

*The application of the
Environmental Impact
Assessment Directive to ‘stalled’
reviews of old mineral
permissions and periodic
reviews of mineral permissions
in England*

Consultation Paper

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

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

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Communities and Local Government Publications
PO Box 236
Wetherby
West Yorkshire
LS23 7NB
Tel: 0870 1226 236
Fax: 0870 1226 237
Textphone: 0870 1207 405
E-mail: communities@twoten.com
or online via the website: www.communities.gov.uk

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Chapter 1

Introduction

THE PURPOSE OF THIS CONSULTATION

- 1.1 This consultation paper seeks your comments on a proposal to amend the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (the “EIA Regulations 1999”) in relation to England. The proposed amendments would put beyond doubt the application of the EIA Regulations 1999 to applications for the review of old minerals permissions submitted before 15 November 2000 but not yet determined. They would provide for the sanction of suspension of minerals development to apply to sites which are the subject of such applications which remain undetermined because the applicant fails to supply the necessary requested environmental information within a proposed period of 3 months of the coming into force of the amending regulations.
- 1.2 We are also consulting on some additional and stronger sanctions which would apply to all reviews of mineral permissions for continuing failure to provide environmental information. Consultation is underway on similar proposals in Wales (www.wales.gov.uk).

SPECIFIC QUESTIONS TO CONSULTEES

- 1.3 Comments are invited on any aspect of the proposals and also the following specific questions:

Questions from Chapter 4

Question 1: Do you agree that there is a need for statutory provision to require Environmental Statements (ESs) and further environmental information to be provided for those initial reviews which are ‘stalled’ for no other reason than requested environmental information has not been provided? If not, please explain how such reviews should be progressed and concluded. (paragraphs 4.1 and 4.6 – 4.7)

Question 2: Do you agree with the Secretary of State’s preferred option of making further regulations to apply the EIA regulations 1999, as amended, including, as a minimum, and subject to comments on the proposed sanctions described in Chapter 5, the sanction of automatic suspension of operations, to the stalled cases? If not, please describe any other option which you think is preferable and explain why. (paragraphs 4.2 – 4.3)

Question 3: Do you agree the scope of the proposed regulations? If not, please describe how they might be amended. (paragraph 4.4)

Question 4: Do you agree that 3 months from the coming into force of the proposed regulations is a reasonable period to be specified for the provision of the relevant environmental information from applicants? If not, what is the reason and should the period be longer or shorter? (paragraph 4.5)

Question 5: Do you have any other comments on the proposed regulations, including any practical implications you think they might have?

Questions from Chapter 5

Question 6: Do you agree with the Secretary of State that the proposed regulations described in Chapter 4 should also include, as the Welsh Assembly Government have proposed, additional provision so that if additional screening information is not provided then mineral planning authorities (MPAs) could apply the sanction of automatic suspension? (paragraph 5.2)

Question 7: What are your views on the proposal to require MPAs to consider in every case, following automatic suspension of mineral operations, whether to make suspension orders on the expiration of 12 months suspension? (paragraphs 5.3(a), 5.4 – 5.7 and 5.9)

Question 8: What are your views on the proposal to require MPAs to make prohibition orders where the requisite screening or environmental information has not been provided within 2 years of the automatic suspension of operations? In particular, how do you view the human rights issue in such cases, which hinges on balancing the interests of the local community and the environment against those of the operator? (paragraphs 5.3(b) and (c), 5.4 – 5.6, 5.8 – 5.12 and 5.14 – 5.15)

Question 9: What are your views on the possibility that compensation might have to be paid to operators pursuant to the imposition of either a prohibition order or a suspension order? Do you consider that, in view of the “culpability” factor in respect of a longstanding failure to provide the necessary environmental information, that there is a case for limiting whatever compensation payments might normally be payable pursuant to the making of such orders?(paragraph 5.12)

Question 10: What are your views on the proposal to amend paragraph 3(2) of Schedule 9 to the Town and Country Planning Act 1990 (“the 1990 Act”) so that an MPA may presume that operations have permanently ceased where automatic suspension has continued for a period of two years and the screening or environmental information has not been provided without good reason. (paragraphs 5.3(c) and 5.10 – 5.11)

Question 11: What are your views on the necessity of including in the proposed regulations described in Chapter 4 specific provision for the Secretary of State to use her default powers (under paragraph 11 of Schedule 9 to the 1990 Act) to make suspension and prohibition orders in relation to reviews of mineral planning permissions? (paragraph 5.13)

Question 12: Do you have any other comments on the proposed sanctions for non-provision of environmental information described in this chapter (Chapter 5), including their practical implications?

Question 13: Do you have any comments on the partial Regulatory Impact Assessment ("RIA") at Appendix B, including quantification of the costs and benefits of each of the options identified? Specifically, the minerals industry is asked for estimates of the potential costs if the proposed sanctions of suspension and prohibition of permissions are used. MPAs are asked to comment on whether the use of the proposed sanctions of suspension and prohibition of permissions for non-provision of environmental information will result in additional costs to them and if so to estimate those costs. (paragraphs 46–51)

RESPONDING TO THIS CONSULTATION

1.4 Comments, in writing by email or post, should be sent to:

Richard Brown
Planning – Resources and Environment Policy Division
Communities and Local Government
Zone 4/C2
Eland House
Bressenden Place
London SW1E 5DU

Email: Dick.Brown@communities.gsi.gov.uk
Tel: 0207 944 4822
Fax: 0207 944 3859

- 1.5 The closing date for responses is: **12 March 2007**. When commenting, please make clear whether you represent any organisation or group and in what capacity you are responding. A list of consultees is at **Appendix C**.
- 1.6 A summary of responses will be published on the Communities and Local Government website within 3 months of the end of the consultation period.
- 1.7 All information in responses, including personal information, may be subject to publication or disclosure under freedom of information legislation. If a correspondent requests confidentiality, this cannot be guaranteed and will only be possible if considered appropriate under the legislation. Any such request should explain why confidentiality is necessary. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.
- 1.8 This consultation document has been produced in accordance with the Government's *Code of Practice on Consultation*. The criteria are reproduced in **Appendix D** of this consultation paper.

Chapter 2

Background

2.1 The 1990 Act, as amended by the Planning and Compensation Act 1991 (the PCA 1991) and the Environment Act 1995 (the EA 1995), provides the basis for the control of mineral development in England and Wales. In general, planning permission is required for the working of minerals, for the erection of any associated plant or building, for the disposal of mineral waste or for other ancillary purposes. Some minor mineral development does not require specific planning permission because it has been granted permitted development rights by the Town and Country Planning (General Permitted Development) Order 1995. Proposals for new mineral development which are likely to have significant effects on the environment are subject to environmental impact assessment. Usually, mineral planning permissions are granted subject to a wide variety of planning conditions which ensure the environmental acceptability of the mineral operations. These conditions also provide for appropriate restoration and aftercare of the site after mineral extraction has ceased.

LEGISLATION TO REVIEW OLD MINERAL PERMISSIONS

- 2.2 Section 22 of and Schedule 2 to the PCA 1991 introduced provisions for the registration of mineral permissions originally granted under Interim Development Orders (“IDOs”) and subsequent application by mineral operators for determination of new conditions to be attached to such permissions. These are permissions granted after 21 July 1943 and before 1 July 1948, many of which were granted subject to few, if any, conditions to mitigate the impact of operations or to govern the restoration and after-use of the site once operations ceased. The aim of the PCA 1991 provisions was to ensure that, in a relatively short period of time, all valid IDO permissions would be subject to operating conditions that accord with up-to-date environmental standards and that the land covered by the permissions would be promptly restored to an appropriate after-use once operations permanently ceased.
- 2.3 The process of modernising old mineral permissions was continued by section 96 of and Schedules 13 and 14 to the EA 1995. Schedule 13 contains a registration and initial review procedure very similar to that in the PCA 1991. It applies to mineral planning permissions granted between 1 July 1948 and 21 February 1982. Schedule 14 contains provisions for the subsequent periodic review of **all** specific permissions for mineral development i.e. IDO permissions; those permissions subject to initial review under Schedule 13 and all other permissions issued after 21 February 1982. These periodic reviews are to be held at 15 year intervals from the date of either a previous review, or, if no review has taken place, from the date of the latest mineral permission relating to the site. There is provision for operators to request postponement of a periodic review and a power for the Secretary of State to specify, by order, a different period between reviews.

- 2.4 Both the PCA 1991 and EA 1995 powers provide that operators submit applications to MPAs for reviews of their permissions with schemes of suggested conditions. Any new conditions only apply from the date the application is finally determined by the authority, or the Secretary of State where the MPA's determination is appealed or called in for her decision or in consequence of an application to the High Court under section 288 of the 1990 Act where the Secretary of State's determination is challenged. Until new conditions are finally determined, operators at active (i.e. working) sites can continue to work under existing conditions that apply to the permission.

APPLICATION OF ENVIRONMENTAL IMPACT ASSESSMENT TO CONDITIONS REVIEWS

- 2.5 When the minerals planning legislation was introduced in the 1990s, it was assumed that, because reviews of IDO consents under Schedule 2 to the PCA 1991 and of old mineral permissions under Schedules 13 and 14 to the EA 1995 did not grant permission for mineral extraction but merely introduced up-to-date operating conditions, there was no need to apply the provisions of the Environmental Impact Assessment (EIA) Directive¹ before new operating conditions were determined either by MPAs or by the Secretary State on appeal. In short, because the consent which allows the quarry to operate was the planning permission granted by an old mineral permission, the imposition of new operating conditions was not considered to be a "development consent" within the meaning of the Directive.
- 2.6 However, in February 1999, the House of Lords ruled (in *R v North Yorkshire County Council ex parte Brown and Cartwright*) that the imposition of conditions by a mineral planning authority in relation to development authorised by IDOs under section 22 of and Schedule 2 to the PCA 1991 was a development consent under the EIA Directive. Therefore, the need for environmental impact assessment had to be considered in accordance with the EIA Directive prior to the imposition of new operating conditions. A subsequent judgment in the High Court (*R v Peak District National Park ex parte Bleaklow Industries Ltd*) extended this to the review of old mineral permissions under Schedule 13 to the EA 1995. The need for EIA should similarly be considered when determining applications for the periodic review of conditions under Schedule 14 to the EA 1995.
- 2.7 In response to these judgments, the Town and Country Planning (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2000² (SI 2000/2867) (the "EIA Regulations 2000") were introduced to amend the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999³ (SI 1999/293) and apply those regulations to statutory reviews of conditions attached to existing permissions for mineral development. The EIA Regulations 1999, as amended, prohibit the determination of conditions without environmental information first being taken into consideration. They also empower MPAs in determining applications for new operating conditions

1. Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of the European Parliament and of the Council. <http://ec.europa.eu/environment/eia/full-legal-text/85337.htm>

2. <http://www.legislation.hmsso.gov.uk/si/si2000/20002867.htm>

3. <http://www.hmsso.gov.uk/si/si1999/19990293.htm>

for mineral sites, or the Secretary of State in relation to appeals against these determinations or called-in applications, to require an ES to be produced to inform the determination of the application or appeal where the remaining development has a significant effect on the environment (as defined in the regulations). They also apply the mineral planning provisions in the PCA 1991 and the EA 1995 with certain amendments. The amended regulations provide for the suspension of mineral development where certain procedural requirements or deadlines are not met, until such time as the requirements are met (regulations 26A (3), 26A (5), 26A (16) to (21)).

GUIDANCE ON THE APPLICATION OF ENVIRONMENTAL IMPACT ASSESSMENT TO CONDITIONS REVIEWS

2.8 Guidance issued in November 2000⁴ by the former Department of the Environment, Transport and the Regions made clear its advisory, informal status and the fact that only the Courts can make an authoritative statement of the law. It advised that the EIA Regulations 1999, as amended, were not retrospective and therefore applied only to applications for determination of conditions reviews made **after** 15 November 2000 (the date on which the regulations came into force). Informal guidance issued in October 1998⁵ and in March 2000⁶ advised that for applications for determination of new conditions **pre-dating** 15 November 2000, MPAs and mineral operators should voluntarily apply the principles of the EIA Regulations 1999. That is, for relevant applications where either the MPA or the Secretary of State on call-in or appeal, decides that the remaining mineral development is EIA development (as defined in the regulations), the applicant should provide an ES voluntarily within a reasonable timescale. For most applications pre-dating 15 November 2000, applicants have supplied the requested information and new conditions have been determined.

4. <http://www.communities.gov.uk/index.asp?id=1504637>

5. <http://www.communities.gov.uk/index.asp?id=1144720>

6. <http://www.communities.gov.uk/index.asp?id=1144722>

Chapter 3

The Problem of ‘Stalled’ Reviews of Old Mineral Permissions

- 3.1 For some time, the Secretary of State has been aware that there remain applications for new mineral operating conditions, which were submitted before 15 November 2000 when the EIA Regulations 2000 amending the EIA Regulations 1999 took effect, which remain undetermined.
- 3.2 We know from information supplied by MPAs in England that there are 41 applications for initial review of conditions under Schedule 13 to the 1995 Act which are ‘stalled’ for a variety of reasons. For example, in some cases, operators are awaiting decisions on planning applications for new, replacement, extraction sites which, if successful, would mean that the sites which are the subject of old mineral permissions would no longer be needed. Clearly, in these circumstances, operators are reluctant to provide ESs for sites which may cease working in the near future. However, there are some applications which are ‘stalled’ for no other reason than the operators have not provided an ES or further environmental information when requested to do so. In Wales there are an estimated 18 applications which are ‘stalled’ mainly because the environmental information required to progress the applications has not been provided by the applicants.

THE NEED FOR ACTION TO BRING ‘STALLED’ CONDITIONS REVIEW APPLICATIONS TO A CONCLUSION

- 3.3 The Secretary of State has encouraged in successive guidance notes, and most recently in a letter in April 2006 to owners and operators of the 41 sites where applications are currently ‘stalled’, the voluntary provision of the requested environmental information without further delay. Where, in the example cited in the previous paragraph, planning applications for alternative sites remain to be determined, the Secretary of State encourages MPAs to come to a decision on those applications as soon as possible. If the application for an alternative site is unsuccessful, operators should then provide the requested environmental information promptly to enable the determination of new conditions without further delay. MPAs are also reminded that it may be appropriate to make orders prohibiting the resumption of mineral development under Schedule 9 to the 1990 Act at sites where no working has taken place to any substantial extent for a period of at least 2 years and where it appears to the MPA that development is unlikely to resume to any substantial extent. Chapter 5 of this consultation paper makes proposals for sanctions to apply to all reviews of mineral operating conditions, for continuing non-provision of environmental information. One of these proposed sanctions is a requirement for MPAs to make prohibition orders when activity on a site has been suspended for two years because required environmental information has not been provided.

- 3.4 The Secretary of State is firmly of the view that it is unreasonable for reviews of conditions to be delayed, in some cases for a considerable number of years, because environmental information has not been provided by the applicant. Delays in providing environmental information in respect of active mineral sites mean that mineral operations are continuing under old permissions with few, if any, conditions to mitigate the environmental impacts of mineral working, contrary to the objectives of the EIA legislation and to the court judgments on the application of that legislation.
- 3.5 In view of the length of time which has elapsed since the Secretary of State first advised on the voluntary provision of the necessary environmental information to inform the determination of modern operating conditions at mineral sites, it is clear that exhortations alone are insufficient. The Secretary of State believes that statutory backing and a suitable sanction are needed to ensure that speedy progress is made finally to enable the determination of the relatively few applications which are 'stalled' for no other reason than the operators are refusing to provide the requested environmental information.

OPTIONS FOR STATUTORILY APPLYING ENVIRONMENTAL IMPACT ASSESSMENT TO 'STALLED' CONDITIONS REVIEW APPLICATIONS

- 3.6 When the former Office of the Deputy Prime Minister first sought information on 'stalled' applications in September 2004⁷ it was suggested that powers in paragraph 3A of Schedule 14 to the 1995 Act might be used to enable the Secretary of State, by order, to bring forward the date of the first periodic review of the mineral permissions which were the subject of 'stalled' initial reviews. Those first periodic reviews would need to be carried out in accordance with the EIA Regulations 1999, as amended, which provide the sanction of suspension of operations in the event of non-compliance with requests for environmental information.
- 3.7 However, the comments received in response to the September 2004 letter indicated several potential problems with this possible approach. First, the date of these periodic reviews would need to be set around 15 months after the coming into effect of the order(s) to allow for the statutory 12 months notice period by authorities to operators of a forthcoming review. Adding on the time needed to allow operators a final opportunity to provide the necessary information voluntarily, and then, if necessary, to draft, consult on and bring into effect any order(s), it could be 2 to 3 years more before new operating conditions for all the 'stalled' applications were finally determined. Secondly, the compensation provisions for new conditions determined on periodic review which affect working rights are more favourable than those determined on initial review. In considering this route as a means to resolve the 'stalled' applications, the Secretary of State was concerned not to inadvertently reward, through the more favourable compensation provisions, operators who have not voluntarily complied with requests to provide ESs.
- 3.8 The proposed regulations described in the next chapter would avoid these problems.

7. <http://www.communities.gov.uk/index.asp?id=1504637>

Chapter 4

Proposed Regulations to Apply Environmental Impact Assessment to ‘Stalled’ Conditions Review Applications

- 4.1 Some commentators have expressed the view that the EIA Regulations 1999, as amended, apply irrespective of the date of the application – that is, to the stalled applications as well as those made after the date of coming into force of the amending regulations. The effect of this would be to enable MPAs in determining applications for new operating conditions for mineral sites, or the Secretary of State in relation to call-in and appeals against these determinations, both to require an ES to be produced to inform the determination of the new conditions and to suspend the permission if an ES is not forthcoming within a reasonable period. However, without a Court decision, this remains uncertain.
- 4.2 Consequently, the Secretary of State’s preferred option for ensuring that EIA requirements are applied to the relatively few outstanding applications for initial review of conditions attached to old mineral permissions which are ‘stalled’ for want of the necessary environmental information is to legislate. This would put beyond doubt that the 1999 Regulations, as amended, including the sanction of suspension of operations for failing to provide environmental information within a reasonable period, apply to **all** applications and appeals relating to the review of minerals conditions where EIA is required, irrespective of the date of the application.
- 4.3 Subject to comments received in response to this consultation paper, including comments on proposed sanctions to apply to all reviews of mineral permissions (see Chapter 5), the Secretary of State therefore proposes, as a minimum, to make further regulations, the effect of which would be to apply the EIA Regulations 1999, including the amendments made in 2000, to applications submitted before 15 November 2000 which remain undetermined. The proposed regulations would enable MPAs to require an ES to be produced to inform the determination of the new conditions. They would also (as a minimum and subject to comments on the proposed sanctions described in Chapter 5), automatically suspend the permission (except in respect of any restoration and aftercare conditions) if an ES or further supporting environmental information is not forthcoming within a reasonable period. The suspension sanction is already included in the amended EIA Regulations 1999 (regulation 26A (16) to (21)) and applies in respect of applications submitted after 15 November 2000.

SCOPE OF THE PROPOSED REGULATIONS

- 4.4 The proposed regulations would be made under section 2(2) of the European Communities Act 1972, and would apply in relation to England only. They would apply the EIA Regulations 1999, as amended, to **all** applications and appeals

relating to reviews of conditions attached to old mining or mineral permissions. A copy of the draft regulations, which apply the sanction of automatic suspension of operations for failing to provide environmental information within a reasonable period, is set out at **Appendix A**. They need to be read in conjunction with the EIA Regulations 1999 and EIA Regulations 2000 (see footnote web links on page 8). The draft regulations do not currently provide for the proposed sanctions described in Chapter 5.

- 4.5 We propose to allow **3 months** after the coming into force of the proposed regulations for any outstanding ESs or further environmental information to be provided. If operators are genuinely seeking to supply the required information and are expected to do so within an acceptable further period then the proposed regulations would give MPAs the discretion to extend the period beyond 3 months. However, the proposed regulations would also, as a minimum and subject to comments on the proposed sanctions described in Chapter 5, contain the sanction of automatic suspension of operations where an MPA considered that the ES or further information was being unreasonably delayed even further.

PROPOSED PROVISION FOR THE SUSPENSION OF MINERAL DEVELOPMENT

- 4.6 The purpose of the suspension provisions in regulation 26A where requested environmental information is not provided is to ensure that there is some mechanism or sanction to ensure that the necessary environmental information is provided. Without this provision as a minimum, operators could continue indefinitely to operate under existing, possibly sub-standard, conditions.
- 4.7 The Secretary of State believes that all the provisions of the EIA Regulations 1999, as amended by the EIA Regulations 2000, including the sanction of automatic suspension, as a minimum and subject to comments on the proposed sanctions described in Chapter 5, for non-provision of requested environmental information, should apply equally to **all** conditions reviews, irrespective of the date of application for determination of new conditions. The only difference between stalled and other conditions review applications would relate to the period for the provision of ESs or further environmental information. The Secretary of State is proposing a period of 3 months (with provision for extension at the discretion of the MPA) after the coming into force of the proposed regulations for any outstanding environmental information to be provided in support of the stalled applications. She believes that would be a reasonable period bearing in mind the length of time which has elapsed since the applications were submitted. Question 4 below invites specific comments from consultees on whether they agree that 3 months would be a reasonable period. For all other applications the period for providing ESs or further environmental information will be at the discretion of the MPA, or Secretary of State on appeal.

OTHER ISSUES

- 4.8 The proposed amending regulations would not, in the Secretary of State's view, amount to retrospective provision since, although they would apply to applications made before coming into force, the new requirements would only apply after the date the regulations came into force. For example, the provision for automatic suspension of a mineral permission where requested environmental information is not provided would only apply if the operator failed to provide the information within the proposed period of 3 months after the coming into force of the regulations. The amending regulations would not impose retrospective requirements.
- 4.9 Comments are invited on any aspect of these proposed regulations and in particular on the following specific questions.

Question 1: Do you agree that there is a need for statutory provision to require ESs and further environmental information to be provided for those initial reviews which are 'stalled' for no other reason than requested environmental information has not been provided? If not, please explain how such reviews should be progressed and concluded. (paragraphs 4.1 and 4.6 – 4.7)

Question 2: Do you agree with the Secretary of State's preferred option of making further regulations to apply the EIA regulations 1999, as amended, including, as a minimum, and subject to comments on the proposed sanctions described in Chapter 5, the sanction of automatic suspension of operations, to the stalled cases? If not, please describe any other option which you think is preferable and explain why. (paragraphs 4.2 – 4.3)

Question 3: Do you agree the scope of the proposed regulations? If not, please describe how they might be amended. (paragraph 4.4)

Question 4: Do you agree that 3 months from the coming into force of the proposed regulations is a reasonable period to be specified for the provision of the relevant environmental information from applicants? If not, what is the reason and should the period be longer or shorter? (paragraph 4.5)

Question 5: Do you have any other comments on the proposed regulations, including any practical implications you think they might have?

Chapter 5

Proposed Sanctions Applying to All Reviews of Mineral Planning Permissions

5.1 The Secretary of State considers that there are three other provisions which should be included in the proposed new regulations described in Chapter 4 in order to make the regulations as effective as possible in support of mineral planning policy. These additional provisions are described below. They would apply to **all** reviews of mineral planning permissions, not just those which are currently 'stalled' for want of necessary environmental information.

PROPOSED PROVISION REQUIRING ADDITIONAL SCREENING INFORMATION

5.2 The amended EIA Regulations 1999 do not apply the sanction of automatic suspension of mineral development if additional information requested by an MPA or the Secretary of State to enable them to provide a screening opinion or screening direction (under regulations 5 and 6 respectively) is not forthcoming. The Welsh Assembly Government are therefore proposing to make specific provision in their regulations to apply this sanction, followed, if necessary, by the two proposed sanctions described in paragraph 5.3 below, in the event that such additional information is not provided within a reasonable period. The Secretary of State believes that a similar provision should be included in the proposed regulations for England and would welcome views on this proposal.

PROPOSED PROVISIONS FOR THE MAKING OF SUSPENSION AND PROHIBITION ORDERS

- 5.3 The Secretary of State is considering including in the proposed regulations the following additional provisions. These are:
- (a) That MPAs be **required** to **consider** making suspension orders under paragraph 5 of Schedule 9 to the 1990 Act, where operations have been suspended for a period of 12 months (pursuant to regulation 21A of the amended EIA Regulations 1999) without provision of the outstanding environmental information, if the criteria for making such an order in paragraph 5(3) of Schedule 9 are met. These criteria are:
 - (i) that no winning and working of minerals or depositing of mineral waste has occurred to any substantial extent at the site for at least 12 months; but
 - (ii) it appears to the MPA on the available evidence that a resumption of such development is likely.

- (b) That MPAs be **required** to make orders prohibiting resumption of mineral working under paragraph 3 of Schedule 9 to the 1990 Act, where operations have been suspended for a period of 2 years (pursuant to regulation 21A of the amended EIA Regulations 1999) without provision of the outstanding environmental information, if the criteria for making such an order in paragraph 3(2) of Schedule 9 are met. These criteria are:
 - (i) that no winning and working of minerals or depositing of mineral waste has occurred to any substantial extent at the site for at least 2 years; and
 - (ii) it appears to the MPA on the available evidence that resumption of such development is unlikely.
- (c) That, for the purposes of the proposed regulations only, paragraph 3(2) of Schedule 9 be amended to include provision that an MPA **may presume** that the winning and working of minerals and the depositing of mineral waste has permanently ceased where the suspension of operations has continued for 2 years and outstanding environmental information has not been provided without good reason.

The Welsh Assembly Government propose to include these additional provisions in regulations applying to Wales.

- 5.4 The EIA Regulations 1999, as amended by the EIA Regulations 2000, currently provide for automatic suspension of mineral operations for a potentially indefinite period because of non-provision of environmental information. This causes uncertainty, not least to local communities, over the future of the site and may preclude action being taken to remedy any environmental damage caused by the suspension. Long-term suspension of mineral operations, especially where there are no measures in force to maintain the site, is problematic for many reasons. It can lead to the continuing existence of unsightly areas of land and possible pollution of water courses and groundwater from run-off after heavy rain. Sites containing dangerous plant and machinery, voids and mounds of mineral and mineral waste pose risks to members of the public and, if rights of way have been suspended to facilitate mineral extraction, there are likely to be lengthy delays in restoring these rights of way for public enjoyment.
- 5.5 The imposition of suspension orders, when appropriate, would provide a temporary respite from certain types of site management problem until mineral development resumed. In cases where mineral development is deemed to have permanently ceased, the imposition of prohibition orders would prevent the land falling into long term decay by enabling the MPA to impose conditions for restoration and aftercare of the site. Minerals Policy Statement 1: Planning and Minerals, dated November 2006⁸ encourages the reclamation of land affected by mineral working at the earliest opportunity. It also makes clear that it is not acceptable for mineral working to result in dereliction. The Secretary of State believes that the sanctions described in the previous paragraphs would provide useful support to these policies, albeit in what she hopes will be those relatively few cases where required screening or environmental information is not forthcoming.

8. <http://www.communities.gov.uk/index.asp?id=1504275>

- 5.6 The purpose of the sanctions is to provide for the contingency where suspension of operations does not persuade operators to provide the outstanding information and the prospect of them ever doing so seems uncertain or unlikely. In such circumstances long-term problems of site management may arise and are likely to be particularly acute when an operator decides to abandon a mineral site without making provision for site restoration. More generally, the sanction of automatic suspension of operations is entirely ineffective when applied to "dormant" i.e. inactive sites.
- 5.7 The proposal to require MPAs to consider making suspension orders after mineral operations have been suspended for 12 months is intended to encourage MPAs to keep the condition of sites under review. It is likely that an MPA would only exercise its discretion to make an order where it considered that there were immediate site management problems to be confronted. Making an order would enable the MPA to require the carrying out of measures for the purpose of preserving the amenities of the area during the period of suspension, protecting the area from damage and preventing any deterioration in the condition of the land during that period. Such an order presumes that the resumption of development is likely and therefore precludes the possibility of imposing restoration and aftercare conditions.
- 5.8 The presumption underlying prohibition orders is, by contrast, that the resumption of mineral development is not likely. Where works on a site have been suspended for 2 years the deterioration in site condition is also likely to be more serious. In such cases, problems of site management, whether immediate or potential, require a more permanent solution. Accordingly, the Secretary of State considers it is necessary to take more extreme measures in these circumstances. The making of a prohibition order enables the imposition of restoration and aftercare conditions to deal with potential long-term deterioration of a site.
- 5.9 The Secretary of State believes that the use of these types of order, in the circumstances envisaged, is the only available remedy for actual or potential site management problems in the small number of cases where operators are refusing to provide necessary environmental information and to maintain their mineral sites in an environmentally beneficial and safe condition. Although the number of errant operators may be relatively small, the environmental damage and amenity impact on local communities may be substantial and, if not dealt with, protracted. The powers to make suspension and prohibition orders are currently permissive and have not been widely used by MPAs. However, the Secretary of State believes that incorporating them into sanctions would respectively encourage and oblige MPAs to utilise these powers when they may be otherwise reluctant to do so despite clear benefits.
- 5.10 One of the reasons why the provisions in the 1990 Act for the making of prohibition orders have not been widely used may be because of the perceived difficulty in achieving the certainty necessary to meet the two tests required to determine that operations have permanently ceased. The proposed provisions will enable a presumption to be made that the tests have been met where suspension has continued for 2 years and the operator has failed to produce the outstanding screening or environmental information without good reason.

- 5.11 The Secretary of State considers that requiring MPAs to use the existing prohibition order provision where necessary environmental information has not been provided and enabling the relevant tests to be satisfied more easily may provide additional incentives in some cases for operators to comply with the requirement to supply the outstanding information.
- 5.12 A further reason why the making of prohibition orders has not been widely used is the probable perception by MPAs that imposing such orders would entail a liability to pay substantial amounts of compensation. While a compensation liability would arise under current legislation, the value of the remaining mineral and mineral waste, the value of any void space and the cost of restoration and aftercare are excluded from the compensation calculation, in addition to a standard abatement sum currently standing at £7,800. Similar considerations would apply to the imposition of suspension orders. Any sum payable in respect of either order is therefore likely to be very small.
- 5.13 The Secretary of State is considering whether it would be necessary for the proposed regulations to also make specific provision for her to use her default powers to make suspension and prohibition orders under paragraph 11 of Schedule 9 to the 1990 Act in relation to reviews of mineral planning permissions. Comments are invited from consultees on the necessity of such a provision.

OTHER ISSUES

- 5.14 To the extent that the amending regulations as proposed in Chapter 4 and the additional proposed provisions described in this chapter might engage Article 1 of the First Protocol to the European Convention of Human Rights, the Secretary of State's view is that any control of use of land would be necessary and proportionate to ensure compliance with the EIA Directive and for the protection of the environment. In particular, in relation to the regulations proposed in Chapter 4, it is considered that the proposed 3 month period (or such longer period as the MPA agrees in a particular case) for submission of the environmental information strikes an appropriate balance between the interests of the operator and the wider public interest in ensuring that conditions reviews are carried out as quickly as possible and to ensure that mineral development is carried out in accordance with modern conditions which adequately protect the environment.
- 5.15 The Secretary of State understands that since the EIA Regulations 1999 were amended in 2000, no mineral operations in England have been automatically suspended in accordance with regulation 26A. However, she considers that the proposed sanctions described in this chapter are necessary and proportionate to safeguard against the environmental problems which could result from the otherwise potentially indefinite suspension. Suspension orders, require an operator to take steps for the protection of the environment during the period of suspension on a temporarily suspended site, while prohibition orders permanently extinguish a mineral permission and may impose restoration and aftercare conditions so that the land will be restored to an acceptable condition in respect of the environment and local amenity. Paragraphs 4 and 7 of Schedule 9 to the 1990 Act, respectively, do however contain provisions for independent consideration by the Secretary of State of objections to such orders. In addition, compensation may be paid if either a suspension or prohibition order is confirmed by the Secretary of State. The conditions to be satisfied, and the

basis of calculation of any compensation are described in paragraphs 31-33 of Minerals Planning Guidance Note 4: Revocation, Modification, Discontinuance, Prohibition and Suspension Orders – Town and Country Planning (Compensation for Restrictions on Mineral Workings and Mineral Waste Depositing) Regulations 1997, dated August 1997.⁹ Comments are invited from consultees on the costs to industry and MPAs of the proposals in this consultation paper which are summarised in the partial RIA at Appendix B.

- 5.16 Comments are invited on any aspect of these proposed additional provisions and in particular on the following specific questions:

Question 6: Do you agree with the Secretary of State that the proposed regulations described in Chapter 4 should also include, as the Welsh Assembly Government have proposed, additional provision so that if additional screening information is not provided then MPAs could apply the sanction of automatic suspension? (paragraph 5.2)

Question 7: What are your views on the proposal to require MPAs to consider in every case, following automatic suspension of mineral operations, whether to make suspension orders on the expiration of 12 months suspension? (paragraphs 5.3(a), 5.4- 5.7 and 5.9)

Question 8: What are your views on the proposal to require MPAs to make prohibition orders where the requisite screening or environmental information has not been provided within 2 years of the automatic suspension of operations? In particular, how do you view the human rights issue in such cases, which hinges on balancing the interests of the local community and the environment against those of the operator? (paragraphs 5.3(b) and (c), 5.4 – 5.6, 5.8 – 5.12 and 5.14 – 5.15)

Question 9: What are your views on the possibility that compensation might have to be paid to operators pursuant to the imposition of either a prohibition order or a suspension order? Do you consider that, in view of the "culpability" factor in respect of a longstanding failure to provide the necessary environmental information, that there is a case for limiting whatever compensation payments might normally be payable pursuant to the making of such orders? (paragraph 5.12)

Question 10: What are your views on the proposal to amend paragraph 3(2) of Schedule 9 to the 1990 Act so that an MPA may presume that operations have permanently ceased where automatic suspension has continued for a period of two years and the screening or environmental information has not been provided without good reason ? (paragraphs 5.3(c) and 5.10 – 5.11)

9. <http://www.communities.gov.uk/index.asp?id=1144169>

Question 11: What are your views on the necessity of including in the proposed regulations described in Chapter 4 specific provision for the Secretary of State to use her default powers (under paragraph 11 of Schedule 9 to the 1990 Act) to make suspension and prohibition orders in relation to reviews of mineral planning permissions? (paragraph 5.13)

Question 12: Do you have any other comments on the proposed sanctions for non-provision of environmental information described in this chapter, including their practical implications?

Question 13: Do you have any comments on the partial RIA at Appendix B, including quantification of the costs and benefits of each of the options identified? Specifically, the minerals industry is asked for estimates of the potential costs if the proposed sanctions of suspension and prohibition of permissions are used. MPAs are asked to comment on whether the use of the proposed sanctions of suspension and prohibition of permissions for non-provision of environmental information will result in additional costs to them and if so to estimate those costs. (paragraphs 46 – 51)

Appendix A

STATUTORY INSTRUMENTS

2007 No.

TOWN AND COUNTRY PLANNING, ENGLAND

The Town and Country Planning (Environmental Impact Assessment) (Amendment) (England) Regulations 2007

<i>Made</i>	- - - -	2007
<i>Laid before Parliament</i>		2007
<i>Coming into force</i>	- -	[xxxx 2007]

The Secretary of State, as respects England, being a designated Minister for the purposes of section 2(2) of the European Communities Act 1972(a), in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in exercise of the powers conferred by that section, makes the following Regulations:

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Town and Country Planning (Environmental Impact Assessment) (Amendment) (England) Regulations 2007 and shall come into force on [xxxx 2007].

(2) These Regulations apply in relation to England only.

(3) In these Regulations—

“the 1999 Regulations” means the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999(b);

“ROMP application” means an application to a relevant mineral planning authority to determine the conditions to which a planning permission is to be subject under paragraph—

(a) 2(2) of Schedule 2 to the Planning and Compensation Act 1991(c) (registration of old mining permissions);

(b) 9(1) of Schedule 13 to the Environment Act 1995(d) (review of old mineral permissions);
or

(c) 6(1) of Schedule 14 to the Environment Act 1995 (periodic review of mineral planning permissions); and

(a) 1972 c. 68; section 2(2) includes power to make certain provision in relation to the European Economic Area by virtue of section 2(5) of the European Economic Area Act 1993 (1993 c. 51). Council Directive 85/337/EEC applies to the EEA by virtue of Article 74 of, and paragraph 1 of part 1 of Annex XX to, the Agreement on the European Economic Area. Council Directive 97/11/EC was extended to the European Economic Area by Decision No. 20/1999 of the European Economic Area Joint Committee of 26th February 1999, O.J. No. L 148, 22.6.2000, p.45.

(b) S.I. 1999/293. Relevant amendments were made by S.I. 2000/2867. The functions of the Secretary of State under the Regulations, so far as exercisable in relation to Wales, are exercisable by the National Assembly for Wales - see regulation 2(6) and the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2; see the entry at the end of Schedule 1 referring to the Regulations.

(c) 1991 c. 34.

(d) 1995 c. 25.

“undetermined ROMP application” means a ROMP application made before 15th November 2000 but not determined by [xxxx 2007].

Application of the 1999 Regulations to undetermined ROMP applications

2.—(1) For the purpose of the 1999 Regulations, an undetermined ROMP application shall be treated as if it were a ROMP application made on or after 15th November 2000 and the 1999 Regulations shall, subject to the following modifications, apply accordingly.

(2) The references in paragraphs (1) and (3) of regulation 7 (application made to a local planning authority without an environmental statement) and 8(3) (application referred to the Secretary of State without an environmental statement) to the date an application is received or lodged shall be treated as a reference to [xxxx 2007].

(3) In regulation 26A(17) (ROMP applications) for paragraph (b) substitute—

“(b) submit an environmental statement and comply with regulation 14(5)—

- (i) before [yyyy 2007];
- (ii) within the period specified by the authority or the Secretary of State in accordance with paragraph (16), if later than [yyyy 2007]; or
- (iii) within such extended period as is agreed in writing; or”

(4) In regulation 26A(17) (ROMP applications) for paragraph (c) substitute—

“(c) provide additional information—

- (i) before [yyyy 2007];
- (ii) within the period specified by the authority, the Secretary of State or an inspector in accordance with paragraph (16), if later than [yyyy 2007]; or
- (iii) within such extended period as is agreed in writing.”

Signed by authority of the Secretary of State

Parliamentary Under Secretary of State

Date

Department for Communities and Local Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Town and Country Planning (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2000 (S.I. 2000/2867) implemented, in England, Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (O.J. No. L175, 5.7.1985, p.40), as amended by Council Directive 97/11/EC (O.J. No. L73, 14.3.1997, p.5) (“the Directives”), in relation to applications to mineral planning authorities to determine the conditions to which a mineral planning permission is subject under Schedule 2 to the Planning and Compensation Act 1991 and Schedules 13 and 14 to the Environment Act 1995 (“ROMP applications”).

The 2000 Regulations applied the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, with modifications, to ROMP applications made after the commencement of the 2000 Regulations (15th November 2000). These Regulations apply the 1999 Regulations, with modifications, to ROMP applications made before 15th November 2000 but which are undetermined on [xxxx 2007].

A Regulatory Impact Assessment has been prepared in relation to these Regulations. It has been placed in the library of each House of Parliament and copies may be obtained from PREP Division, Department for Communities and Local Government, Zone 4/C2, Eland House, Bressenden Place, London, SW1E 5DU (Telephone: 020 7944 8138).

Appendix B

Partial Regulatory Impact Assessment (RIA)

TITLE OF PROPOSAL

1. The application of the Environmental Impact Assessment (EIA) Directive to 'stalled' reviews of old mineral permissions and periodic reviews of mineral permissions in England.

PURPOSE AND INTENDED EFFECT OF MEASURE

Objective

2. To put beyond doubt the application of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (the "EIA Regulations 1999") to the determination of applications for review of operating conditions attached to old mineral permissions which are currently 'stalled' because environmental information requested by the authorities has not been provided.
3. At the same time, we are taking the opportunity to consult on additional provisions (see option 4 in paragraph 20 below) which would (a) apply the sanction of suspension, and where necessary prohibition of operations, for failure to provide additional 'screening' information to determine whether a review of remaining mineral operations requires the submission of an environmental statement and (b) strengthen the current automatic suspension sanction, and where necessary prohibit operations, to apply to all reviews of mineral planning permissions for failure to provide environmental statements or further environmental information. If progressed, these additional provisions would apply to all initial and periodic reviews of mineral operating conditions under Schedule 2 to the Planning and Compensation Act 1991 (the PCA 1991) and Schedules 13 and 14 to the Environment Act 1995 (the EA 1995).

Background

4. Many mineral sites are operating under permissions granted many years ago which contained few, if any, conditions to mitigate the impact of mineral extraction. Unusually, and uniquely within the planning system, legislation was introduced in the PCA 1991 and EA 1995 to review and update to modern environmental standards these old permissions which can last for many decades (until 2042 if no other end date was set at the outset).
5. Following the introduction in 1991 and 1995 of the review legislation, court judgments established that reviews of Interim Development Order permissions and old mineral permissions constituted "development consent" as defined in the EIA Directive, which had not, therefore, been fully transposed. As a result, the Town and Country Planning (Environmental Impact Assessment)(England and Wales)(Amendment) Regulations 2000 (the "EIA Regulations 2000") were

introduced applying the EIA Directive to these reviews, with the sanction of suspension of operations where an operator fails to provide an environmental statement on the request of the mineral planning authority (MPA). The EIA Regulations 2000 amended the EIA Regulations 1999. The EIA Regulations 2000 also provided for a right of appeal to the Secretary of State if the MPA fails to give notice of its determination of an application accompanied by an environmental statement – or in the case where such a statement or additional information has been required after an application has been submitted, within 16 weeks of receipt of that statement or additional information (or any other time agreed in writing).

6. Guidance issued by the former DETR when the regulations were implemented advised that the EIA Regulations 2000 applied only to applications for new operating conditions made after their coming into force on 15 November 2000. It emphasised that suspension of development will be minimised if MPAs and operators are co-operative and constructive in their approach to determining and meeting reasonable deadlines. The Secretary of State subsequently became aware that there are 41 initial review applications in England which are 'stalled' for a variety of reasons, including some where operators are refusing to provide environmental statements (ESs) or further environmental information when requested to do so by MPAs. There is currently no sanction to encourage them to do so and, at active (i.e. working sites) operations can continue under the terms of the old permissions with little or no mitigation of the environmental impacts.
7. The Secretary of State has taken action to address these cases by offering a final opportunity to operators to provide the outstanding information voluntarily but also warning that a consultation paper was being prepared on proposed regulations which would statutorily require provision of any remaining outstanding environmental information, with a sanction of suspension of operations in the event of non-compliance.
8. The Secretary of State is also proposing :
 - To apply the sanction of automatic suspension if insufficient information is provided to enable an MPA to determine if remaining mineral operations are "EIA development" (as defined by the EIA Regulations 1999) and thus whether an ES is or is not required;
 - To require that at the end of 12 months automatic suspension for non provision of screening or environmental information, MPAs must consider in every case whether there is a need to make a suspension order to protect the environment; and
 - To require at the end of a period of 2 years automatic suspension for non-provision of screening or environmental information, MPAs to make prohibition orders that will prohibit the resumption of mineral operations subject to certain procedural safeguards.

Rationale for government intervention

9. The Secretary of State is firmly of the view that it is unreasonable for reviews of conditions to be delayed, in some cases for a considerable number of years, simply because information has not been provided by the applicant. Several approaches have been made to operators of sites where reviews are 'stalled' encouraging the provision of outstanding environmental information. Some of the 41 initial reviews which are currently still outstanding are 'stalled' because environmental information has not been provided. Delays to reviews at active mineral sites mean that mineral operations are continuing under old permissions with few, if any, conditions to mitigate the environmental impacts of mineral working, contrary to the objectives of the legislation introduced in the 1990s and subsequent clarification that the EIA Directive should be applied to these reviews. This has an unacceptable impact on local environments and communities and is unfair to mineral operators at other sites who have produced the requested environmental information voluntarily.
10. Failure to fully transpose EC Directives is likely to lead ultimately to proceedings in the European Court of Justice (ECJ) and may lead to a risk of challenges to the non application of the EIA Directive within the UK courts.
11. The Secretary of State is also of the view that the sanction in the amended EIA Regulations 1999 of automatic suspension, for failure on the part of operators to provide the environmental information required to progress their review in accordance with the obligations imposed by the EIA Directive could potentially apply indefinitely. Suspension without appropriate restoration may cause environmental damage with few means of ensuring remediation except at taxpayers' expense. It is therefore proposed to introduce a further and final sanction by requiring MPAs to make prohibition orders where a suspension under the amended EIA Regulations 1999 continues in effect for a period of 2 years and subject to the criteria for making such orders under Schedule 9 to the Town and Country Planning Act 1990 (the 1990 Act) being satisfied. It is also proposed to make an associated amendment to Schedule 9 to the 1990 Act so that a 2 year suspension and failure to provide the relevant information without good reason will constitute grounds for an MPA to presume that the resumption of operations is unlikely. Where sites are automatically suspended, MPAs will be required to consider the need in every case to make suspension orders to enable any environmental damage during the period of suspension to be remedied.

Consultation

12. This partial RIA forms part of the formal public consultation process and comments are invited on it from all consultees. Approval to consult on the proposed regulations which have been discussed with the Welsh Assembly Government, has been given by the Domestic Affairs Cabinet Committee. Since September 2004, the former Office of the Deputy Prime Minister has written to all MPAs in England to secure detailed information on the 'stalled' applications and informally invited views on option 2 below.

OPTIONS

Option 1: 'Do nothing'/voluntary provision of the environmental information

13. Continued non-application of the EIA Directive in respect of this small number of reviews may result in infraction proceedings by the European Commission and ultimately the ECJ imposing substantial daily fines on the UK Government. These fines could amount to several million pounds. Additionally, continued non-transposition may provoke challenges in the UK courts.
14. The Secretary of State has written to operators and owners of sites where reviews are 'stalled' encouraging them for a final time to provide the required environmental information voluntarily. In addition, the British Aggregates Association and the Quarry Products Association have sought to encourage their members with outstanding initial reviews which are 'stalled' for want of environmental information to provide this information as soon as possible voluntarily. We would hope that this encouragement will result in progress on at least some of the reviews 'stalled' simply because the operators are not prepared to provide the necessary information.
15. The amended 1999 EIA Regulations provide no sanction for failure to provide sufficient information to enable MPAs to determine whether EIA is required. These regulations also provide for indefinite suspension of operations if the required environmental statement or further environmental information is not provided. This potential indefinite inactivity could result in a lack of certainty for local communities about future working and sites remaining unrestored, possibly indefinitely.

Option 2: Regulations to bring forward periodic reviews of conditions where initial reviews are 'stalled'

16. It had initially been the intention to deal with reviews which are 'stalled' for want of the provision of the necessary environmental information by use of Schedule 14 to the EA 1995, as amended by the Planning and Compulsory Purchase Act 2004, to bring forward the date of the first periodic (15 year) review of conditions at the relevant sites. This would subject them to EIA according to the EIA Regulations 1999, as amended, with the sanction of suspension where the necessary information was not provided within a specified period. However, there appear to be several potential problems with this approach. First, given the time needed to allow operators a final opportunity to voluntarily produce the information, and then, if necessary, to draft, consult on and bring into effect any regulations, it could be 2 to 3 years more before new operating conditions for these 'stalled' applications are finally determined by MPAs. Secondly, and most importantly, the 2004 Act route to resolution of the 'stalled' cases could, because of the compensation provisions for periodic reviews, inadvertently reward operators of the sites where reviews were "stalled" because of non-provision or incomplete provision of environmental information. Operators of these sites, unlike the majority of operators with initial reviews outstanding in November 2000, have not voluntarily complied with requests from the MPAs for environmental information. We consider it to be unreasonable both that they have not provided the information voluntarily and

also that regulations under these powers would potentially provide a financial "reward" (because of the compensation provisions applying to periodic reviews in Schedule 14 to the 1995 Act) for not doing so.

17. In addition, this option would not provide an opportunity to resolve the problem with the amended 1999 EIA Regulations in respect of the lack of a sanction to require the provision of information to enable MPAs to determine whether environmental impact assessment is required when review applications are submitted; nor would it provide for the possible sanctions of suspension and prohibition orders in the case of non-provision of environmental information.

Option 3: Regulations to apply the EIA Directive specifically to initial conditions reviews which are 'stalled' because the relevant environmental information has not been provided voluntarily

18. The proposed regulations would put beyond doubt that the EIA Regulations 1999, as amended, apply to all reviews of mineral operating conditions irrespective of the date of application. They will fully transpose the EIA Directive, provide for a more efficient, effective and straightforward control system and are intended to be Human Rights Act-compliant. This approach would be similar to that achieved in Scotland. The Environmental Impact Assessment (Scotland) Amendment Regulations 2002 (SSI No. 324)¹⁰ contain a transitional provision applying the Regulations, including the sanction of suspension of operations for non compliance with requests for ESs, to applications made and not determined before the coming into force of the Regulations (i.e. 23 September 2002).
19. This option though would not provide a sanction for failure to provide sufficient information to enable MPAs to determine whether environmental impact assessment is required. In addition, it would leave in place potentially indefinite suspension of operations if the required information for environmental statements is not provided. This potential indefinite inactivity could result in a lack of certainty for local communities about future working, it may result in environmental damage and sites remaining unrestored, possibly indefinitely.

Option 4: Regulations to apply the EIA Directive specifically to initial conditions reviews which are 'stalled' because the relevant environmental information has not been provided voluntarily and to provide sanctions to make environmental impact assessment more effective and avoid potential environmental problems

20. Under this option, regulations are proposed as in option 3, but to include additional provisions relating to sanctions in the event of non-compliance with requests for information. The sanction of automatic suspension would apply for failure to provide at 'screening' stage sufficient information to enable MPAs to determine whether environmental impact assessment is required. At the end of 12 months suspension for failure to provide 'screening' information or environmental statements or further environmental information, MPAs will be required to

10. <http://www.uk-legislation.hmso.gov.uk/legislation/scotland/ssi2002/20020324.htm>

consider the need to make suspension orders to ensure the protection of the environment including measures to preserve the amenities of the area and to protect it from damage or further deterioration while development is suspended. At the end of 2 years suspension because of the failure to provide screening or environmental information, MPAs will be required to make prohibition orders to prohibit the resumption of mineral operations and, where appropriate, to impose specific requirements on operators ensuring appropriate restoration and aftercare of the site.

COSTS AND BENEFITS

Sectors and groups affected

21. The following organisations and individuals will be affected:

Certain mineral operators and owners;
Environmental and amenity organisations;
Certain MPAs;
Local interest groups and the general public.

Race equality assessment

22. These proposed regulations do not have any race equality impacts

Health impact assessment

23. The provision of an ES under options 2-4 to inform the MPA's consideration of new conditions would assess the impact of continued mineral working on residents, wildlife and landscape. Its provisions could help to reduce the health impact of future mineral working to a greater degree than if no EIA was carried out.

Rural considerations

24. Minerals can only be worked where they are found and most mineral working takes place in rural areas. However, if environmental information to determine conditions is not forthcoming this may have a deleterious effect on the landscape. When working, all 'stalled' review sites would provide employment opportunities for local communities.

Assessment of the costs and benefits of option 1

Economic benefits

25. The only benefit would be to the operators of the 'stalled' sites who would not have to pay for the provision of ESs or further environmental information.

Economic costs

26. There would be significant (but at this stage, unquantifiable) costs to the Government arising from the failure to comply with any ECJ ruling following successful infraction proceedings against the UK and through possible litigation nationally.

Environmental benefits

27. None have been identified.

Environmental costs

28. Mineral sites without modern working conditions because of the absence of EIA can potentially have an adverse impact on the environment and on local communities as operations can continue under the terms of the old permissions with little or no mitigation of the environmental impacts.

Social benefits

29. This option would prevent possible suspension of operations at stalled review sites if environmental information continues not to be provided and hence ensure employment opportunities at working sites.

Social costs

30. This option would maintain the status quo and result in continuation of environmental impacts of the works at these sites on local communities without conditions reflecting up to date environmental standards.

Assessment of the costs and benefits of option 2

Economic benefits

31. The main benefit will be to the operators of the sites where conditions reviews are 'stalled' who would be able to claim compensation under Schedule 14 to the 1995 Act on the brought forward first periodic review where the MPA determines different conditions from those submitted by the applicant and the effect of the determined conditions (other than restoration and aftercare conditions) is to restrict working rights.

Economic costs

32. Conversely there will be an economic cost on MPAs if they have to pay compensation to operators because they determine conditions which have an adverse impact on the working of the 'stalled' sites. The amount of compensation cannot be calculated at this stage as this would be subject to the type and number of conditions determined by the MPAs. The operators of the sites where conditions reviews are 'stalled' would be required to produce an ES earlier than the normal 15 years after conditions were finally determined on initial review i.e. in 2008/9. However, the costs of providing a statement are in other respects no different to those falling to operators of any mineral site where the MPA has requested an ES. In addition, the costs to operators of the management time involved in preparing conditions for the first periodic review would occur in 2008/9 rather than later. But again, these costs are no different from the costs falling on all mineral operators now that, under Schedule 14 to the 1995 Act, all mineral permissions are to be periodically reviewed every 15 years. The costs to the MPAs of determining conditions under brought forward first periodic reviews at sites where initial reviews are stalled would fall in 2008/9 rather than the end of the standard 15 year period.

33. Under this option, the European Commission may still progress infraction proceedings for the delay in applying the EIA Directive to the 'stalled' reviews as following the making of the regulations, operators require a period of notice of at least 12 months before they must apply for the new conditions.

Environmental benefits

34. Full environmental information will assess the impact of continued mineral working on residents, wildlife and landscape. Conditions determined following the submission of an ES could help to improve local amenity by reflecting up-to-date environmental standards against which the environmental assessment had been made.

Environmental costs

35. The delay in producing new conditions under this option (see paragraph 16 above) would inevitably result in mineral working at active sites continuing under the existing, unmodified, planning conditions with no assessment of environmental impacts for a longer period than under options 3 or 4.

Social benefits

36. Completion of periodic reviews of the conditions for these sites at which conditions reviews are 'stalled' would alleviate any local resident concerns and uncertainty over the environmental impact caused by these sites. It would enable the sites to operate with new conditions, continuing to generate employment opportunities and producing material for economic use.

Social costs

37. No social costs have been identified from this option.

Assessment of the costs and benefits of option 3

Economic benefit

38. Introduction of regulations putting beyond doubt that the EIA Regulations 1999, as amended, applied EIA to all reviews of conditions, irrespective of the date of application, including reviews 'stalled' for want of full environmental information, would avoid any costs to Government arising from possible litigation nationally and potential future infraction proceedings. Measures intended to mitigate the impact of mineral working on the environment are likely to be cheaper and more effective if considered as part of the design stage of each application for new conditions, rather than through more ad hoc considerations. The Secretary of State also believes that EIA is a useful tool in helping to achieve sustainable development, by ensuring that regard is paid to environmental considerations at all stages in the minerals review process.

Economic costs

39. There would be costs to the operators of providing the environmental information. The average cost of producing an environmental statement is estimated to be around £35,000. The average length of time to carry out EIA and prepare an ES is 4-6 months, but longer periods are not unusual depending on the complexity of the case. EIA is a one-off additional "entry" cost to a typical

non-mineral business where the development is likely to have a significant effect on the environment. However, mineral development can last for many years. Under present law, a periodic review of the conditions attached to mineral permission must be conducted every 15 years; EIA may be required in appropriate circumstances before each further phase of the development can proceed, for example, where there has been a material change in the land use planning circumstances, or in mitigation technology, since the last review. EIA may therefore be a recurring cost at intervals of 15 years for some longer lasting developments. However, under this option we will be bringing operators of 'stalled' review sites into line with the rest of the sector who already have to comply with the EIA Regulations 1999, as amended. Thus any additional cost is something operators are required to fund anyway.

40. Failure to comply with a requirement to carry out EIA where the remaining development is considered to have significant environmental effects will result in the suspension of the right to win and work minerals or deposit mineral waste until the necessary requirements have been complied with. There would be a cost to both operators and the local economy if the sanction of suspension was imposed on any of the sites. It is difficult to quantify this as each case will depend on the size of operation, number of people employed and turnover.

Environmental benefits

41. The benefit of complete environmental information will be a more effective consideration of the need to mitigate adverse environmental impacts at the relevant sites where conditions reviews are 'stalled', and as a result deliver better decisions on the modernising of these permissions. This in turn should provide benefits to mineral operators, MPAs and the general public, as well as for the physical environment.

Environmental costs

42. One inevitable disbenefit of the requirement is that formal, mandatory EIA is a process which can cover many months. During this time, mineral working at active sites can continue under the existing, unmodified, planning conditions. But, overall, the Secretary of State considers that there will be long term environmental benefits from the systematic application of EIA in these cases where the MPA believes the operations still to be carried out under existing planning permissions at mineral sites will have significant environmental impacts.

Social benefits

43. Local residents will benefit from knowing that where reviews are currently stalled for want of full environmental information sites will in future meet the required environmental standards. Individual operators and the mining industry as a whole will benefit from the updating of permissions to meet environmental standards in terms of, respectively, local communities and wider public perception.

Social costs

44. There may be wider social costs to local communities if there are job losses as a result of non-compliance with the regulations and site operations are suspended.

Assessment of the costs and benefits of option 4

45. Option 4 would entail some additional costs and benefits to those identified in relation to option 3.

Economic benefits

46. The proposed sanctions of suspension and prohibition orders provide a means to ensure the greater protection of the environment than would otherwise be possible if the sanction of, potentially indefinite, suspension of operations alone was applied. If suspension or prohibition orders are confirmed then the operator would be responsible for remedying any environmental problems arising after 12 months of automatic suspension and then restoring the site after 2 years of automatic suspension. There would be an economic benefit to council taxpayers since the MPA could otherwise be responsible for remedying any environmental problems arising from indefinite suspension.

Economic costs

47. There would be minimal costs to operators of providing additional information to the MPA at 'screening' stage to determine whether environmental impact assessment of the remaining mineral operations was necessary. We believe that most operators provide this information willingly and voluntarily at present and so the proposed additional sanction will only need to be used rarely. This proposed sanction simply ensures that the information will be provided in every case; thus 'levelling the playing field' for all mineral operators.
48. Although it is envisaged that the proposed sanctions of suspension and prohibition orders will be used very rarely (see paragraph 5.9 in the main text of the consultation paper) there would be costs for operators and MPAs if either type of order is confirmed by the Secretary of State. For operators, there would be administrative costs associated with responses to either order, including the cost of presenting a case at an inquiry if they wish to contest the orders. However, the major costs to operators would be those arising from lost production as a result of suspension and, if the environmental information continued not to be provided, prohibition of operations after confirmation of a prohibition order by the Secretary of State. In the event of confirmation of either a suspension or prohibition order, there would be costs to operators of, respectively, remedying any environmental damage and restoring the site. These costs would be avoided (in the case of restoration until the planned cessation of working) if the necessary environmental information was provided and the proposed sanctions will help to ensure that it is. We are taking the opportunity of this consultation to ask for estimates of the costs to operators in what we hope will be rare cases where the proposed sanctions are used.
49. For MPAs, there would be the costs of making and justifying the orders, including the possible additional cost of presenting a case at an inquiry into any objections to the orders. While the proposal is that MPAs' additional power to make suspension orders will be discretionary, because not every site will exhibit environmental problems after 12 months of suspension, it is proposed that there will be a duty on MPAs to make prohibition orders after 2 years of suspension for non-provision of environmental information. This is to prevent sites remaining in suspension indefinitely.

50. MPAs would need to pay compensation to operators if either a suspension or prohibition order is confirmed by the Secretary of State. Compensation is limited and calculated according to the criteria set out in paragraphs 31-33 of Minerals Planning Guidance Note 4 (see footnote 9 on page 19 of the main text of the consultation paper). We are not aware that any compensation has been paid in respect of any suspension or prohibition orders confirmed since 2000 in England. Without the proposed additional sanctions of suspension and prohibition orders, MPAs are of course likely to be involved in potentially extended negotiations with operators about any site in suspension because of non-provision of environmental information. Through this consultation, we are inviting comments from MPAs on the net additional costs to them of administering the proposed suspension and prohibition order provisions and the potential costs of any compensation which may be payable, although we recognise that it is difficult to estimate this with any certainty given that we think that the proposed powers would be used only rarely and that each mineral site is different and so would attract a different amount of compensation.
51. We recognise that the proposed requirement for prohibition orders to be made in the very specific and, we believe infrequent, cases described in this consultation paper constitutes a potential new burden on MPA finances. We do not believe that this potential new burden would be felt by all MPAs and with any kind of frequency. On the contrary, we think the proposed provision, intended to avoid the potential environmental problems arising from a site remaining in suspension indefinitely, is likely to be used very rarely and only by a few MPAs. We are specifically asking through this consultation for MPAs' estimates of how often they believe they might use this proposed new provision and for estimates of any compensation they may be required to pay as a result. On the basis of information provided by consultees, we will seek additional resources to meet any quantified additional financial burden identified.

Environmental benefits

52. The proposal to require operators to provide additional information at 'screening' stage has the benefit of ensuring that mineral development which is likely to have a significant effect on the environment is identified and new operating conditions are determined which have been fully informed by an environmental assessment. The proposals for suspension and prohibition orders would, respectively, ensure environmental problems arising soon after operations were suspended were remedied and that suspension did not carry on indefinitely and sites were appropriately and promptly restored.

Environmental costs

53. No additional environmental costs than those applying to option 3 have been identified for option 4.

Social benefits

54. Under this option, local communities would benefit from the certainty that environmental problems at suspended sites would be addressed promptly and sites would be restored following the confirmation of any prohibition order.

Social costs

55. Marginal additional social costs to those identified under option 3 will arise if a suspended site which had been expected to resume operations permanently ceases production because of the confirmation of a prohibition order.

Small Firms' Impact Test (SFIT)

56. In April 2006 the 25 operators of the 41 sites where condition reviews are 'stalled' were asked to voluntarily provide the environmental information. Some responded that the cost of providing the environmental information would be prohibitive as they were small, low key operations, and in some cases mineral operations had ceased making the provision of an ES unnecessary. It was also clear from the responses that the applications were 'stalled' for a variety of reasons, not always simply because environmental information has not been provided to enable new conditions to be determined. For example, the site may currently be inactive and a new use of the site is being promoted, eg housing, through a new planning permission.
57. The April letter was followed up with telephone interviews of a sample of four small firms operating at 'stalled' sites. Each firm confirmed that there would be a 'significant' financial impact, including in one case the possibility of going 'bankrupt' if an ES was required. While none of the operators could be precise on the cost of providing the information at that stage, they estimated that the cost would range from £10,000 to over £100,000 which reflected the scope of information requested by the MPAs. In the latter case, an operator was hoping to re-negotiate with the MPA on the requirements for information in order to reduce the cost. The work of producing the information would also draw staff away from the day-to-day operation of the business.
58. The vast majority of mineral extraction operations can be termed small or medium sized businesses from the point of view of numbers of employees. However, identifying mineral businesses as small and medium sized enterprises does not reveal the ability of operators to produce and pay for ESs. Depending on the nature and quantity of mineral being extracted, turnover and profits can be substantial, compared to the number of people employed. While the requirement to produce an ES will tend to bear more heavily on smaller businesses as a proportion of turnover, it is a requirement that has been applied to the mineral industry in general since 2000, with the overwhelming majority of operators complying. There is no provision in environmental regulations for smaller firms to operate to lower environmental standards than larger ones and we now have a duty to fully transpose the EIA Directive or face proceedings in the ECJ.
59. The Secretary of State recognises that the cost of producing an ES may be significant for small mining companies with low turnover and acknowledges the concerns from some of the smaller firms on the likely impact this will have on their operations. The average cost of producing an ES is approximately £35,000 which is estimated to be around 3% of the annual average turnover of small firms in the non-energy and non metal mining and quarrying sector. Therefore, while initial soundings (stage one of the SFIT) found there might be significant impact on some of the small businesses in the sector with individually lower turnovers, it is fair to say that, while the minerals sector contains significant

numbers of firms which are small in terms of their number of employees, the average annual turnover of firms in the sector takes them into a higher category. It would therefore be reasonable to conclude that there is, on the basis of average annual turnover figures, no significant impact on small firms of the proposed regulations. A copy of this partial RIA will be sent to all the firms whose initial site conditions reviews are currently stalled and to the trade associations for the minerals sector for further comment on the potential impact on small businesses in the sector of the cost of producing the environmental information required by the EIA Directive.

60. To help mitigate the impact of the proposed regulations on firms with a lower turnover, the application of the EIA Regulations 1999, as amended, to all conditions reviews would mean that operators would be granted a proposed 3 months from the date they come into force to comply with the requirement for the provision of environmental information and MPAs could extend that period if there are good reasons for doing so.
61. Ultimately the proposed regulations will bring the operators of 'stalled' review sites into line with the rest of the sector who have already provided the environmental information to inform initial conditions reviews. For those few operators who continue to default MPAs will be required, through the mechanism of option 4, to oblige them in the first instance, if necessary, to take temporary remedial action on their sites, and finally to relinquish their planning permission and restore the site permanently.
62. The proposed sanctions described under option 4 above would apply equally to all mineral operators who chose not to provide the necessary environmental information and the procedures for suspension and prohibition orders include safeguards in terms of independent confirmation by the Secretary of State, who is required to consider any objections from operators. They also include provision for the payment of limited compensation.
63. We have consulted the Small Business Service who confirmed our approach.

Competition Assessment

64. It is currently competitively unfair that most mineral operators have voluntarily produced environmental information while a minority have refused to provide the information.
65. There are no competition issues arising under option 3 because after the proposed regulations come into force EIA will be applied consistently to all minerals conditions reviews, and the operators of the sites where reviews are 'stalled' because of the failure to provide all or some environmental information are being treated no differently than any other firm in the same circumstances.
66. Similarly, the proposed sanctions in option 4 would, if imposed, apply equally to all mineral operators.

Enforcement, Sanctions and Monitoring

67. If, under option 2, the operator failed to submit schedules of new conditions and an ES by the specified date, then each mineral permission related to the site would cease to have effect except as regards the restoration and aftercare conditions.
68. Under option 3, the proposed regulations would enable MPAs to apply the sanction of suspension of operations to sites which are the subject of applications submitted before 15 November 2000 which remain undetermined when the proposed regulations come into force and where the applicant fails to supply the necessary requested environmental information within the proposed 3 months, or such longer period as may be agreed, of the implementation of the proposed regulations.
69. Under option 4, MPAs could consider the proposed sanction of making a suspension order to require remediation of any environmental problems after 12 months of suspension for non provision of the necessary environmental information. They would be required to make a prohibition order to cease the permission if the environmental information was still not forthcoming after 2 years of suspension.

Monitoring and review

70. Monitoring and review will be needed to ensure that the proposed regulations under options 3 or 4 are appropriately and proportionately implemented in respect of the 'stalled' reviews. Follow up letters will therefore be sent to the MPAs after the proposed regulations have been in force for 3 months in order to check on the position of the 'stalled' reviews and on whether there are any outstanding cases.

Recommended Option

71. The possibility of European Court proceedings requiring the transposition of the EIA Directive in respect of these 'stalled' conditions reviews means that, as a minimum, new regulations should be implemented as soon as possible as proposed in option 3. Subject to consultation comments, the Secretary of State's preference is to make provision in those new regulations for the proposed sanctions described in option 4, to provide effective remedies for environmental problems caused by the current sanction of, potentially indefinite, suspension of operations and to prompt restoration of sites where the necessary environmental information continues to be withheld.
72. Pursuing option 1, 'do nothing', or option 2, transposition by regulations bringing forward the first periodic review, will result in, respectively, the non-transposition of the Directive in respect of these reviews or a long delay (12 months from the regulations coming into force) before the Directive is transposed. Option 2 also has the potential to reward operators for the delay in providing ESs or further environmental information. Either of these options will result in the continued delay in the provision of the required environmental information, as will the alternative option of continuing to encourage the voluntary provision of the information, which is likely to result in further action by the EC, the potential imposition of substantial daily fines and the possibility of legal challenges.
73. Options 1 and 2 are therefore not the Secretary of State's preferred way forward.

Appendix C

List of Consultees

NATIONAL PARKS

Dartmoor National Park Authority
Exmoor National Park Authority
Lake District National Park Authority
The Broads Authority
New Forest National Park Authority

Northumberland National Park Authority
North York Moors National Park
Authority
Peak District National Park Authority
Yorkshire Dales National Park Authority

COUNTY COUNCILS

Bedfordshire County Council
Berkshire Joint Strategic Planning Unit
Buckinghamshire County Council
Cambridgeshire County Council
Cheshire County Council
Cornwall County Council
Cumbria County Council
Derbyshire County Council
Devon County Council
Dorset County Council
Durham County Council
Essex County Council
East Sussex County Council
Gloucestershire County Council
Hampshire County Council
Hertfordshire County Council
Kent County Council
Lancashire County Council

Leicestershire County Council
Lincolnshire County Council
Norfolk County Council
Northamptonshire County Council
Northumberland County Council
North Yorkshire County Council
Nottinghamshire County Council
Oxfordshire County Council
Shropshire County Council
Somerset County Council
Staffordshire County Council
Suffolk County Council
Surrey County Council
Warwickshire County Council
West Sussex County Council
Wiltshire County Council
Worcestershire County Council

METROPOLITAN COUNCILS

Barnsley Metropolitan Borough Council	Rotherham Metropolitan Borough Council
Birmingham City Council	St Helens Metropolitan Borough Council
Bolton Metropolitan Borough Council	Salford City Council
Bradford City Council	Sandwell Metropolitan Borough Council
Bury Metropolitan Borough Council	Sefton Metropolitan Borough Council
Calderdale Metropolitan Borough Council	Sheffield City Council
Coventry City Council	Solihull Metropolitan Borough Council
Doncaster Metropolitan Borough Council	South Tyneside Metropolitan Borough Council
Dudley Metropolitan Borough Council	Stockport Metropolitan Borough Council
Gateshead Metropolitan Borough Council	Sunderland City Council
Kirklees Metropolitan Borough Council	Tameside Metropolitan Borough Council
Knowsley Metropolitan Borough Council	Trafford Metropolitan Borough Council
Leeds City Council	Wakefield City Council
Liverpool City Council	Walsall Metropolitan Borough Council
Manchester City Council	Wigan Metropolitan Borough Council
Newcastle Upon Tyne City Council	Wirral Metropolitan Borough Council
North Tyneside Metropolitan Borough Council	Wolverhampton Metropolitan Borough Council
Oldham Metropolitan Borough Council	
Rochdale Metropolitan Borough Council	

UNITARY AUTHORITIES

Bath & North East Somerset Unitary Authority	Peterborough City Council
Blackburn with Darwen Borough Council	Plymouth City Council
Blackpool Borough Council	Borough of Poole
Bournemouth Borough Council	Portsmouth City Council
Bracknell Forest Borough Council	Reading Unitary Authority
Brighton & Hove Borough Council	Redcar & Cleveland Unitary Authority
Bristol City Council	Rutland Unitary Authority
Darlington Borough Council	Slough Unitary Authority
Derby City Council	Southampton City Council
East Riding of Yorkshire Unitary Authority	Southend-on-Sea Unitary Authority
Halton Unitary Authority	South Gloucestershire Unitary Authority
Hartlepool Unitary Authority	Stockton-on-Tees Borough Council
Herefordshire Unitary Authority	Stoke-on-Trent City Council
Isle of Wight Unitary Authority	Swindon Borough Council
Kingston upon Hull City Council	Telford & Wrekin Unitary Authority
Leicester City Council	Thurrock Unitary Authority
Luton Borough Council	Torbay Unitary Authority
Medway Towns Unitary Authority	Warrington Unitary Authority
Middlesbrough Unitary Authority	Windsor & Maidenhead Unitary Authority
Milton Keynes Borough Council	Wokingham Unitary Authority
North East Lincolnshire Unitary Authority	West Berkshire Unitary Authority
North Lincolnshire Unitary Authority	City of York
North Somerset Unitary Authority	
Nottingham City Council	

LONDON BOROUGHS

London Borough of Barking and Dagenham	London Borough of Havering
London Borough of Barnet	London Borough of Hillingdon
London Borough of Bexley	London Borough of Hounslow
London Borough of Bromley	London Borough of Redbridge
London Borough of Croydon	London Borough of Richmond
London Borough of Ealing	London Borough of Sutton
London Borough of Enfield	London Borough of Waltham Forest
London Borough of Harrow	

GOVERNMENT OFFICES IN THE REGIONS (PLANNING)

Government Office for the East of England	Government Office for the South West
Government Office for the East Midlands	Government Office for the West Midlands
Government Office for London	
Government Office for the North East	Government Office for Yorkshire and the Humber
Government Office for the North West	
Government Office for the South East	

REGIONAL AGGREGATES WORKING PARTY SECRETARIES (RAWPS)

East of England RAWP
East Midlands RAWP
North East RAWP
North Wales RAWP
North West RAWP
South East England and London RAWP
South Wales RAWP
West Midlands RAWP
Yorkshire/Humberside RAWP

OPERATORS, PROFESSIONAL ASSOCIATIONS AND OTHER INTERESTED ORGANISATIONS

Association of National Park Authorities
The Brick Development Association
British Aggregates Association
British Calcium Carbonates Federation
British Cement Association
British Ceramic Confederation
British Geological Survey
British Nuclear Fuels plc
British Precast Concrete Federation Ltd
British Slate Association
British Stone
The Civic Trust
The Coal Authority
The Coalfield Communities Campaign
Confederation of British Industry Minerals Committee
The Confederation of UK Coal Producers (COALPRO)
Construction Industry Research & Information Association
Council for National Parks
Council for the Protection of Rural England
The Council on Tribunals
Country Land and Business Association
Department for the Environment, Food and Rural Affairs
Department for Culture, Media and Sport
Department of the Environment (Northern Ireland)
Department of Trade and Industry
English Heritage
The Environment Agency
Environmental Services Association
European Commission
Federation of Small Businesses
Forestry Commission
Friends of the Peak District
Friends of the Earth
The Green Alliance
Growing Media Association
Health and Safety Executive
HM Treasury
The Institute of Civil Engineers
The Institute of Materials, Minerals and Mining
Institute of Quarrying
Institute of Revenue, Rating and Valuation
Joint Nature Conservation Committee
Journal of Planning and Environmental Law
Kaolin and Ball Clay Association
The Lands Tribunal
The Law Society's Planning Committee
Local Government Association
Local Government Ombudsman
Mineral Planning Magazine
The Mining Association of the UK
National Farmers Union
The National Trust
Natural England
Northern Ireland Office
Operators with 'stalled' conditions review applications
The Planning Inspectorate
Planning Officers' Society Minerals and Waste Committee
Quarry Products Association
Royal Institution of Chartered Surveyors
Royal Society of Wildlife Trusts
Royal Society for the Protection of Birds
Royal Town Planning Institute
Salt Manufacturers Association
The Scottish Executive
Silica and Moulding Sands Association
The Stone Federation of Great Britain
Town and Country Planning Association
UK Coal
Valuation Office Agency
Welsh Assembly Government
Wildlife and Countryside Link

Appendix D

The Consultation Criteria

The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

- 1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.**
- 2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.**
- 3. Ensure that your consultation is clear, concise and widely accessible.**
- 4. Give feedback regarding the responses received and how the consultation process influenced the policy.**
- 5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.**
- 6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.**

The full consultation code may be viewed at
www.cabinet-office.gov.uk/regulation/Consultation/Introduction.htm

Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact

Albert Joyce, Communities and Local Government Consultation Co-ordinator,
Zone 6/H10, Eland House, Bressenden Place, London SW1E 5DU;
Or by e-mail to:
albert.joyce@communities.gsi.gov.uk

Please note that **responses to the consultation itself** should be sent to the contact shown within the main body of the consultation.