



Department for
Communities and
Local Government

Amendment to permitted development rights for drilling boreholes for groundwater monitoring for petroleum exploration

Government response to the consultation

and

Invitation for views on further amendments to permitted
development rights for petroleum exploration site
investigation and monitoring



© Crown copyright, 2015

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

This document/publication is also available on our website at www.gov.uk/dclg

If you have any enquiries regarding this document/publication, complete the form at <http://forms.communities.gov.uk/> or write to us at:

Department for Communities and Local Government
Fry Building
2 Marsham Street
London
SW1P 4DF
Telephone: 030 3444 0000

For all our latest news and updates follow us on Twitter: <https://twitter.com/CommunitiesUK>

August 2015

ISBN: 978-1-4098-4658-1

Contents

Part 1 - Government response to consultation on permitted development rights for drilling boreholes for groundwater monitoring for petroleum exploration

Introduction	5
Summary of responses by question	6
Overall approach	6
Restrictions and conditions	7
Height restrictions for structures	8
Potential cost savings	9

Part 2 – Further amendments to permitted development rights for petroleum exploration site investigation and monitoring

Summary of original proposals	10
Summary of further proposals	11
Boreholes for seismic investigation and monitoring	12
Boreholes for the location and appraisal of mine workings	13
Proposed extension of duration of new permitted development right for groundwater monitoring	13
Questions – views on extending permitted development rights	14

Part 1 - Government response to consultation on permitted development rights for drilling boreholes for groundwater monitoring for petroleum exploration

Introduction

1. The Government is committed to reducing the administrative burden of the planning system to support growth. Therefore it is continuing its reforms so that more development can take place without the need for an individual planning application. This is achieved through the extension of permitted development rights to further reduce bureaucracy and cost to business.
2. On 5 March the Government issued a consultation seeking views on proposals to amend permitted development rights for mineral exploration to enable the drilling of boreholes for groundwater monitoring for petroleum exploration¹. This would enable groundwater monitoring to be put in motion much earlier in the planning process, and provide early reassurance that the environmental impacts are being properly considered, in the case of potential petroleum exploration proposals. The consultation closed on 16 April 2015 and 28 responses were received from a range of interested parties including local government (21%), businesses and trade associations (25%), landowners (22%), and others including planners, private individuals and one Non-Departmental Public Body.
3. This document provides a summary of the responses received to the individual consultation questions and the Government's response to them.
4. After publication of the consultation in March, the Town and Country Planning (General Permitted Development) Order 1995 ("the 1995 Order") referred to in that consultation has been replaced by the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the 2015 Order"), with Classes A and B of Part 22 of the 1995 Order transposed across to form Classes J and K of Part 17 under the 2015 Order. References in this response are to Part 17 and other corresponding articles that can now be found under the 2015 Order.

¹ [Amendment to permitted development rights for petroleum exploration - Consultations - GOV.UK](#)

Summary of responses by question

Overall approach

Question 1: Do you have views on whether we amend the restrictions on existing permitted development rights for minerals exploration, to enable the drilling of boreholes for groundwater monitoring for petroleum exploration?

5. Those respondents who opposed the proposal considered the current requirement for a planning application to be made to the mineral planning authority for such development should be maintained. A number of responses registered objection to shale gas exploration in principle.
6. Representations from the industry and some local authorities welcomed the proposals. Some concern was, though, expressed that the intended 6 month time period for exercising the proposed right (where the right is exercised for longer than 28 days duration) would negate its purpose. The particular requirements associated with petroleum, compared to mineral exploration more generally which is more surface driven, require the drilling of boreholes and subsequent monitoring to be undertaken for appreciably longer than 6 months. It was considered that a 6 months duration may also be inconsistent with the monitoring requirement under new section 4A of the Petroleum Act 1998 (not yet commenced), introduced through section 50 of the Infrastructure Act 2015, which requires the level of methane in groundwater to have been monitored in the period of 12 months before the commencement of high volume hydraulic fracturing for shale. Given these circumstances, requests were made for the period to be extended to up to 24 months, or no time limit placed on it, to enable the monitoring to be undertaken effectively.
7. Industry responses also wished the proposals to go further, to encompass the related drilling of boreholes to obtain and monitor seismic data, and to carry out investigative operations to locate and appraise shallow mine workings. As for groundwater monitoring, these are activities which are important to carry out early to inform the process for any potential petroleum, including shale, exploration going forward.
8. The Environment Agency recommended in their response an additional restriction on the right so far as it relates to ground water monitoring, so that development would not be allowed within groundwater Source Protection Zone 1, or 50 metres from any well, borehole or spring used to supply drinking water. The Agency also sought an amendment to the condition proposed for sealing the borehole after use, to require all works for the borehole to conform to the Agency's guidance.

Government response

9. The Government considers there is significant merit in enabling groundwater monitoring to be carried out as permitted development. The monitoring would enable information on the groundwater environment to be provided early and would contribute towards informing the consideration of proposals for the exploratory phase of

petroleum exploration (including the drilling of petroleum wells), which would be subject to the full planning application process.

10. The Government therefore intends to amend the 2015 Order, so that development which consists of the drilling of boreholes for groundwater monitoring for petroleum exploration can take place as permitted development.
11. In doing so, provision will be made for an additional restriction, whether for development proposed under 28 days or through the direction restricting permitted development rights that can be given by a mineral planning authority where development is proposed over 28 days duration, to not allow that development if it is proposed within protected groundwater source areas. This would tie in with a similar condition excluding associated hydraulic fracturing from those areas under section 4A of the Petroleum Act 1998. This will recognise the importance of protecting areas used to supply drinking water. It is considered that it is not necessary to amend the condition relating to sealing the borehole after use and developers should be aware of the Environment Agency's guidance.
12. It is vital that any legislative measure is clear and that the development authorised under that power can be undertaken effectively. In light of responses, and given the different nature of monitoring for groundwater associated with potential petroleum exploration compared to mineral exploration more generally, the Government considers that the right should be exercisable over a longer period than the 6 months that currently applies for minerals. Before taking this legislation forward, the Government wishes to invite views on extending the timescale for exercising this permitted development right from 6 months to 24 months. This is set out more fully in Part 2 of this document.
13. The Government also sees considerable merit in allowing, as permitted development, the drilling of boreholes for the purposes of seismic monitoring and the locating and appraising of shallow mine workings in connection with petroleum exploration. Along with that for groundwater monitoring, these would form an overall monitoring/investigative package of activities which would benefit from being able to be carried out as permitted development. Part 2 of this document sets out the Government's proposals and invites views on them.

Restrictions and conditions

Question 2: Do you agree that the amended rights should (with the one exception on height of structures) be subject to the same restrictions and conditions as apply currently to mineral exploration? If not what alternative restrictions or conditions would be appropriate?

14. Excluding the height restriction of structures considered under question 3, the majority of those who responded agreed that the proposed permitted development right should be subject to the same restrictions and conditions that currently apply to mineral exploration more generally.

15. However, there was concern that the Broads were not identified alongside other designated areas, such as National Parks which have similar status, in the restriction that would be applied to development proposed for up to 28 days duration.
16. Additional conditions or restrictions were also sought to cover advance warning of access arrangements on private land, accumulation of boreholes, and proximity of boreholes to sensitive locations.

Government response

17. The Government intends to apply those conditions and restrictions that currently apply to the permitted development rights for mineral exploration to the groundwater monitoring permitted development right for petroleum exploration. However, in doing so the Government intends to make certain modifications so that, both in respect of petroleum and mineral exploration, development proposed for less than 28 days would not be allowed in the Broads, in common with the other exempted areas already set out in the 2015 Order.
18. The Government considers that issues relating to rights of access to land and to trespass do not necessitate further conditions or restrictions to be applied to the proposed right. Permitted development rights do not confer any access rights or otherwise impact on existing property rights.

Height restrictions for structures

Question 3: Do you agree with the proposal to amend the height restrictions to 15 metres for structures assembled or provided under the permitted development right?

19. Those respondents who did not agree with this proposal considered that the increase to 15 metres could lead to significant visual impacts on the landscape. While appreciating there would be restrictions on any borehole activity taking place in a National Park or other protected area, it was considered the potential location of rigs up to 15 metre high adjacent to such areas could impact on their setting. Areas that do not fall into these categories, such as Green Belt, were also considered to be at risk of negative impact.

Government response

20. The Government intends to amend the height restriction of structures from 12 to 15 metres and to apply that new height restriction to structures assembled or provided both in respect of the operation of the permitted development right for the drilling of boreholes for groundwater monitoring for petroleum exploration, and to the operation of the permitted development rights for mineral exploration under Part 17 of the 2015 Order more generally.

21. The Government has carefully taken into account those responses relating to the impacts of this height extension. While appreciating concerns raised in consultation responses about visual intrusiveness, the Government considers that this change is acceptable taking into account the nature of the development; its temporary duration; and that any structures will be removed either within or at the end of the period.

Potential cost savings

Question 4: We consider that, as well as the benefits in providing public confidence that the environmental impacts of potential petroleum exploration schemes are being properly considered, the proposal could save time for such schemes going forward. What potential cost savings might be achieved were these permitted development rights to be realised?

22. Those who responded positively to this question considered that potential cost savings arising from this proposal would be best measured by way of the time saved by the industry in not having to wait for full planning permissions to be granted before baseline groundwater monitoring could commence, with consequent programme savings. There would also be potential cost savings for mineral planning authorities (through not having to devote resource to consider a full planning application for such development), and for environmental regulators, as good information early in the planning process should facilitate the efficient consideration of proposals.
23. Some respondents expressed concern that in cases where development is proposed for longer than 28 days, the proposed changes could result in more costs for mineral planning authorities in having to consider whether to give a direction under what is now Article 5 of the 2015 Order. The change would potentially lead to a high level of objection at the appraisal phase of a proposal, leading to increased time and costs to mineral planning authorities.

Government response

24. The Government considers there could be cost savings to business through the establishment of permitted development rights for groundwater monitoring boreholes through the time saved by the industry in not having to apply for planning permissions before baseline monitoring could commence. The consideration of a direction under Article 5 is a matter for local consideration; the permitted development right changes will apply nationally.

Part 2 – Further amendments to permitted development rights for petroleum exploration site investigation and monitoring

Consultation Proposals

Summary of original proposals

1. The proposals originally consulted on in March 2015 were to:
 - Amend existing permitted development rights under the Town and Country Planning (General Permitted Development) Order 1995 (“the 1995 Order”) so that development, which consists of the drilling of boreholes for groundwater monitoring for petroleum exploration, can take place as permitted development under Class A or Class B of Part 22 (mineral exploration)
 - Make the amended rights subject to the same restrictions and conditions, including those related to the duration for which development may continue, as currently apply to mineral exploration (with the exception of the height of structures) under Part 22;
 - Amend the current height restriction from 12 metres to 15 metres for structures assembled or provided under the permitted development right.
2. After the March consultation, the 1995 Order was replaced with the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the 2015 Order”).
3. The permitted development rights in Class A and Class B of Part 22 of the 1995 Order are now found in Class J and Class K of Part 17 of the 2015 Order. For information, a copy of the relevant classes in the 2015 Order is attached at Annex A. It does not include the amendments that the Government proposes to take forward, as set out in Part 1 of this document.

Summary of proposals accepted by the Government

4. As set out in Part 1 of this document, the Government proposes to introduce the following changes to permitted development rights in respect of **all** mining and mineral exploration:
 - In Classes J and K – including the drilling of boreholes for groundwater monitoring for petroleum exploration as permitted development;

- In Class J.1 (c) - including the Broads within the definition of areas where development is not permitted. This recognises that the Broads are of similar status to National Parks;
- In Class J - including protected groundwater source areas² within the definition of areas where the drilling of boreholes for petroleum site investigation and monitoring is not permitted;
- Under Article 5 - to provide in respect of Class K development (ie. permitted development not exceeding 6 months) that the mineral planning authority may make a direction restricting permitted development rights for the drilling of boreholes for groundwater monitoring for petroleum, where it is satisfied that this is expedient because the land is in a protected groundwater source area;
- In Class J.1(g) and Class K.1(f) - increasing the permitted height of any structure assembled or provided on the site to 15 metres in height, as previously consulted on, to recognise that modern rigs for the drilling of boreholes can range between 10 and 15 metres in height.

Summary of further proposals

5. Following consideration of the representations received, we are now seeking views on further amendments to permitted development rights for petroleum development to assist in seismic investigation and monitoring and for the location and appraisal of mine workings.
6. These further proposals are related to the original proposals in that they should also assist in establishing a more informed baseline for future monitoring; provide information to inform any environmental statement for an environmental impact assessment; and inform the location of drilling sites for any future planning application for the petroleum exploration.
7. In addition we are seeking views, in light of responses, to an extension of the proposed timescale for permitted development rights allowing the drilling of boreholes for groundwater monitoring in respect of petroleum exploration.
8. The Government's intention is that the proposed new rights will apply for the temporary use of land (not exceeding 28 consecutive days as per Class J) and the longer use of

² Our intention is to define "protected groundwater source area" as meaning any land at a depth of less than 1,200 metres beneath a relevant surface area, where

"relevant surface area" means any land at the surface that is –

- (a) within 50 metres of a point at the surface at which water is abstracted from underground strata and is used to supply water for domestic or food production purposes, or
- (b) within or above a zone defined by a 50-day travel time for groundwater to reach a groundwater abstraction point that is used to supply water for domestic or food production purposes; and

"groundwater" means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil.

land (which must not continue for longer than 6 months without the written consent of the mineral planning authority, as per Class K). The current restrictions and conditions within Classes J and K of Part 17 of the 2015 Order (as amended) relating to mining and mineral exploration would be applied to the permitted development rights in any new classes, where relevant.

The further proposals for new permitted development rights for petroleum exploration site investigation and monitoring

9. In the light of responses to the previous consultation, we are seeking views on further amendments to permitted development rights, for the purposes of petroleum exploration site investigation and monitoring, for:
- the drilling of boreholes for carrying out of seismic investigation and monitoring (and the provision or assembly on that land or adjoining land of any structure required in connection with any of those operations);
 - the drilling of boreholes for purposes of locating and appraising mine workings (and the provision or assembly on that land or adjoining land of any structure required in connection with any of those operations);
 - the extension of the duration of the permitted development right for the drilling of boreholes for groundwater monitoring from 6 to 24 months.

Boreholes for seismic investigation and monitoring

10. Classes J and K of Part 17 of the 2015 Order provide permitted development rights for mining and mineral exploration. These include the right to drill boreholes for purposes of seismic monitoring and allow an explosive charge of no more than 1 kilogram (Class J.1(d) – 28 days) and 2 kilograms (Class K.1 (d) – 6 months). The drilling of boreholes for petroleum exploration is currently excluded from the permitted development rights for mining and mineral exploration, which means that developers proposing to carry out such development can carry out surface seismic monitoring, but cannot sink boreholes for this purpose.
11. Seismic investigation and monitoring encompasses passive monitoring of background seismicity which may require the drilling of boreholes to accommodate seismic monitoring equipment, as well as induced seismicity, which may be undertaken by a vibrating pad above ground rather than a charge set within a borehole. It may not therefore require an explosive charge, depending on the method used. In view of the importance of obtaining full seismic data to inform any proposal for petroleum exploration, we propose that there should be a permitted development right allowing the drilling of boreholes for purposes of seismic monitoring.

Boreholes for the location and appraisal of mine workings

12. Existing information will inform a desk based assessment of the location of previous mine workings but information on very old mines, which were often shallow workings, is not comprehensive. It is important to determine where mine workings have taken place and to understand their condition, to inform the location of drill sites for petroleum exploration and extraction.
13. The Construction Industry Research and Information Association in its publication on Construction Over Abandoned Mine Workings³, notes that old shallow workings (up to 50 metres) can impact on surface stability and that exceptionally workings at depths up to 150 metres can also influence the ground surface. Separately, a Coal Authority Permit is required from the Coal Authority for any activities that intersect with coal seams or coal mining legacy features.
14. In view of the need to establish where previous mine workings may affect future drill sites for petroleum exploration, we propose that there should be a permitted development right allowing the drilling of boreholes for the location and investigation of former mine workings, to a depth of 160 metres. This will allow for drilling below the likely depth of former shallow mine workings to establish their condition.

Proposed extension of the duration of the new permitted development right allowing boreholes for groundwater monitoring in respect of petroleum exploration to 24 months

15. As set out in Part 1 of this document, the Government has decided to introduce new permitted development rights to allow boreholes, in respect of petroleum development, for the purposes of groundwater monitoring. In respect of these new permitted development rights we propose to apply the restrictions and conditions that apply to other mining and mineral exploration permitted development rights, as amended in light of the original consultation (see paragraph 4 above).
16. The current time restrictions on these rights are 28 days for the temporary right under Class J; and not exceeding 6 months unless the mineral planning authority has otherwise agreed, in writing, to extend the period under Class K.
17. In the original consultation we proposed that the period, in respect of that longer term right (Class K), after which permitted development rights for groundwater monitoring in advance of petroleum development would cease, would be 6 months. Groundwater monitoring is necessary to establish a baseline and information on ground conditions to identify sources of groundwater and avoid pollution and contamination. However, establishing the baseline may take 12 months or longer, depending on the geology and

³ CIRIA Special Publication 32 Construction over abandoned mine workings (1984, reprinted 2002)

chemical properties of the rock formation of the aquifer. In addition, it is noted that for shale development, there is a requirement for monitoring the level of methane in groundwater in the period of 12 months before any associated hydraulic fracturing commences (Petroleum Act 1998 section 4A, as introduced by section 50 of the Infrastructure Act 2015; these provisions are not yet in force).

18. It is therefore proposed to extend the permitted development rights for the drilling of boreholes for groundwater monitoring to 24 months, to facilitate this essential monitoring and continuity in monitoring, in respect of petroleum exploration (including shale development), from the pre-application stage, through the consideration of any planning application, to the potential commencement of development.

Questions - Views on Extending Permitted Development Rights

Question 1: Do you have views on whether permitted development rights should be amended to extend the period for boreholes for groundwater monitoring for petroleum exploration from six months to twenty four months?

Question 2: Do you have views on whether permitted development rights should be amended to include boreholes for seismic investigation and monitoring for petroleum exploration?

Question 3: Do you have views on whether permitted development rights should be amended to include boreholes for the location and appraisal of mine workings for petroleum exploration?

Question 4: We consider that, as well as the benefits in providing public confidence that the environmental impacts of potential petroleum exploration schemes are being properly considered, the proposal could save time for such schemes going forward. What potential cost savings might be achieved were these additional permitted development rights to be realised?

What happens next?

Please submit your views on the above questions by **24 September 2015**. Details on how to respond are contained on page 15. The Government will consider views submitted on these proposals and then publish a response to these, before any changes are made to the 2015 Order. The changes that it has already accepted to the 2015 Order, following the consultation in March, will not be implemented until a decision is made on whether or not to extend the permitted development rights, as proposed in Part 2 of this document.

Topic	Amendment to existing permitted development rights
Invitation for views	Views are sought on the Government's proposal to amend Part 17 of the Town and Country Planning (General Permitted Development) (England) Order 2015, to allow the drilling of boreholes in relation to petroleum exploration.
Geographical scope	England
Department responsible	Planning Directorate within the Department for Communities and Local Government.
Duration	6 weeks (13 August 2015 to 24 September 2015)
Enquiries	For enquiries please contact: Roger Wand Tel: 03034441688
How to respond	<ul style="list-style-type: none"> • We would ideally prefer responses using the online SurveyMonkey at https://www.surveymonkey.com/r/DLPTSNQ • Alternatively you can email your response to the questions to PDRboreholes@communities.gov.uk • If you need to provide a written response please make it clear which questions you are responding to. • Written responses should be sent to: Roger Wand Department for Communities and Local Government Third Floor Fry Building 2 Marsham Street SW1P 4DF <p>When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:</p> <ul style="list-style-type: none"> • your name, • your position (if applicable), • the name of organisation (if applicable), • an address (including post code), • an email address, and a contact telephone number
What happens next?	<p>We will take into account all responses.</p> <p>A summary of responses will be published on the Department's pages on the www.gov.uk website within three months of the closing date.</p>

About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact CLG Consultation Co-ordinator.

DCLG Consultation Co-ordinator
2 Marsham Street
London SW1P 4DF
or by e-mail to: consultationcoordinator@communities.gsi.gov.uk

Annex A

The Town and Country Planning (General Permitted Development) (England) Order 2015

PART 17

Mining and mineral exploration

Class J – temporary use of land etc for mineral exploration

Permitted development

J. Development on any land during a period not exceeding 28 consecutive days consisting of—

- (a) the drilling of boreholes;**
- (b) the carrying out of seismic surveys; or**
- (c) the making of other excavations,**

for the purpose of mineral exploration, and the provision or assembly on that land or adjoining land of any structure required in connection with any of those operations.

Development not permitted

J.1 Development is not permitted by Class J if—

- (a) it consists of the drilling of boreholes for petroleum exploration;**
- (b) any operation would be carried out within 50 metres of any part of an occupied residential building or a building occupied as a hospital or school;**
- (c) any operation would be carried out within a National Park, an area of outstanding natural beauty, a site of archaeological interest or a site of special scientific interest;**
- (d) any explosive charge of more than 1 kilogram would be used;**
- (e) any excavation referred to in Class J(c) would exceed 10 metres in depth or 12 square metres in surface area;**
- (f) in the case described in Class J(c) more than 10 excavations would, as a result, be made within any area of 1 hectare within the land during any period of 24 months; or**
- (g) any structure assembled or provided would exceed 12 metres in height, or, where the structure would be within 3 kilometres of the perimeter of an aerodrome, 3 metres in height.**

Conditions

J.2 Development is permitted by Class J subject to the following conditions—

- (a) no operations are carried out between 6.00pm and 7.00am;
- (b) no trees on the land are removed, felled, lopped or topped and no other thing is done on the land likely to harm or damage any trees, unless the mineral planning authority⁴ have so agreed in writing;
- (c) before any excavation (other than a borehole) is made, any topsoil and any subsoil is separately removed from the land to be excavated and stored separately from other excavated material and from each other;
- (d) within a period of 28 days from the cessation of operations unless the mineral planning authority have agreed otherwise in writing—
 - (i) any structure permitted by Class J and any waste material arising from other development so permitted is removed from the land;
 - (ii) any borehole is adequately sealed;
 - (iii) any other excavation is filled with material from the site;
 - (iv) the surface of the land on which any operations have been carried out is levelled and any topsoil replaced as the uppermost layer, and
 - (v) the land is, so far as is practicable, restored to its condition before the development took place, including the carrying out of any necessary seeding and replanting.

Class K – use of land etc for mineral exploration

Permitted development

K. Development on any land consisting of—

- (a) the drilling of boreholes;**
- (b) the carrying out of seismic surveys; or**
- (c) the making of other excavations,**

for the purposes of mineral exploration, and the provision or assembly on that land or on adjoining land of any structure required in connection with any of those operations.

⁴ See section 1(4) of the Act

Development not permitted

K.1 Development is not permitted by Class K if—

- (a) it consists of the drilling of boreholes for petroleum exploration;
- (b) the developer has not previously notified the mineral planning authority⁵ in writing of its intention to carry out the development (specifying the nature and location of the development);
- (c) the relevant period has not elapsed;
- (d) any explosive charge of more than 2 kilograms would be used;
- (e) any excavation referred to in Class K(c) would exceed 10 metres in depth or 12 square metres in surface area; or
- (f) any structure assembled or provided would exceed 12 metres in height.

Conditions

K.2 Development is permitted by Class K subject to the following conditions—

- (a) the development is carried out in accordance with the details in the notification referred to in paragraph K.1(b), unless the mineral planning authority have otherwise agreed in writing;
- (b) no trees on the land are removed, felled, lopped or topped and no other thing is done on the land likely to harm or damage any trees, unless specified in detail in the notification referred to in paragraph K.1(b) or the mineral planning authority have otherwise agreed in writing;
- (c) before any excavation other than a borehole is made, any topsoil and any subsoil is separately removed from the land to be excavated and stored separately from other excavated material and from each other;
- (d) within a period of 28 days from operations ceasing, unless the mineral planning authority have agreed otherwise in writing—
 - (i) any structure permitted by Class K and any waste material arising from other development so permitted is removed from the land;
 - (ii) any borehole is adequately sealed;
 - (iii) any other excavation is filled with material from the site;

⁵ See section 1(4) of the Act

(iv) the surface of the land is levelled and any topsoil replaced as the uppermost layer, and

(v) the land is, so far as is practicable, restored to its condition before the development took place, including the carrying out of any necessary seeding and replanting, and

(e) the development ceases no later than a date 6 months after the elapse of the relevant period, unless the mineral planning authority have otherwise agreed in writing.

Interpretation of Class K

K.3 For the purposes of Class K, “relevant period” means the period elapsing—

(a) where a direction is not issued under article 5, 28 days after the notification referred to in paragraph K.1(b) or, if earlier, on the date on which the mineral planning authority notify the developer in writing that they will not issue such a direction, or

(b) where a direction is issued under article 5, 28 days from the date on which notice of that decision is sent to the Secretary of State, or, if earlier, the date on which the mineral planning authority notify the developer that the Secretary of State has disallowed the direction.

Interpretation of Part 17

N.1 For the purposes of Part 17—

“mineral exploration” means ascertaining the presence, extent or quality of any deposit of a mineral with a view to exploiting that mineral;

“structure” includes a building, plant or machinery;

Article 5

Directions restricting certain minerals permitted development

5.—(1) If, on receipt of a notification from any person proposing to carry out development within Class K or M of Part 17 of Schedule 2, a mineral planning authority⁶ are satisfied as mentioned in paragraph (2), they may, within a period of 21 days beginning with the receipt of the notification, direct that the permission granted by article 3 does not apply to the development, or to such part of the development as is specified in the direction.

⁶ See section 1 (4) of the Act

(2) The mineral planning authority may make a direction under this article if they are satisfied that it is expedient that the development, or any part of it, should not be carried out unless permission for it is granted on an application because—

(a) the land on which the development is to be carried out is within—

(i) a National Park;

(ii) an area of outstanding natural beauty;

(iii) a site of archaeological interest, and the operation to be carried out is not one described in the Schedule to the Areas of Archaeological Importance (Notification of Operations) (Exemption) Order 1984 (exempt operations)⁷;

(iv) a site of special scientific interest; or

(v) the Broads;

(b) the development, either taken by itself or taken in conjunction with other development which is already being carried out in the area or in respect of which notification has been given under the provisions of Class K or M of Part 17 of Schedule 2 would cause serious detriment to the amenity of the area in which it is to be carried out or would adversely affect the setting of a Grade I listed building;

(c) the development would constitute a serious nuisance to the inhabitants of a nearby residential building, hospital or school; or

(d) the development would endanger aircraft using a nearby aerodrome.

(3) A direction made under this article must contain a statement as to the day on which (if it is not disallowed under paragraph (5)) it comes into force, which must be 29 days from the date on which notice of it is sent to the Secretary of State in accordance with paragraph (4).

(4) As soon as is reasonably practicable a copy of a direction under this article must be sent by the mineral planning authority to the Secretary of State and to the person who gave notice of the proposal to carry out development.

(5) The Secretary of State may, at any time within a period of 28 days beginning with the date on which the direction is made, disallow the direction; and immediately upon receipt of notice in writing from the Secretary of State disallowing the direction, the mineral planning authority must give notice in writing, to the person who gave notice of the proposal, stating that the person is authorised to proceed with the development.

⁷ S.I. 1984/1286