

Circular 2/1999: Town and country planning (Scotland) (minerals) regulations 1998

This Circular supersedes SDD Circular 65/1971.

The Chief Executive, Local Authorities

Copy to: The Director of Planning

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Planning series:

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Introduction

1. This Circular explains the provisions of the Town and Country Planning (Minerals) (Scotland) Regulations 1998 (SI 1998 No.2913 (s.169)) which come into force on 25 January 1999. These Regulations replace the Town and Country Planning (Minerals) Regulations 1971 as amended by the Town and Country Planning (Minerals) Regulations 1982. The new Regulations modify certain provisions of the Town and Country Planning (Scotland) Act 1997 (the "1997 Act") as they apply to development consisting of the winning and working of minerals or involving the depositing of mineral waste.

Summary of changes

2. The Regulations update the statutory references in the 1971 Regulations and repeal, by omission, those which are now redundant. The Regulations do not, with one exception, contain any substantive change in policy or effect. The exception is the repeal of Regulation 5 of the 1971 Regulations. This provides that, in relation to mining operations, an enforcement notice for breach of planning conditions or limitations may be served within 4 years of non-compliance coming to the notice of the planning authority. This means that the time limits for enforcement action in respect of a breach of planning control set out in Section 124 of the 1997 Act will now apply unmodified to minerals development. This is consistent with the provisions

of Section 74 of the Town and Country Planning (Scotland) Act 1997, whereby conditions are now subject to periodic review thus removing the effect of any time limitation in relation to such conditions.

Development consisting of the winning and working of minerals

3. Regulation 1 provides that for the purpose of the Regulations "development consisting of the winning and working of minerals" does not include the winning and working of minerals on agricultural land for the purposes of agricultural use in connection with that land, or the winning and working of peat for domestic use. Section 262(3) of the 1997 Act specifically precludes regulations made under Section 262(1) from applying to such development.

Modification of the meaning of "use"

4. Regulation 2 modifies the meaning of "use". Section 277(1) of the 1997 Act provides the general position that "use", in relation to land, does not include the use of land for the carrying out of any building or other operations on it. Regulation 2(1) modifies the general rule so that development consisting of the winning and working of minerals is a "use" in relation to the discontinuance of a use of land for the purposes of the provisions specified in Parts I and II of Schedule 18 to the 1997 Act. This is necessary to ensure consistency with the power to make orders requiring the discontinuance of mineral working in paragraph 1 of Schedule 8 to the 1997 Act. Regulation 2(2) provides that for all other purposes of those provisions "use" does not include the use of land for development consisting of the winning and working of minerals. This is necessary to ensure that mineral development being carried out without the benefit of planning permission cannot obtain established use rights.

Time when development begun

5. Regulation 3 and the Schedule to the Regulations modify specific provisions of the 1997 Act. Paragraph 1 of the Schedule modifies Section 27 (time when development begun) of the 1997 Act. The effect of the modification is that for the purposes of Sections 58, 59 and 61 of the 1997 Act development consisting of the winning and working of minerals is taken to be begun on the earliest date on which the winning and working of minerals to which the relevant grant of planning permission relates begins. Section 58 of the 1997 Act provides that every planning permission granted or deemed to be granted shall be granted subject to the condition that the development to which it relates must be begun not later than 5 years from the date of grant of the planning permission or such longer or shorter period as the planning authority may in a particular case direct. If development has not begun within the specified period the planning permission lapses. Section 59 makes similar provision with respect to outline planning permissions. Section 61 enables a planning authority to serve "a completion notice" where development has begun within the period specified under Sections 58 or 59 but has not been completed.

6. This modification was originally introduced in the 1971 Regulations for 2 reasons. First, Section 66(1) of the Town and Country Planning (Scotland) Act 1969 (the "1969 Act") introduced a provision under which planning permissions granted before 8 December 1969 would lapse on 9 December 1974 if the development had not

begun by that date. Regulation 7 of the 1971 Regulations extended that time limit from 5 to 10 years. Secondly, Section 38(2) of the 1972 Act provided that where planning permission does not include a specified time limit for the beginning of development, the period deemed to be specified would be 5 years, beginning with the date of grant. For both these purposes, Regulation 7 of the 1971 Regulations defines the beginning of development for minerals permissions as the time when the winning and working of minerals was begun.

7. The intention was that the carrying out of preparatory works, which need not be very substantial, should not be sufficient either to exempt a permission granted before 8 December 1969 from the 10 year rule or to exempt a permission granted after 8 December 1969 from the 5 year rule. Whilst there is no longer any need for specific provision to deal with the permissions granted before 8 December 1969 (they were either implemented or lapsed under the 10 year rule), the 5 year rule still applies by virtue of Section 58 of the 1997 Act - although it is open to the planning authority to specify a longer or shorter period than 5 years in individual cases.

8. In the Government's view, it remains the case the preparatory works should not be regarded as commencing development for the purposes of Sections 58, 59 and 61; otherwise fairly minor works would be sufficient to exempt the development from the 5 year rule with the risk that a site could be left unworked indefinitely since a prohibition order can only be made where "development consisting of the winning and working of minerals has occurred....". (Paragraph 3(1) of Schedule 8 to the 1997 Act).

9. In some cases it may be necessary, or indeed a requirement of the planning permission, to carry out substantial preparatory works before the actual winning and working of minerals begins. Where this is likely to take longer than 5 years, planning authorities should specify an appropriate longer period under the provisions of Sections 58(1)(b) of the 1997 Act. In cases where preparatory works are unlikely to be completed before the period specified for the beginning of development under Section 58, it is open to the owner or operator to apply to the planning authority for the condition to be varied under Section 42 of the 1997 Act. Planning authorities should consider such applications reasonably having regard to the provisions of the development plan and to any other material considerations.

10. As explained above, modification of Section 27 is for the purposes of Sections 58, 59 and 61 only. Enforcement action can only be taken where a "breach of planning control" occurs. This is defined in Section 123 of the 1997 Act as:
(a) carrying out development without the required planning permission; or
(b) failing to comply with any condition or limitation subject to which planning permission has been granted.

11. In short, the effect is:

If neither preliminary works nor winning and working has commenced - the development has not been begun and there is no development which the planning authority could make the subject of enforcement action, but the 5 year period runs from the date of grant of the permission and if winning and working is not started within that period the permission lapses.

If preliminary works have commenced but winning and working has not - the planning authority can take enforcement action against any breach of conditions relating to the preliminary works, but cannot require the works themselves to be carried out. The 5 year period runs from the date of grant of the permission and if winning and working is not started within that period the permission lapses. If winning and working has commenced within the 5 year period but conditions have not been complied with - the winning and working could be regarded as being carried out in breach of planning permission (as opposed to breach of condition).

Compensation when planning permission revoked

12. Paragraph 2 of the Schedule to the Regulations modifies Section 76 (compensation where planning permission is revoked or modified) of the 1997 Act. Section 76 provides that where planning permission is revoked or modified compensation may be claimed by any person with an interest in the land or minerals for any loss or damage sustained which is directly attributable to the revocation or modification. Such loss or damage would include loss or expenditure in connection with buildings, plant or machinery. However, in the case of minerals development, it may be possible for the developer to put buildings, plant or machinery to another use. Paragraph 2 of the Schedule therefore modifies Section 76 to provide that in calculating the compensation payable following an order revoking or modifying planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste, no amount shall be allowed for loss in respect of buildings, plant or machinery unless the claimant can provide that he is unable to use them or can only use them at a loss. Where a claim includes a claim for expenditure or loss in respect of buildings etc, the Lands Tribunal for Scotland may direct that that part of the claim may be severed from the remainder of the claim and be dealt with at a later date.

Further copies and enquiries

13. Enquiries about this Circular should be addressed to Mr Ian Mitchell, Scottish Office Development Department, Planning Division, 2-H32, Victoria Quay, Edinburgh, EH6 6QQ (Telephone 0131-244-7062). Further copies and a list of planning Circulars may be obtained from Miss Lisa Mullen (0131-244-7066) at the same address.

14. Copies of the Town and Country Planning (Scotland) (Minerals) Regulations 1998 (SI 1998 No.2913 (s.169)) may be purchased from The Stationery Office Ltd, 71 Lothian Road, Edinburgh, EH3 9AZ (Telephone 0131 622-7050).