Minerals Planning Guidance 8: Planning and Compensation Act 1991 - Interim development order permissions (IDOS): statutory provisions and procedures

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

Department for Communities and Local Government
Eland House
Bressenden Place
London SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

This publication is only available online via the Communities and Local Government website: www.communities.gov.uk

Alternative formats under Disability Discrimination Act (DDA):if you require this publication in an alternative format please email alternativeformats@communities.gsi.gov.uk

Publication title: Minerals Planning Guidance 8: Planning and Compensation Act 1991 - Interim development order permissions (IDOS): statutory provisions and procedures
Date published: October 1991
ISBN: 0 11 752531 6
Price: £6 (available to view below)

Summary

Minerals Planning Guidance 8 (MPG8) is concerned with mineral permissions granted under IDOs on or after 22 July 1943 in respect of development which had not been carried out before 1 July 1948.

Order

This is a priced publication available from TSO (The Stationery Office), PO Box 29, Norwich NR3 1GN. Order through the Parliamentary Hotline (Lo-call): 08457 023 474, fax: 0870 600 5533, textphone 0870 240 3701, email: book.orders@tso.co.uk or visit www.tsoshop.co.uk to buy online.

Alternative formats under Disability Discrimination Act (DDA): if you require this publication in an alternative format (eg Braille or audio) please email alternativeformats@communities.gsi.gov.uk quoting the title and product code/ISBN of the publication, and your address and telephone number.

Contents

Schedule 2, para 4(5) and (6))

Procedure for applying and application form (Schedule 2, para 4(1), 4(2), 4(5), 4(6), 4(8) and para 10(1))

More than one application in respect of the same permission (Schedule 2, para 8)

Validity of IDO permissions and evidence to be submitted with application

Procedure on receipt of application-notification receipt and entry on planning register (Schedule 2, para 4(3), and para 9(1) and 9(2))

Matters to be takeninto account by mpas in consideration of application (Schedule 2, para 1(4))

Time period for determination of applications (Schedule 2, para 1(5))

Time period for appeals including appeals against non-determination (Section 22(4) and Schedule 2, para 5(1), 5(3), 5(4) and para 10(2))

Procedure for appeals(Schedule 2, para 5(6), 5(7), 5(8), para 6 and para 9(3))

Procedure following finaldetermination-entry of details in Planning Register (Schedule 2, para 3, para 9(1), 9(2) and para 10(2))

Applicationsfor determination of conditions

Time limits for applying (Section 22(5), Schedule 2 para 2(4) and 2(5))

Who shouldapply and who should be notified of application (Schedule 2, para 2(2), para 4(5), 4(7), 4(8) and para 10(1))

Procedure for applying and application form (Schedule 2, para 4(1), 4(2), 4(5), 4(7), 4(8) and para 10(1))

More than one application in respect of the same permission (Schedule 2, para 8)

Matters to be submitted with application (Schedule 2, para 2(1), 2(3) and para 4(1) and 4(2))

Procedure on receipt of application - notification of receipt and entry on planning register (Schedule 2, para 4(1) and para 9(1) and 9(2))

Matters to be taken into account by mpas in consideration of applications (Schedule 2, para 2(6))

Time period for determination of applications by mpas (Schedule 2, para 2(6))

Time period for appeals(Section 22(2) and Schedule 2, para 5(2), 5(3), 5(5) and para 10(2))

Procedure for appeals (Schedule 2, para 5, para 6, and para 9(3))

Go to table of contents

Introduction and Background

1 The Planning and Compensation Act 1991 (the "1991 Act") received Royal Assent on 25 July 1991. With effect from 25 September 1991, the provisions of section 22 and Schedule 2 introduce new procedures for dealing with permissions for the winning and working of minerals or the depositing of minerals waste, originally granted under Interim Development Orders (IDOs). These were permissions granted after 21 July 1943 and before 1 July 1948, which 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. They are referred to in the 1991 Act as "old mining permissions".

2 The Act requires certain actions to be taken if these old permissions are to continue to have effect. These are explained in more detail below, but:

- *owners or tenants of land which has the benefit of an IDO permission;*
- *persons with an interest in minerals in that land; and,*
- *mineral operators of sites that are currently being worked under the terms of such a permission,*

should take note of the following key points if they wish the permission to be preserved.

Key points for action

Land owners, tenants and persons with an interest in minerals should note that -

- applications for registration of permissions must be made to the mineral planning authority (mpa) by 25 March 1992, or the permission will cease to have effect. It is advisable to consult the mpa at an early stage and well before submitting a formal application for registration (paragraphs 16 to 22);
- permissions where no working has taken place on the land between 1 July 1948 and 1 April 1979, ceased to have effect on 2 April 1979 (paragraphs 23 to 25);
- if the mpa does not determine the application within 3 months the application is deemed to be refused, and the permission will cease to have effect unless an appeal is made to the Secretary of State within 3 months (paragraphs 28 to 35);
- if the mpa determines that the permission is invalid, the permission will cease to have effect unless an appeal is made to the Secretary of State within 3 months (paragraphs 28 to 35);
- if the mpa determines that the permission is valid but over a different area or on different terms from those set out in the application, the permission will have effect as determined by the mpa unless an appeal is made to the Secretary of State within 3 months

(paragraphs 28 to 35);

- if the permission is dormant (that is, no working has been carried out to any substantial extent in, on or under the land to which the permission relates between 1 May 1989 and 30 April 1991), working may not recommence until a scheme of operating and restoration conditions has been determined by the mpa (paragraphs 38, 39 and 41 to 47);
- in any other case, application must be made to the mpa for determination of conditions within 12 months (or such longer period as the mpa agree) of the application for registration having been approved or finally determined, or the permission will cease to have effect (paragraphs 40 to 47);
- if the mpa impose conditions different from those set out in the application, the permission will have effect subject to the conditions determined by the mpa unless an appeal is made to the Secretary of State within 6 months of the mpa's decision (paragraphs 51 to 54).

Mineral planning authorities should note that -

- they should make every effort to provide information or records that they hold in respect of particular sites in response to enquiries from persons entitled to apply for registration of a possible IDO permission on that site;
- applicants for registration of a permission or for determination of conditions must be notified in writing:

    i. of the date of receipt of the application;

    ii. of the mpa's determination of the application

    (paragraphs 26 to 28 and 48 to 51);

- the details of applications for registration and of applications for determination of conditions should be entered in Part I of the Planning Register, or should be passed to the appropriate *district planning authority* for entry, as soon as possible (paragraphs 26 and 49);
- the details of final determinations of applications for registration and of final determinations of schemes of operating and restoration conditions should be entered in Part II of the Planning Register, or should be passed to the appropriate *district planning authority* for entry, as soon as possible (paragraphs 36, 37, 55 and 56).

District planning authorities should note that -

- they must enter the relevant details supplied by the mpa in the appropriate part of the Planning Register as soon as reasonably practicable (paragraphs 26, 37, 49, and 56).

Background to IDO permissions

3 With the ending of the war, the Government came to the conclusion that it was important to establish a balance between the Country's need for minerals in the post-war reconstruction period and the need to avoid conflict with other land uses and the protection of amenity. The Town and Country Planning (General Interim Development) Order 1946 therefore withdrew previous permitted development rights for surface mineral working. Thus, from October 1946, most new surface mineral working needed an express grant of permission from the interim development authority. Quarrying undertakings which had not already secured interim development permission were encouraged to apply for such permission.

4 The Town and Country Planning Act 1947 extended full planning control to all forms of development throughout England and Wales. Section 12 of the 1947 Act made any development carried out after 1 July 1948 subject to planning permission. Permissions granted under IDOs before 22 July 1943 ceased to be effective on 1 July 1948. However, under section 77 of the 1947 Act, where consent for development had been granted on an application under an IDO on or after 22 July 1943, permission for development covered by the consent which had not been carried out before 1 July 1948 was deemed to be granted under the 1947 Act and no fresh application was needed. This "preservation" was carried forward to paragraph 7 of Schedule 13 to the Town and Country Planning Act 1962, and then to paragraph 90 of Schedule 24 to the Town and Country Planning Act 1971 which continues to apply by virtue of paragraph 3 of Schedule 3 to the Town and Country Planning (Consequential Provisions) Act 1990 .

5 This guidance is therefore concerned with mineral permissions granted under IDOs on or after 22 July 1943 in respect of development which had not been carried out before 1 July 1948.

The issues

6 There are essentially four separate problems associated with permissions granted under IDOs:

- Unlike post 1947 Act permissions, there was no requirement to register them, so records are sparse and such as there are may be imprecise. This means that planning authorities (and other interested parties eg house purchasers) do not know where some permissions exist and where they do know, the details they hold may differ from those held by the person or persons with the benefit of the permission.

- Because they are not registered, long dormant workings can be re-activated without

warning.

- Existing workings may be subject to few, if any conditions, governing the operation of the quarry or its restoration.
- There can be large unworked extensions to existing workings covered by the permissions, which if worked may have significant adverse impacts on the environment and amenity.

7 Because of the absence of accurate records the number and extent of IDO permissions which are valid today is not known. However, it is believed that there could be in the order of 1000 in England and Wales. The Government considered this represented a considerable potential problem, and therefore decided to take measures in the Planning and Compensation Act 1991, to ensure that these old permissions are brought within the modern planning system.

The statutory provisions

8 In brief, the 1991 Act provides that:

a. Holders of the IDO permissions who wish to rely on their permissions must apply to have them registered by 25 March 1992, or the permission will cease to have effect, without compensation. Disputes over the validity of permissions will be determined by the Secretary of State;
b. In the case of dormant sites (ie sites where there has been no working to any substantial extent for a period of 2 years preceding 1 May 1991) working may not recommence until the permission has been registered and an application has been made to the mpa, and a scheme of operating and restoration conditions has been determined by the mpa, or Secretary of State on appeal. An application for determination of conditions may be made at any time after the registration application has been granted;
c. In any other case, within 12 months (or such longer period as the mpa agree) of the application for registration having been granted or finally determined, an application must be made to the mpa for determination of a scheme of operating and restoration conditions or the permission will cease to have effect. Working may continue under the terms of the original permission until the permission ceases to have effect or, if an application is made within the 12 months (or longer period agreed), until new conditions have been determined by the mpa or Secretary of State.
d. The Secretary of State has power to "call in" an application (whether for registration of a permission or approval of conditions) for his own determination.
e. There will be no compensation for the cost of complying with any conditions imposed. However, there is provision for appeal to the Secretary of State against the imposition of unreasonable conditions; and, in relation to active sites, the Secretary of State takes the view that a distinction should be drawn between conditions which deal with the environmental and amenity aspects of working the site, which would not affect the asset value and are therefore appropriate to this procedure, and conditions that would fundamentally affect the economic structure of the operation. In the Secretary of State's view, conditions that would significantly affect the asset value are more appropriate to mpas' general reviews of mineral working sites and order making powers introduced by the Town and Country Planning (Minerals) Act 1981 (the "1981 Minerals Act").

A detailed explanation of the provisions is given in paragraphs 16 to 56 below.

Review of the powers introduced by the 1981 Minerals Act

9 The powers introduced by the 1981 Minerals Act (which placed a duty on mpas to review mineral sites in their area and to consider making orders updating permissions to modern standards where appropriate), were intended to deal with all inadequate minerals permissions, including IDO permissions and permissions granted in the 1950s and 60s. However, if an order is made compensation may be payable to any person with an interest in the land or minerals, although this can be abated in certain circumstances and subject to certain limits.

10 However, progress has not been as fast as had been hoped, and the Government therefore announced in the Environment White Paper, its intention to review the operation of the provisions of the 1981 Act, which are now incorporated in the Town and Country Planning Act 1990 (the "1990 Act") and the compensation arrangements under it. Paragraphs 7, 9 and 16 of Schedule 1 to the Planning and Compensation Act 1991 therefore amend the provisions of the 1990 Act, to ensure that any recommendations for change arising out of that review can be implemented quickly. Essentially they:

a. substitute a new section 105 in the 1990 Act which retains the duty on mpas to periodically review mineral sites in their area, but provide a new power for the Secretary of State to prescribe by order, the periods in which mpas must carry out their reviews and the matters to be covered in such reviews.
b. remove the previous restrictions, in Schedule 11 to the 1990 Act, on the circumstances in which and the amount by which compensation may be abated following orders updating mineral working sites to modern standards, and substitute a new section 116 in the 1990 Act providing a power to provide for the abatement of compensation by such amounts and in such circumstances as are prescribed in the regulations themselves.
c. retain the existing regulations governing the abatement of compensation (The Town and Country Planning (Compensation for Restrictions on Mineral Working) Regulations 1985 (SI 1985 No 698), as amended by The Town and Country Planning (Compensation for Restrictions on Mineral Working)(Amendment) Regulations 1990 (SI 1990 No 803)) until new regulations have been made and approved by both Houses.

Negotiated solutions

11 Mineral planning authorities should not suspend action on reviews which are already underway, nor should they refrain from taking action under their existing powers where that seems the most appropriate course. However, they should bear in mind the advice in MPG4 that much can be achieved by constructive negotiation without recourse to the statutory powers that are available.

12 In implementing the new procedures for dealing with IDOs, it should be borne in mind that applications for registration of IDO permissions must be determined on the evidence of the

case and not on the perceived planning merits of the development. This means that there is no statutory scope, under the provisions introduced by the 1991 Act, for reducing the extent of a valid permission area: any formal action would have to be by means of a revocation, modification or discontinuance order under the provisions of the 1990 Act. Nevertheless, where the extent of the permission impinges on areas of environmental or ecological importance, applicants and mpas are encouraged to seek a voluntary solution to protect the area from lasting damage. For example by agreeing appropriate operating and restoration conditions or by negotiating suitable alternative areas for extraction.

13 In preparing and considering schemes of operating and restoration conditions in respect of IDO permissions where development is currently taking place, it is necessary to distinguish between conditions which deal with the environmental and amenity aspects of working the site, which would not affect the asset value, and conditions which would fundamentally affect the economic structure of the operation. Conditions that would significantly affect the asset value would be more appropriate to reviews under the provisions introduced by the 1981 Minerals Act and any necessary modification or discontinuance orders, unless a negotiated solution can be found.

14 Where the IDO permission forms part of a larger planning unit which is the subject of one or more later planning permissions, it is desirable for the applicant and the mpa to look at the unit as a whole and agree a comprehensive planning solution, possibly using a combination of the new procedures and existing powers to make modification and discontinuance orders.

15 In all cases, holders of IDO permissions are encouraged to discuss their proposals for the operation and restoration of the site with the mpa at an early stage, and well before submitting a formal application.

Statutory Provisions and Procedures for IDO Permissions

Applications for registration

Contentsof application and time limits for applying (Schedule 2, paras 1(2) and 1(3))

16 An application for the permission to be registered must specify the development which the applicant claims is authorised by the old mining permission, the land to which the permission relates, and the conditions (if any) to which the permission is subject. Any such application must be served on the mpa by 25 March 1992.

Who should apply and who should be notified of application (Schedule 2, para 1 and 10 and Schedule 2, para 4(5) and (6))

17 The persons entitled to apply to the mpa for an IDO permission to be registered are:

a. the freeholder of any part of the land to which the permission relates; or,
b. the tenant of any part of the land to which the permission relates with more than 7 years lease left to run; or,
c. any person who is entitled to an interest in any mineral in the land to which the permission relates.

18 Any person who intends to apply for an IDO permission to be registered must comply with the notification and certification procedures currently set out in section 66 to 68 of the 1990 Act. These require an applicant to notify any other person who is a freeholder or tenant of any part of the land to which the permission relates, any other person who has an interest in any mineral in the land, and any agricultural tenant. If the applicant is unable to find out the names and addresses of all or any of the other owners, tenants or persons with an interest in the minerals, details of the application must be published in a local paper not more than 21 days before the application is submitted.

19 However, section 16 of the 1991 Act substitutes a new section 65 for sections 65 to 68 of the 1990 Act enabling the notifications and certification requirements for planning applications to be prescribed in a development order. Applicants should note that the Department is currently considering possible changes to the notification and certification procedures (see DOE/WO Consultation Paper "Planning Applications: Publicity and Notification" dated 17 July 1991) and applicants should therefore consult the mpa well before submitting an application to check the requirements in force.

Procedure for applying and application form (Schedule 2, para 4(1), 4(2), 4(5), 4(6), 4(8) and para 10(1))

20 Applications for registration of the permission must be made on an official form obtainable from the mpa and must be accompanied by the appropriate certificates that the necessary persons have been properly notified of the application, or that the application has been properly advertised. A sample of the official form is at Annex A. The certificates and notices currently required by sections 66 to 68 of the 1990 Act are set out in Parts 1 and 2 of Schedule 5 to the Town and Country Planning General Development Order 1988 (SI 1988 No 1813), as amended by Article 2(9) and (10) of the Town and Country Planning General Development (Amendment) Order 1989 (SI 1989 No 603), and Article 10 of the Town and Country Planning General Development (Amendment) Order 1991 (SI 1991 No 1536). However, applicants should note that these may change and they should consult the mpa well in advance of submitting an application to check what certificates and notices are required-see paragraph 19 above. Applications which are not accompanied by the appropriate certificates will be invalid.

More than one application in respect of the same permission (Schedule 2, para 8)

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

22 Applicants are strongly advised therefore to coordinate their approach with any other persons eligible to apply for registration of the same permission and to discuss the position with the mpa with a view to submitting a single application covering all their respective interests.

Validity of IDO permissions and evidence to be submitted with application

23 Under section 65 of the Town and Country Planning Act 1968, as modified in respect of minerals developments by regulation 6 of the Town and Country Planning (Minerals) Regulations 1971, every mineral permission granted or deemed to be granted before 1 April 1969 where the development permitted had not been begun before 1 January 1968, is deemed to have been granted subject to a condition that the development must be begun no later than 1 April 1979. This provision was carried forward to paragraph 19 of Schedule 24 to the 1971 Act and saved by paragraph 3 of Schedule 3 to the Town and Country Planning (Consequential Provisions) Act 1990 .

24 The Secretary of State takes the view that, where no working has been carried out between 1 July 1948 and 1 April 1979 inclusive under the deemed permission granted by section 77 of the 1947 Act, then the permission is no longer valid. For this purpose, regulation 7 of the Town and Country Planning (Minerals) Regulations 1971, provides that development consisting of the winning and working of minerals is begun on the earliest date on which any of the operations for the winning and working of minerals to which the relevant grant of planning permission relates begin to be carried out.

25 So that the validity of an IDO permission can be determined by the mpa, an application for registration of an IDO permission will need to be accompanied by:

a. evidence of the existence, extent and terms of the IDO permission and the date on which it was granted. Eg the original IDO permission and schedule of conditions or such evidence as is available as to the existence, scope, extent, and terms of the IDO permission together with the original plan of the IDO permission or such plan as is available together with such evidence as is available that it is the plan to which the permission relates; and,

b. such evidence as is available that the winning and working of minerals or the depositing of mineral waste was carried out on the site between 1 July 1948 and 1 April 1979.

Procedure on receipt of application-notification receipt and entry on planning register (Schedule 2, para 4(3), and para 9(1) and 9(2))

26 The mpa should first check that the application form is accompanied by the necessary certificates, and that all have been properly completed and signed. If there are any deficiencies which would invalidate the application, the mpa should inform the applicant without delay. The mpa must acknowledge receipt of the application in writing as soon as practicable and must enter details of the application in the appropriate part of the Planning Register or, where they are not the authority responsible for keeping the register, pass the details to the appropriate district planning authority who must enter them in the appropriate part of the register.

Matters to be takeninto account by mpas in consideration of application (Schedule 2, para 1(4))

27 Having accepted that there is a proper application, the mpa must determine on the evidence supplied by the applicant, and on any other evidence available to them, whether a valid IDO permission exists. In this they should have regard to the advice on validity set out in paragraphs 23 to 25 above. If they decide on the evidence that there is a valid permission, they must then ascertain the area of land to which the permission relates, and the conditions, if any, to which the permission is subject. Determinations must be made on the basis of the evidence, not on planning merits. It will be for the mpa, in the first instance, to determine whether they require any further information to establish the facts of the case, and from whom. There is no statutory requirement for consultation. If they are satisfied that the permission is valid as submitted, or valid over a different area or on different conditions from those submitted, they must grant the application accordingly. If they are satisfied that no valid permission exists, they must refuse the application.

Time period for determination of applications (Schedule 2, para 1(5))

28 The mpa must notify the applicant in writing of their decision on the application within 3 months of receipt (or such longer period as may be agreed in writing between the applicant and the mpa) or the application will be deemed to be refused. If the application is refused, or deemed to be refused. If the application is refused, or deemed to be refused, or is granted on terms different from those set out in the application, the person who made the application has a right of appeal to the Secretary of State (see para 29 below).

Time period for appeals including appeals against non-determination (Section 22(4) and Schedule 2, para 5(1), 5(3), 5(4) and para 10(2))

29 If the mpa refuses the application (ie because they believe there is no valid permission on the evidence), or if the mpa grant the application but determine that the permission relates to a different area or is subject to different conditions than those set out in the application, the applicant has 3 months from the date of the mpa's determination to appeal to the Secretary of State. Similarly, if the mpa fail to give notice of their decision within 3 months of receipt (or such longer period as may be agreed in writing between the applicant and the mpa), the application will be deemed to be refused on the expiry of the 3 months (or on the expiry of such longer period as may have been agreed), and the applicant has 3 months from the date of the deemed refusal to appeal to the Secretary of State. If no appeal is made within the 3 month period allowed, then:

a. in the case of a determination, or deemed determination that there is no valid permission, the permission will cease to have effect on the expiry of the 3 month period;
b. in the case of a determination that the permission is valid but over a different area or subject to different conditions from those set out in the application, any working that does not comply with the mpa's determination may be liable to enforcement action.

Procedure for appeals(Schedule 2, para 5(6), 5(7), 5(8), para 6 and para 9(3))

30 An applicant who intends to appeal to the Secretary of State must comply with the notification and certification procedures currently set out in sections 66 to 68 of the 1990 Act. Appeals must be made on an official form obtainable from the DTLR or the National Assembly for Wales, and must be accompanied by the appropriate certificates that the necessary persons have been properly notified of the application, or that the application has been properly advertised. A sample of the official form is at Annex C. The certificates and notices currently required by sections 66 to 68 of the 1990 Act on appeal are set out in Parts 1 and 3 of Schedule 5 to the Town and Country Planning General Development Order 1988 (SI 1988 No 1813), as amended by Article 2(9) and (10) of the Town and Country Planning General Development (Amendment) Order 1989 (SI 1989 No 603) and Article 10 of the Town and Country Planning General Development (Amendment) Order 1991 (SI 1991 No 1536). However, applicants should note that these may change-see paragraphs 18 and 19 above. Appeals which are not accompanied by the appropriate certificates will be invalid.

31 Before determining an appeal the Secretary of State must, if either the appellant or mpa so wish, give each of them the opportunity of appearing before or being heard by a person appointed by the Secretary of State for that purpose.

32 If at any time before or during the determination of the appeal it appears to the Secretary of State that the appellant is responsible for undue delay in the progress of the appeal, he may require the appellant to take steps to expedite the appeal and, if those steps are not taken within the specified period, dismiss the appeal.

33 On appeal the Secretary of State may deal with the application as if it had been made to him in the first place. He may allow or dismiss the appeal, and may reverse or vary any part of the mpa's decision whether the appeal relates to that part of it or not.

34 If, on receipt of the Secretary of State's determination, the mpa or the appellant wishes to question the validity of the Secretary of State's decision on the grounds that it is not within his powers, or that the requirements of the Act have not been complied with, they may apply to the High Court for the decision to be reviewed. Any such application must be made within 6 weeks of the date of the Secretary of State's determination.

35 Once an appeal has been finally determined, then:

a. in the case of a determination that there is no valid permission, the permission will cease to have effect from the date of the final determination;
b. in the case of a determination that the permission is valid but over a different area or subject to different conditions from those set out in the application, any working that does not comply with the determination may be liable to enforcement action.

Procedure following finaldetermination-entry of details in Planning Register (Schedule 2, para 3, para 9(1), 9(2) and para 10(2))

36 An application for registration is finally determined when all the relevant proceedings have

been completed and any time periods for appeal and redetermination have expired. That is an application is finally determined when:

a. where the mpa grant the application as submitted (and there is therefore no right of appeal) - on the date the application is granted.
b. where an application for registration is refused or is granted on terms different from those set out in the application and no appeal is made within 3 months from the mpa's determination - on the expiry of the 3 months.
c. where an application has been determined, or redetermined, by the Secretary of State (either on appeal or "call in") and no appeal is made to the High Court within 6 weeks of the Secretary of State's determination-on the expiry of the 6 weeks.
d. where there is an appeal to the High Court against the Secretary of State's decision and that appeal is finally refused - the date of that refusal.

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

Applicationsfor determination of conditions

Time limits for applying (Section 22(5), Schedule 2 para 2(4) and 2(5))

38 Once an application for registration of an IDO permission has been granted by the mpa or finally determined by the Secretary of State, an application must be made to the mpa for determination of the conditions to which the permission is to be subject. The application must set out the proposed conditions.

39 In the case of dormant sites, there is no time limit for the submission of such applications, but working cannot lawfully recommence on the site until an application has been made and the conditions have been finally determined.

40 In any other case, an application must be submitted to the mpa within 12 months (or such longer period as the mpa may agree in writing) from the date the application for registration was approved by the mpa or was finally determined on appeal. If no application is submitted within the 12 months (or longer period agreed), the permission will cease to have effect on the expiry of that period.

Who shouldapply and who should be notified of application (Schedule 2, para 2(2), para 4(5), 4(7), 4(8) and para 10(1))

41 The persons entitled to apply to the mpa for determination of conditions are:

a. the freeholder of any part of the land to which the permission relates; or,
b. the tenant of any part of the land to which the permission relates with more than 7 years lease left to run; or,

c. any person who is entitled to an interest in any mineral in the land to which the permission relates.

Provided that they hold the necessary entitlement, it is expected that the most appropriate person to apply for approval of a scheme of conditions will be the person who is or will be responsible for operating the site.

42 Any person who intends to apply for determination of a scheme of conditions must comply with the notification and certification procedures currently set out in sections 65 to 68 of the 1990 Act. These require an applicant to:

a. publish details of the intended application in a local newspaper;
b. post a copy of the notice of application on the land; and,
c. notify any other person who is a freeholder or tenant of any part of the land to which the permission relates, any other person who has an interest in any mineral in the land, and any agricultural tenant.(If the applicant is unable to find out the names and addresses of all or any of the other owners, tenants or persons with an interest in the minerals, details of the application must be published in a local paper not more than 21 days before the application is submitted.)

However, applicants should take note of the advice in paragraphs 18 and 19 above of a possible change to these procedures.

Procedure for applying and application form (Schedule 2, para 4(1), 4(2), 4(5), 4(7), 4(8) and para 10(1))

43 Applications for approval of conditions must be made on an official form obtainable from the mpa and must be accompanied by the appropriate certificates that the necessary publicity, notification and certification requirements have been complied with. A sample of the official form is at Annex B. The certificates and notices currently required by sections 65 to 68 of the 1990 Act are set out in Schedule 4 and Parts 1 and 2 of Schedule 5 to the Town and Country Planning General Development Order 1988 (SI 1988 No 1813), as amended by Article 2(9) and (10) of the Town and Country Planning General Development (Amendment) Order 1989 (SI 1989 No 603) and Article 10 of the Town and Country Planning General Development (Amendment) Order 1991 (SI 1991 No 1536). However, applicants should note that these may change - see paragraphs 18 and 19 above. Applications which are not accompanied by the appropriate certificates will be invalid.

More than one application in respect of the same permission (Schedule 2, para 8)

44 As with applications for registration of permissions, any person who is an owner or tenant of any part of the land to which a registered permission relates (or who holds an interest in any mineral to which the permission relates), may apply to the mpa for determination of conditions. The Act makes similar provision for dealing with situations where there is more than one application in respect of the same permission (see paragraph 21 above). That is, each eligible person may make only one application for the determination of conditions. If there is more than

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

45 As with applications for registration, applicants are strongly advised to co-ordinate their approach with any other persons eligible to apply for determination of conditions, and to discuss the position with the mpa with a view to submitting a single application covering all their respective interests.

46 In most cases, it is expected that the most appropriate applicant will be the person who is, or will be, responsible for operating the site, provided that they hold the necessary interest in the land or minerals.

Matters to be submitted with application (Schedule 2, para 2(1), 2(3) and para 4(1) and 4(2))

47 Applications for determination of conditions should be accompanied by the appropriate certificates (see paragraph 43 above), details of the determination of the application for registration of the permission, and a scheme of operating, restoration and, where appropriate, aftercare conditions; and must, so far as reasonably practicable, give the information required by the form. Advice on conditions will be given in MPG9 which will be published shortly and on which the Department is currently consulting.

Procedure on receipt of application - notification of receipt and entry on planning register (Schedule 2, para 4(1) and para 9(1) and 9(2))

48 The mpa should first check that the application form is accompanied by the necessary certificates, and that all have been properly completed and signed. If there are any deficiencies which would invalidate the application, the mpa should inform the applicant without delay.

49 The mpa must acknowledge receipt of the application in writing as soon as practicable and must enter details of the application in the Planning Register or, where they are not the authority responsible for keeping the register, they must pass the details to the relevant district planning authority who must enter them in the register.

Matters to be taken into account by mpas in consideration of applications (Schedule 2, para 2(6))

50 If they are satisfied that the application is valid, the mpa should have regard to the advice in the forthcoming MPG9 in determining whether the conditions set out in the application should apply to the permission, or whether modified or different conditions should apply. It is not open to the mpa to refuse a valid application.

Time period for determination of applications by mpas (Schedule 2, para 2(6))

51 The mpa must notify the applicant in writing of their decision on the application within 3 months of receipt (or such longer period as may be agreed in writing between the applicant

and the mpa) or the application will be deemed to be approved as submitted. If the application is granted on terms different from those set out in the application, the person who made the application has a right of appeal to the Secretary of State (see paragraph 52 below).

Time period for appeals(Section 22(2) and Schedule 2, para 5(2), 5(3), 5(5) and para 10(2))

52 If the mpa grant the application subject to conditions different from those set out in the application, the applicant has 6 months from the date of the mpa's determination to appeal to the Secretary of State. If no appeal is made within the 6 month period allowed, the mpa's decision will be treated as final on the expiry of that period, and the permission will have effect subject to the conditions determined by the mpa.

Procedure for appeals (Schedule 2, para 5, para 6, and para 9(3))

53 The procedure for appeals against an mpa's determination of conditions different from those set out in the application, is the same as the procedure for appeals against an mpa's refusal of an application to register a permission, including the right to a hearing and the right of appeal to the High Court (see paragraphs 30 to 35 above). The appeal must be made on an official form obtainable from the DTLR or the National Assembly for Wales, and must be accompanied by the appropriate certificates required by sections 65 to 68 of the 1990 Act. A sample of the official form is at Annex C. The certificates and notices currently required by sections 65 to 68 of the 1990 Act are set out in Schedule 4 and Parts 1 and 3 of Schedule 5 to the Town and Country Planning General Development Order 1988 (SI 1988 No 1813), as amended by Article 2(9) and (10) of the Town and Country Planning General Development (Amendment) Order 1989 (SI 1989 No 603) and Article 10 of the Town and Country Planning General Development (Amendment) Order 1991 (SI 1991 No 1536). However, appellants should note that these may change - see paragraphs 18 and 19 above. Appeals which are not accompanied by the appropriate certificates will be invalid.

54 Once an appeal has been finally determined, the permission will have effect subject to the conditions determined by the Secretary of State.

Procedure following final determination - entry of details in Planning Register (Schedule 2, para 3(2), 3(3), para 9(1), 9(2), and 10(2))

55 An application for approval of conditions is finally determined when all the relevant proceedings have been completed and the relevant time periods for appeal and redetermination have expired. That is an application is finally determined when:

a. where the mpa determine that the conditions set out in the application should apply and there is therefore no right of appeal - on the date the application is determined by the mpa;
b. where an application for determination of conditions is granted on terms different from those set out in the application and no appeal is made within 6 months of the mpa's determination - on the expiry of the 6 months;
c. where an application has been determined, or redetermined, by the Secretary of State (either on appeal or "call in") and no appeal is made to the High Court within 6 weeks of the Secretary of State's determination - on the expiry of the 6 weeks;

d. where there is an appeal to the High Court against the Secretary of State's decision and that appeal is finally refused - the date of that refusal.

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

Go to table of contents

Annexes A - C: Official Forms for Applications and Appeals

Annex A: Official Form for Application for Registration of IDO Permission (Old Mining Permission) is available below to download.

Annex B: Official Form for Application for Determination of Condition IDO Permission is to be Subject is available below to download.

Annex C: Official Form for Appeals to the Secretary of State is available below to download.

Note on Certificates and Notices Required with Appeal Forms

The certificates and notices currently required by sections 66 to 68 of the Town and Country Planning Act 1990 to accompany an appeal against refusal of an application to register an IDO permission or against approval of an application on terms different from those set out in the application are set out in Parts 1 and 3 of Schedule 5 to the Town and Country Planning General Development Order 1988 (SI 1988 No 1813), as amended by the Town and Country Planning General Development (Amendment) Order 1989 (SI 1989 No 603) and Article 10 of the Town and Country Planning General Development (Amendment) Order 1991 (SI 1991 No 1536).

The certificates and notices currently required by sections 65 to 68 of the 1990 Act to accompany an appeal against the mpa's determination of conditions different from those set out in the application are set out in Schedule 4 and Parts 1 and 3 of Schedule 5 to the Town and Country Planning General Development Order 1988 (SI No 1813), as amended by the Town and Country Planning General Development (Amendment) Order 1989 (SI 1989 No 603) and Article 10 of the Town and Country Planning General Development (Amendment) Order 1991 (SI 1991 No 1536).

Appellants should note that these requirements may change and they should consult the mpa or the DOE or the Welsh Office, well in advance of submitting an appeal to check what certificates and notices are required.

Go to table of contents

Annex D: Bibliography/ Reference

Primary Legislation

Town and Country Planning Act 1947
Town and Country Planning Act 1962
Town and Country Planning Act 1968
Town and Country Planning Act 1971
Town and Country Planning (Minerals) Act 1981
Town and Country Planning Act 1990
Town and Country Planning (Consequential Provisions) Act 1990
Planning and compensation Act 1991

Statutory Instruments

Town and Country Planning (Minerals) Regulations 1971 (SI 1971 No 756)
Town and Country Planning (Compensation for Restrictions on Mineral Working) Regulations 1985 (SI 1985 No 698)
Town and Country Planning General Development Order 1988 (SI 1988 No 1813)
Town and Country Planning General Development (Amendment) Order 1989 (SI 1989 No 603)
Town and Country Planning (Compensation for Restrictions on Mineral Working)(Amendment) Regulations 1990 (SI 1990 No 803)
Town and Country Planning General Development (Amendment) Order 1991 (SI 1991 No 1536)

Circular and MPGs

DOE/WO Circular 1/85: Use of Conditions
DOE/WO Circular 14/91; Planning and Compensation Act 1991 MPG 2 1988: Applications, Permissions and Conditions
MPG 4 1988: The Review of Mineral Working Sites

Other

White Paper on the Environment "This Common Inheritance"; CM1200: September 1990
DOE/WO Consultation Paper "Planning Applications; Publicity and Notification": 17 July 1991.