 3 months of the date of the mpa's written notification of their determination of that application.

**38** The purpose of the facility for postponement is to avoid unnecessary review where the existing planning conditions are judged to be satisfactory. In such cases, postponement should be for a reasonable number of years - eg 10 to 15 years. A site with a postponed review date will still be subject to the terms and conditions of an initial review at that date. Applications for postponement should not be made simply to seek a small extension of time for the submission of new schemes of conditions: such minor extensions can be agreed in writing between the applicant and the mpa without the formal procedure of a postponement application.

**39** An application for postponement must set out the existing planning conditions relating to the site; set out the reasons why the applicant considers these conditions to be satisfactory; specify the date which the applicant wishes to be substituted for the one in the list; and be accompanied by an appropriate certificate. An appropriate certificate is one, modified as necessary, as would be required under section 65 of the 1990 Act as if the application for postponement were an application for planning permission for minerals development (ie that all persons known to the applicant to have an interest in the land or minerals to which the application relates have been notified of the application). The requirements in relation to notification of owners and certificates are set out in articles 6 and 7 of the Town and Country Planning (General Development Procedure) Order 1995 [SI 1995 No 419]. Suggested forms of modified notices and certificates are set out in Annex C (see link to the right).

**40** If the mpa do not consider the existing conditions satisfactory they must refuse the application. If the mpa do consider the existing conditions satisfactory they must grant the application, but may specify a different date from that proposed by the applicant, and amend the first or second list accordingly. The mpa must notify the applicant of their determination in writing.

**41** Where the mpa have not given notice of their determination within 3 months (or such longer period as they may have agreed in writing with the applicant) of receipt of the application, the application is deemed to be approved and the mpa must amend the first or second list accordingly.

**42** Any person who is an owner or tenant of any part of the site (or who holds an interest in any relevant mineral in the site) may apply for postponement of a review date. It is possible for there to be more than one application in respect of the same site, see advice in paragraphs 64 and 65.

#### *Duty to serve notice on land and mineral owners of preparation of first and second lists (Schedule 13, paragraph 8)*

**43** Mpas must serve written notice of the first list having been prepared on every person appearing to them to be an owner of land or having an interest in any relevant mineral in a mineral site included in the first list. The notice must be served no later than the date of first



advertisement of the first list and must indicate whether the site is dormant or an active Phase I or II site. In the case of an active Phase I site, the notice must also:

- a. indicate the date specified for the submission of an application for determination of new conditions;
- b. explain the consequences which will occur if no application is made by the specified date;
- c. explain the right to apply for postponement of that date and indicate the date by which such an application must be made.

**44** Mpas must also serve written notice of the second list having been prepared on every person appearing to them to be an owner of land or having an interest in any relevant mineral in a mineral site included in the second list. The notice must be served no later than the date of first advertisement of the second list. The notice must indicate that the site is an active Phase II site and must also:

- a. indicate the date specified for the submission of an application for determination of new conditions;
- b. explain the consequences which will occur if no application is made by the specified date;
- c. explain the right to apply for postponement of that date and indicate the date by which such an application must be made.

Suggested forms of notice are at Annex D (see link to the right).

### *Reminders*

**45** Where an mpa has served notice in respect of an active Phase I or Phase II site and no application for determination of conditions has been made by 8 weeks before the date specified in the relevant list, the mpa must serve a written reminder on the land and relevant mineral owners at least 4 weeks before the specified date. The reminder must:

- a. indicate that the site is an active Phase I or II site as appropriate;
- b. indicate the date specified in the appropriate list by which an application for the approval of new conditions must be submitted to the mpa; and,
- c. explain the consequences that will occur if no application is made by that date.

A suggested form of reminder notice is at Annex E (see link to the right).

**46** Mineral operators are asked to provide mpas with every assistance in identifying landowners and persons with an interest in relevant minerals in the site. However, where an mpa is unable to identify the names or addresses of landowners or persons with an interest in relevant minerals for the purpose of serving written notices or reminders, they shall instead post a copy of the notice or reminder, as appropriate, by firmly affixing it to one or more conspicuous objects on the land in question. Where there are no or insufficient conspicuous object on the land, the mpa may affix the notice or reminder to a post driven into or erected on the land.

**47** A site notice must be displayed in such a way as to be easily visible and legible; must be posted subject to the same timetable as for written notices and reminders; and, must be left in position for at least 21 days from the date when it is first displayed. Site notices should be posted in suitably prominent places and, for larger sites, more than one notice may be appropriate.

**48** Where an mpa has failed to serve a written reminder or to post a copy of a reminder on the land by the date required, they may do so at any later time. In such cases, the date by which an application for determination of conditions must be made is 3 months from the date of service or posting of the reminder rather than the date specified in the first or second list.

### *Applications for determination of new conditions (Schedule 13, paragraph 9)*

**49** Any person who is an owner of land or has an interest in any relevant mineral which is or forms part of a dormant site or an active Phase I or II site may apply to the mpa to determine the conditions to which the relevant planning permissions relating to that site are to be subject. In the case of active Phase I and active Phase II sites, if no application is made by the date specified by the mpa the permissions will cease to have effect. Applications must be in writing and must:

- a. identify the site;
- b. specify the land or minerals of which the applicant is an owner;
- c. identify any relevant planning permissions relating to the site;
- d. identify and give an address for any other person known to the applicant to be an owner of land or person with an interest in relevant minerals in the site;
- e. set out the applicant's proposed conditions; and,
- f. be accompanied by an appropriate certificate.

A standard form of application is set out at Annex F (see link to the right).

**50** An appropriate certificate is one, modified as necessary, such as would be required under section 65 of the 1990 Act as if the application for determination of new conditions were an application for planning permission for minerals development (ie that all persons known to the applicant to have an interest in the land or minerals to which the application relates have been notified of the application). The requirements in relation to notification of owners and certificates are set out in articles 6 and 7 of the Town and Country Planning (General Development Procedure) Order 1995 [SI 1995 No 419]. Suggested forms of modified notices and certificates are set out in Annex C (see link to the right).

**51** On receipt of an application, the mpa should first check that the application form is accompanied by the necessary certificates, and that all have been properly completed and signed. If there are any deficiencies which would invalidate the application, the mpa should inform the applicant without delay and should be prepared to grant an extension of time where appropriate.

**52** The mpa should acknowledge receipt of the application in writing as soon as practicable and should enter details of the application in the Planning Register or, where they are not the authority responsible for keeping the register, they should pass the details to the relevant

district planning authority who should enter them in the register. Paragraph 9(5) of Schedule 13 provides that an mpa must publicise the application as if it were an application for planning permission. A suggested form of notice is at Annex G (see link to the right).

**53** On receipt of a valid application the mpa must determine the conditions to which each relevant planning permission is to be subject. A valid application is one which gives the information set out in paragraph 49 above and which is accompanied by the appropriate certificates. The conditions determined may include any conditions which may be imposed on the grant of planning permission for minerals development and may be in addition to, or in substitution for, any existing conditions. In determining conditions relating to development for which permission is granted by a development order, the mpa must have regard to guidance issued by the Secretary of State. (This provision relates to the imposition of conditions on planning permission for minerals development which regulate or control ancillary mining development - see paragraphs 93 to 98 below).

**54** If the mpa have not given written notice of their determination within 3 months (or such longer period as may be agreed in writing between the mpa and the applicant) of receipt of the application, the application and the conditions submitted therein are deemed to be approved from that date.

**55** Where the mpa are unable to determine an application unless the applicant provides further information, they may within one month of receipt of the application notify the applicant and specify the further details they require. In such a case, the 3 month period for determination of the application does not start to run until the mpa have received all the further details specified in the notice. The further details required may include information, plans or drawings or evidence verifying information or details already supplied. Mpas should require further details only where necessary to determine the application and should specify clearly the further details required and by what date. Applicants should make every effort to provide all further details requested as speedily as possible.

**56** New conditions do not have effect until the application is finally determined - ie all proceedings on the application, including appeals to the Secretary of State and the High Court have been determined, and the time period for any further appeal has expired.

**57** Once an application has been finally determined, the mpa should enter details of the determination in Part II of the Planning Register or, if they are not the authority responsible for keeping the register, they should pass the details to the relevant district planning authority who should enter them in that part of the register. At the same time the copy of the application should be removed from Part I of the register.

*Information to accompany determination of conditions where working rights are restricted or reduced (Schedule 13, paragraphs 1(6) and 10)*

**58** This applies to active Phase I and Phase II sites only. Where the mpa determine conditions different from those submitted by the applicant, and the effect of the conditions - other than restoration and aftercare conditions - is to restrict working rights further than the existing conditions attached to the permissions relating to the site, the mpa must provide a separate notice with their determination. Where the mpa do not determine conditions different from those submitted by the applicant, or where the new conditions do not have the effect of further

restricting working rights, no separate notice is required. Where a separate notice is required it should be issued with, and at the same time as, the notice of determination of conditions. The notice must state that the conditions the mpa have determined differ from those submitted by the applicant; state that the conditions further restrict working rights identify the working rights further restricted; and, state whether or not, in their opinion, the effect of that restriction would be such as to prejudice adversely to an unreasonable degree either the economic viability of operating the site or the asset value of the site (also referred to in this guidance note as "unreasonable prejudice"). In forming that opinion, mpas must have regard to the guidance in this MPG.

**59** Paragraph 1(6) of Schedule 13 provides that working rights are restricted in respect of a mineral site if any of the following is restricted or reduced in respect of the mineral site in question:-

- 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 any 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 the 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.

A suggested form of notice is set out in Annex H (see link to the right).

### *Meaning of "mineral waste"*

**60** Section 336(1) of the 1990 Act defines the "depositing of mineral waste" as "any process whereby a mineral-working deposit is created or enlarged ...". "Mineral-working deposit" is defined as "any deposit of material remaining after minerals have been extracted from land or otherwise deriving from the carrying out of operations for the winning and working of minerals in, on or under land". For the purpose of what constitutes a restriction on working rights, the deposition of mineral waste will generally mean the permanent deposit of waste material arising from the extraction of minerals or minerals processing, and not overburden mounds or other temporary deposits which will be disposed of in the mineral void, or otherwise used in the site restoration.

### *Right to appeal against MPA's determination of conditions (Schedule 13, paragraph 11)*

**61** Where the mpa determine conditions different from those submitted by the applicant or give notice that, in their opinion, a restriction on working rights would not prejudice adversely to an unreasonable degree either the economic viability of operating the site or the asset value of the site, the applicant has a right of appeal to the Secretary of State.

**62** An appeal must be made by giving notice to the Secretary of State within 6 months of the

mpa's notice of determination.

### *Compensation (Schedule 13, paragraph 15)*

**63** Where the mpa do give notice that they have determined conditions different from those submitted by the applicant; specify the further restriction of working rights; and, state that in their opinion, the effect of the restriction would be such as to prejudice adversely to an unreasonable degree either the economic viability of operating the site or the asset value of the site, then Parts IV and XI of the 1990 Act have effect as if a modification order had been made and confirmed under sections 97 and 98 of that Act imposing those restrictions. Persons having an interest in the land or relevant minerals comprised in the mineral site whose interests have been adversely affected by the restrictions imposed by the deemed modification order will be entitled to claim compensation under section 107 of the 1990 Act unmodified by section 116 of that Act or any regulations made thereunder.

### *More than one application in respect of the same site (Schedule 13, paragraph 14)*

**64** Because it is open to any person who is an owner or tenant of any part of the site (or who holds an interest in any relevant mineral in the site) to apply for postponement of a review date or for the determination of new conditions, it is possible for there to be more than one application in respect of the same site. The Act provides that each eligible person may make only one application for postponement or determination of conditions. However, if there is more than one person eligible to apply and each makes a separate application, the mpa must treat all the applications as a single application served on the date on which the latest application was made, and must notify each applicant of receipt of the applications and their determination accordingly. Where the mpa have already determined an application, then no further applications may be made by any person.

**65** Applicants are strongly advised therefore to co-ordinate their approach with any other persons eligible to apply for postponement of a review date or determination of conditions in respect of the same site and to discuss the position with the mpa with a view to submitting a single application covering all their respective interests.

### *Reference of applications to the Secretary of State (Schedule 13, paragraph 13)*

**66** The Secretary of State may give directions requiring applications for the determination of conditions to be referred to him rather than being dealt with by the mpa. Such directions may relate either to a particular application or to a class of application (eg a particular mineral type). The Secretary of State intends to use this power vary sparingly along the same lines as his power of call-in for planning applications generally.

**67** Where the Secretary of State does call in an application for his own determination, he is bound by the same requirement to provide a notice accompanying his determination of conditions where working rights are restricted or reduced.

### *Appeals: general procedural provisions (Schedule 13, paragraph 16)*

**68** Paragraph 16 of Schedule 13 provides that notice of appeals must be made on a form

supplied by the Secretary of State for that purpose. Suggested forms of notice are at Annex I and a standard appeal form is set out at Annex J (see links to the right). The procedures for determination of appeals are those that apply to IDO permissions and the usual right of appeal to the High Court against the Secretary of State's determination applies.

**69** Before determining a called-in application or an appeal the Secretary of State must, if either the applicant/appellant or the mpa so wish, give each of them the opportunity of appearing before or being heard by a person appointed for that purpose. In any event, where the Secretary of State is minded either to confirm or determine conditions which would impose a further restriction on working rights and, in his opinion, the effect of that further restriction would prejudice adversely to an unreasonable degree either the economic viability of operating the site or the asset value of the site, he will consult with the interested parties before issuing his determination or decision.

### *Permissions ceasing to have effect (Schedule 13, paragraph 12)*

**70** Where no application for determination of conditions in respect of an active Phase I or Phase II site has been made to the mpa by the date specified in the appropriate list - or as amended - (or such later date as may have been agreed in writing between the applicant and the mpa or, where the mpa served a reminder later than 4 weeks before the specified date, within 3 months of the date the reminder was served), the permissions relating to that site, other than any existing restoration and aftercare conditions, cease to have effect on the day following the last date on which such an application may be made. There is no specified date for the submission of applications for the determination of conditions relating to dormant sites, but such sites cannot lawfully recommence working until a new scheme of conditions has been approved.

**71** Where a Phase I or Phase II site has not been included in the first list, and no application for inclusion of the site has been made within 3 months of the date of first advertisement of the list, each permission relating to that site, except in so far as it imposes a restoration or aftercare condition, will cease to have effect on the day following the last date on which such an application may be made.

**72** Where an application for inclusion in the list has been made, unless the application is approved (either by the mpa or the Secretary of State on appeal), the permissions relating to the site cease to have effect on the date when all the proceedings relating to the application, including any appeal to the High Court, have been finally determined and the time period for any further appeal has expired.

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## C Guidance on Initial Reviews

### *Introduction*

**73** The Government takes the view that this is an important opportunity to secure improved operating and environmental standards. Minerals are vital to the economy but it is essential that they are extracted in an environmentally acceptable and sustainable way. The Government therefore look to the minerals industry in the first instance to demonstrate their commitment to raising standards, to operate as good environmental neighbours and to ensure that any adverse affects of extraction are minimised and that land is restored to a beneficial use. The Government believes that a responsible industry will wish to meet these objectives and expects that, in relation to active sites, mpas should not need to impose conditions - other than restoration and aftercare conditions - which would restrict working rights to the extent that either the economic viability of operating the site or the asset value of the site would be prejudiced adversely to an unreasonable degree except in exceptional circumstances. In this context the economic viability of operating the site would include processing operations which are wholly dependent on the availability of minerals from the site. The Government believes that in this way, and with a constructive approach on all sides, the need to provide proper protection for the environment and the amenity of local residents and the reasonable expectations of mineral operators can be accommodated without the payment of compensation.

**74** Section B sets out the procedures to be followed in respect of initial reviews of mineral sites. This section gives advice on the approach to be adopted in defining mineral sites and related matters, and the considerations to be taken into account by applicants and mpas in preparing and determining the conditions to which permissions relating to mineral sites should be subject. It is for applicants in the first place to submit schemes of conditions for the consideration of the mpa, and for the mpa to determine whether the submitted conditions are acceptable or should be modified or added to in the light of the particular circumstances of the case and this guidance. Applicants have a right of appeal to the Secretary of State against the imposition of conditions different from those submitted in their application: either where they regard these as unreasonable in any respect; or, where the effect of the conditions would be to further restrict working rights, they disagree with the mpa's determination that the effect of the further restriction would not prejudice adversely to an unreasonable degree either the economic viability of operating the site or the asset value of the site. In all cases, it is expected that applicants will seek to submit conditions which provide environmental protection and ensure that future operations are carried out to a high standard.

**75** The 1995 Act provides that, in the case of Phase I and Phase II sites where no operations for the winning and working of minerals or the depositing of minerals waste have been carried out to any substantial extent in the period beginning on 22 February 1982 and ending with 6 June 1995 ("dormant" sites), development may not recommence or lawfully continue after 1 November 1995 until a scheme of conditions has been finally determined. In the case of active Phase I and Phase II sites an application for determination of conditions must be made to the mpa by the date specified in the appropriate list (or such longer period as the mpa agree) or the permissions relating to the site will cease to have effect.

**76** This distinction will prevent the reactivation of dormant sites without full modern planning conditions; and, will ensure that schemes that are prepared and submitted are appropriate to the circumstances pertaining at the time. Applicants should avoid preparing and submitting schemes of conditions too far in advance of their need to work dormant sites, both in their own interests and to ensure that the workload for both applicants and mpas is more evenly spread. Equally, where applicants can demonstrate the need to re-activate dormant sites - eg to meet a specific contract - mpas should deal with the application as speedily as possible.

**77** The purpose of the initial review is to ensure that in a relatively short period of time, all valid permissions for the winning and working of minerals or the depositing of mineral waste relating to active Phase I and II mineral sites will be subject to conditions appropriate to the land use planning circumstances, having regard to the safe, efficient and economic operation of the site, and that the land covered by the permission will be suitably restored as soon as practicable.

**78** The conditions which may be imposed may include any conditions which could be imposed on a grant of planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste, and may be imposed in addition to, or in substitution for, any conditions which attached to the original grant of permission. General advice on the types of conditions that may be appropriate to permissions for the winning and working of minerals and the depositing of mineral waste is given in paragraphs 55 to 130 of, and Annex 2 to, [Minerals Planning Guidance 2: Applications, Permissions and Conditions \(MPG2\)](#). Applicants should have regard to the advice in [MPG2](#) and [Minerals Planning Guidance 7: The Reclamation of Mineral Workings \(MPG7\)](#), and to the following paragraphs in drawing up the conditions to which they propose the relevant planning permissions should be subject. Similarly, mpas should have regard to the advice in [MPG2](#) and [MPG7](#), and to the following paragraphs, in considering applications and in determining conditions. In all cases, conditions should have regard to the circumstances of the particular site and should be:

- necessary
- relevant to planning
- relevant to the development
- enforceable
- precise
- reasonable in all other respects.

The following paragraphs give advice on the particular considerations to be taken into account in defining sites and related matters and in drawing up and considering schemes of conditions for initial reviews.

### *Approach to conditions for active sites*

**79** Under the approach adopted for the updating of IDO permissions, there is no entitlement to compensation for the cost of complying with any conditions imposed. However, the policy



approach - as set out in Sir George Young's statement of 16 May 1991 and paragraph 7 of [MPG9](#) - is that, for working sites, a distinction should be drawn between conditions that deal with the environmental and amenity aspects of working the site, which should not affect asset value, and conditions that would fundamentally affect the economic structure of the operation. Conditions that would significantly affect the asset value would be more appropriately imposed by modification or discontinuance orders, which would give rise to a compensation entitlement.

**80** The approach to be adopted to the determination of conditions for active Phase I and Phase II sites should differ little from that for IDOs. The only difference is that where the mpa determine conditions different from those submitted by the applicant; and the effect of those conditions, other than restoration or aftercare conditions, is to restrict working rights further than before the review - then, if the effect of the further restriction is to prejudice adversely to an unreasonable degree either the economic viability of the operation or the asset value of the site, a liability for compensation will arise. In practice, the Government's view is that conditions, other than restoration and aftercare conditions, which would restrict working rights to the extent of unreasonable prejudice should not be imposed except in exceptional circumstances. In the Government's view, this is little different from the IDO approach which urged against conditions that would fundamentally affect the economic structure of the operation or significantly affect asset values.

**81** Where the mpa do determine conditions different from those submitted by the applicant and the effect of those conditions, other than restoration and aftercare conditions, is to further restrict working rights, paragraph 10 of Schedule 13 requires the mpa to provide certain additional information with their notice of determination of conditions. They must state, amongst other things, whether or not, in their opinion, the effect of the restriction would be such as to prejudice to an unreasonable degree either the economic viability of the operation or the asset value of the site. Whether or not the effect of a condition is to further restrict working rights will be a matter of fact. Whether such a restriction would give rise to unreasonable prejudice is a matter of judgement in each particular case. In forming their opinion the mpa must have regard to this guidance.

**82** The mpa should first consider on the facts whether in their judgement the effect of the new conditions would restrict working rights. In this context, the Government's intention is that there should not be a sliver of difference between the approach to conditions for IDOs and the approach to conditions for initial review sites - ie "that there should be no compensation for any new environmental, amenity and restoration conditions imposed" (Viscount Ullswater, Official Report Col 134, 7 March 1995). If the mpa conclude that the effect of the new conditions would not restrict working rights they do not have to issue a separate notice and no compensation is payable. There is no right of appeal against the mpa's judgement that the effect of the new conditions would not restrict working rights, but the applicant may appeal against the determination of conditions different from those submitted if they consider them unreasonable in any respect.

**83** If the mpa conclude that the effect of the new conditions would restrict working rights, they must then consider whether the effect of the restriction would be such as to prejudice adversely to an unreasonable degree either the economic viability of operating the site or the asset value of the site. Prejudice to an unreasonable degree clearly means that modest changes to working rights can be made without liability for compensation. Where the mpa conclude that working rights would be restricted but unreasonable prejudice would not arise

they must issue a separate notice to that effect. The applicant has a right of appeal to the Secretary of State against the mpa's opinion. Where the mpa conclude that unreasonable prejudice might arise, they should discuss the proposed conditions with the operator who should provide information about the economic viability of the operation and the asset value of the site. In the light of that information, the mpa should either moderate the restriction or they must issue a separate notice as outlined above and be prepared for a compensation claim.

**84** Neither economic viability, nor asset value are defined in the Act and, in the absence of case law, the words have their common or everyday meaning. Economic viability means the ability of a site to produce sufficient revenue to cover all of its operating costs (including finance costs and depreciation) and produce an appropriate return on capital. The asset value of the site is the remaining mineral in the ground for which planning permission exists and stockpiled material, together with the land, buildings and fixed plant and machinery. In those cases where a new planning condition would restrict working rights, for example a buffer zone between the edge of the site and residential property which sterilized some of the workable mineral reserves, the test is whether that condition would prejudice adversely to an unreasonable degree the asset value or economic viability of operating the site. In terms of asset value, this would normally mean that a significant quantity of workable mineral would have to be lost relative to the amount of workable mineral in the site for which planning permission exists. In terms of economic viability, the test is the extent to which the further restrictions imposed by new conditions would cause extra operating costs or restrict revenue to the extent that economic viability would be prejudiced adversely to an unreasonable degree.

**85** In determining new conditions therefore, the mpa should consider whether a resulting restriction on working rights would be such as to prejudice adversely to an unreasonable degree the asset value or economic viability of the site or operation having regard to the expected remaining life of the site. If it would do so, the appropriate course would be to seek to moderate the restriction so that unreasonable prejudice does not arise. In the Secretary of State's view, if mpas follow the general guidance on conditions set out in the following paragraphs unreasonable prejudice should not arise. Nevertheless, each case must be determined on its merits.

## **General considerations**

### *Consultations*

**86** Applicants should note that applications for determination of conditions must be accompanied by the appropriate certificate that the necessary notification requirements have been complied with, as if it were an application for planning permission for the winning and working of minerals or the depositing of mineral waste. In addition to these statutory requirements, applicants are encouraged to explain fully and as early as possible the nature of their proposals indicating the ways in which they intend to deal with the various environmental and amenity factors. Applicants are strongly advised to consult with the relevant statutory bodies, local authorities and other organisations whose interests may be affected, before submitting a formal application to the mpa. Technical issues such as drainage, access arrangements, working methods, pollution control, restoration and after-use should also have been discussed with the appropriate bodies. Where proposals relate to larger sites or sites that may be worked over many years, it may be particularly helpful for the applicant to discuss the

issues at an early stage with the local community - for example by arranging public meetings and exhibitions.

**87** Similarly, whilst the provisions of the Town and Country Planning (General Development Procedure) Order 1995 relating to consultations before the grant of planning permission do not statutorily apply to these new procedures, mpas should have regard to these general requirements and carry out such consultations as they see fit before determining the application. In considering the need for consultations mpas should also have regard to any consultations carried out by the applicant prior to submission of the application and the extent to which the submitted proposals reflect the views of consultees. Unnecessary duplication of consultation should be avoided.

### *Conditions*

**88** In considering the types of conditions that will be appropriate in any particular case, regard should be had to all material planning considerations including: the type of mineral; the nature and extent of existing working; the location and planning history of the site; land quality and proposed after-use; and, the availability of suitable restoration materials. For dormant sites full modern conditions will be appropriate. For active sites, the Government believes that generally conditions which deal with the environmental and amenity aspects of working the site should not have the effect of restricting working rights to the extent that either the economic viability of operating the site or the asset value of the site would be prejudiced adversely to an unreasonable degree.

**89** For active sites where only a relatively small part of the total land covered by the permission has been or is currently being worked, it may be appropriate to apply full modern conditions. However, where the effect of the imposition of full modern conditions would be to restrict working rights to the extent that the restriction would prejudice adversely to an unreasonable degree either that economic viability or the asset value of the site, it would be appropriate to apply a degree of flexibility if a liability for compensation is to be avoided.

**90** In all cases, it will be necessary in preparing and considering schemes of conditions, to identify sensitive property and areas which are, or could be, adversely affected by the development and to seek ways in which the impact can be mitigated or avoided - for example, through the provision of buffer zones and/or baffle mounds, or restrictions on working hours and/or appropriate noise limits. Particular attention should be given to areas of environmental or ecological importance such as National Parks, AONBs, National Nature Reserves, SSSIs, features of archaeological interest and the built heritage; and, to the proximity of residential or other sensitive property such as schools and hospitals. Consideration should also be given to the need to avoid adverse effects on the quality or quantity of groundwater resources where these are particularly vulnerable or in short supply.

**91** In relation to active sites, where the applicant can demonstrate that buffer zones or other limits on the extractive area cannot be complied with without prejudicing adversely to an unreasonable degree either economic viability or asset value, the applicant and mpa should consider whether equivalent or better protection can be provided by other means.

**92** All responsible minerals developers should work their sites in an environmentally acceptable and sustainable way and aim to be recognised as good neighbours. At the same

time, it has to be accepted that, in some cases there will be limits to what can be achieved without unreasonable prejudice. Nevertheless, applicants should seek to achieve the greatest possible improvement in environmental standards and should, where possible, voluntarily offer limits on extractive areas, depths and rates of output, where this is the only way of avoiding unacceptable environmental damage. In all cases, applicants are encouraged to discuss their proposals for the operation and restoration of the site with the mpa at an early stage, and well before submitting a formal application. Mpas should be prepared to respond positively to such approaches. In this way many issues can be resolved by constructive negotiation.

### *Ancillary Mining Development*

**93** The requirements to apply for determination of conditions apply only to permissions for development consisting of the winning and working of minerals or involving the depositing of mineral waste. However, a condition imposed on an initial review following an application for determination of conditions, may include any condition which may be imposed on a grant of planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste. Such conditions may include any conditions which a mineral planning authority thinks fit, including conditions for regulating the development or use of any land for the purposes of or in connection with the development authorised by the permission. Nevertheless, the power to impose planning conditions is constrained by the general limitations imposed by the Courts ie that any condition must fulfil a planning purpose, must fairly and reasonably relate to the development permitted and should not be manifestly unreasonable.

**94** The intention is that reviews should include such development only in relation to land used as a mine or quarry and ancillary mining land, as defined in Part 19 of Schedule 2 to the 1995 General Permitted Development Order. Reviews should cover ancillary mining development which gained its permission from Part 19 of the 1995 Order (and its predecessors); permissions for ancillary mining development granted as part of a consent for the winning and working of minerals or the depositing of mineral waste; and, specific planning permissions for ancillary mining development in so far as the development permitted would otherwise have been acceptable under the 1995 GPDO or its predecessors - ie where the original permitted development rights had been withdrawn and a separate planning permission for the development otherwise permitted had been granted in its place, or where separate planning permission had been granted for development which would now be permitted under the 1995 GPDO but which would not have been permitted under its predecessors.

**95** This would exclude on-site cement works and brickworks from review and also all remote processing plant. It would also exclude processing plant at a mine or quarry where winning and working has ceased but the plant is continuing to process material from other active mines or quarries.

**96** New conditions following a review could:-

- a. withdraw permitted development rights for future ancillary development;
- b. impose conditions regulating the future operation of existing ancillary development, provided that the predominant use of the ancillary development is in connection with the development authorised by the permission for winning and working of minerals or the depositing of mineral waste and that the imposition of such conditions is expedient for the

purposes of the development so authorised and fairly and reasonably relates to that development;  
c. require the removal of ancillary development only as part of a restoration condition once mining operations ceased.

**97** Conditions *could not* require the removal of ancillary development which is not primarily related to the permission for winning and working of minerals or the depositing of mineral waste and which may need to continue operating, or is capable of continuing to operate, after winning and working or depositing has ceased.

**98** Permitted development rights should not be withdrawn nor should restrictions be placed on them unless there are exceptional and sound planning reasons for doing so; and, in relation to active sites, conditions should not place restrictions on the future operation of existing ancillary development which would have the effect of restricting working rights to the extent that the economic viability of the operation or the asset value of the site was prejudiced adversely to an unreasonable degree, except in exceptional circumstances.

### *Waste Tipping*

**99** Some minerals permissions have conditions requiring landfill with non-mineral waste. Other sites may have a permission for minerals development and a separate permission for landfill. In the former case, conditions imposed on the permission for winning and working of minerals may impose new, or alter existing, conditions relating to the landfill element. However, if the effect of the new conditions were to restrict working rights to the extent that either the economic viability of operating the site or the asset value of the site would be adversely prejudiced to an unreasonable degree, a liability to compensation will arise. Separate planning permissions for landfill are not subject to review if they do not constitute development involving the depositing of mineral waste whether or not that landfill is taking place in a mineral void.

**100** In order to implement fully the EC Framework Directive on waste (Council Directive 75/442/EEC, as amended by Council Directives 91/156/EEC and 91/692/EEC), the Waste Management Licensing Regulations 1994 also make provision to ensure that waste recovery or disposal operations, which already had a permit granted before the commencement of the Regulations on 1 May 1994, meet the objectives of the Directive. The Regulations therefore enable pollution control authorities (currently Waste Regulation Authorities - WRA's) to review existing licences in order to meet all the relevant objectives where planning permission for a waste recovery or disposal development was granted before 1 May 1994, or where no planning permission is required.

**101** Where an old permission for mineral working also provides the permission for landfill disposal of "controlled wastes", the new schemes of conditions can and should include suitable restoration and aftercare conditions as defined under minerals planning legislation. Where the planning permission for waste disposal is separate from that for mineral working, initial review schemes of conditions (and further periodic reviews) should not include the landfill. However for such landfills, the 1994 Regulations enable conditions such as soil replacement, seeding and planting of vegetation and other aftercare "steps", to be covered in a review of the licence by the WRA.

## Principles to be applied to the preparation of schemes of conditions and to their consideration by the mpa

### Introduction

**102** The illustrative guide to conditions in Annex M (see link to the right) should assist applicants in preparing their applications. It is to be hoped that the guide will be generally appropriate to all dormant and active Phase I and II mineral sites, but the nature of the conditions applicable, and the extent to which they will be necessary, will vary according to the particular circumstances. In considering submitted schemes therefore, mpas must look at each case on its merits, having regard to the considerations outlined above and to the general principles set out below.

### Conditions Relating to Access, Traffic and Protection of the Public Highway

**103** Conditions dealing with measures to prevent dust, mud and spillages on the public highway will be appropriate to all sites, and conditions relating to the display of agreed vehicle routes may be appropriate to some sites. It will not generally be appropriate to expect the construction of new accesses or exits to active sites, except where this can be accomplished without significantly affecting the structure of the existing operations or design of the quarry. Nor would it be appropriate to expect a new access to be provided on land which is not under the control of the applicant: although it is always open to an applicant to offer to negotiate a new access as part of the application package. It should also be borne in mind that problems with existing accesses and exits may be reduced by minor alterations to the design (eg improved visibility splays, or ensuring the traffic can only turn one way). Offers are sometimes made by mineral operators to restrict their lorries to particular routes. Such schemes have proved successful but all lorries calling at a site are unlikely to be in the control of the operator and planning conditions are not an appropriate means of controlling the right of passage over the public highway (see paragraph 79 of MPG2 "Applications, Permissions and Conditions"). Although negatively worded conditions which control such matters might sometimes be capable of being validly imposed on planning permissions, and planning obligations tied to the continued use of the site to ensure lorries take a certain route are not necessarily unlawful, both are likely to be very difficult to enforce effectively.

### Working Programme

**104** Working programmes should be produced for all sites to ensure that operations are designed in such a way as to protect areas of environmental and ecological importance and the amenity of nearby residential and other sensitive property - including, where appropriate, the provision of buffer zones. Conditions, other than those submitted by the applicant, which would further limit *extraction areas* or further restrict *depths of working* should generally only be imposed where the effect of the new restriction would not prejudice adversely to an unreasonable degree the economic viability of the operation or the asset value of the site. Consideration should be given to whether equivalent or better protection can be provided by other means - eg through the control of noise and dust levels - without giving rise to unreasonable prejudice.

**105** Conditions should not place limits on the *annual output* from active sites to control the rate

at which the resource is depleted. However, it should also be recognised that these permissions may have been granted at a time when available technology would have restricted the rate at which extraction could take place and the amount of traffic leaving the site. Existing accesses may not be suitable to take significant increases in traffic volumes because, for example, of the proximity of residential property. Where such problems cannot be resolved by alterations to access roads or by other means, it may be appropriate in some cases to impose conditions limiting the rate of output to preclude substantial increases in traffic in the future. Any such conditions should not place inflexible limits on the annual output from the site, but should relate to an average annual output over a period of years to enable the operator to respond to the demands of the market. Conditions which significantly restricted the rate of output from the quarry to the extent that the economic viability of operating the site would be prejudiced adversely to an unreasonable degree would give rise to a liability to compensation.

### *Working Hours*

**106** In deciding what conditions are appropriate on *working hours*, it should be remembered that it is not the hours of working themselves which cause disturbance but the environmental effects associated with the operation - eg traffic, noise, dust etc. Restricting working hours may not therefore achieve environmental improvements if production is intensified during the shortened working period. Mineral extraction and associated processing may require a complex shift system to enable the operator to respond to the demands of the market. Significant restrictions on the hours currently worked at active sites eg forcing a reduction from two shift working to single shift working, might restrict the rate at which the mineral may be extracted and thus be subject to the test of unreasonable prejudice.

**107** Nevertheless, it is important that permissions should be subject to conditions governing working hours. Applicants and mpas should therefore have regard *both to the illustrative guide to conditions on working hours* in Annex M (see link to the right), and to the circumstances of the particular case including the current working hours of the application site and of other mineral sites in the area. Where the existing or proposed working hours of a site are reasonable conditions should ensure that these are adhered to. Longer working hours, including 24 hour working, may be acceptable where the location of the site and/or other conditions can ensure that residential and other sensitive property do not suffer adverse effects. In other cases, consideration should be given to whether there is scope for achieving environmental improvements eg by requiring later starts and/or earlier finishes than are currently operated at the site, bearing in mind that limits which might constitute a working rights restriction giving rise to unreasonable prejudice should generally be avoided. Consideration should also be given to whether conditions limiting noise levels and traffic movements at different times of the day and night can provide equal or better protection.

**108** Reasonable restrictions on working hours combined with appropriate conditions on noise, dust and traffic levels, may provide a preferable solution to minimising the impact on nearby property than the imposition of buffer zones if the effect of the conditions would not restrict working rights to the extent that either economic viability or asset value would be prejudiced adversely to an unreasonable degree.

### *Noise Conditions*

**109** *Noise conditions* should be attached to permissions limiting the impact of noise on sensitive properties at different times of day. That is, limits should be set so that noise levels at sensitive properties do not exceed a certain range during specified periods. Noise limits should be set at the site boundary or sensitive property at a level to ensure that the noise reaching the relevant properties falls within the specified range, and so that monitoring can take place on land controlled by the mineral operator or at the noise sensitive property itself. Applicants and mpas should have regard to the advice in [Minerals Planning Guidance 11: The Control of Noise at Surface Mineral Workings \(MPG11\)](#). Noise conditions would rarely constitute a restriction on working rights, but where the applicant can demonstrate that the only way of complying with an intended noise condition is by reducing the working area or rate of extraction to such an extent that economic viability or asset value would be prejudiced adversely to an unreasonable degree the mpa and operator should seek to moderate the condition. In this connection, it should be remembered that the use of silencers on vehicles, acoustic screens and good site management and design can do much to moderate noise emissions.

### *Conditions for Reclamation of Sites - Landforms, Restoration, Aftercare and After-Use*

**110** Where a site is already subject to satisfactory conditions providing for restoration and aftercare there should be no need to alter them. In all other cases, appropriate restoration and, where relevant, aftercare conditions should be imposed and provision should be made for reclamation to an appropriate after-use as soon as practicable. As with all conditions, restoration and aftercare conditions should be reasonable having regard to the circumstances of the particular case. The type of restoration that will be appropriate in any particular case will depend, amongst other things, on the nature and extent of existing workings and the availability of suitable restoration materials. Clearly grandiose schemes which pay no regard to what is feasible or practicable in the circumstances will not be reasonable.

**111** Applicants may find the advice and information in [MPG7](#) useful in preparing their schemes to submit to mpas, and for sites operated by the cement industry, the advice in [Minerals Planning Guidance 10: Provision of Raw Material for the Cement Industry \(MPG10\)](#) - particularly Annex C. Similarly, mpas should have regard to the advice in [MPG7](#) on any necessary consultations on restoration, aftercare and after-use before determining scheme applications.

**112** The majority of mineral workings are reclaimed for agriculture, forestry or amenity after-uses, and applicants should consider which of these options would be most appropriate. "Agriculture" is defined in section 336(1) of the 1990 Act. "Forestry" in this context means the growing of a utilisable crop of timber. "Amenity after-use" is a broad category which includes open grassland for informal recreational use, basic preparation for more formal sports facilities, amenity woodland, lakes for water recreation, water storage and balancing reservoirs, and both wet and dry areas for nature conservation and landscaping. Any other after-uses, such as residential or industrial development, or buildings and infrastructure associated with formal sports and leisure facilities, would require a separate planning permission, as would the use of the void for the disposal of controlled waste. In the latter case a licence will also be required at present from the Waste Regulation Authority (WRA) under the Waste Management Licensing Regulations 1994, which implement Part II of the Environmental Protection Act 1990. Advice on this can be found in DOE Circular 11/94 (WO 26/94) and in Waste Management Paper No. 4 (1994 edition).



**113** In some cases an applicant may wish to put forward a scheme of conditions which includes changing the present intended after-use of a site, for reasons such as that the change would be more in keeping with current best technical practices or the planning policies for an area. Examples might be to restore land to an amenity after-use, to forestry, or to a mix of after-uses, rather than solely to agriculture. In other cases the existing conditions attached to the planning permission may not specify an after-use, and the new scheme should remedy this deficiency. It may also be desirable to confirm, before a detailed scheme is put forward, that an existing intended after-use remains appropriate. The preparation, and consideration by mpas, of schemes of conditions for initial review sites are not subject to the formal consultation procedures which apply to new planning applications for mineral developments. However, particularly for larger sites, it may be valuable for an applicant to seek early informal advice from the the Department for Environment, Food and Rural Affairs (DEFRA) - or, in Wales, the National Assembly for Wales Agriculture and Rural Development Committee - if it is considered that there should be a change towards or away from agriculture as the intended after-use of all or part of a site, or to confirm that agriculture remains the appropriate after-use. Similarly, advice from the Forestry Commission may be sought in respect of forestry after-use. Mpas may also wish to seek advice from DEFRA/ National Assembly for Wales Agriculture and Rural Development Committee or the Forestry Commission in determining schemes of conditions. Advice in [MPG7](#) on the contents of informal and statutory consultations with these bodies, in respect of new applications, may be helpful.

**114** There is no equivalent statutory consultee for the broad range of "amenity" after-uses. However useful contacts for particular schemes include English Nature, the Countryside Commission, (in Wales these two organisations are now combined as the Countryside Council for Wales (CCW)), the Forestry Commission, the Regional Councils for Sport and Recreation, the Wildlife Trusts, the Royal Society for the Protection of Birds (RSPB), and the Game Conservancy.

**115** The appropriate level of detail specified in conditions or set out in accompanying schemes will vary according to the circumstances of the particular case. More detail should be provided for shorter life sites (eg where mineral extraction or the depositing of mineral waste will cease, or restoration is due to start, within 5 or 10 years of the review). For sites which will continue for a longer period, it may be preferable to have conditions which require the mineral operator to submit detailed schemes for final landform/contours of the site, restoration (ie replacement of soil materials) and aftercare (ie management of the restored soils and planting and maintenance of vegetation) when a particular phase has been reached or at a set date or dates. There should also be provision to ensure that the mineral operator will bring forward and implement a scheme for final landform, restoration and aftercare should the site cease operation for any reason before the end date as contained in the time limit condition.

**116** It is normally expected that applicants will make provision for full restoration and also aftercare in accordance with the proposed after-use. However, the type of restoration that will be appropriate in any particular case will depend on a number of factors: in particular the nature and extent of existing workings and the availability of suitable restoration materials. In preparing and considering restoration and aftercare proposals regard should therefore be had to:

- a. the type of mineral or mineral waste;
- b. whether or not the site is currently operational and extraction/tipping has already taken

place over a major part of the whole area;

c. the existing or proposed depth of excavation and the relationship between this and the level of the water table;

d. the long term stability of faces at sites which are to remain unfilled or partly filled;

e. the desirability of conserving features of geological interest;

f. the nature and amounts of soils and soil-making materials available within the site (including unworked land) and their suitability for growing vegetation for the intended after-use (eg whether there are any particular chemical or physical problems or, for some older-established sites and/or hard rock quarries, the lack of much soil making materials);

g. the nature and amount of mineral waste to be generated on site and whether it is to be backfilled into a mineral void;

h. whether there is an existing licence to deposit controlled waste as landfill within the site, and the conditions attached to this;

i. the topography, altitude, climate, landscape features and wildlife habitats of the site;

j. the general character of, and planning policies for, the surrounding area.

**117** Aftercare can only be used to bring the land to a required standard which is defined in general terms according to the intended after use. In respect of sites where an agricultural after-use is proposed, only exceptionally is it likely to be either feasible or practicable for DEFRA to undertake a pre-working survey of the land before the mpa gives its decision on the scheme of conditions. Such surveys will normally be undertaken only where large parts of a site remain undisturbed and currently in agricultural use, especially if it is high quality land, so that the "required standard" would be as in paragraph 3(1) of Schedule 5 to the 1990 Act (referred to as section 30A(9) of the 1971 Act in [MPG7](#)). In other cases, the appropriate "required standard" to be achieved at the end of any aftercare period will be that the land is "reasonably fit for that use" as in paragraph 3(2) of Schedule 5 to the 1990 Act (section 30A(10) of the 1971 Act in [MPG7](#)).

### *Consents Required from Other Statutory Agencies*

**118** Planning permissions do not convey any consents that may be required from other statutory authorities. Equally, planning conditions should not seek to control matters that are the proper concern of other statutory agencies, except where planning interests are clear and the conditions in the non-planning consents, authorizations or licences are not sufficient to protect those interests. This is particularly relevant in the field of pollution control. Care should be taken therefore to avoid conditions on matters which the relevant pollution control authority (such as the National Rivers Authority, Health and Safety Executive, Her Majesty's Inspectorate of Pollution, and Waste Regulation Authorities) judges can be satisfactorily regulated under their own separate powers. However, there may be circumstances when planning conditions may properly impinge on matters that are subject to other statutory controls eg to limit noise levels to avoid statutory nuisance action being taken at a later date, or where the pollution control standards for the particular operation or process are insufficient for the site in question when the environmental effects of the development as a whole are considered. Before proposing or imposing conditions which are primarily related to pollution control applicants and mpas should consult the appropriate pollution control authority. Guidance on the interface between planning and pollution control in England is given in Planning Policy Guidance 23: Planning and Pollution Control.



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## **D Other Issues**

### *Revocation, modification, discontinuance, prohibition and suspension orders*

**119** Mpas retain their powers to make orders revoking, modifying, discontinuing, prohibiting, or suspending mineral working. Where such orders are made, compensation is payable but may be abated in the circumstances set out in Schedule 11 to the 1990 Act and by the amounts set out in The Town and Country Planning (Compensation for Restrictions on Mineral Working) Regulations 1985 [SI 1985 No 698] as amended by The Town and Country Planning (Compensation for Restrictions on Mineral Working)(Amendment) Regulations 1990 [SI 1990 No 803] and article 2 of The Coal Industry Act 1994 (Consequential Modifications of Subordinate Legislation) Order 1994 [SI 1994 No 2567]. In due course, the Government intends to bring forward new regulations, which would be subject to affirmative resolution in both Houses, to ensure that the compensation entitlement following a revocation, modification or discontinuance order is in line with that for periodic reviews - ie there would be no compensation for orders which imposed restoration or aftercare conditions, nor for orders which imposed conditions the effect of which did not restrict working rights. Unabated compensation would be payable in respect of revocation, modification or discontinuance orders which imposed conditions, other than restoration or aftercare conditions, where the effect of the restriction imposed by the order would be to restrict working rights. For prohibition and suspension orders, the Government intends to retain the existing arrangements - ie provided that "mineral compensation requirements are satisfied" the amount of compensation that would be payable by mpas for loss or damage occasioned by complying with the terms of such an order would be reduced by a prescribed sum (currently £6,400).

**120** The Government decided that valid planning permissions should not be revoked without compensation, but Parliament expressly provided power for mpas to make orders prohibiting the resumption of mineral working or depositing of mineral waste where development has permanently ceased. Prohibition orders therefore provide the due process for extinguishing planning permissions in such circumstances and the Government believes that wider use should be made of these powers in respect of sites which have not been worked to any substantial extent since 1982 and where resumption of development is unlikely. Mpas may therefore wish to use the opportunity of preparing their first list of sites to consider whether any sites they intend to classify as dormant in the first list of sites are suitable candidates for orders prohibiting the resumption of mineral working or the depositing of mineral waste. Where they do identify such candidates they may wish to use the requirement to notify land and mineral owners of site classification as the opportunity to carry out the special consultations required by Schedule 11 to the 1990 Act if the modified compensation arrangements are to apply - ie that the value of any mineral unable to be worked as a result of the order is to be excluded from any assessment of compensation and any compensation is abated by a prescribed sum of £6,400.

**121** In deciding whether to make a prohibition order, the mpa must be satisfied that development consisting of the winning and working of minerals or involving the depositing of mineral waste has permanently ceased (paragraph 3 of Schedule 9 to the 1990 Act). They may only assume that development has permanently ceased if:

- a. no such development has occurred to any substantial extent at the site for a period of at least two years (in practice this should include all sites classified as dormant in the first list);  
and
- b. it appears to them, on the evidence available to them at the time when they make the order, that resumption of such development to any substantial extent at the site is unlikely.

**122** In determining whether resumption of development to any substantial extent is unlikely, mpas must take account of all considerations material to that decision. These would include the quality and quantity of workable mineral and whether there is a real and genuine intention to work the site. Given that dormant Phase I and Phase II sites may only lawfully recommence working once full modern conditions have been approved, it is material to consider whether such a site is capable of being worked to full modern conditions now or in the foreseeable future. In considering whether or not to confirm such orders, the Secretary of State will similarly wish to satisfy himself on these and all other material considerations.

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## E Special Cases

### *SSSIs and habitats issues*

#### *Initial Reviews of SSSI Sites*

**123** All sites which are wholly or partly within SSSIs are included as Phase I sites for initial reviews. However the preparation of schemes of conditions will need to adopt different approaches, depending on whether the SSSI has been notified for its biological or geological (earth science) interest. In the case of biological SSSIs, applicants should seek to preserve the interest in-situ by voluntarily offering limits on extractive or tipping areas. Where this is not practicable, schemes should make provision for safeguarding the interest by means such as careful transplanting of a habitat as part of restoration and aftercare. Geological SSSIs will, in many cases, have been notified because past mineral extraction has revealed sections of geological importance. Schemes of conditions for such sites may be able to safeguard existing SSSI sections where this would not sterilise permitted mineral reserves, or to create an equivalent geological section at the final boundary of the excavation area. Applicants should consult English Nature (EN) or the Countryside Council for Wales (CCW) in preparation of schemes for SSSI sites; and additional guidance is given in [MPG7](#).

#### *SSSI Sites of International Importance*

**124** A few Phase I sites which are, or include, SSSIs may be or become Special Protection Areas (SPAs) under the EC Directive on the Conservation of Wild Birds (the Birds Directive), or may become Special Areas of Conservation (SACs) to be designated under the EC Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (the Habitats Directive). After SPA or SAC status has been confirmed, any extant permissions for development (of any type) which have not been implemented or have not been completely implemented, must be reviewed by the local planning authority under the Conservation (Natural Habitats &c.) Regulations 1994 (the "Habitats Regulations"). Such a review will need to ascertain whether implementation of any permission which is likely to have a significant effect on the site, and is not directly connected with or necessary to its management, would adversely affect its integrity. If the integrity of the site would be adversely affected, and if the permission does not fulfil the conditions under which a new development proposal affecting the site would be approved, then the authority must take appropriate action to remove the potential for harm, unless there is no likelihood of the development being carried out or continued. In England, advice on the Habitats legislation and Regulations is contained in Planning Policy Guidance 9: Nature Conservation (PPG9), and the lpa must seek the advice of English Nature on individual cases.

**125** Reviews of permissions under the Habitats Regulations are legislatively separate from old mineral permission reviews, and have different purposes. However there may be some practical interaction of the two review requirements at site level, including the relative timing of the reviews. Whilst no definitive interpretation can be given, the following advice should be taken into account for mineral reviews.

**126** There is a major procedural difference between the two requirements for reviews. Local

planning authorities have to undertake Habitats Regulation reviews, whereas for mineral reviews it is land and mineral owners who have to submit schemes of conditions for the approval of mpas.

**127** If a review of an old mineral planning permission has already been carried out under the Habitats Regulations, and a satisfactory planning obligation has been entered into or a modification order made, which would safeguard the integrity of the SPA or SAC, this may be a basis for the mpa agreeing to postpone the initial minerals review.

**128** If reviews under both legislative provisions have to take place in parallel, which may occasionally happen, the different objectives of the reviews must be clearly identified. It is recommended that an informal meeting between the mpa (who would be the relevant lpa for the purpose), the mineral or land owner, and EN or CCW should be held at an early stage to consider how best to deal with the interactions for the decision making processes.

### *Peat*

**129** Most peat extraction in England takes place from within old sites which are now also SSSIs. There is now no commercial extraction from sites in Wales. Peat extraction sites which are wholly or partly within SSSIs fall to be reviewed in the first phase of initial reviews. The industry have already undertaken that in bringing forward new schemes of conditions they will have regard to safeguarding any adjacent areas which are of nature conservation value; the phasing of remaining extraction; and proposals for rehabilitation, wherever practicable, to provide future areas for nature conservation. The industry have voluntarily agreed to surrender substantial working rights to achieve this approach. The Government welcomes this constructive approach to a difficult problem. MPG13 "Guidelines for Peat Provision in England including the place of Alternative Materials" provides more detailed guidance on a framework for updating old mineral permissions for peat extraction.

### *Ironstone*

**130** All active ironstone sites will fall to be reviewed and updated within the first phase. These are permissions which were granted in special circumstances and which are no longer being used for the purposes for which they were originally intended. The Government has concluded however that it would be wrong to revoke validly held planning permissions without compensation. Nevertheless, the Government believes the requirements introduced by the 1995 Act provide the opportunity for all parties to work together to resolve this long standing problem in an environmentally acceptable way. They therefore welcome the agreement between Northamptonshire County Council, the Northamptonshire Ironstone Group and British Steel plc, that conditions requiring modern access arrangements and transport arrangements should be attached to all ironstone permissions without compensation. Owners and operators of ironstone permissions should therefore bring forward schemes of conditions which make provision for this and which provide for appropriate "buffer zones" between working areas and residential property and protection for other sensitive areas.

**131** Dormant ironstone sites will not be able to reactivate until full modern conditions are approved, including provision for proper access and transport which are of particular importance for these sites. In a number of dormant ironstone sites, the quality and quantity of

limestone available is not commercially viable and is therefore unlikely to be worked. In these circumstances, and having regard to the advice in paragraphs 119 to 122 above, the mpa should make use of prohibition orders to prevent the resumption of mineral working.

**132** There are some large ironstone permissions where only a small part of the site is being worked. In such cases it is for the mpa to decide on the evidence, after consultation with the land and relevant mineral owners, whether or not the site should be classified as dormant having regard to the advice in paragraphs 24 and 25 above. Where they classify the site as active, the applicant and mpa should have regard to the advice in paragraph 89 above on the approach to be adopted in relation to large areas of unworked land within active sites.

### *China Clay*

**133** The extraction of china clay is confined to Cornwall and Devon. The industry now produces in the order of 25 million tonnes of waste each year, most of which is tipped outside the limits of the pits. Most of the 3000 hectares of land already affected by pits, tips and lagoons in the St Austell area of Cornwall are covered by old permissions and will therefore fall to be reviewed within the first phase.

**134** The research carried out for the Department by Wardell Armstrong ("Landscaping and Revegetation of China Clay Waste Tips - Main Report", 1993) recommended the need for more long-term and broadly based reclamation and landscape strategies for the area, which took account of existing and future tipping requirements, and considered both long-term objectives and short term improvements to the local environment. To ensure the long term success of the reclamation it was proposed that a land-use led approach to the design of tips was necessary. For this approach to work satisfactorily it will be necessary for the industry and the mpa to work in partnership to develop a strategy which takes account of the needs of the industry and the need to secure real environmental improvements in both the short and the long term. The Government therefore expects the China Clay industry, in consultation with the mpa, to bring forward schemes of operating, restoration and aftercare conditions which accord with that strategy, including information on the total amounts of wastes to be deposited in any particular area and which pits might be backfilled with waste. In preparing and considering such schemes, the industry and mpas should have regard to the advice in paragraph 115 above.

**135** For both initial and periodic reviews it should be noted that a "site" may not consist of less than one permission for the winning and working of minerals or depositing of mineral waste. Nevertheless the industry and the mpa should bear in mind that it is possible to provide for different working programmes and different conditions to apply to different areas of land within the same permission.

### *Coal*

**136** Underground coal mines which derive their planning permission from the General Permitted Development Order are not subject to initial or periodic review under the arrangements introduced by the 1995 Act - separate provision for this will be made within the GDO itself in due course. However, open cast coal mines and underground coal mines which have the benefit of a specific (or deemed) planning permission, or permissions, will be subject



to periodic review and to initial review if the relevant planning permissions bring the site within the definition of a Phase I or Phase II site.

**137** Most opencast coal permissions will have been granted since 1982 and will not therefore be subject to an initial review but should already be subject to full modern conditions. In reviewing those underground coal mines which do fall to be treated as Phase I or Phase II sites for the purposes of an initial review, mpas should bear in mind that the object is not to restrict working rights but to ensure that the ancillary surface development is subject to proper conditions and that the environment is protected. Many aspects of surface ancillary development will already be subject to authorizations under the Environmental Protection Act 1990 and new planning conditions should not seek to duplicate these. However, where the operation of surface ancillary development is not properly controlled by EPA authorizations, and particularly where there are no adequate restoration and aftercare conditions in respect of the surface development, operators and mpas should ensure that appropriate conditions are attached to the permission for winning and working. The general advice on the imposition of conditions controlling or restricting ancillary mining development applies.

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## F Periodic Reviews

### Key points

**138** Periodic reviews apply to all mining sites, including IDO permissions, but excluding permissions granted by the old GDO - separate provision will be made for these in the new General Permitted Development Order itself.

- Periodic reviews will take place every 15 years from the date of either a previous review, or, if no review has taken place, from the date of the latest mineral permission relating to the site.
- Mpas must give at least 12 months advance notice to land and mineral owners of the date by which an application for the approval of new conditions must be submitted to the mpa.
- If no scheme of conditions is submitted by the specified date the permissions will cease to have effect.

### The statutory provisions

#### *Duty to carry out periodic reviews and definition of mining site (Section 96 and Schedule 14, paragraphs 1 and 2)*

**139** Paragraph 1 of Schedule 14 places a statutory duty on mpas to cause periodic reviews to be carried out of the mineral permissions relating to a mining site. "Mining site" differs from the "mineral site" used for initial reviews in that it is defined by reference to mineral permissions rather than "relevant planning permission". A "mineral permission" is defined in Paragraph 2(1) as a permission, other than a planning permission granted by the GDO, for minerals development. In this context "minerals development" means development consisting of the winning and working of minerals or involving the depositing of mineral waste. In other words, a "mining site" includes IDO permissions whereas a "mineral site" does not. In addition, there is no distinction between active and dormant "mining sites" for the purposes of periodic reviews although dormant Phase I and Phase II mineral sites will not be subject to their first periodic review until after new conditions have been determined under an initial review.

#### *Aggregate of two or More Permissions*

**140** As with initial reviews, a mining site for the purposes of periodic review may consist of a single mineral permission or, where the mpa consider it expedient, the aggregate of two or more mineral permissions. However, in determining whether a site consists of two or more permissions, the mpa must have regard to the following guidance. In the case of sites which have already been subject to an initial review (ie active Phase I and II sites and dormant sites that have been reactivated on full modern conditions) it is expected that the mining site for the purposes of periodic reviews will be the same as that for initial reviews. Where extensions to the initial review site have been granted in the interim, these should be incorporated in the

mining site for the purposes of periodic reviews. For sites which have not been subject to an initial review, it should be clear from the planning history of the mineral workings what constitutes a site. Where an IDO permission forms an integral part of the mineral operation, this should be incorporated in the mining site for the purposes of periodic reviews. As with initial reviews, there may also be cases where planning permissions to work the same mineral are severed by some physical barrier - eg a road. In such cases, the mpa should have regard to what constitutes a sensible planning unit bearing in mind that where land covered by a single permission is separated by a physical barrier it is not open to the mpa to treat it as more than one site.

### *Satellite Sites*

**141** Some mineral operations rely on a number of "satellite" sites serving a central processing facility. Some of these sites may be active, whilst others may be held in reserve to be brought into production as the market dictates or as other sites are worked out. Whether or not such "satellite" sites should be regarded as one mining site or several different mining sites will depend upon factors such as their location, their distance from each other and from the central processing facility, and whether it makes sense to review them all at the same time or separately.

### *Cross-Boundary Sites*

**142** There may be some instances where a single minerals operation straddles mpa boundaries. Legally, mpas only have administrative responsibility for land within their administrative area. An old permission straddling more recent boundaries is treated as two (or more) permissions, one covering each area as appropriate, by virtue of regulation 4 of the Local Government Changes for England Regulations 1994 [SI 1994 No.867]. (With regard to local government re-organisation in Wales, section 53 of the Local Government (Wales) Act 1994 will have similar effect.). Accordingly, the development will have to be treated as two (or more) sites, but in such cases mpas should coordinate their approach so that the respective "sites" are reviewed at the same time.

### *First periodic review date (Schedule 14, paragraph 3)*

#### *Mining Sites That Include IDO Permissions*

**143** Paragraph 3(1) defines the first review date for mining sites where the mineral permissions for that site include an IDO permission as:

- a. the date 15 years after the date when new conditions have been finally determined in respect of the site under Schedule 2 to the 1991 Act; or
- b. where there are two or more IDO permissions relating to the site, 15 years after whichever has the latest date of final determination.

#### *Mining Sites Which are Dormant or Active Phase I or Phase II Sites for the Purposes of Schedule 13*

**144** Paragraph 3(2) defines the first review date for a mining site which is a dormant site or an

active Phase I or II site for the purposes of Schedule 13 to the Environment Act 1995 as the date 15 years after new conditions have been finally determined in relation to such a site under an initial review under that Schedule.

### *Other Mining Sites*

**145** Paragraph 3(3) defines the first review date for mining sites which are not dormant or active Phase I or II sites or sites to which an IDO permission relates. In such cases, the first review date is 15 years after the date of the most recent mineral permission relating to the site. However, paragraph 3(4) provides that where the most recent permission relates to part only of the site the mpa may, for the purposes of ascertaining the first review date, treat that permission as having been granted at the same time as the earlier permissions relating to the site. The intention is that minor mineral permissions granted in relation to a mining site should not necessarily defer the first periodic review of all the substantive mineral permissions relating to that site. Mpas should only exercise this discretion therefore where the most recent permission is a minor permission which has not significantly altered the terms and conditions of the earlier permissions relating to the site.

### *Mining Sites Where a Revocation, Modification or Discontinuance Order has Been Made*

**146** Paragraph 3(6) provides that in the case of a mining site where a revocation, modification or discontinuance order has been made, the first review date is 15 years after the date the order, or the latest order relating to that site, took effect.

### *Conflicting First Periodic Review Dates*

**147** Paragraph 3(7) provides that in the case of a mining site for which one or more first periodic review dates may be ascertained under the previous paragraphs, the first review date shall be the latest of those dates.

### *Service of Notice and Reminders of First Periodic Review (Schedule 14, Paragraph 4)*

**148** Mpas must serve written notice on owners of land or minerals comprised in a mining site of the first periodic review date, at least 12 months before that date. The notice must:

- a. indicate that the land or mineral is included in a mining site and specify that site;
- b. identify the mineral permissions relating to the site;
- c. state the date by which an application for determination of the conditions must be made (and that the mineral permissions identified in the notice will cease to have effect if no application is made by that date);
- d. explain the right to apply for postponement of that date and the date by which such an application must be made.

A suggested form of notice is at Annex K (see link to the right).

**149** Where an mpa has served notice in respect of a mining site and no application for determination of conditions has been made by 8 weeks before the date specified in the notice, the mpa must serve a written reminder on the land and mineral owners at least 4 weeks before

the specified date. The reminder must:

- a. indicate the mining site in question;
- b. identify the mineral permissions relating to the site;
- c. state the date by which an application for determination of the conditions must be made; and,
- d. explain that the mineral permissions identified in the notice will cease to have effect if no application is made by that date.

A suggested form of reminder notice is at Annex L (see link to the right).

**150** Where an mpa is unable to identify the names or addresses of owners of land or minerals comprised in a site for the purpose of serving written notices or reminders, they shall instead post a copy of the notice or reminder by firmly affixing it to one or more conspicuous objects on the land in question. Where there are no or insufficient conspicuous object on the land, the mpa may affix the notice or reminder to a post driven into or erected on the land.

**151** A site notice must be displayed in such a way as to be easily visible and legible; must be posted subject to the same timetable as for written notices and reminders; and, must be left in position for at least 21 days from the date when it is first displayed.

#### *Application for postponement of first review date (Schedule 14, paragraph 5)*

**152** A land or mineral owner of a mining site may apply to the mpa for postponement of the date specified in the notice for the submission of new conditions. Applications must be made within 3 months of the date the notice was served.

**153** The purpose of the facility for postponement is to avoid unnecessary review where the existing planning conditions are judged to be satisfactory. In such cases, postponement should be for a reasonable number of years - eg 10 to 15 years. Applications for postponement should not be made simply to seek a small extension of time for the submission of new schemes of conditions: such minor extensions can be agreed in writing between the applicant and the mpa without the formal procedure of a postponement application.

**154** An application for postponement must set out the existing planning conditions relating to the site; set out the reasons why the applicant considers these conditions to be satisfactory; and, specify the date which the applicant wishes to be substituted for the first periodic review date. There is no statutory requirement for an application to be accompanied by an appropriate certificate but applicants are advised to use the suggested forms of modified notices and certificates set out in Annex C.

**155** If the mpa do not consider the existing conditions satisfactory they must refuse the application. If the mpa do consider the existing conditions satisfactory they must grant the application, but may specify a different date from that proposed by the applicant. The mpa must notify the applicant of their determination in writing.

**156** Where the mpa have not given notice of their determination within 3 months (or such longer period as they may have agreed in writing with the applicant) of receipt of the

application, the application is deemed to be approved.

### *Application for determination of conditions (Schedule 14, paragraphs 6 and 10)*

**157** Any person who is an owner of land or has an interest in any relevant mineral which is or forms part of a mining site may apply to the mpa to determine the conditions to which the mineral permissions relating to that site are to be subject. Applications must be in writing and must:

- a. identify the site and state that the application is made in connection with the first periodic review;
- b. specify the land or minerals of which the applicant is an owner;
- c. identify the minerals permissions relating to the site;
- d. identify and give an address for any other person known to the applicant to be an owner of land or having an interest in any minerals in the site;
- e. set out the applicant's proposed conditions; and,
- f. be accompanied by an appropriate certificate.

A standard application form is at Annex F.

**158** An appropriate certificate is one, modified as necessary, as would be required under section 65 of the 1990 Act as if the application for postponement were an application for planning permission for minerals development (ie that all persons known to the applicant to have an interest in the land or minerals to which the application relates have been notified of the application). The requirements in relation to notification of owners and certificates are set out in articles 6 and 7 of the Town and Country Planning (General Development Procedure) Order 1995 [SI 1995 No 419]. Suggested forms of modified notices and certificates are set out at Annex C (see link to the right).

**159** The mpa should acknowledge receipt of the application in writing as soon as practicable and should enter details of the application in the Planning Register or, where they are not the authority responsible for keeping the register, they should pass the details to the relevant district planning authority who should enter them in the register. There is no statutory requirement on mpas to publicise an application but they should do so as if it were an application for planning permission using an appropriately modified form of the notice at Annex G (see link to the right).

**160** On receipt of a valid application the mpa must determine the conditions to which each mineral permission is to be subject . The conditions determined may include any conditions which may be imposed on the grant of planning permission for minerals development and may be in addition to, or in substitution for, any existing conditions.

**161** If the mpa have not given written notice of their determination within 3 months (or such longer period as may be agreed in writing between the mpa and the applicant) of receipt of the application, the application and the conditions submitted therein are deemed to be approved from that date.

**162** Where the mpa are unable to determine an application unless the applicant provides

further information, they may within one month of receipt of the application notify the applicant and specify the further details they require. In such a case, the 3 month period for determination of the application does not start to run until the mpa have received all the further details specified in the notice. The further details required may include information, plans or drawings or evidence verifying information or details supplied. Mpas should require further details only where necessary to determine the application and should specify clearly the further details required and by what date. Applicants should make every effort to provide all further details requested as speedily as possible.

**163** New conditions do not have effect until application is finally determined - ie all proceedings on the application, including appeals to the Secretary of State and the High Court been determined, and the time period for any further appeal has expired.

**164** Once an application has been finally determined, the mpa should enter details of the determination in Part II of the Planning Register or, if they are not the authority responsible for keeping the register, they should pass the details to the relevant district planning authority should enter them in that part of the register. At the same time the copy of the application be removed from Part I of the register.

#### *Permissions ceasing to have effect (Schedule 14, paragraph 7)*

**165** Where no application for determination of conditions has been made to the mpa by the first review date (or such later date as the mpa may agree in writing), each mineral permission relating to that site and identified in the notice will cease to have effect, except in so far as it imposes a restoration and aftercare condition, on the day following that date.

#### *Appeals (Schedule 14, paragraph 9)*

**166** Where the mpa determine conditions different from those submitted by the applicant, the applicant may appeal to the Secretary of State. An appeal must be made by giving notice to the Secretary of State within 6 months of the mpa's notice of determination. Suggested forms of notice are set out in Annex I and a standard appeal form is at Annex J (see links to the right)..

#### *Reference of applications to the Secretary of State (Schedule 14, paragraph 8)*

**167** The Secretary of State may give directions requiring applications for the determination of conditions to be referred to him rather than being determined by the mpa. If he does so, the relevant provisions of the Schedule are applied with any necessary modifications, including the mpa's and appellant's right to a hearing before he makes his determination.

#### *Two or more applicants (Schedule 14, paragraph 11)*

**168** Because it is open to any person who is an owner or tenant of any part of the site (or who holds an interest in any mineral in the site), to apply for postponement of a review date or for new conditions to be determined, it is possible for there to be more than one application in respect of the same site. The 1995 Act provides that each eligible person may make only one application for postponement or the determination of conditions. However, if there is more than

one person eligible to apply and each makes a separate application, the mpa must treat all the applications as a single application served on the date on which the latest application was made, and must notify each applicant of receipt of the applications and their determination accordingly. Where the mpa have already determined an application, then no further applications may be made by any person.

**169** Applicants are strongly advised therefore to co-ordinate their approach with any other persons eligible to apply for postponement of a review date or determination of conditions in respect of the same site and to discuss the position with the mpa with a view to submitting a single application covering all their respective interests.

### *Second and subsequent periodic reviews (Schedule 14, paragraph 12)*

**170** Second and subsequent periodic reviews must be carried out 15 years after the date of determination of new conditions under a first or previous periodic review as appropriate. The provisions relating to first periodic reviews, including the provision to apply for postponement of review dates, apply as if the appropriate reference to second or subsequent periodic review were substituted for first periodic review.

### *Compensation (Schedule 14, paragraph 13)*

**171** Where an mpa determines conditions different from those submitted by the applicant and the effect of the new conditions, other than restoration or aftercare conditions, as compared with the effect of the existing conditions is to impose a restriction on working rights, then Parts IV and XI of the 1990 Act have effect as if a modification order had been made and confirmed under sections 97 and 98 of that Act imposing those restrictions. Land and mineral owners whose interests have been adversely affected by the restrictions imposed by the deemed modification order will be entitled to claim compensation from the mpa under section 107 of the 1990 Act unmodified by section 116 of that Act or any regulations made thereunder.

**172** Paragraph 13(3) provides that working rights are restricted in respect of a mining site if any of the following is restricted or reduced in respect of the mining site in question:-

- 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 any 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 the 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.



## **G Guidance on Periodic Reviews**

### *Introduction*

**173** The purpose of periodic reviews is to ensure that the conditions attached to mineral permissions do not become outdated with the passage of time. Periodic reviews apply to all mining sites, including sites with IDO permissions, except for mineral permissions granted by the General Permitted Development Order.

### *Conditions*

**174** The approach to be adopted to the determination of conditions following periodic reviews broadly follows that for initial reviews with two main differences. First, there is no distinction between periodic review sites that are working and those that are not. Secondly, where mpas determine conditions different from those submitted by the applicant; and the effect of those conditions, other than restoration or aftercare conditions, is to restrict working rights further than before the review, a liability for compensation will always arise. This is because periodic reviews will be dealing with sites where the predominant planning permissions have been granted since 1982 and sites which have already been updated following an initial review or through the IDO procedures introduced by the 1991 Act. There should not therefore be any need for further changes to working rights and the Government's view is that conditions, other than restoration and aftercare conditions, which would restrict working rights should not be imposed except in exceptional circumstances. Subject to these two points, the advice on the principles to be applied to the preparation of schemes and conditions and to their consideration by the mpa for initial reviews applies equally to periodic reviews.

## **H Monitoring**

**175** The Department intends to engage the Minerals Valuation Agency and the County Planning Officers' Society to prepare an annual report on progress with IDOs and initial and periodic reviews. This will ensure that there is information on the operation of the legislation and this guidance. It will also ensure that the Government has sufficient information about the progress being made with the review of Phase I sites to decide whether the timetable for the review of Phase II sites needs to be deferred.

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## Annex M: Illustrative Guide to Conditions

This guide should be used by both applicants and mpas in the preparation and consideration of new schemes of conditions in conjunction with the guidance above.

### Time Limits

Conditions should provide for the date on which the winning and working of minerals or depositing of mineral waste must cease. New time limit conditions should only be imposed with the agreement of the applicant, otherwise the condition would constitute a restriction on working rights which could give rise to a liability for compensation.

### Access, Traffic and Protection of the Public Highway

Conditions should provide for the cleanliness of roads leading to and from the public highway and of vehicles leaving the site. Conditions cannot restrict the right of passage over the public highway, but may control access to or from the highway and may provide for the display of on-site signs showing recommended vehicle routes.

*Examples include: surfacing quarry access roads with tarmacadam or other suitable material, sheeting of loaded lorries, and installation and maintenance of facilities for the cleaning of wheels and chassis of vehicles prior to leaving the site to prevent dust and other debris being carried onto the public highway; provision of wider splays where access road joins public highway to improve visibility; redesign of access or exit so that traffic can only turn one way; requiring agreed vehicle routes to be displayed at quarry exits.*

### Working Programme

#### *i. working scheme*

Conditions should provide for the way in which the site is to be worked.

*For example, conditions specifying:*

- a. the limit of excavations - surface area and depth (or limits on size and height of minerals waste deposits), as appropriate;*
- b. limits on the output from the site, or rate of depositing of minerals waste, as appropriate;*
- c. the phasing of operations;*
- d. the location, design, phasing, treatment and maintenance of baffle mounds and minerals waste deposits;*
- e. the location and design of any acoustic fencing;*
- f. the movement and placement of overburden;*
- g. the location, design and formation of the main haul routes and, where appropriate, access to public highway, such as to minimise disturbance in the vicinity of the site.*

### *ii. Soil Removal and Storage*

Conditions should provide for the management and maintenance of topsoil, subsoil or any other soil making materials.

*For example, conditions relating to:*

- a. the location, size and management of any existing stockpiles of soil and soil making materials (including where incorporated in existing baffle mounds);*
- b. the amounts of soil materials in unworked areas and their preservation for use in restoration and landscaping;*
- c. the methods of stripping and storage of these materials so as to cause least damage to soil structure;*
- d. the location, design, phasing and management of these additional stockpiles of soil materials;*
- e. the recovery of soil making materials from overburden for use in restoration, where appropriate.*

### *iii. Hours of Operations*

Conditions should provide for the times and days on which specified operations may or may not be carried out.

*For example: Except in emergencies, or with the prior agreement of the mpa*

- a. no operations, other than water pumping, servicing, maintenance and testing of plant or other similar work, to be carried out except between the following times:  
[0700 hours and 1900 hours] Mondays to Fridays; and  
[0700 hours and 1300 hours] Saturdays;*
- b. no servicing, maintenance and testing of plant to be carried out between  
[2200 hours and 0700 hours] on any day;*
- c. operations for the formation and subsequent removal of material from any baffle mounds and soil/overburden storage areas which would adversely effect occupied residential property not to be carried out except between the following times:  
[0800 hours and 1800 hours] Mondays to Fridays; and  
[0800 hours and 1300 hours] Saturdays;*
- d. no working on Sundays, Bank Holidays and National Holidays.*

The precise nature of the condition and the times specified will depend upon the circumstances of the particular case. Longer or shorter hours may be appropriate.

## Environmental Protection

### *i. Dust*

Conditions should provide for the emission and propagation of dust to be minimised.

*Examples include: requiring water bowsers, sprayers or similar equipment to be used to minimise dust emissions from the site; suspension of movement of soils, overburden and minerals waste during adverse weather conditions; enclosure of dust emitting plant and machinery.*

### *ii. Noise*

Conditions should provide for specified noise limits to avoid public nuisance having regard to the nature of the operations to be carried out and the impact on noise-sensitive property at different times of the day; and, for monitoring to ensure that the limits set are not exceeded. Conditions may provide for the erection of acoustic screens, the maintenance of efficient silencers on engines and plant, and the erection of baffle mounds prior to the extraction of minerals.

Further advice on the control of noise from surface mineral working is given in [MPG11](#).

### *iii. Blasting and Vibration*

Where appropriate, conditions should provide for limits on the timing of blasts and on ground vibrations received at noise or vibration sensitive properties; for monitoring to ensure that the limits are not exceeded; and, for methods to be employed minimising air overpressure.

*For example:- Except in emergencies, -*

- no blasting shall be carried out on the site except between the following times:*
- [1000 and 1200 hours] and [1400 and 1600 hours] on Mondays to Fridays; and [1000 and 1200 hours] on Saturdays;*
- there shall be no blasting or drilling operations on Sundays, Bank Holidays or National Holidays*
- audible warning shall be given prior to the commencement of any blasting operations.*
- ground vibration as a result of blasting operations shall not exceed a peak particle velocity of [6 mm/sec][10 mm/sec] in 95% of all blasts measured over any period of [6 months] and no individual blast shall exceed a peak particle velocity of [12 - mm/sec] as measured at vibration sensitive buildings. The measurement to be the maximum of three mutually perpendicular directions taken at the ground surface.*
- prior to the commencement of any blasting operations a scheme for the monitoring of blasting including the location of monitoring points and equipment to be used shall be*

*submitted to the mpa for approval.*

- *prior to the commencement of blasting operations details of the methods employed to minimise air overpressure from blasting operations shall be submitted to the mpa for approval.*

NB:- the precise levels of peak particle velocity that will be acceptable will depend on the effects on the local environment but will also be governed by the type of mineral being worked, the blasting operations being carried out, and local circumstances. Generally, individual blasts should not exceed 12mm/sec ppv. Average levels should not exceed 10mm/sec ppv, and usually will not be below 6mm/sec ppv in 95% of all blasts, although lower levels may be appropriate in certain circumstances. The appropriate monitoring period must be a period which, relative to the length of time over which blasting is to be carried out, will ensure that the 95% confidence level is being met. In all cases, it will be necessary to ensure that planning conditions do not cut across good and safe practice under Mines and Quarries legislation and advice should be sought from HM Inspectorate of Mines and Quarries before conditions to control blasting are imposed.

#### *iv. Groundwater and Surface Water Drainage Protection*

Conditions should provide for the protection of surface and groundwater.

*Examples include (where not controlled under other legislation): requirements for the provision of settlement lagoons; the way in which surface water is to be disposed of; the avoidance of impairing drainage from adjoining areas; the prevention of material entering open watercourses; the provision of outfall (including any necessary construction for controlling erosion on site or downstream) for the drainage of a site; and the maintenance of water levels in adjoining areas.*

#### *v. Miscellaneous*

Conditions may provide for the control of other matters not covered under previous categories.

*Examples include: the storage of oil, fuel, lubricants etc to prevent contamination of topsoil, subsoil or any watercourse, and their disposal-away from the site.*

Conditions should not unnecessarily duplicate consents and controls imposed by other statutory agencies - eg pollution control authorities.

#### *Landscaping*

Conditions may provide for the landscaping of the site, or the submission of a landscaping scheme for the approval of the mpa.

*Examples include: requirements for the design of overburden mounds, minerals waste deposits etc, planting and other screening to mask the site so far as possible by blending in to the local topography; requirements for screening through retention of existing trees etc; new*

*planting; design and planting of baffle mounds; and, requirements for the maintenance of existing hedges and fences on the site boundary and the erection of stockproof fencing on those parts of the site boundary which do not coincide with existing hedges or fences.*

### *Restoration, Aftercare and After-use*

Conditions should provide for:-

- a. landforms, hydrology and levels of the site - whether a mineral excavation or deposit of minerals waste - on which the final restoration and after-use will take place;
- b. restoration - use of soils and soil-making materials, including depth and nature of topsoil and subsoil and handling methods for soil movement;
- c. aftercare - provision for a scheme to be submitted and agreed for a five year aftercare period where sites are restored to agriculture, forestry or amenity after-use;
- d. where appropriate, the removal of buildings, fixed plant, equipment and foundations and integration of these areas into the proposals for items a to c above.

Conditions may provide for these matters to be the subject of a scheme or schemes to be submitted at the appropriate phases or times.

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## **Annex N: Bibliography**

### **Primary Legislation**

Town and Country Planning Act 1947

Town and Country Planning Act 1962

Town and Country Planning Act 1968

Town and Country Planning Act 1971

Local Government Act 1972

Town and Country Planning (Minerals) Act 1981

Town and Country Planning Act 1990

Town and Country Planning (Consequential Provisions) Act 1990

Environment Protection Act 1990

Planning and Compensation Act 1991

Coal Industry Act 1994

Local Government (Wales) Act 1994

Environment Act 1995

### **Secondary Legislation**

Town and Country Planning (Compensation for Restrictions on Mineral Working) Regulations 1985 (SI 1985 No 698)

Town and Country Planning General Development Order 1988 (SI 1988 No 1813)

Town and Country Planning (Compensation for Restrictions on Mineral Working)(Amendment) Regulations 1990 (SI 1990 No 803)

The Coal Industry Act 1994 (Consequential Modifications of Subordinate Legislation) Order 1994 (SI 1994 No 2567)

Local Government Changes for England Regulations 1994 (SI 1994 No 867)

Waste Management Licensing Regulations 1994

Conservation (Natural Habitats) Regulations 1994

Town and Country Planning (General Permitted Development) Order 1995 (SI 1995 No 418)

Town and Country Planning (General Development Procedure) Order 1995 (SI 1995 No 419)

### **MPGs, PPGs, and Circulars**

MPG 2 1988 - Applications, Permissions and Conditions

MPG 4 1988 - Review of Mineral Working sites

MPG 5 1988 - Minerals Planning and the General Development Order

MPG 7 1989 - Reclamation of Mineral Workings

MPG 8 1991 - IDOs: Statutory Provisions and Procedures

MPG 9 1992 - IDOs: Conditions

MPG 10 1991 - Raw Material for Cement

MPG 11 1993 - Control of Noise at Surface Mineral Workings MPG 13 1995 - Peat Provision in England

PPG 9 - Nature Conservation

PPG 23 - Planning and Pollution Control

DOE Circular 11/95 (WO 35/95) - Use of Conditions

DOE/WO Circular 14/91 - Planning and Compensation Act 1991

DOE Circular 11/94 (WO 26/94) - Environmental Protection Act 1990

### **EC Directives**

EC Framework Directive on Waste (Council Directive 75/442/EEC) as amended by Council Directives 91/156/EEC and 91/692/EEC

EC Directive on Conservation of Wild Birds

EC Directive on Conservation of Natural Habitats and of Wild Fauna and Flora

### **Other**

Stevens Committee Report 1976



Environment White Paper "Our Common Inheritance" 1991

Statement by Sir George Young - House of Commons Official Report 16 May 1991 Cols 448 - 449

Waste Management Paper No 4 (1994 edition)

Statement by Lord Ullswater - House of Lords Official Report 7 March 1995 Cols 133 - 136

