

## SCHEDULES

### SCHEDULE 3

Article 27(2)

#### PROVISIONS TO BE INSERTED AS SCHEDULES 1A AND 1B TO THE PRINCIPAL ORDER

##### “SCHEDULE 1A

##### REVIEW OF OLD MINERAL PLANNING PERMISSIONS

###### *Interpretation*

###### 1.—(1) In this Schedule—

“dormant site” means a Phase I or Phase II site in, on or under which no minerals development has been carried out to any substantial extent at any time in the period beginning on 31st December 1993 and ending with 1st June 2007;

“first list” means the list prepared by the Department under paragraph 3;

“mineral site” has the meaning given by sub-paragraph (2);

“Phase I site” and “Phase II site” have the meanings given by paragraph 2;

“relevant planning permission” means any planning permission for minerals development; and

“second list” means the list prepared by the Department under paragraph 4.

###### (2) For the purposes of this Schedule “mineral site” means—

(a) in a case where it appears to the Department to be expedient to treat as a single site the aggregate of the land to which any two or more relevant planning permissions relate, the aggregate of the land to which those permissions relate; and

(b) in any other case, the land to which a relevant planning permission relates.

(3) Any reference (however expressed) in this Schedule to a relevant planning permission relating to a mineral site is a reference to the mineral site, or some part of it, being the land to which the permission relates; and where any such permission authorises the carrying out of development consisting of the winning and working of minerals but only in respect of any particular mineral or minerals, that permission shall not be taken, for the purposes of this Schedule, as relating to any other mineral in, on or under the land to which the permission relates.

(4) For the purposes of this Schedule, a mineral site which is a Phase I site or a Phase II site is active if it is not a dormant site.

(5) For the purposes of this Schedule, working rights are restricted in respect of a mineral site if any of—

(a) the size of the area which may be used for the winning and working of minerals or the depositing of mineral waste;

(b) the depth to which operations for the winning and working of minerals may extend;

(c) the height of any deposit of mineral waste;

(d) the rate at which any particular mineral may be extracted;

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- (e) the rate at which any particular mineral waste may be deposited;
- (f) the period at the expiry of which any winning or working of minerals or depositing of mineral waste is to cease; or
- (g) the total quantity of minerals which may be extracted from, or of mineral waste which may be deposited on, the site,

is restricted or reduced in respect of the mineral site in question.

(6) For the purposes of this Schedule, where an application is made under paragraph 9 for the determination of the conditions to which the relevant planning permissions relating to the mineral site to which the application relates are to be subject, those conditions are finally determined when—

- (a) the proceedings on the application have been determined, and
- (b) any time for appealing under paragraph 11(1), or applying or further applying under paragraph 9, (where there is a right to do so) has expired.

#### *Phase I and II sites*

2.—(1) This paragraph has effect for the purposes of determining which mineral sites are Phase I sites, which are Phase II sites, and which are neither Phase I nor Phase II sites.

(2) A mineral site is neither a Phase I site nor a Phase II site where—

- (a) all the relevant planning permissions which relate to the site have been granted after 31st December 1993; or
- (b) some only of the relevant planning permissions which relate to the site have been granted after 31st December 1993, and the parts of the site to which those permissions relate constitute the greater part of that site.

(3) With the exception of those mineral sites which, by virtue of sub-paragraph (2), are neither Phase I nor Phase II sites, every mineral site is either a Phase I site or a Phase II site.

(4) Subject to sub-paragraph (2), where—

- (a) all the relevant planning permissions which relate to a mineral site were granted before 31st December 1980; or
- (b) some only of the relevant planning permissions which relate to the site were granted before 31st December 1980 and the parts of the site to which those permissions relate constitute the greater part of that site,

that mineral site is a Phase I site.

(5) Subject to sub-paragraphs (2) and (4), where—

- (a) all the relevant planning permissions which relate to a mineral site were granted after 31st December 1980 but before 31st December 1993; or
- (b) some only of the relevant planning permissions which relate to the site were granted after 31st December 1980 but before 31st December 1993, and the parts of the site to which those permissions relate constitute the greater part of the site,

the mineral site is a Phase II site.

(6) In ascertaining, for the purposes of sub-paragraph (2) or (5), whether any parts of a mineral site constitute the greater part of that site, or whether a part of a mineral site is greater than any other part, that mineral site shall be treated as not including any part of the site which is a part where minerals development has been (but is no longer being) carried out and which has, in the opinion of the Department, been satisfactorily restored; but no part of a site shall be treated as being not so included in the site unless the Department is satisfied that any after care conditions which relate to that part have, so far as relating to that part, been complied with.

*The “first list”*

3.—(1) the Department shall, in accordance with the following provisions of this paragraph, prepare a list of mineral sites (“the first list”).

(2) A site shall, but shall only, be included in the first list if it is either—

- (a) an active Phase I site;
- (b) an active Phase II site; or
- (c) a dormant site.

(3) In respect of each site included in the first list, the list shall indicate whether the site is an active Phase I site, an active Phase II site or a dormant site.

(4) In respect of each active Phase I site included in the first list, that list shall specify the date by which an application is to be made to the Department under paragraph 9.

(5) Any date specified pursuant to sub-paragraph (4) shall be a date not earlier than the date upon which expires the period of 12 months from the date on which the first list is first advertised in accordance with paragraph 5.

*The “second list”*

4.—(1) The Department shall, in accordance with the following provisions of this paragraph, prepare a list of active Phase II sites (“the second list”).

(2) The second list shall include each mineral site which is an active Phase II site.

(3) In respect of each site included in the second list, that list shall specify the date by which an application is to be made to the Department under paragraph 9.

(4) Any date specified pursuant to sub-paragraph (3) shall be a date not earlier than the date upon which expires the period of 12 months from the date on which the second list is first advertised in accordance with paragraph 5.

*Advertisement of the first and second lists*

5.—(1) This paragraph makes provision for the advertisement of the first and second lists.

(2) The Department shall advertise each of the first and second lists by causing to be published, in each of two successive weeks, in one or more newspapers circulating throughout Northern Ireland, notice of the list having been prepared.

(3) In respect of each of those lists, such notice shall—

- (a) state that the list has been prepared by the Department; and
- (b) specify one or more places at which the list may be inspected, and in respect of each such place specify the times (which shall be reasonable times) during which facilities for inspection of the list will be afforded.

(4) In respect of the first list, such notice shall—

- (a) explain the general effect of a mineral site being classified as a dormant site or, as the case may be, as an active Phase I site or an active Phase II site;
- (b) explain the consequences which will occur if no application is made under paragraph 9 in respect of an active Phase I site included in the list by the date specified in the list for that site;
- (c) explain the effects for any dormant or active Phase I or II site not included in the list of its not being included in the list and—

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- (i) set out the right to make an application to the Department for that site to be included in the list;
  - (ii) set out the date by which such an application must be made; and
  - (iii) state that the owner of such a site has a right of appeal against any decision of the Department upon such an application; and
- (d) explain that the owner of an active Phase I site has a right to apply for postponement of the date specified in the list for the making of an application under paragraph 9, and set out the date by which an application for such postponement must be made.
- (5) In respect of the second list, such notice shall explain the consequences which will occur if no application is made under paragraph 9 in respect of an active Phase II site included in the list by the date specified in the list for that site.

*Applications for inclusion in the first list of sites not included in that list as originally prepared and appeals from decisions upon such applications*

**6.—**(1) Any person who is the owner of any land, or is entitled to an interest in a mineral, may, if that land or interest is not a mineral site included in the first list and does not form part of any mineral site included in that list, apply to the Department for that land or interest to be included in that list.

(2) An application under sub-paragraph (1) shall be made no later than the day upon which expires the period of 3 months from the day when the first list was first advertised in accordance with paragraph 5.

(3) Where the Department considers that—

- (a) the land or interest is, or forms part of, any dormant site or active Phase I or II site, it shall accede to the application; or
- (b) part only of the land or interest is, or forms part of, any dormant or active Phase I or II site, it shall accede to the application so far as it relates to that part of the land or interest,

but shall otherwise refuse the application.

(4) On acceding, whether in whole or in part, to an application made under sub-paragraph (1), the Department shall amend the first list as follows—

- (a) where it considers that the land or interest, or any part of the land or interest, is a dormant site or an active Phase I or II site, it shall add the mineral site consisting of the land or interest or, as the case may be, that part, to the first list and shall cause the list to indicate whether the site is an active Phase I site, an active Phase II site or a dormant site;
- (b) where it considers that the land or interest, or any part of the land or interest, forms part of any mineral site included in the first list, it shall amend the entry in the first list for that site accordingly.

(5) Where the Department amends the first list in accordance with sub-paragraph (4), it shall also—

- (a) in a case where an active Phase I site is added to the first list pursuant to paragraph (a) of that sub-paragraph, cause that list to specify, in respect of that site, the date by which an application is to be made to the Department under paragraph 9;
- (b) in a case where—
  - (i) the entry for an active Phase I site included in the first list is amended pursuant to paragraph (b) of that sub-paragraph; and
  - (ii) the date specified in that list in respect of that site as the date by which an application is to be made to the Department under paragraph 9 is a date falling less than 12

months after the date upon which the Department makes its decision upon the application in question,

cause that date to be amended so as to specify instead the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) of the Department's decision upon his application.

(6) Any date specified pursuant to sub-paragraph (5)(a) shall be a date not earlier than the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) of the Department's decision upon his application.

(7) On acceding, whether in whole or in part, to an application made under sub-paragraph (1), the Department shall, if the second list has been first advertised in accordance with paragraph 5 prior to the time at which it makes its decision on the application, amend the second list as follows—

- (a) where it considers that the land or interest, or any part of the land or interest, is an active Phase II site, it shall add the mineral site consisting of the land or interest or, as the case may be, that part, to the second list;
- (b) where it considers that the land or interest, or any part of the land or interest, forms part of any active Phase II site included in the second list, it shall amend the entry in that list for that site accordingly.

(8) Where the Department amends the second list in accordance with sub-paragraph (7), it shall also—

- (a) in a case where an active Phase II site is added to the second list pursuant to paragraph (a) of that sub-paragraph, cause that list to specify, in respect of that site, the date by which an application is to be made to the Department under paragraph 9;
- (b) in a case where—
  - (i) the entry for an active Phase II site included in the second list is amended pursuant to paragraph (b) of that sub-paragraph; and
  - (ii) the date specified in that list in respect of that site as the date by which an application is to be made to the Department under paragraph 9 is a date falling less than 12 months after the date upon which the Department makes its decision upon the application in question,

cause that date to be amended so as to specify instead the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) of the Department's decision upon his application.

(9) Any date specified pursuant to sub-paragraph (8)(a) shall be a date not earlier than the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) of the Department's decision upon his application.

(10) When the Department determines an application made under sub-paragraph (1) it shall notify the applicant in writing of its decision and, in a case where it has acceded to the application, whether in whole or in part, shall supply the applicant with details of any amendment to be made to the first or second list in accordance with sub-paragraph (4) or (8).

(11) Where the Department—

- (a) refuses an application made under sub-paragraph (1); or
- (b) accedes to such an application only so far as it relates to part of the land or interest in respect of which it was made,

the applicant may by notice appeal to the planning appeals commission.

(12) A person who has made such an application may also appeal to the planning appeals commission if the Department has not given notice to the applicant of its decision on the application

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within such period as may be prescribed or within such extended period as may at any time be agreed upon in writing between the applicant and the Department.

(13) An appeal under sub-paragraph (11) or (12) must be made by giving notice of appeal in writing to the planning appeals commission before the end of the period of 6 months beginning with—

- (a) in the case of an appeal under sub-paragraph (11), the determination; or
- (b) in the case of an appeal under sub-paragraph (12), the end of the first period mentioned in that sub-paragraph or, as the case may be, the end of the extended period mentioned in that sub-paragraph.

*Postponement of the date specified in the first or second list for review of the permissions relating to a Phase I or II site in cases where the existing conditions are satisfactory*

7.—(1) Any person who is the owner of any land, or of any interest in any mineral, comprised in—

- (a) an active Phase I site included in the first list; or
- (b) an active Phase II site included in the second list,

may apply to the Department for the postponement of the date specified in that list in respect of that site as the date by which an application is to be made to the Department under paragraph 9 (in this paragraph referred to as “the specified date”).

(2) Subject to sub-paragraph (3), an application under sub-paragraph (1) shall be made no later than the day upon which expires the period of 3 months from the day when—

- (a) in the case of an active Phase I site, the first list; or
- (b) in the case of an active Phase II site, the second list,

was first advertised in accordance with paragraph 5.

(3) In the case of—

- (a) an active Phase I site—
  - (i) added to the first list in accordance with paragraph 6(4)(a); or
  - (ii) in respect of which the entry in the first list was amended in accordance with paragraph 6(4)(b);

or

- (b) an active Phase II site—
  - (i) added to the second list in accordance with paragraph 6(7)(a); or
  - (ii) in respect of which the entry in the second list was amended in accordance with paragraph 6(7)(b),

an application under sub-paragraph (1) shall be made no later than the day upon which expires the period of 3 months from the day on which notice was given under paragraph 6(10) of the Department’s decision to add the site to or, as the case may be, so to amend the list in question.

(4) An application under sub-paragraph (1) shall be in writing and shall—

- (a) set out the conditions to which each relevant planning permission relating to the site is subject;
- (b) set out the applicant’s reasons for considering those conditions to be satisfactory;
- (c) set out the date which the applicant wishes to be substituted for the specified date; and
- (d) be accompanied by the appropriate certificate (within the meaning of sub-paragraph (5)).

- (5) For the purposes of sub-paragraph (4), the appropriate certificate is such a certificate—
- (a) as would be required, under Article 22 (notification of applications to certain persons), to accompany the application if it were an application for planning permission for minerals development, but
  - (b) with such modifications as are required for the purposes of this paragraph,
- and Article 22(6) (offences) shall also have effect in relation to any certificate purporting to be the appropriate certificate.
- (6) Where the Department receives an application made under sub-paragraph (1)—
- (a) if it considers the conditions referred to in sub-paragraph (4)(a) to be satisfactory it shall agree to the specified date being postponed in which event the Department shall determine the date to be substituted for that date;
  - (b) in any other case it shall refuse the application.
- (7) Where the Department agrees to the specified date being postponed it shall cause the first or, as the case may be, the second list to be amended accordingly.
- (8) When the Department determines an application made under sub-paragraph (1) it shall notify the applicant in writing of its decision and, in a case where it has agreed to the postponement of the specified date, shall notify the applicant of the date which it has determined should be substituted for the specified date.
- (9) Where, within 3 months of the Department having received an application under sub-paragraph (1), or within such extended period as may at any time be agreed upon in writing between the applicant and the Department, the Department has not given notice, under sub-paragraph (8), to the applicant of its decision upon the application, the Department shall be treated as—
- (a) having agreed to the specified date being postponed; and
  - (b) having determined that the date referred to in sub-paragraph (4)(c) be substituted for the specified date,
- and sub-paragraph (7) shall apply accordingly.

*Service on owners etc. of notice of preparation of the first and second lists*

- 8.—**(1) The Department shall, no later than the date upon which the first list is first advertised in accordance with paragraph 5, serve notice in writing of the first list having been prepared on each person appearing to it to be the owner of any land, or entitled to an interest in any mineral, included within a mineral site included in the first list, but this sub-paragraph is subject to sub-paragraph (7).
- (2) A notice required to be served by sub-paragraph (1) shall—
- (a) indicate whether the mineral site in question is a dormant site or an active Phase I or II site; and
  - (b) where that site is an active Phase I site—
    - (i) indicate the date specified in the first list in relation to that site as the date by which an application is to be made to the Department under paragraph 9;
    - (ii) explain the consequences which will occur if such an application is not made by the date so specified; and
    - (iii) explain the right to apply to have that date postponed, and indicate the date by which such an application must be made.
- (3) Where, in relation to any land or mineral included in an active Phase I site, the Department—
- (a) has served notice on any person under sub-paragraph (1); and

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- (b) has received no application under paragraph 9 from that person by the date falling 8 weeks before the date specified in the first list as the date by which such applications should be made in respect of the site in question,

the Department shall serve a written reminder on that person, and such a reminder shall—

- (i) indicate that the land or mineral in question is included in an active Phase I site;
- (ii) comply with the requirements of sub-paragraph (2)(b)(i) and (ii); and
- (iii) be served on that person on or before the date falling 4 weeks before the date specified in the first list in respect of that site as the date by which an application is to be made to the Department under paragraph 9.

(4) The Department shall, no later than the date upon which the second list is first advertised in accordance with paragraph 5, serve notice in writing of the second list having been prepared on each person appearing to it to be the owner of any land, or entitled to an interest in any mineral, included within an active Phase II site included in the second list, but this sub-paragraph is subject to sub-paragraph (7).

(5) A notice required to be served by sub-paragraph (4) shall—

- (a) indicate that the mineral site in question is an active Phase II site; and
- (b) indicate the date specified in the second list in relation to that site as the date by which an application is to be made to the Department under paragraph 9;
- (c) explain the consequences which will occur if such an application is not made by the date so specified; and
- (d) explain the right to apply to have that date postponed, and indicate the date by which such an application must be made.

(6) Where, in relation to any land or mineral included in an active Phase II site, the Department—

- (a) has served notice on any person under sub-paragraph (4), and
- (b) has received no application under paragraph 9 from that person by the date falling 8 weeks before the date specified in the second list as the date by which such applications should be made in respect of the site in question,

the Department shall serve a written reminder on that person, and such a reminder shall—

- (i) comply with the requirements of sub-paragraph (5)(a) to (c); and
- (ii) be served on that person on or before the date falling 4 weeks before the date specified in the second list in respect of that site as the date by which an application is to be made to the Department under paragraph 9.

(7) Sub-paragraph (1) or (4) shall not require the Department to serve notice under that sub-paragraph upon any person whose identity or address for service is not known to and cannot practicably, after reasonable inquiry, be ascertained by it, but in any such case the Department shall cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the notice which it would (apart from the provisions of this sub-paragraph) have had to serve under that sub-paragraph on the owner of that land or interest.

(8) If, in a case where sub-paragraph (7) applies, no person makes an application to the Department under paragraph 9 in respect of the active Phase I or II site which includes the land or interest in question by the date falling 8 weeks before the date specified in the first or, as the case may be, the second list as the date by which such applications should be made in respect of that site, the Department shall cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the written reminder that would, in a case not falling within sub-paragraph (7), have been served under sub-paragraph (3) or (6).



(9) Where by sub-paragraph (7) or (8) a copy of any notice is required to be affixed to an object on any land that copy shall—

- (a) be displayed in such a way as to be easily visible and legible;
- (b) be first displayed—
  - (i) in a case where the requirement arises under sub-paragraph (7), no later than the date upon which the first or, as the case may be, the second list is first advertised in accordance with paragraph 5; or
  - (ii) in a case where the requirement arises under sub-paragraph (8), no later than the date falling 4 weeks before the date specified in the first or, as the case may be, the second list in respect of the site in question as the date by which an application is to be made to the Department under paragraph 9; and
- (c) be left in position for at least the period of 21 days from the date when it is first displayed, but where the notice is, without fault or intention of the Department, removed, obscured or defaced before that period has elapsed, that requirement shall be treated as having been complied with if the Department has taken reasonable steps for protection of the notice and, if need be, its replacement.

(10) In sub-paragraphs (7) and (8), any reference to a conspicuous object on any land includes, in a case where the person serving a notice considers that there are no or insufficient such objects on the land, a reference to a post driven into or erected upon the land by the person serving the notice for the purpose of having affixed to it the notice in question.

(11) Where the Department, being required—

- (a) by sub-paragraph (3) or (6) to serve a written reminder on any person; or
- (b) by sub-paragraph (8) to cause a copy of such a reminder to be displayed in the manner set out in that sub-paragraph,

fails to comply with that requirement by the date specified for the purpose, it may at any later time serve or, as the case may be, cause to be displayed, such a written reminder and, in any such case, the date by which an application in relation to the mineral site in question is to be made under paragraph 9 is the date upon which expires the period of 3 months from the date when the reminder was served or posted in accordance with the provisions of this sub-paragraph.

*Applications for approval of conditions and appeals in cases where the conditions approved are not those proposed*

**9.—(1)** Any person who is the owner of any land, or who is entitled to an interest in a mineral, may, if that land or mineral is or forms part of a dormant site or an active Phase I or II site, apply to the Department to determine the conditions to which the relevant planning permissions relating to that site are to be subject.

(2) An application under this paragraph shall be in writing and shall—

- (a) identify the mineral site to which the application relates;
- (b) specify the land or minerals comprised in the site of which the applicant is the owner or, as the case may be, in which the applicant is entitled to an interest;
- (c) identify any relevant planning permissions relating to the site;
- (d) identify, and give a postal address for, each other person that the applicant knows or, after reasonable inquiry, has cause to believe to be an owner of any land, or entitled to any interest in any mineral, comprised in the site;
- (e) set out the conditions to which the applicant proposes the permissions referred to in paragraph (c) should be subject; and

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- (f) be accompanied by the appropriate certificate (within the meaning of sub-paragraph (3)).
- (3) For the purposes of sub-paragraph (2), the appropriate certificate is such a certificate—
  - (a) as would be required, under Article 22 (notification of applications for planning provisions to certain persons) to accompany the application if it were an application for planning permission for minerals development, but
  - (b) with such modifications as are required for the purposes of this paragraph,and Article 22(6) (offences) shall also have effect in relation to any certificate purporting to be the appropriate certificate.
- (4) Before determining an application under this paragraph, the Department shall consult with the district council for the area in which the site to which the application relates is situated.
- (5) Article 21 shall have effect, with any necessary modifications, in relation to an application under this paragraph as it has effect in relation to an application for planning permission.
- (6) Where the Department receives an application under this paragraph in relation to a dormant site or an active Phase I or II site it shall determine the conditions to which each relevant planning permission relating to the site is to be subject; and any such permission shall, from the date when the conditions to which it is to be subject are finally determined, have effect subject to the conditions which are determined under this Schedule as being the conditions to which it is to be subject.
- (7) The conditions imposed by virtue of a determination under sub-paragraph (6)—
  - (a) may include any conditions which may be imposed on a grant of planning permission for minerals development;
  - (b) may be in addition to, or in substitution for, any existing conditions to which the permission in question is subject.
- (8) Subject to sub-paragraph (10), where, within the period of 6 months from the Department having received an application under this paragraph, or within such extended period as may at any time be agreed upon in writing between the applicant and the Department, the Department has not given notice to the applicant of its decision upon the application, the Department shall be treated as having at the end of that period or, as the case may be, that extended period, determined that the conditions to which any relevant planning permission to which the application relates is to be subject are those specified in the application as being proposed in relation to that permission; and any such permission shall, from that time, have effect subject to those conditions.
- (9) Where the Department, having received an application under this paragraph, is of the opinion that it is unable to determine the application unless further details are supplied to it, it shall within the period of one month from having received the application give notice to the applicant—
  - (a) stating that it is of such opinion; and
  - (b) specifying the further details which it requires,and where the Department so serves such a notice the period of 6 months referred to in sub-paragraph (8) shall run not from the Department having received the application but from the time when the Department has received all the further details specified in the notice.
- (10) Without prejudice to the generality of sub-paragraph (9), the further details which may be specified in a notice under that sub-paragraph include any—
  - (a) information, plans or drawings; or
  - (b) evidence verifying any particulars of details supplied to the Department in respect of the application in question,which it is reasonable for the Department to request for the purpose of enabling it to determine the application.

*Notice of determination of conditions to be  
accompanied by additional information in certain cases*

**10.**—(1) This paragraph applies in a case where—

- (a) on an application made to the Department under paragraph 9 in respect of an active Phase I or II site the Department determines under that paragraph the conditions to which the relevant planning permissions relating to the site are to be subject;
- (b) those conditions differ in any respect from the proposed conditions set out in the application; and
- (c) the effect of the conditions, other than any restoration or aftercare conditions, so determined by the Department, as compared with the effect of the conditions, other than any restoration or aftercare conditions, to which the relevant planning permissions in question were subject immediately prior to the Department making the determination, is to restrict working rights in respect of the site.

(2) In a case where this paragraph applies, the Department shall, upon giving to the applicant notice of the conditions determined by the Department under paragraph 9, also give to the applicant notice—

- (a) stating that the conditions determined by the Department differ in some respect from the proposed conditions set out in the application;
- (b) stating that the effect of the conditions, other than any restoration or aftercare conditions, determined by the Department, as compared with the effect of the conditions, other than any restoration or aftercare conditions, to which the relevant planning permissions relating to the site in question were subject immediately prior to the making of the Department's determination, is to restrict working rights in respect of the site;
- (c) identifying the working rights so restricted; and
- (d) stating whether, in the opinion of the Department, the effect of that restriction of working rights would be such as to prejudice adversely to an unreasonable degree—
  - (i) the economic viability of operating the site; or
  - (ii) the asset value of the site.

(3) In this paragraph, “the applicant” means the person who made the application in question under paragraph 9.

*Right to appeal against Department's determination of conditions etc.*

**11.**—(1) Where the Department—

- (a) on an application under paragraph 9 determines under that paragraph conditions that differ in any respect from the proposed conditions set out in the application; or
- (b) gives notice, under paragraph (d) of paragraph 10(2), stating that, in its opinion, the restriction of working rights in question would not be such as to prejudice adversely to an unreasonable degree either of the matters referred to in sub-paragraphs (i) and (ii) of the said paragraph (d),

the person who made the application may appeal to the planning appeals commission.

(2) An appeal under sub-paragraph (1) shall be made by giving notice of appeal in writing to the planning appeals commission before the end of the period of 6 months beginning with the date on which the Department gives notice to the applicant of its determination or, as the case may be, stating its opinion.

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*Permissions ceasing to have effect*

**12.—(1)** Subject to paragraph 8(11), where no application under paragraph 9 in respect of an active Phase I or II site has been served on the Department by the date specified in the first or, as the case may be, the second list as the date by which applications under that paragraph in respect of that site are to be made, or by such later date as may at any time be agreed upon in writing between the applicant and the Department, each relevant planning permission relating to the site shall cease to have effect, except insofar as it imposes any restoration or aftercare condition, on the day following the last date on which such an application may be made.

(2) The reference in sub-paragraph (1) to the date specified in the first or, as the case may be, the second list as the date by which applications under paragraph 9 are to be made in respect of any Phase I or II site is a reference to the date specified for that purpose in respect of that site in that list as prepared by the Department or, where that date has been varied by virtue of any provision of this Schedule, to that date as so varied.

(3) Subject to sub-paragraph (4), no relevant planning permission which relates to a dormant site shall have effect to authorise the carrying out of minerals development unless—

- (a) an application has been made under paragraph 9 in respect of that site; and
- (b) that permission has effect in accordance with sub-paragraph (6) of that paragraph.

(4) A relevant planning permission which relates to a Phase I or II site not included in the first list shall cease to have effect, except insofar as it imposes any restoration or aftercare condition, on the day following the last date on which an application under sub-paragraph (1) of paragraph 6 may be made in respect of that site unless an application has been made under that sub-paragraph by that date in which event, unless the site is added to that list, such a permission shall cease to have effect when the following conditions are met—

- (a) the proceedings on that application have been determined, and
- (b) any time for appealing under paragraph 6(11) or (12), or applying or further applying under paragraph 6(1), (where there is a right to do so) has expired.

*Special procedure for major applications under paragraph 9*

**13.—(1)** Where, in relation to an application under paragraph 9, the Department considers that the conditions to which the applicant proposes any permission to which the application relates should be subject would, if determined under this Schedule as being the conditions to which a relevant planning permission is to be subject—

- (a) involve a substantial departure from the development plan for the area to which it relates;  
or
- (b) be of significance to the whole or a substantial part of Northern Ireland; or
- (c) affect the whole of a neighbourhood,

the Department may within 2 months from the date of the application serve on the applicant a notice in such form as may be specified by a development order applying this paragraph to the application.

(2) For the purpose of considering representations made in respect of an application to which this paragraph applies, the Department may cause a public local inquiry to be held by the planning appeals commission.

(3) Section 23 of the Interpretation Act (Northern Ireland) 1954 (c. 33) shall apply to an inquiry under paragraph (2) as if that inquiry were an inquiry referred to in that section.

(4) Where a public local inquiry is not held under sub-paragraph (2), the Department shall, before determining the application, serve a notice on the applicant indicating the determination which it proposes to make; and if within such period as may be specified in that behalf in the notice (not

being less than 28 days from the date of service thereof) the applicant so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(5) In determining an application to which this paragraph applies, the Department shall, where any inquiry or hearing is held, take into account the report of the planning appeals commission.

(6) The following provisions of this Schedule—

(a) paragraph 9(6) and (7);

(b) paragraph 10; and

(c) paragraph 14, so far as relating to applications under paragraph 9,

shall apply, with any necessary modifications, to any application to which this paragraph applies.

(7) Paragraph 11(1) shall not apply to any application to which this paragraph applies.

(8) The decision of the Department on an application to which this paragraph applies shall be final.

#### *Two or more applicants*

**14.**—(1) Where the Department has received from any person a duly made application under paragraph 7(1) or 9—

(a) that person may not make any further application under the paragraph in question in respect of the same site; and

(b) if the application has been determined, whether or not in the case of an application under paragraph 9 it has been finally determined, no other person may make an application under the paragraph in question in respect of the same site.

(2) Where—

(a) the Department has received from any person in respect of a mineral site a duly made application under paragraph 7(1) or 9; and

(b) the Department receives from another person a duly made application under the paragraph in question in respect of the same site,

then for the purpose of the determination of the applications and any appeal against such a determination, this Schedule shall have effect as if the applications were a single application received by the Department on the date on which the later application was received by the Department and references to the applicant shall be read as references to either or any of the applicants.

#### *Compensation*

**15.**—(1) This paragraph applies in a case where—

(a) an application made under paragraph 9 in respect of an active Phase I or II site is finally determined; and

(b) the requirements of either sub-paragraph (2) or (3) are satisfied.

(2) The requirements, referred to in sub-paragraph (1)(b), of this sub-paragraph are—

(a) that the conditions to which the relevant planning permissions relating to the site are to be subject were determined by the Department;

(b) no appeal was made under paragraph 11(1)(a) in respect of that determination or any such appeal was withdrawn or dismissed; and

(c) the Department gave notice under paragraph (d) of paragraph 10(2) and either—

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- (i) that notice stated that, in the Department’s opinion, the restriction of working rights in question would be such as to prejudice adversely to an unreasonable degree either of the matters referred to in sub-paragraphs (i) and (ii) of the said paragraph (d); or
- (ii) that notice stated that, in the Department’s opinion, the restriction in question would not be such as would so prejudice either of those matters but an appeal under paragraph 11(1) in respect of the giving of the notice has been allowed.

(3) The requirements, referred to in sub-paragraph (1)(b), of this sub-paragraph are that the conditions to which the relevant planning permissions are to be subject were determined by the planning appeals commission upon an appeal under paragraph 11(1)(a) and either—

- (a) the Department gave notice under paragraph (d) of paragraph 10(2) stating that, in its opinion, the restriction of working rights in question would be such as to prejudice adversely to an unreasonable degree either of the matters referred to in sub-paragraphs (i) and (ii) of the said paragraph (d); or
- (b) the Department gave a notice under the said paragraph (d) stating that, in its opinion, the restriction in question would not be such as would so prejudice either of those matters but an appeal under paragraph 11(1)(b) in respect of the giving of that notice has been allowed.

(4) In a case to which this paragraph applies section 26 of the Land Development Values (Compensation) Act (Northern Ireland) 1965 shall have effect as if an order made under Article 38 had effect to modify those permissions to the extent specified in sub-paragraph (5) below.

(5) For the purposes of sub-paragraph (4), the order which is treated by virtue of that sub-paragraph as having been made under Article 38 is one whose only effect adverse to the interests of any person having an estate or interest in the land or minerals comprised in the mineral site is to restrict working rights in respect of the site to the same extent as the relevant restriction.

*Appeals: general procedural provisions*

**16.—(1)** This paragraph applies to appeals under any of the following provisions of this Schedule—

- (a) paragraph 6(11) or (12); or
- (b) paragraph 11(1).

(2) Paragraphs (4) and (5) of Article 32 (determination of appeals) shall apply to an appeal to which this paragraph applies as those paragraphs apply to an appeal under that Article.

SCHEDULE 1B

PERIODIC REVIEW OF MINERAL PLANNING PERMISSIONS

*Duty to carry out periodic reviews*

**1.** The Department shall, in accordance with the provisions of this Schedule, cause periodic reviews to be carried out of the mineral permissions relating to a mining site.

*Interpretation*

**2.—(1)** For the purposes of this Schedule—

“first review date”, in relation to a mining site, shall, subject to paragraphs 4 and 6, be ascertained in accordance with paragraph 3;

“mineral permission” means any planning permission for minerals development;

“mining site” means—

- (a) in a case where it appears to the Department to be expedient to treat as a single site the aggregate of the land to which any two or more mineral permissions relate, the aggregate of the land to which those permissions relate; and
- (b) in any other case, the land to which a mineral permission relates.

(2) Any reference (however expressed) in this Schedule to a mining site being a site to which relates a mineral permission, is a reference to the mining site, or some part of it, being the land to which the permission relates.

(3) For the purposes of this Schedule, an application made under paragraph 7 is finally determined when—

- (a) the proceedings on the application have been determined, and
- (b) any time for appealing under paragraph 9(1), or applying or further applying under paragraph 7, (where there is a right to do so) has expired.

#### *The first review date*

**3.—(1)** Subject to sub-paragraph (5), in the case of a mining site which is a Phase I or II site within the meaning of Schedule 1A, the first review date means the date falling 15 years after the date upon which, pursuant to an application made under paragraph 9 of that Schedule, there is determined under that paragraph the conditions to which the relevant planning permissions (within the meaning of that Schedule) relating to the site are to be subject.

(2) Subject to sub-paragraphs (3) and (5), in the case of a mining site which is not a Phase I or II site within the meaning of Schedule 1A, the first review date is the date falling 15 years after the date upon which was granted the most recent mineral permission which relates to the site.

(3) Where, in the case of a mining site falling within sub-paragraph (2), the most recent mineral permission relating to that site relates, or the most recent such permissions (whether or not granted on the same date) between them relate, to part only of the site, and in the opinion of the Department it is expedient, for the purpose of ascertaining, under that sub-paragraph, the first review date in respect of that site, to treat that permission or those permissions as having been granted at the same time as the last of the other mineral permissions relating to the site, the first review date for that site shall be ascertained under that sub-paragraph accordingly.

(4) Subject to sub-paragraph (5), in the case of a mining site—

- (a) to which relates a mineral permission in respect of which an order has been made under Article 38, or
- (b) in respect of which, or any part of which, an order has been made under Article 39,

the first review date shall be the date falling 15 years after the date upon which the order took effect or, in a case where there is more than one such order, upon which the last of those orders to take effect took effect.

(5) In the case of a mining site for which the preceding provisions of this paragraph have effect to specify two or more different dates as the first review date, the first review date shall be the latest of those dates.

**4.—(1)** The Department may by order subject to negative resolution specify a first review date different from the first review date found in pursuance of paragraph 3(1).

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- (2) Sub-paragraph (3) applies if no first review date is found in pursuance of paragraph 3(1).
- (3) The Department may by order subject to negative resolution specify a first review date.

*Service of notice of first periodic review*

5.—(1) The Department shall, in connection with the first periodic review of the mineral permissions relating to a mining site, no later than 12 months before the first review date, serve notice upon each person appearing to it to be the owner of any land, or entitled to an interest in any mineral, included in that site.

- (2) A notice required to be served under sub-paragraph (1) shall—
  - (a) specify the mining site to which it relates;
  - (b) identify the mineral permissions relating to that site;
  - (c) state the first review date;
  - (d) state that the first review date is the date by which an application must be made for approval of the conditions to which the mineral permissions relating to the site are to be subject and explain the consequences which will occur if no such application is made by that date; and
  - (e) explain the right to apply for postponement of the first review date and give the date by which such an application has to be made.
- (3) Where, in relation to any land or mineral included in a mining site, the Department—
  - (a) has served notice on any person under sub-paragraph (1); and
  - (b) has received no application under paragraph 7 from that person by the date falling 8 weeks before the first review date,

the Department shall serve a written reminder on that person.

- (4) A reminder required to be served under sub-paragraph (3) shall—
  - (a) indicate that the land or mineral in question is included in a mining site;
  - (b) comply with the requirements of sub-paragraph (2)(a) to (d); and
  - (c) be served on the person in question on or before the date falling 4 weeks before the first review date.

(5) Sub-paragraph (1) shall not require the Department to serve notice under that sub-paragraph upon any person whose identity or address for service is not known to and cannot practicably, after reasonable inquiry, be ascertained by it, but in any such case the Department shall cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the notice which it would (apart from the provisions of this sub-paragraph) have had to serve under that sub-paragraph on the owner of that land or interest.

(6) If, in a case where sub-paragraph (5) applies, no person makes an application to the Department under paragraph 7 in respect of the mining site which includes the land or interest in question by the date falling 8 weeks before the first review date, the Department shall cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the written reminder that would, in a case not falling within sub-paragraph (5), have been served under sub-paragraph (3).

- (7) Where by sub-paragraph (5) or (6) a copy of any notice is required to be affixed to an object on any land that copy shall—
  - (a) be displayed in such a way as to be easily visible and legible;
  - (b) be first displayed—



- (i) in a case where the requirement arises under sub-paragraph (5), no later than 12 months before the first review date; or
- (ii) in a case where the requirement arises under sub-paragraph (6), no later than the date falling 4 weeks before the first review date;

and

- (b) be left in position for at least the period of 21 days from the date when it is first displayed, but where the notice is, without fault or intention of the Department, removed, obscured or defaced before that period has elapsed, that requirement shall be treated as having been complied with if the Department has taken reasonable steps for protection of the notice and, if need be, its replacement.

(8) In sub-paragraphs (5) and (6), any reference to a conspicuous object on any land includes, in a case where the person serving a notice considers that there are no or insufficient such objects on the land, a reference to a post driven into or erected upon the land by the person serving the notice for the purpose of having affixed to it a copy of the notice in question.

#### *Application for postponement of the first review date*

**6.—**(1) Any person who is the owner of any land, or of any interest in any mineral, comprised in a mining site may, no later than the day upon which expires the period of 3 months from the day upon which notice was served upon him under paragraph 5, apply under this paragraph to the Department for the postponement of the first review date.

(2) An application under this paragraph shall be in writing and shall set out—

- (a) the conditions to which each mineral permission relating to the site is subject;
- (b) the applicant's reasons for considering those conditions to be satisfactory; and
- (c) the date which the applicant wishes to have substituted for the first review date.

(3) Where the Department receives an application made under this paragraph—

- (a) if it considers the conditions referred to in sub-paragraph (2)(a) to be satisfactory it shall agree to the first review date being postponed in which event it shall determine the date to be substituted for that date;
- (b) in any other case it shall refuse the application.

(4) When the Department determines an application made under this paragraph, it shall notify the applicant in writing of its decision and, in a case where the Department has agreed to the postponement of the first review date, it shall notify the applicant of the date which it has determined should be substituted for the first review date.

(5) Where, within the period of 3 months of the Department having received an application under this paragraph, or within such extended period as may at any time be agreed upon in writing between the applicant and the Department, the Department has not given notice, under sub-paragraph (4), to the applicant of its decision upon the application, the Department shall be treated as having, at the end of that period or, as the case may be, that extended period—

- (a) agreed to the first review date being postponed; and
- (b) determined that the date referred to in sub-paragraph (2)(c) be substituted for the first review date.

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*Application to determine the conditions to which the mineral permissions relating to a mining site are to be subject*

7.—(1) Any person who is the owner of any land, or who is entitled to an interest in a mineral, may, if that land or mineral is or forms part of a mining site, apply to the Department to determine the conditions to which the mineral permissions relating to that site are to be subject.

(2) An application under this paragraph shall be in writing and shall—

- (a) identify the mining site in respect of which the application is made and state that the application is made in connection with the first periodic review of the mineral permissions relating to that site;
- (b) specify the land or minerals comprised in the site of which the applicant is the owner or, as the case may be, in which the applicant is entitled to an interest;
- (c) identify the mineral permissions relating to the site;
- (d) identify, and give a postal address for, each other person that the applicant knows or, after reasonable inquiry, has cause to believe to be an owner of any land, or entitled to any interest in any mineral, comprised in the site;
- (e) set out the conditions to which the applicant proposes the permissions referred to in paragraph (c) should be subject; and
- (f) be accompanied by the appropriate certificate (within the meaning of sub-paragraph (3)).

(3) For the purposes of sub-paragraph (2)(f), the appropriate certificate is such a certificate—

- (a) as would be required, under Article 22, to accompany the application if it were an application for planning permission for minerals development, but
- (b) with such modifications as are required for the purposes of this paragraph,

and Article 22(6) shall also have effect in relation to any certificate purporting to be the appropriate certificate.

(4) Before determining an application under this paragraph, the Department shall consult with the district council for the area in which the site to which the application relates is situated.

(5) Article 21 shall have effect, with any necessary modifications, in relation to an application under this paragraph as it has effect in relation to an application for planning permission.

(6) Where the Department receives an application under this paragraph in relation to a mining site it shall determine the conditions to which each mineral permission relating to the site is to be subject.

(7) The conditions imposed by virtue of a determination under sub-paragraph (6)—

- (a) may include any conditions which may be imposed on a grant of planning permission for minerals development;
- (b) may be in addition to, or in substitution for, any existing conditions to which the permission in question is subject.

(8) Subject to sub-paragraph (9), where, within the period of 6 months of the Department having received an application under this paragraph, or within such extended period as may at any time be agreed upon in writing between the applicant and the Department, the Department has not given notice to the applicant of its decision upon the application, the Department shall be treated as having at the end of that period or, as the case may be, that extended period, determined that the conditions to which any mineral permission to which the application relates is to be subject are those specified in the application as being proposed in relation to that permission; and any such permission shall, from that time, have effect subject to those conditions.

(9) Where the Department, having received an application under this paragraph, is of the opinion that it is unable to determine the application unless further details are supplied to it, the Department

shall within the period of one month from having received the application give notice to the applicant—

- (a) stating that it is of such opinion; and
- (b) specifying the further details which it requires,

and where the Department so serves such a notice the period of 6 months referred to in sub-paragraph (8) shall run not from the Department having received the application but from the time when the Department has received all the further details specified in the notice.

(10) Without prejudice to the generality of sub-paragraph (9), the further details which may be specified in a notice under that sub-paragraph include any—

- (a) information, plans or drawings; or
- (b) evidence verifying any particulars of details supplied to the Department in respect of the application in question,

which it is reasonable for the Department to request for the purpose of enabling it to determine the application.

#### *Permissions ceasing to have effect*

**8.** Where no application under paragraph 7 in respect of a mining site has been served on the Department by the first review date, or by such later date as may at any time be agreed upon in writing between the applicant and the Department, each mineral permission—

- (a) relating to the site; and
- (b) identified in the notice served in relation to the site under paragraph 5,

shall cease to have effect, except insofar as it imposes any restoration or aftercare condition, on the day following the first review date or, as the case may be, such later agreed date.

#### *Appeals*

**9.—(1)** Where on an application under paragraph 7 the Department determines conditions that differ in any respect from the proposed conditions set out in the application, the applicant may appeal to the planning appeals commission.

(2) An appeal under sub-paragraph (1) shall be made by giving notice of appeal in writing to the planning appeals commission before the end of the period of 6 months beginning with the date on which the Department gives notice to the applicant of its determination.

(3) Paragraphs (4) and (5) of Article 32 (determination of appeals) shall apply to appeals under sub-paragraph (1) as those paragraphs apply to appeals under that Article.

#### *Special procedure for major applications under paragraph 7*

**10.—(1)** Where, in relation to an application under paragraph 7, the Department considers that the conditions to which the applicant proposes any mineral permission to which the application relates should be subject would, if determined under this Schedule as being the conditions to which the permission is to be subject—

- (a) involve a substantial departure from the development plan for the area to which it relates;  
or
- (b) be of significance to the whole or a substantial part of Northern Ireland; or
- (c) affect the whole of a neighbourhood,

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the Department may within 2 months from the date of the application serve on the applicant a notice in such form as may be specified by a development order applying this paragraph to the application.

(2) For the purpose of considering representations made in respect of an application to which this paragraph applies, the Department may cause a public local inquiry to be held by the planning appeals commission.

(3) Section 23 of the Interpretation Act (Northern Ireland) 1954 (c. 33) shall apply to an inquiry under paragraph (2) as if that inquiry were an inquiry referred to in that section.

(4) Where a public local inquiry is not held under sub-paragraph (2), the Department shall, before determining the application, serve a notice on the applicant indicating the determination which it proposes to make; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof) the applicant so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(5) In determining an application to which this paragraph applies, the Department shall, where any inquiry or hearing is held, take into account the report of the planning appeals commission.

(6) Paragraph 12, so far as relating to applications under paragraph 7, shall apply, with any necessary modifications, to any application to which this paragraph applies.

(7) Paragraph 9(1) shall not apply to any application to which this paragraph applies.

(8) The decision of the Department on an application to which this paragraph applies shall be final.

*Time from which conditions determined under this Schedule are to take effect*

**11.**—(1) Where an application has been made under paragraph 7 in respect of a mining site, each of the mineral permissions relating to the site shall, from the time when the application is finally determined, have effect subject to the conditions to which it is determined under this Schedule that that permission is to be subject.

(2) Sub-paragraph (1) is without prejudice to paragraph 7(8).

*Two or more applicants*

**12.**—(1) Where the Department has received from any person a duly made application under paragraph 6 or 7—

- (a) that person may not make any further application under the paragraph in question in respect of the same site; and
- (b) if the application has been determined, whether or not in the case of an application under paragraph 7 it has been finally determined, no other person may make an application under the paragraph in question in respect of the same site.

(2) Where—

- (a) the Department has received from any person in respect of a mineral site a duly made application under paragraph 6 or 7; and
- (b) the Department receives from another person a duly made application under the paragraph in question in respect of the same site,

then for the purpose of the determination of the applications and any appeal against such a determination, this Schedule shall have effect as if the applications were a single application received by the Department on the date on which the later application was received by the Department and references to the applicant shall be read as references to either or any of the applicants.

*Second and subsequent periodic reviews*

**13.—**(1) In this paragraph, in relation to a mining site, but subject to paragraph 6 as applied by sub-paragraph (2) below, “review date” means—

- (a) in the case of the second periodic review, the date falling 15 years after the date upon which was finally determined an application made under paragraph 7 in respect of the site; and
- (b) in the case of subsequent periodic reviews, the date falling 15 years after the date upon which there was last finally determined under this Schedule an application made in respect of that site under paragraph 7 as applied by sub-paragraph (2) below.

(2) Paragraphs 5 to 12 shall apply in respect of the second or any subsequent periodic review of the mineral permissions relating to a mining site as they apply to the first such periodic review, but as if—

- (a) any reference in those paragraphs to the “first review date” were a reference to the review date; and
- (b) the references in paragraphs 5(1) and 7(2)(a) to the first periodic review were references to the periodic review in question.

*Compensation*

**14.—**(1) This paragraph applies where—

- (a) an application made under paragraph 7 in respect of a mining site is finally determined; and
- (b) the conditions to which the mineral permissions relating to the site are to be subject, as determined under this Schedule, differ in any respect from the proposed conditions set out in the application; and
- (c) the effect of the new conditions, except insofar as they are restoration or aftercare conditions, as compared with the effect of the existing conditions, except insofar as they were restoration or aftercare conditions, is to restrict working rights in respect of the site.

(2) For the purposes of this paragraph—

“the new conditions”, in relation to a mining site, means the conditions, determined under this Schedule, to which the mineral permissions relating to the site are to be subject; and

“the existing conditions”, in relation to a mining site, means the conditions to which the mineral permissions relating to the site were subject immediately prior to the final determination of the application made under paragraph 7 in respect of that site.

(3) For the purposes of this paragraph, working rights are restricted in respect of a mining site if any of—

- (a) the size of the area which may be used for the winning and working of minerals or the depositing of mineral waste;
- (b) the depth to which operations for the winning and working of minerals may extend;
- (c) the height of any deposit of mineral waste;
- (d) the rate at which any particular mineral may be extracted;
- (e) the rate at which any particular mineral waste may be deposited;
- (f) the period at the expiry of which any winning or working of minerals or depositing of mineral waste is to cease; or
- (g) the total quantity of minerals which may be extracted from, or of mineral waste which may be deposited on, the site,

is restricted or reduced in respect of the mining site in question.

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(4) In a case to which this paragraph applies section 26 of the Land Development Values (Compensation) Act (Northern Ireland) 1965 shall have effect as if an order made under Article 38 had effect to modify those permissions to the extent specified in sub-paragraph (5) below.

(5) For the purposes of this paragraph, the order referred to in sub-paragraph (4) is one whose only effect adverse to the interests of any person having an interest in the land or minerals comprised in the mineral site is to restrict working rights in respect of the site to the same extent as the relevant restriction.”.