

Planning Circular 34/1996: environment act 1995: section 96 guidance on the statutory provisions and procedures

The Chief Executive
Local Authorities

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Planning series:

National Planning Policy Guidelines (NPPGs) provide statements of Government policy on nationally important land use and other planning matters, supported where appropriate by a locational framework.

Circulars, which also provide statements of Government policy, contain guidance on policy implementation through legislative or procedural change.

Planning Advice Notes (PANs) provide advice on good practice and other relevant information.

Statements of Government policy contained in NPPGs and Circulars may, so far as is relevant, be material considerations to be taken into account in development plan preparation and development control.

A. Introduction

1. 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 in Scotland on 1 January 1997. This Circular gives advice to planning authorities and the minerals industry on the statutory procedures to be followed and the approach to be adopted for the preparation and consideration of updated planning conditions in the review process. The Secretary of State attaches importance to the effective and speedy implementation of the procedures and policies contained in this Circular.

2. 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 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 expected by society can also change. There is therefore a need for regular review so as to ensure that modern standards are met.

3. 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" - which amended the Town and Country Planning (Scotland) Act 1972 ("the 1972 Act")). This placed a duty on planning authorities to review periodically mineral sites in their area, and to make such orders as they considered necessary

for the updating of 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.

4. 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 (1990) to review the operation of the legislation and the associated compensation arrangements to see how they could be improved.

5. 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, 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. The 1991 Act required holders of IDO permissions to register them with the planning authority 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. At that time the Government made it 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.

6. 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 in Scotland on 1 January 1997 make provision for this.

7. 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(3) provides that the provisions of both Schedules have effect as if they were included in Part III of the 1972 Act. Section 96(4) repeals Section 251A of the 1972 Act (Reviews by planning authorities).

8. The provisions of Schedule 13 do not apply to IDO permissions ("old mining permissions") as defined in Section 49H of the 1972 Act, (as inserted by Sections 52 of the planning and Compensation Act 1991) because these are already subject to a separate initial review under the provisions of the 1991 Act (see SOEnD circulars 2/1992 and 26/1992).

9. Neither the provisions of Schedule 13 nor those of Schedule 14 apply to planning permissions granted by the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (SI 1992 No 223) (GPDO) for the winning and working of minerals or the depositing of mineral waste. Section 96(5) provides an enabling power to make similar provision for initial and periodic reviews within the GPDO itself.

10. The 1995 Act includes provisions for the establishment of The Scottish Environment Protection Agency (SEPA), which brings together the functions of HM Industrial Pollution Inspectorate, the River Purification Authorities and district and island councils in respect of waste regulation and certain air pollution controls. It took over these functions on 1 April 1996. Any reference in this circular to these functions, and their relevance to initial reviews, should therefore take account of the setting up of the Agency.

11. On 1 April 1996 local government reorganisation in Scotland involving the creation of unitary authorities came into effect. From that date the new authorities as planning authorities assumed the responsibilities, described in this circular, of the former planning authorities.

B. Initial reviews

Key points

12. 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 25) 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 planning authority.
- Active sites will be reviewed in 2 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 8 December 1969.
- Phase II will deal with active sites where the predominant permission(s) was granted after 7 December 1969 and before 22 February 1982.
- However, all initial review sites which are wholly, or partly, within National Scenic Areas, Natural Heritage Areas or Sites of Special Scientific Interest (SSSIs) on the date that notice of the first list of sites is first published will be treated as Phase I sites.
- By 1 April 1997, every planning authority 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 planning authority. Planning authorities must advertise that the list has been prepared, and notify land and relevant mineral owners. Where the planning authority 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 planning authority for its inclusion, otherwise the planning permissions in respect of the site will cease to have effect.

- Land or relevant mineral owners of active Phase I sites must submit new schemes of conditions for the planning authority's approval by the date specified by the authority, or the planning permissions will cease to have effect.
- By 1 January 2000, or such later date as may be specified by order, every planning authority 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 planning authority. Essentially this means updating the first list of active Phase II sites and incorporating specific dates for the submission of revised conditions. Planning authorities must advertise that the list has been prepared, and notify land and relevant mineral owners. Where the planning authority 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 planning authority's approval by the date specified by the authority, or the planning permissions will cease to have effect.
- It is for land or 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 planning authorities 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)

13. A "mineral site" is defined by reference to "relevant planning permission". "Relevant planning permission" means any extant planning permission, other than an IDO or GPDO 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 8 December 1969 and which had not been implemented on or before 8 December 1979 ceased to have effect on 9 December 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.

14. 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 under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and includes any person entitled to possession of the land as lessee under a lease the unexpired proportion of which is not less than 7 years.

15. A mineral site may consist of a single relevant planning permission or, where the planning authority 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, planning authorities must have regard to the following guidance.

Aggregation of two or more permissions

16. 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 - e.g. 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 planning authority should have regard to what constitutes a sensible planning unit (having regard to the original intent of the planning permission or permissions 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 planning authority 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

17. 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

18. There may be some instances where a single minerals operation straddles planning authority boundaries. Legally, planning authorities only have administrative responsibility for land within their administrative area. An old permission which now straddles more than one planning authority area as a result of later boundary changes is treated as two (or more) permissions, one covering each area as appropriate, by virtue of Section 181(3) of the Local Government (Scotland) Act 1994. Accordingly, the development will have to be treated as two (or more) sites, and the appropriate area entered as such in each planning authority's list of sites. Planning authorities should co-ordinate their approach so that the respective "sites" are reviewed at the same time and may wish to make use of Section 56 of the Local Government (Scotland) Act 1973 which provides powers for two or more local authorities to make arrangements to discharge any of their functions jointly.

19. There may be cases where, as a result of such apportionment, the different parts of the same operation fall into different Phases - e.g. 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 a National Scenic Area, Natural Heritage area or SSSI, that part would fall to be reviewed in Phase I. In such cases, the authority 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.

20. 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 I sites

21. 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 8 December 1969. Mineral sites wholly or partly within National Scenic Areas, Natural Heritage Areas and SSSI, 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

22. 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 7 December 1969 and before 22 February 1982.

Greater part of the land

23. Where a site comprises two or more planning permissions granted at different times, in deciding whether a site is a Phase 1 or Phase II site, or is neither and therefore not subject to initial review, planning authorities 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, planning authorities 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 planning authority, has been satisfactorily restored and, where aftercare conditions were imposed, the planning authority judge that those conditions have been satisfactorily complied with.

24. 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. Land which has been satisfactorily restored etc. 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

25. 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 January 1997 it will not be lawful to carry on working a dormant site until full modern planning conditions have been approved by the planning authority. "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.

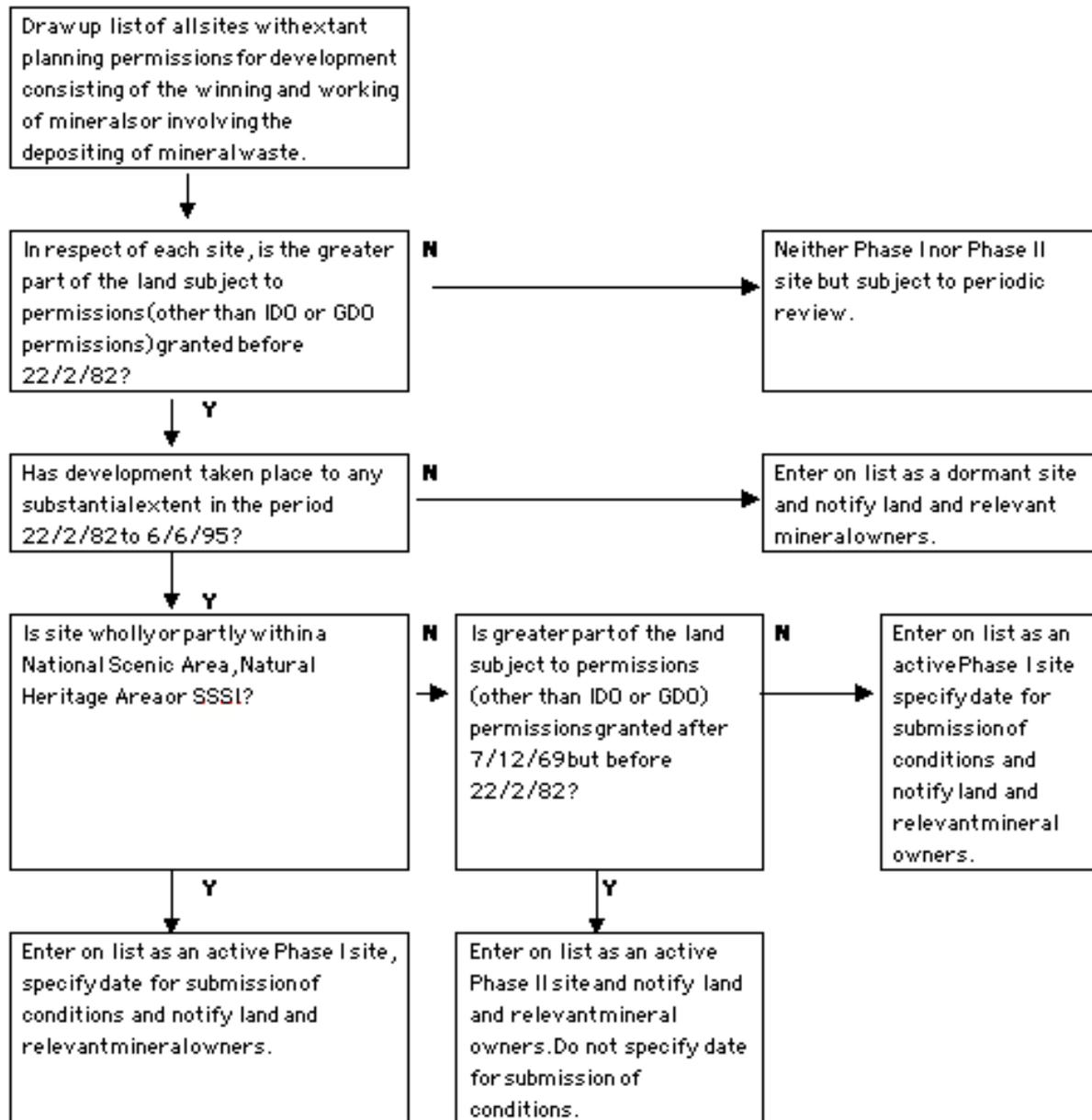
26. However, there may be borderline cases where an owner or operator might object if a site is classified as dormant. There is no right of appeal against a planning

authority's classification. Where therefore it is clear to the planning authority 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 planning authority at the earliest opportunity. Planning authorities 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 planning authority 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)

27. By 1 April 1997 planning authorities 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 planning authority. The date must be not less than 12 months after the list is first advertised and not later than 1 January 2000. Within that period, different dates may be set for different sites. Planning authorities 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 planning authorities 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.

Preparation of First List of Sites which must be completed and advertised by notice in one or more local newspapers no later than 1 April 1997.



28. 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.

29. By 1 April 1997 planning authorities must advertise in 2 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 planning authority'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 1 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 planning authority'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.

Duty to prepare "second" list of active phase II sites (schedule 13, paragraphs 4 and 5)

30. By 1 January 2000 planning authorities 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 1 January 2003 or such later date as may be prescribed by order.

31. By 1 January 2000, or such later date as the Secretary of State may prescribe by order, planning authorities must advertise in 2 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 planning authority'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.

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

32. 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 planning authority 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.

33. On receipt of an application for inclusion of a site in the first list, if the planning authority 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

planning authority 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 planning authority. A planning authority 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.

34. 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 planning authority 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.

35. 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 planning authority notified the applicant of their determination and not later than 1 January 2000 or 12 months from the date of notification of the determination, whichever is the later.

36. Where the planning authority consider that part of a site, or a new site, is to be included in the list is an active Phase II site, and the second list has already been advertised prior to the planning authority's determination, the date for submission of new conditions must be not less than 12 months from the date the planning authority notified the applicant of their determination and not later than 1 January 2003 (unless varied by order by the Secretary of State) or 12 months from the date of notification of the determination, whichever is the later.

37. Where the planning authority 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 planning authority 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)

38. A land or relevant mineral owner of an active Phase I or Phase II site may apply to the planning authority 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 planning authority's written notification of their determination of that application.

39. 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 - e.g. 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 planning authority without the formal procedure of a postponement application.

40. 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 the appropriate certificates. The appropriate certificates are those, modified as necessary, that would be required under Sections 23 and 24 of the 1972 Act as if the application for postponement were an application for planning permission for minerals development (i.e. that all persons known to the applicant to have an interest in the land or minerals to which the application relates and all persons holding an interest in neighbouring land have been notified of the application). The requirements in relation to notification of owners and neighbours and provision of certificates are set out in Articles 8 and 9 of The Town and Country Planning (General Development Procedure) (Scotland) Order 1992 (SI 1992 No 224) as amended by SI 1994 No 3293. Suggested forms of modified notices and certificates are set out in Annex C.

41. If the planning authority do not consider the existing conditions satisfactory they must refuse the application. If the planning authority 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 planning authority must notify the applicant of their determination in writing.

42. Where the planning authority 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 planning authority must amend the first or second list accordingly.

43. 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 paragraph 65 and 66.

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

44. Planning authorities 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; and,

(c) explain the right to apply for postponement of that date and indicate the date by which such an application must be made.

45. Planning authorities 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; and
- (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.

Reminders

46. Where an planning authority 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 planning authority 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 planning authority; 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.

47. Mineral operators are asked to provide planning authorities with every assistance in identifying landowners and persons with an interest in relevant minerals in the site. However, where a planning authority 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 planning authority may affix the notice or reminder to a post driven into or erected on the land.

48. 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.

49. Where a planning authority have failed to serve a written reminder or 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)

50. 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 planning authority 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 planning authority 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.

51. Appropriate certificates are those, modified as necessary, that would be required under Sections 23 and 24 of the 1972 Act as if the application for determination of new conditions were an application for planning permission for minerals development (i.e. that all persons known to the applicant to have an interest in the land or minerals to which the application relates and all persons holding an interest in neighbouring land have been notified of the application). The requirements in relation to notification of owners and neighbours and provision of certificates are set out in articles 8 and 9 of The Town and Country Planning (General Development Procedure) (Scotland) Order 1992 (SI 1992 No 224) as amended by SI 1994 No 3293. Suggested forms of modified notices and certificates are set out in Annex C.

52. On receipt of an application, the planning authority 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 planning authority should inform the applicant without delay and should be prepared to grant an extension of time where appropriate.

53. The planning authority should acknowledge receipt of the application in writing as soon as practicable and should enter details of the application in the Planning Register. Paragraph 9(5) of Schedule 13 provides that a land or relevant mineral owner must publicise the application as if it were an application for planning permission. This means it must be advertised in a local newspaper and, in the case of underground working, be publicly displayed in at least one place in the area of the Planning authority. A suggested form of notice is at Annex C.

54. On receipt of a valid application the planning authority 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 50 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 planning authority 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 95 to 99 below).

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

56. Where the planning authority 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 planning authority 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. Planning authorities 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.

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

58. Once an application has been finally determined, the planning authority should enter details of the determination in Part II of the Planning 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)

59. This applies to active Phase I and Phase II sites only. Where the planning authority 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 planning authority must provide a separate notice with their determination. Where the planning authority 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 planning authority 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, planning authorities must have regard to the guidance in this Circular.

60. 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 G.

Meaning of "mineral waste"

61. Section 275(1) of the 1972 Act as amended by the 1991 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 planning authority's determination of conditions (schedule 13, paragraph 11)

62. Where the planning authority 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.

63. An appeal must be made by giving notice to the Secretary of State within 6 months of the planning authority's notice of determination.

Compensation (schedule 13, paragraph 15)

64. Where the planning authority 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 VIII and XI of the 1972 Act have effect as if a modification order had been made and confirmed under Section 42 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 153 of the Town and Country Planning (Scotland) Act 1972 unmodified by Section 167A of the Act or any regulations made thereunder.

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

65. 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 planning authority 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 planning authority have already determined an application, then no further applications may be made by any person.

66. 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 planning authority 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)

67. 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 planning authority. Such directions may relate either to a particular application or to a class of application (e.g. a particular mineral type). The Secretary of State intends to use this power very sparingly along the same lines as his power of call-in for planning applications generally.

68. 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)

69. 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 H and model appeal forms at Annex I. The procedures for determination of appeals are those that apply to IDO permissions and the usual right of appeal to the Court of Session against the Secretary of State's determination applies.

70. Before determining a called-in application or an appeal the Secretary of State must, if either the applicant/appellant or the planning authority 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)

71. Where no application for determination of conditions in respect of an active Phase I or Phase II site has been made to the planning authority by the date specified in the appropriate list - or as varied or postponed - (or such later date as may have been agreed in writing between the applicant and the planning authority or, where the planning authority 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.

72. 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.

73. Where an application for inclusion in the list has been made, unless the application is approved (either by the planning authority 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 Court of

Session, have been finally determined and the time period for any further appeal has expired.

C. Guidance on initial reviews

Introduction

74. The Government considers that this new legislation provides 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 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 in general expects that, in relation to active sites, planning authorities 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.

75. 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 planning authorities 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 planning authority, and for the planning authority 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; or, where the effect of the conditions would be to further restrict working rights, they disagree with the planning authority'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.

76. 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, the site is considered "dormant". After 1 January 1997 development at dormant sites will be unlawful until a scheme of

conditions has been finally determined. Such schemes of condition can be put forward for decision at any time. In the case of active Phase I and Phase II sites an application for determination of conditions must be made to the planning authority by the date specified in the appropriate list (or such longer period as the planning authority agree) or the permissions relating to the site will cease to have effect.

77. 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 planning authorities is more evenly spread. Equally, where applicants can demonstrate the need to reactivate dormant sites - e.g. to meet a specific contract - planning authorities should deal with the application as speedily as possible.

78. 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.

79. 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 planning permissions is given in SDD Circular 18/1986. SOEnD Circular 26/1992 gives advice on appropriate conditions for the winning and working of minerals and the depositing of mineral waste at IDO sites. Further guidance on conditions for mineral working is given in National Planning Policy Guideline 4: Land for Mineral Working. Applicants should have regard to these and to the following paragraphs in drawing up the conditions to which they propose the relevant planning permissions should be subject. Planning authorities should have similar regard to these, and to the following paragraphs in considering applications and in determining conditions. PAN 50 gives advice on controlling the environmental effects of surface mineral workings. A further PAN on restoration, aftercare and after-use will be published shortly. 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; and
- 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.

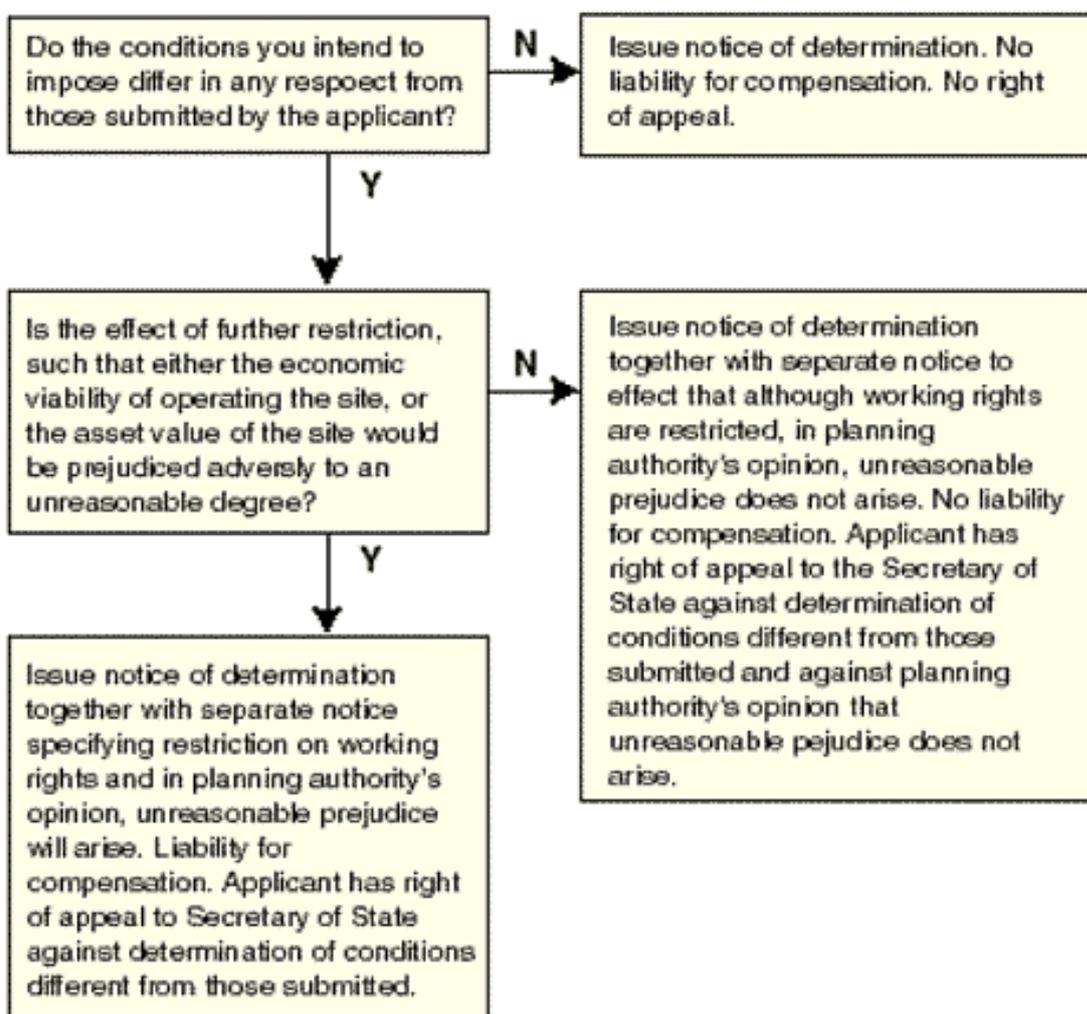
Approach to conditions for active sites

80. 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 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.

81. 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 planning authority 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 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 considers 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.

Determination of Conditions for Active Phase I and Active Phase II Sites

Determination of Conditions for Active Phase I and Active Phase II Sites



82. Where the planning authority do determine conditions different from those submitted by the applicant and the effect of those conditions, other than restoration and aftercare conditions, is to restrict working rights further, paragraph 10 of Schedule 13 requires the planning authority 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 restrict working rights further 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 planning authority must have regard to this guidance.

83. In the first place the planning authority will have to 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 - i.e. "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 planning authority 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 planning authority's judgement that the effect of the new conditions would not restrict working rights. The applicant is entitled to appeal against the determination of conditions different from those submitted if they consider them unreasonable.

84. If the planning authority 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 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 planning authority 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 planning authority's opinion. Where the planning authority 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 planning authority should either moderate the restriction or they must issue a notice as outlined above and be prepared for a compensation claim.

85. 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 sterilised some of the workable mineral reserves, the test is whether that condition would adversely prejudice 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.

86. In determining new conditions therefore, the planning authority should consider whether a resulting restriction on working rights would be such as to prejudice 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 planning authorities 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

87. Applicants should note that applications for determination of conditions must be accompanied by the appropriate certificates 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 planning authority. 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.

88. Similarly, whilst the provisions of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 (SI 1992 No 224) as amended by SI 1994 No 329 and 1994 No 2585 relating to consultations before the grant of planning permission do not statutorily apply to these new procedures, planning authorities 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 planning authorities 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

89. 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.

90. 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 an applicant can demonstrate the area of

currently unworked land contains workable reserves, that there are definite plans for the extraction of those reserves, that the planned extraction forms an integral part of the economic viability of the operation, and that 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.

91. 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 Scenic Areas, Natural Heritage Areas, SSSIs, features of archaeological interest and the built heritage (see paragraphs 124-132); 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.

92. 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 to an unreasonable degree either economic viability or asset value, the applicant and planning authority should consider whether equivalent or better protection can be provided by other means.

93. All responsible minerals developers should work their sites in an environmentally acceptable and sustainable way and able 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 prejudicing economic viability or asset value to an unreasonable degree. 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 planning authority at an early stage, and well before submitting a formal application. Planning authorities should be prepared to respond positively to such approaches. In this way many issues can be resolved by constructive negotiation.

94. 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 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 i.e. that any condition must fulfil a planning purpose, must fairly and reasonably relate to the development permitted and should not be manifestly unreasonable.

Ancillary mining development

95. 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 16 of Schedule 1 to the 1992 General Permitted Development Order. Reviews should cover ancillary mining development which gained its permission from Part 16 of the 1992 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 1992 GPDO or its predecessors - i.e. 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 1992 GPDO but which would not have been permitted under its predecessors.

96. 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.

97. 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.

98. 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.

99. 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

100. 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.

101. 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 (formerly WRAs and from 1 April 1996 the Scottish Environmental Protection Agency) 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.

102. 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, now SEPA.

Principles to be applied to the preparation of schemes of conditions and to their consideration by the planning authority

Introduction

103. The illustrative guide to conditions in Annex L 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, planning authorities 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 road

104. Conditions dealing with measures to prevent dust, mud and spillages on the public road 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 (e.g. improved visibility splays, or ensuring that 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 road. Although negatively worded conditions which control such matters might sometimes be capable of being validly imposed on planning permissions, and planning agreements 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. A simple way to control how lorries approach a site may be either by short local lengths of lorry ban or short local lengths of traffic calming, provided respectively by the local traffic authority and the local roads authority who are the same authority as the planning authority from 1 April 1996.

Working programme

105. 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. 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 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 - e.g. through the control of noise and dust levels - without giving rise to unreasonable prejudice.

106. 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 which could be achieved from the quarry to the extent that the economic viability of operating the site would be prejudiced to an unreasonable degree would give rise to a liability to compensation.

Working hours

107. 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 - e.g. 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 e.g. forcing a reduction from 2 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.

108. Nevertheless, it is important that permissions should be subject to conditions governing working hours. Applicants and planning authorities should therefore have regard both to the illustrative guide to conditions on working hours in Annex L, 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 e.g. 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.

109. 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 to an unreasonable degree.

Noise

110. 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 planning

authorities should have regard to the advice in SDD Circular 23/1973 Planning and Noise. Further advice on the control of noise at surface mineral workings is published in Annex A: The Control of Noise at Surface Mineral Workings to PAN 50: Controlling The Environmental Effects of Surface Mineral Workings. 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 to an unreasonable degree the planning authority 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

111. 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.

112. A Planning Advice Note is in preparation on restoration, aftercare and after-use of surface mineral sites.

113. 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 275 of the 1972 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 formerly from the Waste Regulation Authority (WRA) now SEPA from 1 April 1996 under the Waste Management Regulations 1994, which implement Part II of the Environmental Protection Act 1990. Advice on this can be found in SOEnD Circular 10/1994, in Waste Management Paper No.4 (1994 edition) and NPPG 10 Planning and Waste Management (March 1996).

114. 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 planning authorities, 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 Scottish Office Agriculture, Environment and Fisheries Department (SOAEFD) - 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. Planning authorities may also wish to seek advice from SOAEFD or the Forestry Commission in determining schemes of conditions.

115. There is no equivalent statutory consultee for the broad range of "amenity" after-uses. However useful contacts for particular schemes include Scottish Natural Heritage, the Forestry Commission, The Scottish Sports Council, the Scottish Wildlife Trust, the Royal Society for the Protection of Birds (RSPB), and the Game Conservancy.

116. 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 (e.g. 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 (i.e. replacement of soil materials) and aftercare (i.e. 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.

117. 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 (e.g. 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;
- k. the options for future management of the landscape created by restoration proposals.

118. 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, it is recommended that SOAEFD be consulted before the planning authority gives its decision on the scheme of conditions. SOAEFD may wish to carry out an inspection particularly where large parts of a site remain undisturbed and currently in agricultural use, especially if it is high quality land. The "required standard" would be as in sub paragraph (9) of Section 27A of the 1972 Act as inserted by the 1981 Act. 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 sub-paragraph (10) of Section 27A of the 1972 Act.

Consents required from other statutory agencies

119. 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, authorisations 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 Scottish Environmental Protection Agency (SEPA) or the Health and Safety Executive) judges can be satisfactorily regulated under their own separate powers. However, there may be circumstances when planning conditions may properly overlay matters that are subject to other statutory controls e.g. 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 planning authorities should consult the appropriate pollution control authority. Prescribed processes taking place on active sites will of necessity be covered by EPA authorisations and aqueous discharges by COPA consents. Reviews of planning conditions will not affect these aspects.

D. Other issues

Revocation, modification, discontinuance, prohibition and suspension orders

120. Planning authorities 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 by the amounts set out in The Town and Country Planning (Compensation for Restrictions on Mineral Working) (Scotland) Regulations 1987 (SI 1987 No 433) as amended by 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 - i.e. 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 - i.e. provided that "mineral compensation requirements are satisfied" the amount of compensation that would be payable by planning authorities for loss or damage occasioned by complying with the terms of such an order would be reduced by a prescribed sum (currently £5,000).

121. The Government decided that valid planning permissions should not be revoked without compensation, but Parliament expressly provided power for planning authorities 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. Planning authorities 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 Section 167A of the 1972 Act if the modified compensation arrangements are to apply - i.e. 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 £5,000.

122. In deciding whether to make a prohibition order, the planning authority must be satisfied that development consisting of the winning and working of minerals or involving the depositing of mineral waste has permanently ceased (Section 49A of the 1972 Act). They may only assume that development has permanently ceased if:

(a) no such development has been carried out to any substantial extent anywhere in, on or under the site of which the land forms part for a period of at least 2 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 in, on or under the land is unlikely.

123. In determining whether resumption of development to any substantial extent is unlikely, planning authorities 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.

E. Special cases

SSSIs and Habitats Issues

Initial reviews of SSSI sites

124. 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 Scottish Natural Heritage in preparation of schemes for SSSI sites.

SSSI: sites of international importance

125. A few Phase I sites which are, or include, SSSIs may be or become European sites i.e. Special Protection Areas (SPAs) under the EC Directive on the Conservation of Wild Birds (the Birds Directive), or 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). As soon as an area becomes a European site, any extant permissions for development (of any type) which have not been implemented or have not been completely implemented, must be reviewed by the planning authority under the Conservation (Natural Habitats etc.) 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. Advice on the Habitats Regulations is contained in SOEnD Circular 6/1995. The planning authority must seek the advice of Scottish Natural Heritage on individual cases.

126. 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 2 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 minerals reviews.

127. There is a major procedural difference between the 2 requirements for reviews. Under the Habitats Regulations planning authorities have to undertake reviews for sites that have already been classified "as soon as reasonably practical", whereas for mineral reviews it is land and mineral owners who have to submit schemes of conditions for the approval of planning authorities within the timescales laid down in the 1995 Act.

128. If a review of an old mineral planning permission has already been carried out under the Habitats Regulations, and a satisfactory planning agreement 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 planning authority agreeing to postpone the initial minerals review.

129. Where Habitats Regulations reviews have not yet taken place, planning authorities should take steps to do so as soon as possible. Fifty-nine SPAs have been classified in Scotland as at 1 October 1996 and the Government is aiming to classify a minimum of 20 new SPAs per until the programme is complete. As new SPAs are classified the duty to review under the Habitats Regulations will arise. 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 planning authority, the mineral or land owner, and Scottish Natural Heritage should be held at an early stage to consider how best to deal with the interactions for the decision making processes.

130. In a number of areas potential SPAs have been identified that are expected to be classified in due course. Planning authorities should give priority, wherever possible and reasonable within their lists of active Phase I sites, to reviewing mineral sites affecting these areas. Early dates should be specified within the statutory timescales by which the land and minerals operators must submit their applications for approval of new conditions. This will enable planning authorities, in consultation with Scottish Natural Heritage and with the land and mineral owners, to meet the requirements that will arise under the Habitats Regulations when the area becomes a European site. Land and mineral owners will then be able to take account of potential SPAs in preparing their schemes of conditions for approval by the planning

authority including how far they will be able to protect such areas to safeguard their conservation objectives.

131. Similarly, in a number of areas, candidate Special Areas Conservation (SACs) have been notified. These are areas which have been subject to public consultation and submitted to the European Commission. They are expected to be adopted by the Commission as sites of Community importance, and hence will become European sites, although the timing of this is uncertain and not entirely in the Department's hands. Again, planning authorities should give priority in Phase I to active mineral sites affecting these areas for the same reasons as potential SPAs. In drawing up and considering schemes to be submitted under the 1995 Act requirements there might be administrative advantages to authorities and to land and mineral owners to examine at the same time considerations which would apply under the Habitats Regulations review in advance of the formal statutory duty to do so.

132. The above advice applies primarily to active Phase I mineral sites which are wholly or partly within existing SSSIs. The Habitats Regulations require authorities to review any permissions which are likely to affect European sites, irrespective of whether they are inside the boundaries of such sites. The 1995 Act provisions will not therefore take account of some European sites until Phase II or periodic reviews. In these circumstances, it is likely that the review duty under the Habitats Regulations will arise first. The above advice is unlikely to cover all circumstances, and judgement about timing will undoubtedly vary from site to site. The Department is unable to advise on the merits or otherwise of individual cases because this would prejudice the Secretary of State's position should the case come before him on appeal.

Peat

133. 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 Government welcomes this constructive approach to a difficult problem.

Coal

134. 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 GPDO itself in due course. However, opencast 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.

135. 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, planning authorities 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 authorisations 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 covered by EPA authorisations, and particularly where there are no adequate restoration and aftercare conditions in respect of the surface development, operators and planning authorities 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.

F. Periodic reviews

Key points

136. 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 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.
- Planning authorities 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 planning authority.
- 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)

137. Paragraph 1 of Schedule 14 places a statutory duty on planning authorities 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 GPDO, 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

138. As with initial reviews, a mining site for the purposes of periodic review may consist of a single mineral permission or, where the planning authority consider it expedient, the aggregate of two or more mineral permissions. However, in determining whether a site consists of two or more permissions, the planning authority must have regard to the following guidance. In the case of sites which have already been subject to an initial review (i.e. 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 - e.g. a road. In such cases, the planning authority 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 planning authority to treat it as more than one site.

Satellite sites

139. 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

140. There may be some instances where a single minerals operation straddles planning authority boundaries. Legally, planning authorities 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 Section 181(3) of the Local Government (Scotland) Act 1994 c.39. Accordingly, the development will have to be treated as two (or more) sites, but in such cases planning authorities should co-ordinate 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

141. 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.

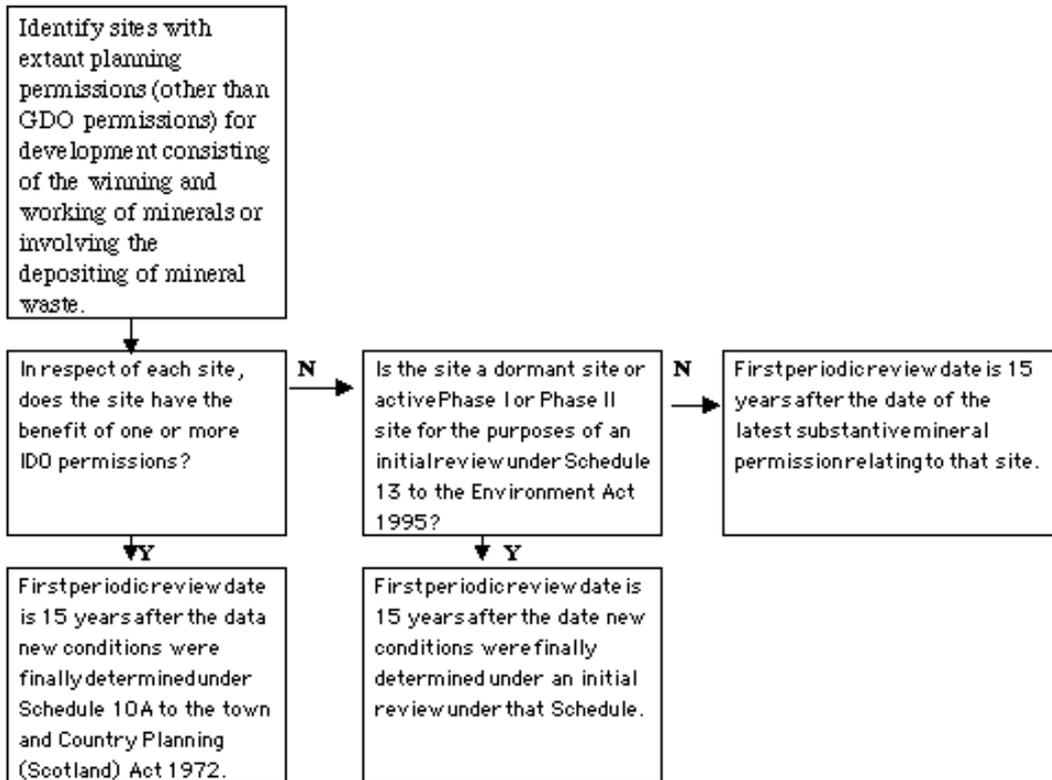
Mining sites which are dormant or active phase I or phase 11 sites for the purposes of schedule 13

142. 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

143. 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 planning authority 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. Planning authorities 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.

First Periodic Review Dates - Notice of review date for each site must be served on land and mineral owners at least 12 months before that date.



Mining sites where a revocation, modification or discontinuance order has been made

144. 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

145. 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)

146. Planning authorities 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 J.

147. Where a planning authority 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 planning authority 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 K.

148. Where a planning authority 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 objects on the land, the planning authority may affix the notice or reminder to a post driven into or erected on the land.

149. 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)

150. A land or mineral owner of a mining site may apply to the planning authority 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.

151. 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 - e.g. 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 planning authority without the formal procedure of a postponement application.

152. 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.

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

154. Where the planning authority 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)

155. 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 planning authority 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 person with an interest in any minerals in the site;
- (e) set out the applicant's proposed conditions; and,
- (f) be accompanied by the appropriate certificates.

A standard application form is at Annex F.

156. The appropriate certificates are those, modified as necessary, that would be required under Sections 23 and 24 of the 1972 Act as if the application for determination of conditions were an application for planning permission for minerals development (i.e. that all persons known to the applicant to have an interest in the land or minerals to which the application relates and all persons holding an interest in neighbouring land have been notified of the application). The requirements in relation to notification of owners and neighbours and provision of certificates are set out in Articles 8 and 9 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 (SI 1992 No 224) as amended by SI 1994 No 3293. Suggested forms of modified notices and certificates are set out at Annex C.

157. The planning authority should acknowledge receipt of the application in writing as soon as practicable and should enter details of the application in the Planning Register. There is no statutory requirement on applicants 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 C. This means that it must be advertised in a local newspaper and publicly displayed in at least one place in the district of the planning authority.

158. On receipt of a valid application the planning authority 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.

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

160. Where the planning authority 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 planning authority 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. Planning authorities 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.

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

162. Once an application has been finally determined, the planning authority should enter details of the determination in Part II of the Planning Register. At the same time the copy of the application should be removed from Part I of the register.

Permissions ceasing to have effect (schedule 14, paragraph 7)

163. Where no application for determination of conditions has been made to the planning authority by the first review date (or such later date as the planning authority 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)

164. Where the planning authority 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 planning authority's notice of determination. Suggested forms of notice are set out in Annex H and model appeal forms at Annex I.

Reference of applications to the secretary of state (schedule 14, paragraph 8)

165. 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 planning authority. If he does so, the relevant provisions of the Schedule are applied with any necessary modifications, including the planning authority's and appellant's right to a hearing before he makes his determination.

Two or more applicants (schedule 14, paragraph 11)

166. 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 planning authority 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 planning authority have already determined an application, then no further applications may be made by any person.

167. 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 planning authority with a view to submitting a single application covering all their respective interests.

Second and subsequent periodic reviews (schedule 14, paragraph 12)

168. 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)

169. Where a planning authority 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 VIII and XI of the 1972 Act have effect as if a modification order had been made and confirmed under Section 42 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 planning authority

under Section 153 of the 1972 Act unmodified by Section 167A of that Act or any regulations made thereunder.

170. 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

171. 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 GPDO.

Conditions

172. The approach to be adopted for the determination of conditions following periodic reviews broadly follows that for initial reviews with 2 main differences. First, there is no distinction between periodic review sites that are working and those that are not. Secondly, where planning authorities 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 2 points, the advice on the principles to be applied to the preparation of schemes and conditions and to their consideration by the planning authority for initial reviews applies equally to periodic reviews.

H. Monitoring

173. The Secretary of State places considerable importance on the successful review of old mineral planning permissions both under the Environment Act 1995 for permissions granted between 1948 and 1982, and under the Planning and Compensation Act 1991 for permissions granted before 1948 under IDO.

Arrangements are being put in place to monitor the progress of these reviews.

Annex A: Notice of preparation of first list of sites

Environment Act 1995: Review of Mineral Sites

NOTICE UNDER PARAGRAPHS 3 AND 5 OF SCHEDULE 13 TO THE ENVIRONMENT ACT 1995 (to be published in one or more local newspapers circulating in the area)

Review of Mineral Sites

I give notice that:

The (a)Council have prepared the first list of mineral sites in their area.

A site is only included in the list if:

- (a) the land has the benefit of a planning permission or permissions (other than an "old mining permission", as defined in Section 22 of the Planning and Compensation Act 1991, or permission granted by General Development Order) for development consisting of the winning and working of minerals or involving the depositing of mineral waste; and,
- (b) the permission(s) relating to the greater part of that land were granted before 22 February 1982.

The list classifies each such site as either "dormant", "active Phase I", or "active Phase II". A copy of the list may be inspected at

- (b) between the hours of
- (c)

Where a site is classified as "dormant", no development consisting of the winning and working of minerals or involving the depositing of mineral waste may lawfully be carried out until new planning conditions have been submitted to, and approved by, the Council.

Where a site is classified as "active Phase I", the list specifies a date by which owners of the land, or persons with an interest in the minerals, to which the planning permissions relate must apply to the Council for the determination of new planning

conditions. If no application is made by that date (or any postponed date the Council may approve), all planning permissions for development consisting of the winning and working of minerals or depositing of mineral waste relating to that site will cease to have effect except in so far as they impose any restoration or aftercare condition. Any owner of the land, or person with an interest in the minerals, to which the planning permissions relate may apply to the Council for postponement of the specified date on the grounds that the existing planning conditions are satisfactory. Applications for postponement must be made by
(d)

Where a site is classified as "active Phase II", you need take no action now. A further list of such sites will be prepared in due course specifying the date by which an application for the determination of new planning conditions must be submitted. The Council have served notice on every person known to them to be owners of the land, or having an interest in the minerals, to which the planning permissions relate in respect of each site. Where they have been unable to identify owners they have posted a copy of the notice on the land. If you are an owner of land, or person with an interest in minerals, in respect of which there is a valid planning permission for development consisting of the winning and working of minerals or depositing of mineral waste, and you believe that land has incorrectly been omitted from the list, you must apply to the council by (d).....for the land to be included in the list as an additional site, or part of a site already included in the list. If you do not do so, all planning permissions for development consisting of the winning and working of minerals or involving the depositing of mineral waste relating to that land will cease to have effect except in so far as they impose any restoration or aftercare condition.

If you do make such an application and the Council either refuse it, or do not give you written notice of their determination within 8 weeks of your application, you may appeal to the Secretary of State.

Signed(Council's authorised officer)

On behalf ofCouncil

Date

"Owner" in relation to any land means any person who under the Lands Clauses Act would be enabled to sell and convey the land to the promoters of an undertaking and includes any person entitled to possession of the land as lessee under a lease the unexpired proportion of which is not less than 7 years and "Person with an interest in minerals" means any person with an interest in minerals to which the planning permission relates.

Insert:

- (a) name of planning authority;
- (b) names and addresses of one or more places in the authority's area at which copies of the list can be inspected;

- (c) times during which copies of the list can be inspected;
- (d) date 3 months from date of first publication of notice.

Annex B: Notice of preparation of second list of sites

Environment Act 1995: Review of Mineral Sites

NOTICE UNDER PARAGRAPHS 4 AND 5 OF SCHEDULE 13 TO THE ENVIRONMENT ACT 1995

(to be published in one or more local newspapers circulating in the area)
I give notice that:

The (a)Council have prepared a list of active Phase II mineral sites in their area. A site is only included in the list if:

(a) the land has the benefit of a planning permission or permissions (other than an "old mining permission" or permission granted by General Development Order) for development consisting of the winning and working of minerals or involving the depositing of mineral waste; and,

(b) the permission(s) relating to the greater part of that land were granted after 7 December 1969 and before 22 February 1982.

A copy of the list may be inspected at (b).....between the hours of (c)..... The list specifies in respect of each site a date by which owners of the land, or persons with an interest in the minerals, to which the planning permissions relate must apply to the Council for the determination of new planning conditions. If no application is made by that date (or any postponed date the council may approve), all planning permissions for development consisting of the winning and working of minerals or involving the depositing of mineral waste relating to that site will cease to have effect except in so far as they impose any restoration and aftercare condition.

The Council have served notice on every person known to them to be an owner of the land, or have an interest in the minerals, to which the planning permissions relate in respect of each site. Where they have been unable to identify owners they have posted a copy of the notice on the land.

Any owner of the land, or person with an interest in the minerals, to which the planning permissions relate may apply to the Council for postponement of the specified date on the grounds that the existing planning conditions are satisfactory. Applications for postponement must be made by

(d)

Signed(Council's authorised officer)

On behalf ofCouncil

Date.....

"Owner" in relation to any land means any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and includes any person entitled to possession of the land as lessee under a lease the unexpired proportion of which is not less than 7 years.

"Person with an interest in minerals" means any person with an interest in minerals to which the planning permission relates.

Insert:

- (a) name of planning authority;
- (b) names and addresses of one or more places in the authority's area at which copies of the list can be inspected;
- (c) times during which copies of the list can be inspected;
- (d) date 3 months from date of first publication of notice.

Annex C: Part 1

Suggested form of modified notices to owners in connection with applications for postponement of initial review date and applications for determination of conditions under either initial or periodic review

Notices under Article 8(2)(a) and (3)(a) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 and *[paragraph 7 of Schedule 13 - initial review postponement application]/[paragraph 9 of Schedule 13 - initial review conditions application]/[paragraph 6 of Schedule 14 - periodic review conditions application] to the Environment Act 1995 - for service on owners and tenants of agricultural holdings.

Development at

(a)

TAKE NOTICE

1. That application is being made to -

(b)Council by

(c)for

*[postponement of the *initial/periodic review date of (d)]/
[determination of new planning conditions]

2. If you wish to make representations about the application you should make them in

writing not later than

(e)

to the council at

(f)

Signed

*On behalf ofDate.....

*Delete where inappropriate.

- (a) Insert address or location of site.
- (b) Insert name of Council.
- (c) Insert name of applicant.
- (d) Insert date specified for determination of new conditions.
- (e) Insert date not less than 21 days later than the date on which the notice is served.
- (f) Insert address of the Council.

Notice under Article 8(2)(b), (3)(b) and (3)(c) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 and *[paragraph 7 of Schedule 13 - initial review postponement application]/[paragraph 9 of Schedule 13 - initial review conditions application]/[paragraph 6 of Schedule 14 - periodic review conditions application] to the Environment Act 1995 - for publication in local newspaper or for public notice.

Development at (a)

.....

NOTICE is hereby given that –

1. Application is being made to -

- (b)Council by
- (c)for

*[postponement of the *initial/periodic review date of (d)]/
[determination of new planning conditions]

2. Any owner (e) of the land to which the application relates, who wishes to make representations to the above-mentioned council about the application should make them in writing not later than (f)to the council at (g)

Signed

*On behalf ofDate.....

*Delete where inappropriate.

- (a) Insert address or location of site.
- (b) Insert name of council.
- (c) Insert name of applicant.
- (d) Insert date specified for determination of new conditions.
- (e) Any person who, in respect of any part of the land, is the proprietor of the *dominium utile* or is the lessee under a lease thereof of which not less than 7 years remain unexpired, or is entitled to an interest in any minerals other than oil, gas, coal, gold or silver.

- (f) Insert date not less than 21 days later than the date on which the notice is published.
- (g) Insert address of the Council.

Annex C: Part 2

Suggested form of modified owner notification certificates in connection with applications for postponement of initial review date and applications for determination of conditions under either initial or periodic review

CERTIFICATES UNDER ARTICLE 8(8) OF THE TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) (SCOTLAND) ORDER 1992 AND PARAGRAPHS 7, 9,13 AND 16 OF SCHEDULE 13 AND PARAGRAPHS 6, 8 AND 9 OF SCHEDULE 14 TO THE ENVIRONMENT ACT 1995
FORM 1 (a)

I hereby certify that:-

- (1) No person other than *myself/the applicant/the appellant was an owner (b) of any part of the land to which the *application/appeal relates at the beginning of the period of 21 days ending with the date of the accompanying *application/appeal;
- (2) None of the land to which the *application/appeal relates constitutes or forms part of an agricultural holding.

Signed
 *On behalf of
 Date

*Delete where inappropriate.

- (a) Form 1 is for use where the applicant is the only owner and the land is not an agricultural holding.
- (b) Any person who, in respect of any part of the land, is the proprietor of the dominium utile or is the lessee under a lease thereof of which not less than 7 years remain unexpired, or is entitled to an interest in any minerals other than oil, gas, coal, gold or silver.

Town and country planning (general development procedure) (Scotland) order 1992 and paragraphs 7, 9, 13 and 16 of schedule 13 and paragraphs 6, 8 and 9 of schedule 14 to the environment act 1995

Form 2(a)

I hereby certify that:-

- (1) No person other than *myself/the applicant/the appellant was an owner (b) of any part of the land to which the *application/appeal relates at the beginning of the period of 21 days ending with the date of the accompanying *application/appeal;

or:-

(1) *I have/The applicant has/The appellant has served notice on every person other than *myself/the applicant/the appellant who, at the beginning of the period of 21 days ending with the date of the accompanying *application/appeal, was owner (b) of any part of the land to which the *application/appeal relates. These persons are:

Name	Address	Date of service of notice

(2) None of the land to which the *application/appeal relates constitutes or forms part of

an agricultural holding;

or:

(2) The land or part of the land to which the *application/appeal relates constitutes or forms part of an agricultural holding and *I have/the applicant has/the appellant has served notice on every person other than *myself/himself who, at the beginning of the period of 21 days ending with the date of the accompanying *application/appeal, was an agricultural tenant. These persons are:

Name of tenant(c)	Address	Date of service of notice
-------------------	---------	---------------------------

Signed

*On behalf of

Date

*Delete where inappropriate.

- (a) Form 2 is for use where Form 1 does not apply but where it has been possible to notify all the owners and agricultural tenants.
- (b) Any person who, in respect of any part of land, is the proprietor of the *dominium utile* or is the lessee under a lease thereof of which not less than 7 years remain unexpired, or is entitled to an interest in any minerals other than oil, gas, coal, gold or silver.
- (c) If you are the sole agricultural tenant enter "None".

**TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)
(SCOTLAND) ORDER 1992 AND PARAGRAPHS 7, 9, 13 AND 16 OF SCHEDULE
13 AND PARAGRAPHS 6, 8 AND 9 OF SCHEDULE 14 TO THE ENVIRONMENT
ACT 1995**

FORM 3 (a)

I hereby certify that:-

(1) *I am/The applicant is/The appellant is unable to issue a certificate in accordance with sub-paragraphs (b)(i) or (ii) of Article 8(8) in respect of the accompanying *application/appeal;

(2) No person other than *myself/the appellant was an owner (b) of any part of the land to which the *application/appeal relates at the beginning of the period of 21 days ending with the date of the accompanying *application/appeal;

or:-

(2) *I have/the applicant has/the appellant has been unable to serve notice on any person other than *myself/the applicant/the appellant who, at the beginning of the period of 21 days ending with the date of the accompanying *application/appeal, was owner (b) of any part of the land to which the application/appeal relates;

or:-

(2) *I have/The applicant has/The appellant has served notice on each of the following persons other than *myself/the applicant/the appellant who, at the beginning of the period of 21 days ending with the date of the accompanying *application/appeal, was owner (b) of any part of the land to which the *application/appeal relates. These persons are:

Name	Address	Date of service of notice
------	---------	---------------------------

(3) None of the land to which the *application/appeal relates constitutes or forms part of an agricultural holding;

or:-

(3) The land or part of the land to which the *application/appeal relates constitutes or forms part of an agricultural holding but *I have/the applicant has/the appellant has been unable to serve notice on any person other than *myself/the applicant/the appellant who, at the beginning of the period of 21 days ending with the date of the accompanying *application/appeal was an agricultural tenant;

or:-

(3) The land or part of the land to which the *application/appeal relates constitutes or forms part of an agricultural holding and *I have/the applicant has/the appellant has served notice on each of the following persons other than *myself/himself who, at the beginning of the period of 21 days ending with the date of the *application/appeal was an agricultural tenant. These persons are:

Name of tenant(c)	Address	Date of service of notice
-------------------	---------	---------------------------

(4) *I have/The applicant has/The appellant has taken reasonable steps, as listed below, to ascertain the names and addresses of the other owners or agricultural tenants and *have/has been unable to do so –

(d)

.....
.....
(5) Notice of the *application/appeal has been published - in the (e)

.....on

(f).....

Signed

*On behalf of

.....Date.....

*Delete where inappropriate.

- (a) Form 3 is for use where it has not been possible to notify all the owners and agricultural tenants.
- (b) Any person who, in respect of any part of the land, is the proprietor of the *dominium utile* or is the lessee under a lease thereof of which not less than 7 years remain unexpired, or is entitled to an interest in any minerals other than oil, gas, coal, gold or silver.
- (c) If you are the sole agricultural tenant enter "None".
- (d) Insert descriptions of steps taken.
- (e) Insert name of local newspaper circulating in the locality in which the land is situated.
- (f) Insert the date of publication, which must not be earlier than the beginning of the period of 21 days ending with the date of the application or appeal.

**TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)
(SCOTLAND) ORDER 1992 AND PARAGRAPHS 7, 9, 13 AND 16 OF SCHEDULE
13 AND PARAGRAPHS 6, 8 AND 9 OF SCHEDULE 14 TO THE ENVIRONMENT
ACT 1995**

FORM 4

Underground operations

I hereby certify that:-

(1) No person other than *myself/the applicant/the appellant was an owner (a) of any part of the land to which the *application/appeal relates at the beginning of the period of 21 days ending with the date of the accompanying *application/appeal;

or:-

(1) *I have/The applicant has/The appellant has served notice on each of the following persons other than *myself/the applicant/the appellant who, at the beginning of the period of 21 days ending with the date of the accompanying *application/appeal, was owner (a) of any part of the land to which the *application/appeal relates. These persons are:

Name(b)	Address	Date of service of notice
---------	---------	---------------------------

(2) None of the land to which the *application/appeal relates constitutes or forms part of

an agricultural holding;

or:-

(2) The land or part of the land to which the *application/appeal relates constitutes or forms part of an agricultural holding and *I have/the applicant has/the appellant has served notice on each of the following persons other than *myself/himself who, at the beginning of the period of 21 days ending with the date of the *application/appeal was an agricultural tenant. These persons are:

Name of tenant(c) Address Date of service of notice

(3) Notice of the *application/appeal as set out below has been published - in the (d) on (e)

(4) Notice of the *application/appeal has been displayed by public notice at fromto.....

(5) *I have/The applicant has/The appellant has cause to rely on Article 8(7). The circumstances are:-
.....
.....
.....

Signed

*On behalf of

Date

*Delete where inappropriate.

- (a) Any person who, in respect of any part of the land, is the proprietor of the *dominium utile* or is the lessee under a lease thereof of which not less than 7 years remain unexpired, or is entitled to an interest in any minerals other than oil, gas, coal, gold or silver.
- (b) If no owner has been notified enter "None".
- (c) If you are the sole agricultural tenant or if no agricultural tenant has been notified enter "None".
- (d) Insert name of local newspaper circulating in the locality in which the land is situated.
- (e) Insert the date of publication, which must not be earlier than the beginning of the period of 21 days ending with the date of the application or appeal.

Annex C: Part 3

Suggested form of modified notification to neighbours in connection with applications for postponement of initial review date and applications for determination of conditions under either initial or periodic review

Neighbour notification

Article 9(1) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 and *[paragraph 7 of Schedule 13 - initial review postponement application]/[paragraph 9 of Schedule 13 - initial review conditions application]/[paragraph 6 of Schedule 14 - periodic review conditions application] to the Environment Act 1995.

Notification of and information on application

Development at (a)
.....

NOTICE is hereby given that –

1 . application is being made to –

(b)

Council by (c)for

*[postponement of the * initial/periodic review date of (d)
.....]/
[determination of new planning conditions].

2. a copy of a plan showing the situation or location of the development is attached;

3. the application, plans and other documents submitted may be inspected at all reasonable hours in the register of planning applications kept by the planning authority at the address of the planning authority and also at

(e)
.....

during the period of 14 days beginning with the date of this notice; and

4. any person who wishes to make representations to the above-mentioned council about the application should make them in writing within that period to the council at the address of the planning authority shown on the application.

Signed

*On behalf of

Date

*Delete where inappropriate.

- (a) Insert address or location of site.
- (b) Insert name of planning authority.
- (c) Insert name of applicant.
- (d) Insert date specified for determination of new conditions.
- (e) Insert other address in the locality at which plans etc may be inspected.

Annex C: part 4

Suggested form of modified neighbour notification certificates in connection with applications for postponement of initial review date and applications for determination of conditions under either initial or periodic review

Certificate under article 9(5)(a)(i) of the town and country planning (general development procedure) (Scotland) order 1992 and paragraphs 7, 9, 13 and 16 of schedule 13 and paragraphs 6, 8, and 9 of schedule 14 to the Environment Act 1995

I hereby certify that –

(1) *I have/the applicant has in accordance with Article 9(1), (2)(a) and (5)(a)(i)(aa) of the above Order sent the requisite notices to the persons holding a notifiable interest in neighbouring land, together with a plan showing the location of the development. The names and addresses of those persons who have been notified with a note of their interest (being that of owner, lessee or occupier) are as follows:

Name(s)	Address(es)	Interest (as owner, lessee or occupier)
---------	-------------	---

(2) *I have/the applicant has in accordance with Article 9(1), (2)(a) and (5)(a)(i)(bb) of the above Order sent the requisite notices to the addresses sent out below, being addressed to the owner, the lessee or the occupier or any or all of them as the case may be, together with a plan showing the location of the development.

(a)
 *Owner
 *Lessee
(Address)
 *Occupier
 *Owner
 *Lessee
(Address)
 *Occupier
 *Owner
 *Lessee
(Address)
 *Occupier
 Name of applicant
Signature.....

Address

.....
.....
.....

Date *On behalf of.....

If signature is not that of applicant give name and address of the signatory and the capacity in which he acts.

.....
.....
.....

*Delete where inappropriate.

(a) All the addresses in respect of which the requisite notices have been sent out with details as to the owner, lessee and occupier set out opposite should be detailed.

Certificate under article 9(5)a(iii) of the town and country planning (General development procedure) (Scotland) order 1992 and paragraphs 7, 9, 13 and 16 of schedule 13 and paragraphs 6, 8 and 9 of schedule 14 to the environment act 1995

I hereby certify that *I have/the applicant has in accordance with Article 9(1), (2)(b) and (5)(a)(ii) of the above Order sent the requisite notices addressed to the owners, and occupiers who hold a notifiable interest in neighbouring land at the addresses of the premises listed below, together with a plan showing the location of the development.

Addresses to which requisite notices sent

Name of applicantSignature.....

Address

.....
.....
.....

Date *On behalf of.....

If signature is not that of applicant give name and address of the signatory and the capacity in which he acts.

.....
.....
.....

*Delete where inappropriate.

Certificate under article 9(5)(b) of the town and country planning (general development procedure) (Scotland) order 1992 and paragraphs 7, 9, 13 and 16 and paragraphs 6, 8 and 9 of schedule 14 to the environment act 1995

*I/The applicant hereby *certify/certifies that no notification is required in accordance with Article 9(1) to (3) of the above Order since there are no parties holding a notifiable interest in neighbouring land.

Name of applicantSignature.....

Address

.....
.....
.....

Date*On behalf of.....

If signature is not that of applicant give name and address of the signatory and the capacity in which he acts.

.....
.....
.....

*Delete where inappropriate.

Certificate under article 9(5)(c) of the town and country planning (general development procedure)(Scotland) order 1992 and paragraphs 7, 9, 13 and 16 of schedule 13 and paragraphs 6,8 and 9 of the schedule 14 to the environment act 1995

*I/The applicant hereby *certify/certifies that it is not possible to carry out notification in accordance with Article 9(1) to (3) of the above Order since there are no premises situated on the neighbouring land to which the notification could be sent as referred to at Article 9(4).

Name of applicantSignature.....

Address

.....
.....
.....

Date*On behalf of.....

If signature is not that of applicant give name and address of the signatory and the capacity in which he acts.

.....
.....
.....

*Delete where inappropriate.

Annex D: Part 1

Notice of sites included in first list or posted on the land

Environment Act 1995: Review of Mineral Sites

NOTICE UNDER PARAGRAPHS 3 AND 8 OF SCHEDULE 13 TO THE ENVIRONMENT ACT 1995 (To be served on land and relevant mineral owners or posted on the land)

I give notice that:

The (a)Council have prepared a list of mineral sites in their area.

A site is only included in the list if:

(a) the land has the benefit of a planning permission or permissions (other than an "old mining permission" or permission granted by General Development Order) for development consisting of the winning and working of minerals or involving the depositing of mineral waste; and,

(b) the permission(s) relating to the greater part of that land were granted before 22 February 1982. The list classifies each such site as either "dormant", "active Phase I", or "active Phase II".

A copy of the list may be inspected at (b)between the hours of (c).....

The land at (d).....has been classified as a dormant/an active Phase I/an active Phase II* site.

***[AS THIS SITE HAS BEEN CLASSIFIED AS "DORMANT", NO DEVELOPMENT CONSISTING OF THE WINNING AND WORKING OF MINERALS OR INVOLVING THE DEPOSITING OF MINERAL WASTE MAY LAWFULLY BE CARRIED OUT UNTIL NEW PLANNING CONDITIONS HAVE BEEN SUBMITTED TO, AND APPROVED BY, THE COUNCIL.]**

***[As this site has been classified as "active Phase I", the list specifies (e) as the date by which owners of the land, or persons with an interest in the minerals, to which the planning permissions relate must apply to the Council for the determination of new planning conditions. IF NO APPLICATION IS MADE BY THAT DATE (OR ANY POSTPONED DATE THE COUNCIL MAY APPROVE), ALL PLANNING PERMISSIONS FOR DEVELOPMENT CONSISTING OF THE WINNING AND WORKING OF MINERALS OR INVOLVING THE DEPOSITING OF MINERAL WASTE RELATING TO THAT SITE WILL CEASE TO HAVE EFFECT EXCEPT IN SO FAR AS THEY IMPOSE ANY RESTORATION AND AFTERCARE CONDITION.]**

Any owner of the land, or person with an interest in the minerals, to which the planning permissions relate may apply to the Council for postponement of the

specified date on the grounds that the existing planning conditions are satisfactory.
Applications for postponement must be made by
(f)].

*[As this site has been classified as "active Phase II", you need take no action now.
A further list of such sites will be prepared in due course specifying the date which
an application for the determination of new planning conditions must be submitted
and further notices will be served or posted on the land.]

Signed(Council's authorised officer)

On behalf ofCouncil

Date

*delete as appropriate

"Owner" in relation to any land means any person who under the Lands Clauses
Acts would be enabled to sell and convey the land to the promoters of an
undertaking and includes any person entitled to possession of the land as lessee
under a lease the unexpired proportion of which is not less than 7 years.

"Person with an interest in minerals" means any person with an interest in minerals
to which the planning permission relates.

Insert:

- (a) name of planning authority;
- (b) names and addresses of one or more places in the authority's area at which
copies of the list can be inspected;
- (c) insert times during which copies of the list can be inspected;
- (d) insert description of the land and indicate the land on an ordnance survey
map;
- (e) enter date specified in list for that site;
- (f) insert date 3 months from date of first publication of notice.

Annex D: part 2

Notice of sites included in second list or posted on the land

Environment Act 1995: Review of Mineral Sites

NOTICE UNDER PARAGRAPHS 4 AND 8 OF SCHEDULE 13 TO THE ENVIRONMENT ACT 1995 (to be served on land and relevant mineral owners or posted on the land)

I give notice that:

The (a)

.....
Council have prepared a list of active Phase II mineral sites in their area. A site is only included in the list if:

(a) the land has the benefit of a planning permission or permissions (other than an "old mining permission" or permission granted by General Development Order) for development consisting of the winning and working of minerals or involving the depositing of mineral waste;

(b) the permission(s) relating to the greater part of that land were granted after 7 December 1969 and before 22 February 1982; and

(c) development consisting of the winning and working of minerals or involving the depositing of mineral waste was carried out to a substantial extent in, on or under the land in the period beginning with 22 February 1982 and ending with 6 June 1995. A copy of the list may be inspected at (b)between the hours of

(c).....

The land at (d).....has been classified as an active Phase II site.

As this site has been classified as "active Phase II", the list specifies(e)as the date by which owners of the land, or persons with an interest in the minerals, to which the planning permissions relate must apply to the Council for the determination of new planning conditions.

IF NO APPLICATION IS MADE BY THAT DATE (OR ANY POSTPONED DATE THE COUNCIL MAY APPROVE), ALL PLANNING PERMISSIONS FOR DEVELOPMENT CONSISTING OF THE WINNING AND WORKING OF MINERALS OR INVOLVING THE DEPOSITING OF MINERAL WASTE RELATING TO THAT SITE WILL CEASE TO HAVE EFFECT EXCEPT IN SO FAR AS THEY IMPOSE ANY RESTORATION OR AFTERCARE CONDITION.

Any owner of the land, or person with an interest in the minerals, to which the planning permissions relate may apply to the Council for postponement of the

specified date on the grounds that the existing planning conditions are satisfactory.
Applications must be made by

(f)

Signed(Council's authorised officer)

On behalf ofCouncil

Date

"Owner" in relation to any land means any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and includes any person entitled to possession of the land as lessee under a lease the unexpired proportion of which is not less than 7 years.

"Person with an interest in minerals" means any person with an interest in minerals to which the planning permission relates.

"Old mining permission" means development authorised under interim development orders after 10 November 1943.

Insert:

- (a) name of planning authority;
- (b) names and addresses of one or more places in the authority's area at which copies of the list can be inspected;
- (c) times during which copies of the list can be inspected;
- (d) description of the land sufficient and indicate the land on an ordnance survey map;
- (e) date specified in list for that site;
- (f) date 3 months from date of first publication of notice.

Annex E: Reminder of specified date for service of application for determination of conditions under initial reviews

Environment Act 1995: Review of Mineral Sites - REMINDER
REMINDER NOTICE UNDER PARAGRAPH 8 OF SCHEDULE 13 TO THE ENVIRONMENT ACT 1995 (to be served on land and relevant mineral owners or posted on the land where no application for determination of conditions has been received by 8 weeks before the date specified in the first or second list as appropriate)

I give notice that:

The (a)Council gave notice on
(b)that the land at
(c)has been classified as an active Phase I/an active Phase II* site. The first/second* list of mineral sites specifies (d)as the

date by which owners of the land, or persons with an interest in the minerals, to which the planning permissions relate must apply to the Council for the determination of new planning conditions.

YOU ARE REMINDED THAT IF NO SUCH APPLICATION IS MADE BY THAT DATE ALL PLANNING PERMISSIONS FOR DEVELOPMENT CONSISTING OF THE WINNING AND WORKING OF MINERALS OR INVOLVING THE DEPOSITING OF MINERAL WASTE RELATING TO THAT SITE WILL CEASE TO HAVE EFFECT EXCEPT IN SO FAR AS THEY IMPOSE ANY RESTORATION OR AFTERCARE CONDITION.

Signed(Council's authorised officer)

On behalf ofCouncil

Date

* delete as appropriate

"Owner" in relation to any land means any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and includes any person entitled to possession of the land as lessee under a lease the unexpired proportion of which is not less than 7 years.

"Person with an interest in minerals" means any person with an interest in minerals to which the planning permission relates.

Insert:

- (a) name of planning authority;
- (b) date of original notice served on owners or posted on the land;
- (c) description of the land sufficient and indicate the land on an ordnance survey map;
- (d) date specified in list (or approved postponed date as appropriate).

Annex F: form for application for determination of conditions to which a mineral site/mining site is to be subject application for determination of conditions for mineral site/mining site

Environment Act 1995 (Section 96 and paragraph 9 of Schedule 13/paragraph 6 of Schedule 14)

Name of planning authority:

.....

3 copies of the completed form and accompanying plans, documents and certificates should be returned to:

.....
.....
.....

Section 1. The applicant and the owners

1.1 Applicant

Name:

Address:

Phone No.

1.2 Agent (if any) to whom all letters are sent

Name:

Address:

Phone No.

1.3 Please specify the land or minerals comprised in the site of which the applicant is the owner or in which the applicant is entitled to an interest.

1.4 Please identify, and give an address for, each other person that the applicant knows or, after reasonable inquiry, has cause to believe to be an owner of any land, or entitled to any interest in any mineral, comprised in the site.

1.4.1 The surface land owners

Name:

Address:

Phone No.

1.4.2 The mineral owners

Name:

Address:

Phone No.

1.5. Address/Location of Site to which the Application Relates

(ATTACH: Ordnance Survey base plans showing location of site and distinguishing the area(s) to which each permission relates.)

1.6. Type of Application

Please state whether this application is made in connection with an initial review or a periodic review. If made in connection with a periodic review, please state which review - i.e. first, second, third etc.

1.7 Planning Permissions Relating to the Site

Please list all planning permissions for development consisting of the winning and working of minerals or involving the depositing of mineral waste.

Section 2. Current use of the land covered by the permission(s)

- 2.1. Please give a general description of the land covered by the permission(s):
- 2.2.1. Total area of the land covered by the permission(s) (in hectares):
- 2.2.2. Total area to be excavated (in hectares):
- 2.2.3. Total area to be used for the depositing of mineral waste (in hectares):
- 2.3. Please describe the present uses of the land:

Section 3. Details of any land adjoining the permission area owned or controlled by the applicant

- 3.1. Give the particulars of the applicant's interest in adjoining land (outline in blue on ordnance survey base plan):
- 3.2. Give details of any other planning permission relating to the land covered by the permission or to any land specified in 3.1 above:

Please give planning permission reference number(s):

Section 4. Nature of intended future development at site

Give details of any intended:-

- 4.1. Lateral extension of existing working:
- 4.2. Deepening of existing working:
- 4.3. Extension of existing operations for depositing mineral waste:
- 4.4. Re-opening of a disused working:
- 4.5. Re-activation of operations for the depositing of mineral waste:

Section 5. Proposed conditions

5.1. Please set out in an attached schedule, the conditions to which you propose the permission(s) should be subject. The conditions should cover:

- Duration of the permission(s);
- Access, Traffic and Protection of the Public Highway;
- Working Programme;
- Environmental Protection;
- Landscaping;
- Restoration;
- After-use;
- Aftercare (where appropriate).

Section 6. Plans and drawings

In addition to the location plan, plan showing the area of the permission(s) (and adjoining areas in the applicant's ownership or control, where appropriate), attach plans showing the following:-

- 6.1. The existing surface levels over the area of extraction and/or depositing and land in the immediate vicinity.
- 6.2. The general method of working, including details of direction and phasing.
- 6.3. The proposed final levels of the worked out areas prior to restoration.
- 6.4. The proposed surface area, height and location of mineral stockpiles; topsoil; subsoil; overburden mounds; and, mineral waste deposits.
- 6.5. Details of the access to the site, parking, loading, unloading areas etc.
- 6.6. Details of landscaping and restoration including the final levels of the restored site.
- 6.7. Details of services crossing or adjacent to the site - e.g. drainage, gas or electricity supplies.
- 6.8. Details of land to remain unworked within the area of application.

Section 7. Voluntary agreements

Please indicate the need for any agreements to achieve environmental acceptability and after-use identified in pre-application discussions.

(ATTACH: Outline or draft agreements.)

Section 8. Notification and Certification of Application

The application must be accompanied by the appropriate certificates and notices required by the Town and Country Planning (Scotland) Act 1972, as if it were an application for planning permission.

(ATTACH: appropriate certificates and notices)

I/We hereby apply for approval of the conditions as described in the application and accompanying schedule and plans.

Signed:Date:

On behalf of: - insert applicant's name if signed by agent.

NOW CHECK that you have enclosed

- i. 3 copies of the location plan with the permission area(s) accurately marked (and, where relevant, showing any areas of adjoining land owned or under the control of the applicant accurately marked in blue);
- ii. 3 copies of the plans specified in Section 7 of the application form;
- iii. 3 copies of the schedule of proposed operating and restoration conditions;
- iv. 3 copies of the appropriate certificates and notices required.

AND THAT ALL FORMS AND CERTIFICATES ARE SIGNED AND DATED

Annex G: notice to accompany determination of conditions which restrict working rights for active phase I and active phase II sites

Environment Act 1995: Initial Reviews

NOTICE UNDER PARAGRAPH 10 OF SCHEDULE 13 TO THE ENVIRONMENT ACT 1995 (to accompany notice of determination of conditions where planning authority determine conditions different from those submitted by the applicant, and the effect of the new conditions, other than restoration and aftercare conditions, is to further restrict working rights).

I give notice that:

The (a)
Council, in the accompanying notice of determination of your application dated (b)reference (c)
for the approval of conditions in respect of the site at (d)
have determined conditions which differ in some respect from the proposed conditions set out in your application.

The effect of condition/s* (e)as compared with the effect of the conditions, other than any restoration or aftercare conditions, to which the relevant planning permission/s* were subject immediately prior to the making of the accompanying determination, is to restrict working rights in respect of the site.

The working rights so restricted are (f).....
In the opinion of the authority, the effect of the restriction/s* identified above would/would not* be such as to prejudice to an unreasonable degree either the economic viability of operating the site or the asset value of the site. In reaching that opinion, the authority have had regard to the guidance issued by the Secretary of State in SODD Circular

You have the right to appeal to the Secretary of State against the authority's opinion. If you wish to appeal you must give notice to the Secretary of State within 6 months of the date of this notice.

Signed
(Council's authorised officer)

On behalf ofCouncil
Date

* delete where inappropriate

Delete where notice indicates that, in the opinion of the authority, the effect of the restriction/s* identified above would be such as to prejudice to an unreasonable degree either the economic viability of operating the site or the asset value of the site.

Insert:

- (a) name of planning authority;
- (b) date of application;
- (c) application reference number;
- (d) name or description of site concerned;
- (e) the condition(s) the effect of which, either individually or cumulatively, is/are to further restrict working rights;
- (f) the working rights restricted (e.g. area, rate, depth or volume of mineral extraction permitted).

Annex H: suggested form of modified notices to owners in connection with appeals against planning authority’s determination of conditions under either initial or periodic review

Notice of appeal under Articles 8(2)(a) and (3)(a) and 23(4) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 and *[paragraph 16 of Schedule 13 - initial review appeals]/[paragraph 9 of Schedule 14 - periodic review appeals] to the Environment Act 1995 - for service on owners and tenants of agricultural holdings.

Development at (a)

TAKE NOTICE

1. that an appeal is being made to the Secretary of State for Scotland by
 (b)

*against the decision of the (c)Council/or the failure of the (c)Council to give notice of a decision on an application for determination of new conditions.

2. if you wish to make representations to the Secretary of State about the appeal you should make them not later than (d)to the Chief Reporter, Scottish Office Inquiry Reporters Unit, 2 Greenside Lane, Edinburgh, EH1 3AG.

Signed
 *On behalf of
 Date

*Delete where inappropriate.

- (a) Insert address or location site.
- (b) Insert name of appellant.
- (c) Insert name of council.
- (d) Insert date not less than 21 days later than the date on which the notice is served.

Notice of appeal under Articles (8)(2)(b), (3)(b) and (3)(c) and 23(4) of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 and

*[paragraph 16 of Schedule 13 - initial review appeals]/[paragraph 9 of Schedule 14 - periodic review appeals] to the Environment Act 1995 - for publication in a local newspaper or for public notice.

Development at (a)

.....
NOTICE IS HEREBY GIVEN -

1. that an appeal is being made to the Secretary of State for Scotland by -

(b)

*against the decision of the (c)Council/or the failure of the (c)Council to give notice of a decision on an application for determination of new conditions.

2. that any owner (d) of the land who wishes to make representations to the Secretary of State about the appeal should make them in writing not later than (e) to the Chief Reporter, Scottish Office Inquiry Reporters Unit, 2 Greenside Lane, Edinburgh, EH1 3AG.

Signed

.....
*On behalf of

Date

*Delete where inappropriate.

(a) Insert address or location of site.

(b) Insert name of appellant.

(c) Insert name of council.

(d) Any person, who in respect of any part of the land, is the proprietor of the *dominium utile* or is the lessee under a lease of which not less than 7 years remain unexpired, or is entitled to an interest in any minerals other than oil, gas, coal, gold or silver.

(e) Insert date not less than 21 days later than the date on which the notice is published.

Annex I:

Part 1: official form for appeals to the secretary of state against a planning authority's:

a) DETERMINATION OF CONDITIONS WHICH DIFFER FROM THOSE SUBMITTED; OR

b) OPINION THAT RESTRICTION OF WORKING RIGHTS WOULD NOT PREJUDICE EITHER THE ECONOMIC VIABILITY OR ASSET VALUE OF A SITE MINERAL SITE/MINING SITE

ENVIRONMENT ACT 1995

Appeal under Section 96 and paragraph 11 of Schedule 13/paragraph 9 of Schedule 14

Please complete this form clearly and send one copy to the Scottish Office and one copy to the planning authority.

A. Information about the appellants.

Full Name(s)	Agent (if any)
Address	Address
.....
.....
Postcode.....	Postcode.....
Daytime Tel No.....	Daytime Tel No.....

B. Details of the appeal

Name of planning authority
.....

Description of the appeal
.....
.....

Address of the site
.....
.....
.....

National Grid Reference (see key on Ordnance Survey Map for instructions) Grid letters: Grid Numbers e.g. NO
.....

Date and reference no. of application against which you are appealing
.....

Date of Planning Authority decision (if any)
.....

C. Procedure

Do you agree to the written procedure (i.e. an exchange of written statements with the Planning Authority plus a visit to the site by a Planning Reporter)?

YES/NO*

If YES could the Reporter see the whole site clearly from the road or other public land?

YES/NO*

OR

Do you wish to appear before and be heard by a Reporter (i.e. a local inquiry or hearing)?

YES/NO*

*Delete as appropriate

D. Supporting documents

You must enclose copies of the appropriate certificates and notices required (see attached note) with the appeal form sent to The Scottish Office.

the application made to the Planning Authority

- the appropriate certificates
- the appropriate notices
- each of the plans, drawings and documents sent to the Planning Authority as part of the application they considered.
- the Planning Authority's decision (if any)
- all other relevant correspondence with the Planning Authority
- a plan showing the site, marked in red, (preferably on an extract from the relevant 1: 10,000 OS Map)

•

You should also enclose copies of the following, if appropriate.

- any other plans, drawings and documents sent to the Planning Authority but which do not form part of the application (e.g. drawings for illustrative purposes)
- any additional plans, drawings and documents relating to the application but not previously seen by the Planning Authority.

•

Number them clearly and note the numbers here:

.....

E. The appeal

THIS APPEAL IS AGAINST the decision of the Planning Authority -

*1 Granting an application for the approval of operating, restoration and aftercare conditions subject to conditions different from those set out in the application.

*2. Giving notice, under paragraph (d) of paragraph 10(2) of Schedule 13 to the Environment Act 1995, stating that, in their opinion, a restriction on working rights would not 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.

*Strike out the words that do not apply in your case.

F. Grounds of appeal

If you have agreed to the written procedure you **MUST** make your **FULL STATEMENT OF CASE** here; if you do not your appeal may be invalid. If you have not agreed to the written procedure, you should give a brief outline of your case.

[Continue on a separate sheet if necessary]

COMPLETE AND SIGN THE DECLARATION BELOW

I confirm that a copy of each of the supporting documents indicated above is enclosed and that the relevant plans have been clearly marked.

I also confirm that a copy of this appeal form and any supporting documents not previously seen by the Planning Authority has been sent to them.

Signed (on behalf of).....

Name(in capitals) Date.....

NOW CHECK THAT YOU HAVE

- completed the form
- enclosed all the supporting documents
- set out above your grounds of appeal

Send one copy of the appeal form with all the supporting documents to:

The Scottish Office Inquiry Reporters Unit
2 Greenside Lane
Edinburgh
EH1 3AG

The second copy of the appeal form must be sent to the Planning Authority at the address from which you received the decision on your application (or any acknowledgements, etc) enclosing only copies of those documents not previously seen by the Planning Authority.

Annex I: Part 2

Official form for appeals to the secretary of state against a planning authority's refusal of or failure to determine an application for inclusion of a mineral site in the first list

MINERAL SITE/MINING SITE
ENVIRONMENT ACT 1995

Appeal under Section 96 and paragraph 6(11)/paragraph 6(12)* of Schedule 13 to the Act

*delete as appropriate

Please complete this form clearly and send one copy to the Scottish Office and one copy to the planning authority.

A. Information about the appellants.

Full Name(s)	Agent (if any)
Address	Address
Postcode.....	Postcode.....
Daytime Tel No.....	Daytime Tel No.....

B. Details of the appeal

Name of planning authority

.....

Description of the appeal

.....
.....

Address of the site

.....
.....
.....

National Grid Reference (see key on Ordnance Survey Map for instructions) Grid letters: Grid Numbers e.g. NO

.....

Date and reference no. of application against which you are appealing

.....

Date of Planning Authority decision (if any)

.....

C. Procedure

Do you agree to the written procedure (i.e. an exchange of written statements with the Planning Authority plus a visit to the site by a Planning Reporter)?

YES/NO*

If YES could the Reporter see the whole site clearly from the road or other public land?

YES/NO*

OR

Do you wish to appear before and be heard by a Reporter (i.e. a local inquiry or hearing)?

YES/NO*

*Delete as appropriate

D. Supporting documents

You must enclose copies of the appropriate certificates and notices required (see attached note) with the appeal form sent to The Scottish Office.

- the application made to the Planning Authority
- the appropriate certificates
- the appropriate notices
- each of the plans, drawings and documents sent to the Planning Authority as part of the application they considered.
- the Planning Authority's decision (if any)
- all other relevant correspondence with the Planning Authority
- a plan showing the site, marked in red, (preferably on an extract from the relevant 1: 10,000 OS Map)

You should also enclose copies of the following, if appropriate.

- any other plans, drawings and documents sent to the Planning Authority but which do not form part of the application (e.g. drawings for illustrative purposes)
- any additional plans, drawings and documents relating to the application but not previously seen by the Planning Authority.

Number them clearly and note the numbers here:

.....

E. The appeal

THIS APPEAL IS AGAINST –

* 1. The decision of the planning authority to refuse or only partially accept an application for land or interest in a mineral to be included in the first list.

*2. The failure of the planning authority to give notice to a Section 6(1) of Schedule 13 applicant of their decision within eight weeks of having received the application.

*Strike out the words that do not apply in your case.

F. Grounds of appeal

If you have agreed to the written procedure you **MUST** make your **FULL STATEMENT OF CASE** here; if you do not your appeal may be invalid. If you have not agreed to the written procedure, you should give a brief outline of your case. [Continue on a separate sheet if necessary]

COMPLETE AND SIGN THE DECLARATION BELOW

I confirm that a copy of each of the supporting documents indicated above is enclosed and that the relevant plans have been clearly marked.

I also confirm that a copy of this appeal form and any supporting documents not previously seen by the Planning Authority has been sent to them.

Signed (on behalf of).....
Name(in capitals) Date.....

NOW CHECK THAT YOU HAVE

- completed the form
- enclosed all the supporting documents
- set out above your grounds of appeal

Send one copy of the appeal form with all the supporting documents to:

The Scottish Office Inquiry Reporters Unit
2 Greenside Lane
Edinburgh
EH1 3AG

The second copy of the appeal form must be sent to the Planning Authority at the address from which you received the decision on your application (or any acknowledgements, etc) enclosing only copies of those documents not previously seen by the Planning Authority.

Annex J: notice of sites subject to periodic review

Environment Act 1995: Periodic Review of Mining Sites

NOTICE UNDER PARAGRAPH 4 OF SCHEDULE 14 TO THE ENVIRONMENT ACT 1995 (to be served on land and relevant mineral owners or posted on the land)
I give notice that:

The land at (a)..... is included in a mining site and is subject to periodic review in accordance with Section 96 of and Schedule 14 to the Environment Act 1995. The mineral permissions relating to the site and which are subject to review are listed below:

(b)

.....
.....
.....

Owners of the land, or persons with an interest in the minerals, to which the planning permissions relate must apply to the

(c)Council for the determination of new
planning conditions by (d)

IF NO APPLICATION IS MADE BY THAT DATE (OR ANY POSTPONED DATE THE COUNCIL MAY APPROVE), ALL PLANNING PERMISSIONS FOR DEVELOPMENT CONSISTING OF THE WINNING AND WORKING OF MINERALS OR INVOLVING THE DEPOSITING OF MINERAL WASTE RELATING TO THAT SITE WILL CEASE TO HAVE EFFECT EXCEPT IN SO FAR AS THEY IMPOSE ANY RESTORATION OR AFTERCARE CONDITION.

Owners of the land, or persons with an interest in the minerals, to which the planning permissions relate may apply to the Council for postponement of the specified date

on the grounds that the existing planning conditions are satisfactory. Applications must be made by (e)
Signed
(Council's authorised officer)
On behalf ofCouncil
Date

"Owner" in relation to any land means any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and includes any person entitled to possession of the land as lessee under a lease the unexpired proportion of which is not less than 7 years.
"Person with an interest in minerals" means any person with an interest in minerals to which the planning permission relates.

Insert:

- (a) description of the land and indicate the land on an ordnance survey map;
- (b) list planning permission references;
- (c) name of planning authority;
- (d) enter specified date for that site which must be at least 12 months after date of notice.

Annex K: reminder notice relating to date specified for application for determination of conditions under periodic reviews

Environment Act 1995: Periodic Review of Mining Sites - REMINDER
REMINDER NOTICE UNDER PARAGRAPH 4 OF SCHEDULE 14 TO THE ENVIRONMENT ACT 1995 (to be served on land and relevant mineral owners or posted on the land)

I give notice that:

The (a)

.....

...

Council gave notice on (b)that the land at (c)is included in a mining site and the planning permissions listed below are subject to periodic review in accordance with Section 96 of, and Schedule 14 to, the Environment Act 1995.

(d)

.....
.....
.....

The date specified as the date by which owners of the land, or persons with an interest in the minerals, to which the planning permissions relate must apply to the Council for the determination of new planning conditions is

(e)

IF NO APPLICATION IS MADE BY THAT DATE ALL PLANNING PERMISSIONS FOR DEVELOPMENT CONSISTING OF THE WINNING AND WORKING OF MINERALS OR INVOLVING THE DEPOSITING OF MINERAL WASTE RELATING TO THAT SITE WILL CEASE TO HAVE EFFECT EXCEPT IN SO FAR AS THEY IMPOSE ANY RESTORATION OR AFTERCARE CONDITION.

Signed

(Council's authorised officer)

On behalf ofCouncil

Date

"Owner" in relation to any land means any person who under the Lands Clauses Acts would be enabled to sell and convey the land to the promoters of an undertaking and includes any person entitled to possession of the land as lessee under a lease the unexpired proportion of which is not less than 7 years.

"Person with an interest in minerals" means any person with an interest in minerals to which the planning permission relates.

Insert:

- (a) name of planning authority;
- (b) date of original notice;
- (c) description of the land and indicate the land on an ordnance survey map;
- (d) list planning permission references;
- (e) enter date specified in original notice or approved postponed date as appropriate.

Annex L: illustrative guide to conditions

This guide should be used by both applicants and planning authorities 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 arrangements

Access, Traffic and Protection of the Public Road Conditions should provide for the cleanliness of roads leading to and from the public road and of vehicles leaving the site. Conditions cannot restrict the right of passage over the public road, but may indicate access to or from the road 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 road; provision of wider splays where access road joins public road to improve visibility; redesign of access or exit so that traffic can only turn one way; and 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 planning authority –

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

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 3 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 planning authority 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 planning authority 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. Where a discharge to controlled waters is proposed SEPA should be consulted at an early stage.

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 - e.g. 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 planning authority.

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 5 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.

Annex M: bibliography

Primary legislation

Town and Country Planning (Scotland) Act 1947
Town and Country Planning Act 1962
Town and Country Planning Act 1968
Town and Country Planning (Scotland) Act 1972
Local Government (Scotland) Act 1973

Town and Country Planning (Minerals) Act 1981
Environment Protection Act 1990
Planning and Compensation Act 1991
Coal Industry Act 1994
Environment Act 1995

Secondary Legislation

Town and Country Planning (Compensation for Restrictions on Mineral Working) (Scotland) Regulations 1987 (SI 1987 No 433)
Town and Country Planning General Development Order 1988 (SI 1988 No 1813)
The Coal Industry Act 1994 (Consequential Modifications of Subordinate Legislation) Order 1994 (SI 1994 No 2567)
Local Government (Scotland) Act 1994
Waste Management Licensing Regulations 1994
Conservation (Natural Habitats) Regulations 1994
Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (SI 1992 No 223)
Town and Country Planning (General Development Procedure) (Scotland) Order 1992 (SI 1992 No 224)

Planning guidance and circulars

National Planning Policy Guideline 4: Land for Mineral Working
National Planning Policy Guideline 10: Planning and Waste Management
Circular 18/1986: The Use of Conditions in Planning Permissions
[Planning Advice Note: The Environmental Effects of Surface Mineral Working in preparation]
[Planning Advice Note: Restoration and Aftercare of Surface Mineral Working in preparation]

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 (Directive 79/409/EEC)
EC Directive on Conservation of Natural Habitats and of Wild Fauna and Flora (Directive 92/43/EEC)

Other

Stevens Committee Report 1976
Environment White Paper "Our Common Inheritance" 1990
Statement by Lord Ullswater - House of Lords Official Report 7 March 1995 Cols 133 - 136