Circular 58/78
(Department of the Environment)
Circular 103/78
(Welsh Office)

Joint Circular from the
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2 Marsham Street London SW1P 3EB

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Sir

14 *August* 1978

Report of the Committee on Planning Control over Mineral Working

1. We are directed by the Secretary of State for the Environment and the Secretary of State for Wales to bring to your attention their conclusions on the Report of the Committee on Planning Control over Mineral Working (the Stevens Report). A statement of these conclusions was placed in the Library of the House of Commons on Thursday 3 August in response to a Parliamentary Question. A copy of the statement is annexed.

We are, Sir, your obedient Servants,

G I FULLER, *Assistant Secretary*

D J TALLIS, *Assistant Secretary*

The Chief Executive
County Councils
District Councils
London Borough Councils } England and Wales

The Town Clerk, City of London

The Director-General, Greater London Council

The National Park Officer
Peak District National Park
Lake District National Park

[DOE M/348/80]
[WO P87/72/04]

ANNEX

Report of the Committee on Planning Control over Mineral Working (The Stevens Committee)

*Statement of the Conclusions of the Secretary of State for the Environment with the Agreement of the Secretary of State for Wales**

3 *August*, 1978

Introduction

1. The Committee on Planning Control over Mineral Working was appointed in August 1972 under the Chairmanship of Sir Roger Stevens, GCMG with the following terms of reference:

> "To examine the operation of the statutory provisions (except the provisions of the Opencast Coal Act 1958) under which planning control is exercisable over mineral exploration, over surface mineral working and installations, over the deposit on the surface of spoil or waste from mineral workings, and over the after-treatment of surface land worked for minerals: to consider whether the provisions require to be amended or supplemented; and to make recommendations."

Their Report was published on 23 February 1976 and in answer to a question in the House on that date, Mr John Silkin the then Minister for Planning and Local Government thanked the Committee for their very thorough study, announced that the Government welcomed the Report and that they would be consulting the local authority associations, the minerals industry, amenity bodies and others with an interest in the extraction of minerals about the Report's recommendations.

2. We have given the Report the most careful consideration and have now completed our examination. In this process we have had the benefit of the comments of the many bodies and persons who responded during the consultation process and we have had access to all the evidence which the Committee themselves amassed in preparing their Report. We are grateful to all those who took time and trouble in preparing this information.

3. We would also like to add our thanks to the Committee for their valuable work. While the possible need for adaptation of the planning law to fit the circumstances of mineral extraction and processing has always been recognized, minerals planning control has developed as part of the planning system generally and this is the first time since planning laws were enacted that the relevance of the system to the extraction of minerals has been reviewed by an independent body.

Minerals and the Planning System

4. The Committee were appointed against a background of some unease about the system. Local planning authorities were concerned in particular about the inadequacy of conditions attached to permissions for mineral working granted in the early years of planning legislation and about their powers to apply and enforce conditions. The extractive industry was concerned about lack of understanding of their requirements and indeed of the significance of their role, and about delays.

* The Secretary of State for Scotland's conclusions on the Report in its application to Scotland will be published separately.

5. These are legitimate concerns with which the Committee deal in detail. But before doing so they analyse the changes which have occurred over the past two decades and suggest that it is these changes rather than defects in the law which have given rise to the need for review. This is a view we wish to endorse. In general the planning system has coped well with mineral development and we see no reason to take the control of mineral development out of the planning system, subject that is, to some changes in the system arising out of the Committee's recommendations. The impact of mineral working is one of the main reasons why it causes concern and is, in our view, a significant reason for retaining control within the planning system.

Objectives

6. We would also commend the Committee's aim to produce a system which, to quote from paragraph 2.13 of their Report, will—

> "(a) facilitate an increase in our knowledge of our mineral resources, so that decisions may be better informed;
>
> (b) enable the needs of society for minerals to be satisfied with due regard to the wishes of society for the protection of the environment;
>
> (c) enable the planning authorities to secure that the nuisance, damage and loss of amenity caused by mineral operations are eliminated or reduced to an acceptable level, that any necessary damage to the land is promptly and effectively repaired, and that the land is made fit for a socially desirable further use;
>
> (d) facilitate the planned use of our mineral resources, so that they are neither sterilised nor worked at an unacceptable environmental cost."

These have equally been our objectives in considering the recommendations and the comments made on them but necessarily we have had to take into account the current financial restraints and the many other calls on limited resources both in deciding which recommendations to adopt and the possible timescale for implementing them.

Key Recommendations

7. Later in the statement we have set out conclusions on each individual recommendation but there are some aspects to which we would draw particular attention. These are:

a. SPECIAL REGIME (Chapter 3) Distinctions between mineral and other forms of development are already recognised in planning law. They are also recognized in practice in, for example, the imposition on permissions for mineral working of conditions requiring the restoration of the site or after treatment consistent with some subsequent use neither of which options is available for most other forms of development. Implementation of those of the Committee's recommendations which we propose to accept will add appropriate emphasis to those distinctions. However, since for various reasons we have not felt able to adopt the totality of the recommendations at this time we do not think it will be apt to use the expression "special regime".

b. STAFFING (Chapter 4) We accept that benefits would flow from devoting more staff to minerals planning control and from the employment of more specialised staff. The Committee have made plain their view that staffing is a matter of overriding importance, but we are unable to accept the view that their recommenda-

tions as to staff should be implemented before any others. Where an acceptable recommendation may be implemented without disregard for the requirements of present economic strategies we believe it is right to proceed with it.

c. LONGER TERM PLANNING (Recommendations 19.5(a) and (c)). The Committee call for national mineral policies but stress the dangers of attempting to produce a "national plan" which would set out demand and production forecasts for minerals and specify areas to be worked. We propose to publish shortly a circular containing a full statement of our views on policies.

d. CONSULTATION AREAS AND CONSULTATIVE COMMITTEES (Recommendations 19.5(g) and (i)) We believe that broader consultation between local planning authorities and the minerals extractive industry is most desirable, as for instance is taking place in the aggregate working parties. We accept also that consultation areas can be a useful device to avoid the unnecessary sterilisation of mineral deposits of potential value but the need for these and the arrangements for them must be established at local level. As to county consultative committees, this again is primarily a matter for local arrangement.

e. REVIEW OF EXISTING PERMISSIONS (Recommendation 19.12(d)) While we recognize that they are not without difficulties we regard the Committee's recommendations in Chapter 12 of their Report, about the review of existing conditions and permissions for mineral development, as of first significance. There is broad agreement that land worked for minerals should be restored to its original form as far as practicable or should, if feasible, be put to further use; and while it is normal to include in present day permissions, as appropriate, provision for restoration or some form of treatment, there are many existing permissions which contain no such conditions. We hope that it will be possible to introduce legislation which will enable county planning authorities to conduct a review of existing permissions as soon as staff can be made available.

Implementation: Legislation

8. At the end of this statement we have commented on the Committee's views on a programme for implementation. Certain recommendations may be implemented by changes to the General Development Order and these will be made in due course.

9. Where primary legislation is required, we propose to take the opportunity to introduce amendments to the Town and Country Planning Act 1971 when the exigencies of the Parliamentary timetable permit.

Detailed Conclusions

10. Chapters 1 and 2 of the Report contain no specific recommendations and call for no comment additional to the foregoing. Conclusions on the recommendations contained in the remaining chapters are set out below, by reference to the summary of recommendations reproduced from Chapter 19 and using the numbering employed in that chapter.

CHAPTER 3 — DEVELOPMENT CONTROL —

GENERAL PRINCIPLES

19.3(a) Development control over mineral working should remain within the planning system but because of its special nature (see paragraph 3.9) made subject to a special regime; such control should be exercised by county planning authorities (paragraph 3.11).

19.3(b) There should be a defined class of planning applications and permissions relating to mineral working; definitions of "mineral application" and "mineral permission" are proposed (paragraph 3.13).

19.3(c) Early consideration should be given to applying the special regime to all forms of mineral workings (paragraph 3.15) but not to exploration (paragraph 3.14).

We have already indicated in paragraphs 5 and 7(a) above our endorsement of the Committee's recommendation that control over mineral working should remain within the planning system, although it does not seem apt that a new expression "special regime" should be introduced at present. We consider that existing distinctions between control of mineral development and of other development should continue and be given further emphasis by the implementation of certain of the Committee's recommendations (paragraph 7(a)). We accept also that control over mineral development should continue to be a matter primarily for county councils.

We have noted the Committee's proposed definitions. These are related to the proposed special regime and although we do not wholly accept that proposal we will consider whether amendment of existing definitions is necessary in relation to those amendments of statutory provisions which we intend to pursue.

Finally, as to implementation, we propose to take opportunities as they arise to provide the appropriate administrative and legislative framework for implementation of the Committee's recommendations, which we propose to accept. However, because of the present tight control over public expenditure, the bringing into operation of some of the measures will have to be deferred.

19.3(d) Applications for planning permission for mineral working by county planning authorities should be notified to the Secretary of State; any such application relating to a working of significant size, or situated in an environmentally sensitive area, or liable to affect ancient monuments etc. should automatically be called in for determination by the Secretary of State; permissions granted by the Secretary of State to county planning authorities should be fully detailed and the Secretary of State should arrange for the working to be monitored (paragraphs 3.12 and 6.10).

We do not accept this recommendation as we are not satisfied that mineral development by county councils needs to be treated differently from any other category of the extensive range of development undertaken by county councils and district councils. The Town and Country

Planning General Regulations 1976 lay down a procedure whereby local authorities may obtain deemed planning permission and we propose that this procedure should continue to apply to mineral development carried out by county councils who will, we believe, ensure in the control of their own workings at least the same standards that they would wish to secure in those workings if they were under private operation.

CHAPTER 4 — THE ROLE OF THE PLANNING AUTHORITY

19.4(a) Staffs engaged on mineral planning control should:
(i) have a greater range of professional and technical skills (paragraph 4.11);
(ii) exercise continuous supervision over mineral workings (paragraphs 4.13 to 4.15);
(iii) be wholly employed on minerals work over long periods (paragraphs 4.18 and 4.19).

19.4(b) Adequately skilled staff should be available to every county planning authority (paragraph 4.20); the Secretary of State should take reserve powers of direction to secure this if necessary (paragraph 4.23).

19.4(c) County planning authorities should meet the need by staff-sharing schemes (paragraphs 4.25 and 4.26).

We accept the general sense of the Committee's comments. The need for greater technical expertise in dealing with mineral planning matters appears to be widely accepted, and of course it is desirable that authorities should be properly staffed for the full and effective discharge of their functions. We are, however, anxious to husband our resources of the specialist skills which the Committee list and we do not believe, for example, that there is a need for each county to develop organisations which, in expertise, precisely reflect the staff structure of the extractive industry.

As the Committee themselves note, the requirements of all counties are not the same and we believe that the County Councils themselves are in the best position to judge what their needs are bearing in mind that they are already in a position to call on a wide range of skills which they employ for other functions; derelict land teams, for example, may contribute advice in the preparation and monitoring of restoration schemes.

Whether county councils wish to meet any need they have for staff by sharing with other counties eg on the lines of the joint derelict land reclamation teams, or by other means (such as the employment of consultants when an exceptional application is received which calls for expertise which is not readily available) is a matter which we think is best left to the authorities themselves. They will wish to consider both what action, if any, may be taken to improve the situation in the light of present economic strategies and what may be desirable in the longer term. We propose at the appropriate time to inform ourselves of the staffing adopted, or proposed to be adopted, for dealing with minerals matters but wo do not think it appropriate to take reserve powers of direction as proposed by the Committee.

19.5(a) Every effort should be made to formulate and refine national policies for individual minerals or groups of minerals and to reconcile these policies with each other and with national policies for other land-uses (paragraph 5.2).

19.5(c) The Department of the Environment should press ahead with studies designed to lead to the formulation of policy guidance to county planning authorities in relation to construction industry minerals (paragraph 5.9), and should take a more positive attitude to securing the reflection of this policy guidance in development plans and individual decisions on planning applications (paragraph 5.10).

We have already indicated at paragraph 7c that we propose shortly to publish a circular on policies.

Given the collaboration of the other bodies involved it is our intention, in the light of the Report of the Verney Committee on Aggregates, to continue with the current studies relating to aggregate minerals, to provide information that can be incorporated into thinking about regional strategies and into the production of policies in structure and local plans, and to enable us to develop any general policy guidelines that may be required.

As to other construction industry minerals we shall bear in mind the Committee's view that our Departments should play a more positive role. However, we do not propose to take any action which will have the effect of removing individual decisions on planning applications from county planning authorities, who will continue to determine each application on its merits having regard to development plans and to any other material considerations.

19.5(b) The Department of Industry should take positive steps to ensure that county planning authorities are fully aware of the national interests in non-ferrous metals and other minerals for which it is the sponsor department (paragraph 5.7).

The Secretary of State for Industry intends to issue a Circular to planning authorities on this recommendation.

19.5(d) Steps should be taken to remove unnecessary restrictions on the powers of the Institute of Geological Sciences to acquire and use geological information, and to make the services which the Institute can provide to planning authorities more widely known and used (paragraph 5.14).

We are reviewing the powers of the Institute of Geological Sciences in consultation with our colleagues at other Departments.

19.5(e) Consideration should be given to encouraging a wider use of the professional expertise of the Alkali and of the Mines and Quarries Inspectorates as a source of advice to county planning authorities (paragraph 5.15).

This is a matter which we are considering in consultation with the Health and Safety Executive, but having due regard to the necessity to avoid creating a need for additional staff.

19.5(f) The Department of the Environment should make better known, and encourage wider use of, the facilities which it can offer for the provision of information to county planning authorities (paragraph 5.16).

The Department will be ready, within its existing capacity, to meet the legitimate needs of local authorities for any information not of a confidential nature which is held within the Department and is not generally available to authorities in published documents.

19.5(g) Local authority officers should be statutorily required to maintain confidentiality of information supplied by mineral operators (paragraph 5.17), and there should be established for each county a county minerals consultative committee (paragraphs 5.1[illegible] and 5.26) as part of the development plan machinery (paragraph 5.28); the duties of such a committee are outlined (Annex 5D Section D); any members of such a committee who are not officers should also be statutorily required to maintain confidentiality of information (paragraph 5.26).

19.5(i) Areas of substantial mineral deposits should be indicated, on maps included in reports of surveys, as "mineral consultation areas"; there should be consultation with the mineral industry on any application for planning permission for development in a mineral consultation area which could result in sterilisation of mineral deposits (paragraph 5.25).

We accept the Committee's view that protection of confidentiality could encourage the provision of more information from operators to county planning officials. However, we consider that the Committee's proposal needs further consideration. First, the form of any legislation will require further consideration; section 9 of the Statistics of Trade Act 1947, which the Committee cite as a precedent, does not appear to contain provisions which would be appropriate for the Committee's suggested scheme. Secondly, an appropriate balance will have to be struck between the need for confidentiality and the need for openness in the consideration of planning applications and development plans.

We have already commented briefly in paragraph 7d above that while we believe that broader consultation between local planning authorities and the extractive industry is most desirable the proposals for county consultative committees are primarily a matter for local arrangement.

The functions envisaged by the Commitee for these committees are: to be consulted under the proposed arrangements for consultation areas (paragraph 5.25); to propose the consultation maps and to keep under review the consultation areas and all matters affecting mineral working (paragraph 5.28); and generally to encourage co-operation between planning authorities and operators.

Where they exist, the consultation area arrangements have worked well and we would support extended use of them where there is a demonstrable

need. But existing consultation areas and associated procedures have been developed in relation to a few minerals of well defined occurrence and usually, in practice, where relatively few operators are concerned. In the case of many other minerals their occurrence is more widespread and frequently less well defined. We do not believe that it would be right to require a comprehensive network of consultation arrangements covering all minerals and all areas, which could produce a complex situation and require a substantial involvement not only of local authority staff but also of representatives of the extractive industries.

Nonetheless we believe that consultative arrangements should be evolved as necessary to suit local circumstances and meet local needs, as staff resources permit. Whilst it may be feasible to incorporate procedures in development plans based on clearly defined consultation areas it is apparent that some county planning authorities have in mind to develop less formal arrangements to avoid unnecessary sterilization of minerals notably through local plans. We believe that it should be for the authorities to consider the form of arrangements apt to their needs.

As to the other functions envisaged for consultation committees the question of review of consultation area or development plan maps and of mineral matters generally is entirely for county planning authorities. Accordingly we leave it to them to consider whether they would wish to undertake such reviews by delegation to committees including co-opted members from industry, or after advice from such committees or by some other means. We also consider that the method by which co-operation between planning authorities and operators should be encouraged, should be evolved to suit local needs. But we strongly endorse the proposition that authorities and operators should co-operate both in matters of day to day planning control and of longer term needs and we look to county planning authorities, unless they have already done so, to develop continuing liaison with the mineral operators in their area, as staffing permits.

We have at present no reason to believe that the existing powers available to local authorities will not suffice for the establishment of whatever consultative arrangements may be adopted and we do not propose legislation to require arrangements in any particular form or to prescribe particular functions. Officers of our Departments will, however, be ready to join with local authorities and operators in any discussion of such arrangements which may be desired.

19.5(h) Demand and supply forecasts should not be included in development plans (paragraph 5.24).

We agree with this recommendation although we consider that it is important that policies in structure plans and, more especially, in local plans should be seen to have regard to such data set out in reports of surveys. Where the data forms part of the basis for policies or proposals it should be summarised in the reasoned justification in the plans.

19.5(j) The Department of the Environment should adopt a more positive attitude towards the needs of county planning authorities for advice on the exercise of development control over mineral working and should if necessary provide a witness to speak to that advice at any public inquiry (paragraph 5.30).

Our Departments already give advice on development plans and in relation to development control general advice is provided in the "Green Book" (which is to be revised) and in Circulars. Where a planning authority seeks advice concerning an application for planning permission for a mineral development the Departments will be prepared to give such advice where this can properly be done without prejudice to our statutory jurisdiction. We have noted the Committee's view (in paragraph 5.30 of the Report) about Departmental consciousness of the possibility that in the event of a subsequent appeal the Secretary of State's impartiality could be compromised by premature expressions of view, and their opinion that the Department of the Environment has been unduly cautious in relation to advice on minerals matters. But, as the Committee themselves say, "the possibility of compromise is real" and while we recognize that authorities will look to the Department for guidance we are also concerned to secure that there is public confidence in the conduct of appeals. Where advice or information is given to an authority it will be necessary to secure that it is disclosed to the applicant and arrange for a departmental representative to be available to answer questions on it at any inquiry into the application or appeal, where appropriate; but such a departmental representative would not be an official directly concerned with decisions on planning appeals or applications called in for our decisions. We will continue to keep under review the arrangements under which such advice will be provided.

19.5(k) The 'Green Book' should be revised and thereafter kept up to date (paragraph 5.31).

We accept this recommendation. A revised version of the Green Book is in preparation and interested parties will be consulted on the draft.

19.5(l) The Department of the Environment should give detailed guidance on the coverage of minerals in development plans (paragraphs 5.29 and 5.32); the nature of this guidance is set out (Annex 5D Sections A to C).

Advice on these matters will be included in the revised Green Book although consideration will be given to whether some of the detail, which might be subject to change, should be published in advice notes.

CHAPTER 6 — DEVELOPMENT CONTROL:
I — APPLICATION PROCEDURE

19.6(a) A special form for mineral applications should be prescribed by the Secretary of State by Order (paragraph 6.2); notes are given on the drawing up of this form (Annex 6A).
19.6(b) Powers of county planning authorities to require further information in support of a mineral application should remain unaltered (paragraph 6.3).

The proposal by Mr Dobry that there should be a standard application form was not accepted. We recognize that there are some special considerations for minerals planning, to which the Committee have drawn attention, and we consider that it would be helpful to the industry,

local authorities and other interested parties if applications provided a consistent range of information. However, prescription of a form by law could open up the possibility of minor departures from the prescribed form giving rise to doubts about the validity of applications (involving perhaps proceedings in the Courts) and bearing in mind that it is intended to retain unaltered the power to require further information, we consider that the most suitable course would be to include a model in the revised Green Book.

19.6(c) The Secretary of State should keep under review the adequacy of the 21 days formally allowed for objections to a mineral application (paragraph 6.4).

We accept this recommendation.

19.6(d) An applicant for a mineral permission should be obliged by law to give 21 days' notice of the mineral application, followed by a copy of the application, to any person known or reasonably believed to have an interest in minerals comprised in the application site (paragraph 6.6); this recommendation is qualified in respect of owners of fossil fuel deposits (paragraph 6.6).

Insofar as Section 27 of the Act does not require notice to be given to persons referred to in the recommendation we will consider what amendments might be made to that section. As to a further requirement that copies of applications should be provided, we regard existing arrangements for people who receive notices to inspect planning applications as adequate. Such a requirement would be new to the planning system and might well prove to be an unacceptable burden on applicants.

19.6(e) Applications for planning permission for developments which would have the effect of sterilising mineral deposits in a mineral consultation area should be referred to the county minerals consultative committee; the local planning authority determining the application should be obliged to take the views of the committee into account (paragraph 6.7).

It is our policy that mineral deposits needed, or likely to be needed, for future production are not unnecessarily sterilised by surface development and as we have previously indicated (in relation to recommendation 19.5(i)), we consider that further development of arrangements for consultation in defined areas, where necessary, would be desirable. However, not only do the needs of different areas vary but so may the form of the arrangements best suited to the particular mineral or locality and we do not consider that it would be right to seek to impose uniform requirements for consultation or the form which it should take.

19.6(f) The Secretary of State should not make greater use than heretofore of his call-in powers; the situation should be re-examined if the recommendations made by us in Chapters 4 and 5 are not implemented (paragraph 6.9: see also paragraph 19.3(d) above as to mineral working by county planning authorities).

Although, for the reasons explained, we do not feel able at this time to accept unreservedly the recommendations made in Chapters 4 and 5,

we see no present need to vary call-in policy in a way which would take more cases out of the hands of county planning authorities.

19.6(g) County planning authorities should be obliged to consult water authorities about all mineral applications (paragraph 6.14).
19.6(h) County planning authorities should be obliged to consult with people having an interest in land covered by a mineral application:
(i) when they are consulted by an operator before an application is lodged;
(ii) before a permission is granted;
(iii) on a review of conditions (paragraph 6.16).

19.6(i) There should be full consultation between county planning authority and mineral operator before a mineral application is submitted (paragraph 6.20).

We accept the first of these recommendations (which will entail amendment of the General Development Order), and we are in full agreement about the desirability of full consultation between the planning authority and the applicant before a mineral application is submitted. We are also in sympathy with the spirit of the proposal about consultation with people having an interest in land covered by a minerals application and we propose to include advice on that matter in the revised Green Book. However, we shall not seek to make such consultation a statutory requirement; to do so could result in substantial difficulties for county planning authorities.

19.6(j) The Secretary of State should take powers to require an objector to make a pre-inquiry statement in relation to an inquiry into a mineral application (paragraph 6.25).

We have considered this recommendation in relation to all planning cases since we do not consider that if it were introduced it could be confined to minerals cases nor would there be sufficient justification for doing so. We would hesitate to require objectors to put in statements unless we could be sure that they could afford to commission representatives to speak on their behalf if they so wished. But, amongst various procedures which, as was indicated in the statement about Mr Dobry's review (DOE Circular 113/75, Welsh Office Circular 203/75), are being tested to determine whether they might lead to quicker and better inquiries, is one in which some objectors in major cases are invited to submit pre-inquiry statements. The results of these tests will influence our further action.

19.6(k) Persons entitled by rule 7(1) of the Town and Country Planning (Inquiries Procedure) Rules 1974 to appear at an inquiry into a mineral application should have a right, with the permission of the Inspector, to request a statement of relevant fact from a government department, and a witness from the department shall be made available at the inquiry to speak to the statement provided (paragraph 6.30).

This again is a recommendation which in our view needs to be considered in relation to planning cases generally. If a person entitled to appear at an inquiry considers that unpublished factual material in the

possession of a department is relevant to the particular application or appeal in question, it is open to the person concerned to ask for the material to be made available. It would be necessary, as the Committee indicated, for the nature of the facts and their relevance to be specified. Any such requests should be made at as early a stage in the proceedings as possible so that, if the information is available and relevant, it can be disclosed to all the parties before the inquiry and arrangements made for a departmental representative to attend on the basis already described in relation to recommendation 19.5(j).

We would expect such cases to be rare since, if any department concerned (including our own) was aware of the relevance of such information, arrangements would in any event need to be made for it to be made available to the inquiry so that it could be taken into account by the parties, the Inspector and ourselves. We are not at present convinced that it is necessary to formalise the arrangements for such exceptional cases by extending the provisions of the Inquiries Procedure Rules.

19.6(l) Each county planning authority should maintain a separate register of mineral applications (paragraph 6.34).

We accept that for administrative purposes county planning authorities should maintain a register of mineral applications but we do not propose to make statutory provision for this. So far as concerns the register for public reference we consider that the register maintained by district planning authorities should continue to include minerals applications but that the index should include a specific subject index for minerals. We propose therefore to amend the General Development Order to make provision for such a subject index.

19.6(m) If Mr Dobry's recommendation to allow longer time for dealing with his proposed Class B applications is accepted, the extended period should be applied to mineral applications also (paragraph 6.37).

Mr Dobry's recommendation was not accepted.

19.6(n) Our proposed mineral application form will obviate the need to apply Mr Dobry's suggested environmental impact statement procedure to mineral applications (paragraph 6.37).

We have noted this recommendation and will consider it further in the context of the report by Messrs Thirlwell and Catlow on Environmental Impact Analysis. It is our understanding that in the more important cases the work entailed in such an Analysis is already substantially undertaken and the use of a model application form incorporating information which the Committee recommended should be obtained, would further assist that process.

CHAPTER 7 — DEVELOPMENT CONTROL:
II — CONDITIONS ATTACHED TO PLANNING PERMISSIONS

19.7(a) There should be no limit on the time within which work under a mineral permission must be started provided:

(i) working has a defined place in the operator's working programme;
(ii) the operator's working programme is acceptable to the county minerals consultative committee;
in other cases the limit fixed should take full account of the legitimate needs of both the operator and the planning authority (paragraphs 7.10 and 7.11).

19.7(b) Every mineral permission should have a defined life, which should not be more than 60 years unless specially authorised by the Secretary of State (paragraph 7.16).

We accept fully the Committee's view that any time limits to be set, whether for the commencement of operations pursuant to a permission or for the life of a permission, should be those appropriate to the circumstances of each case and take account of the legitimate needs of the operator as well as of planning considerations. Due regard will be paid to the recommendations in framing the advice to be included in the Green Book on this matter. However, while we accept that each permission should have a maximum life ie that the legislation should prescribe a limitation period which would apply to a permission if the local planning authority did not impose a condition prescribing a time limit, we do not see sufficient cause for altering the present provision limiting the time within which work shall be started. We do not believe it to be right to enable the time of starting to be left entirely open, subject only to the maximum life of the permission.

19.7(c) The system of outline planning permission should not be extended to mineral working (paragraph 7.23).

We accept this recommendation. Advice about the imposition of conditions which reserve matters for later agreement with the planning authority will be given in the revised Green Book.

19.7(d) County planning authorities should be encouraged to require in suitable cases the submission and agreement from time to time of programmes of working and progressive restoration (paragraph 7.26).

We agree with the Committee's view and advice about the imposition of conditions of the kind recommended will be given in the revised Green Book.

19.7(e) The Secretary of State should keep under review the overlaps between planning control and other legislation; should issue further detailed guidance to county planning authorities; liaison between the Alkali and the Mines and Quarries Inspectorates and county planning authorities should be facilitated and encouraged (paragraph 7.31).

In our view while the guiding principle to be followed generally is that planning conditions should not seek to duplicate other statutory requirements or impose requirements different from those of the specialist legislation, both planning conditions and other statutory requirements will be subject to change and the situation needs to be kept under review. Guidance will be issued when appropriate.

19.7(f) Sterilisation of mineral deposits to provide support to adjoining land by condition attached to a mineral permission shall not operate to remove any rights of compensation under other legislation (paragraph 7.33).

We are advised that this is not a matter for planning legislation. We will, however, consider further the need for any revision of the advice given in the "Green Book" which is quoted in paragraph 7.32 of the Committee's Report.

19.7(g) Activities ancillary to winning and working of mineral shall be indicated in mineral applications and mineral permissions; activities not specified in a mineral permission will require further specific permission (paragraph 7.39).

We consider that it is desirable that an application should indicate the nature of any associated and ancillary activities which it is proposed to undertake so that the planning authority may consider what stipulations they may wish to make with regard to such activities but we cannot accept that ancillary uses of land must always have the benefit of specific planning permission. We propose to deal with the matter in the revised Green Book, with particular reference to the application form. Amendment of the provisions of Class XIX in schedule 1 to the General Development Order to restrict the scope of the development permitted could do much to meet the apprehensions expressed by the Committee in paragraphs 7.37 and 7.38 of their Report, whereas the full implementation of the recommendation might largely withdraw the benefit of Class XIX of the Order. We are not satisfied that further specific statutory provision is required.

19.7(h) Mineral permissions shall indicate by reference to annual output the maximum scale of permitted development; officers of county planning authorities should be given limited rights of access to production records (paragraph 7.42).

We accept that the environmental impact of increases in production may be great in the localities of mineral workings and that in many circumstances the imposition of a maximum output may be desirable. But we envisage difficulties which might result from the imposition of mandatory limitations on production: there are for example peaks and troughs of production of mineral, particularly from large sites; there is the possibility of discovery of a large quantity of waste which has to be carried away from a site; there are also small quarries where the permitted area and depth of working are small and production limits would have little meaning or value. We have therefore concluded that the imposition of a mandatory condition might prove to be too inflexible and that the matter should be left to the discretion of county planning authorities in the circumstances of any particular case. Production limits may be specified in various ways under present powers and advice will be given in the revised Green Book, but discussion with the operator about the nature of any limitation and its observance in practice will be essential.

19.7(i) County planning authorities should be given a power to accept and enforce positive covenants on the first grant of a mineral permission (paragraph 7.46); the Secretary of State should issue guidance on the use of this power and the enforcement of covenants (paragraph 7.47).

We consider that the existing provisions in section 111 of the Local Government Act 1972 and in section 126 of the Housing Act 1974 (which provides that certain kinds of positive covenant in agreements relating to development of land shall be enforceable against successors in title) should be sufficient for the purpose; advice will be included in the revised Green Book.

CHAPTER 8 — DEVELOPMENT CONTROL:
III — REVIEW OF CONDITIONS

19.8(a) There should be a power to review conditions attached to mineral permissions (paragraph 8.4) but, subject to special arrangements in relation to the first review of a permission granted before this power comes into force (see paragraph 19.12), the power shall not extend (paragraph 8.6) to conditions limiting:

(i) size of the permitted area (for extraction or for waste disposal);
(ii) permitted depth of extraction;
(iii) any period specified within which the development must start or finish;
(iv) specified maximum rate of extraction.

19.8(b) County planning authorities should be required to examine mineral permissions once in every five years; the examination should proceed to a review if either an authority or an operator wished to modify conditions of a permission (paragraph 8.8); a review procedure is recommended with provision for public participation (paragraph 8.9), for protection of third parties (paragraph 8.11), for appeals (paragraph 8.9) and for the Secretary of State to modify the proposals on appeal (paragraph 8.41).

19.8(c) Sections 45 and 46 of the Town and Country Planning Act 1971 shall continue to apply to mineral permissions (paragraph 8.13).

19.8(d) Mineral operators should not be automatically entitled to claim compensation for loss resulting from modifications to the conditions of a mineral permission on review (paragraph 8.18).

19.8(e) A test to determine eligibility to compensation on a review of a mineral permission is specified and recommended (paragraph 8.38) with appeal to a tribunal in cases of dispute (paragraph 8.39); the amount of any compensation payable should be determined under the provisions of section 164 of the Town and Country Planning Act 1971 as if the mineral permission in question had been modified under section 45 of the same Act (paragraph 8.39).

19.8(f) Any dispute as to eligibility to claim compensation shall be determined before any appeal to the Secretary of State on the planning merits of proposed modifications on review (paragraph 8.41).

19.8(g) Special provision is recommended for payment of compensation in certain cases to third parties having an interest in land affected by modifications on review (paragraph 8.42); for taking into account in determining eligibility to claim compensation on review

the losses consequent on any other review within the preceding 30 years for which no compensation has been paid (paragraph 8.43) and for the recovery of compensation in certain cases (paragraph 8.44).

19.12(d) County planning authorities should be required to carry out first examination of existing permissions within five years (paragraph 12.5); matters to be covered on first review are defined (paragraphs 12.6 to 12.9).

Since the question of compensation is, in our view, the key to the matter of review of mineral permissions and the conditions attached to them, these recommendations needed to be considered as a group; and it is convenient also to deal with the Committee's proposals for an initial review in Chapter 12 of the Report.

In commenting on the features which distinguish mineral working from other operations the Committee observed that the scope of the conditions attached to mineral permissions is much wider, and the supervision required of the planning authority more detailed and of greater duration than is the case with permissions for other development. They also noted that at one time the powers to attach conditions requiring working and restoration programmes were not often used and, in consequence, there are many existing minerals permissions which would not be considered satisfactory in the light of altered circumstances and present practice.

We accept this analysis and consider it desirable that existing permissions should be reviewed and the conditions modified as far as may be reasonable and practicable; we are pleased to note that the main organisations representing the extractive industry accept this.

There is already provision in section 45 of the Act relating to the modification etc. of planning permissions and providing for hearings in certain circumstances which might be adapted for the purposes of review. However, we recognize that the process of review might be inhibited by the potential liability borne by planning authorities to pay compensation in certain circumstances, and we accept the Committee's view that the legislation should be altered to modify the entitlement to compensation in respect of a review of existing mineral permissions.

We consider that except for the imposition of a life of 60 years or more (from the date of the first review) on any permission which currently has a longer life, the four matters specified by the Committee in paragraph 8.6 of their Report should be excluded from the altered arrangement and remain within the scope of the normal arrangements for compensation in respect of modification or revocation. It has been represented to us by many of the environmental interests and local authorities that review should encompass all conditions but where they govern all or any of the four fundamental matters specified by the Committee the process would be tantamount to a renewal of the permission. It is not our intention that permissions should need renewal in that way and we do not consider it right to interfere with the normal compensation arrangements in respect of those matters.

For the determination of entitlement to compensation on review of existing permissions, we would favour a simple procedure which does

not expend too much of local authorities' or industry's time or involve too frequent recourse to arbitration or litigation. We have not ruled out adoption of the Committee's proposal but, as they themselves noted, the test they propose does not compare like with like in that it compares cost to rent. This may be acceptable if it works in practice as the Committee's examples suggest, but in more complex cases than these examples there may be scope for widely divergent calculations, notably of annual equivalents. We therefore propose to give further consideration to the problem, together with the related issues mentioned in 19.8(g), in the period before legislation is possible. We accept that the issue of whether or not compensation would be payable should be settled before the Secretary of State confirms an order modifying a permission after review so that the planning authority may have the opportunity of reconsidering the matter in the light of any liability for payment. Decision about the confirmation of an Order, however, would be made solely by reference to the planning merits of the matter.

The Committee propose that the examination of existing permissions should be carried out within 5 years. However both industry and local authorities have represented to us that the imposition of such a period would impose too great a strain on manpower. We accept this and since many cases must wait until circumstances permit the allocation of staff to the task we propose, in legislation providing for the compensation arrangements, to seek power to specify by Order the period during which a review is completed and any related matters, such as any changes to be made on a first review; but we do not think it right to determine these in advance of legislation modifying compensation rights and enabling review to be undertaken. Pending legislation we see no bar to authorities proceeding with review of present conditions under existing procedures in any cases where operators are prepared to agree to a review. In any review process, whether before or after legislation, local authorities will wish to decide on priorities in the light of local circumstances. We consider that the consideration should be the state of the working on the ground and that cases where the workings are quite satisfactory need not command early priority.

The Committee envisage, in addition to an initial review of existing permissions, a continuing process of review to allow for changing circumstances and to enable conditions to be kept up to date. We recognize that within the long time scale of mineral workings changes may occur which may make it necessary to modify permissions on occasions, even when detailed conditions have been imposed on the lines recommended by the Committee, but we do not think it right, or necessary, to make provision at this stage for continuing review and associated compensation arrangements. It would be preferable, in our view, to reconsider the need for such provision during later stages of the period set for the initial review, in the light of the experience during that period.

CHAPTER 9 — DEVELOPMENT CONTROL:
IV — RESTORATION

19.9(a) Standard definitions are proposed (paragraph 9.7).

We have noted these definitions and accept the view that the wider use of terms with accepted meanings would be helpful.

19.9(b) Every effort should be made to reduce the quantity of mineral waste tipped on the surface (paragraphs 9.10 and 9.11).

We agree with this view but, with the Committee, we recognize that even when all practicable steps have been taken there will continue to be a large volume of mineral waste for disposal. It is important that, in disposing of this waste, the sterilisation of agricultural land should, so far as possible, be avoided.

19.9(c) Greater financial support should be given to relevant research on sustaining plant growth on inert and toxic material (paragraph 9.13).

We recognize the desirability of promoting research within the available resources and we hope that each branch of the minerals industry will note the Committee's views in relation to the particular fields for which it is responsible.

19.9(d) County planning authorities should have a positive and comprehensive policy for the restoration of mineral workings; the aims of such a policy are indicated (paragraph 9.17).

19.9(e) Restoration conditions must be attached to every mineral permission and should be discussed between county planning authorities, mineral operators and landowners before the permission is granted (paragraph 9.18).

19.9(f) Monitoring is essential to ensuring good restoration (paragraph 9.19).

19.9(g) Progressive restoration should be insisted on whenever possible (9.21).

We believe that in recent years most county planning authorities have been alive to these needs and we are sure they will pay full regard to the Committee's views, which will be taken into account in the revision of the advice contained in the Green Book.

19.9(h) County planning authorities should be empowered to require a period of five years' after-care supervised in consultation with the Ministry of Agriculture, Fisheries and Food (paragraph 9.22).

We accept that where restoration of worked land is to agriculture or horticulture it would be right to enable a condition to be attached, providing for after care over a period of years similar to the arrangements which obtain for opencast coal working by the National Coal Board. This will however entail legislation.

19.9(i) No final decision should be taken now on proposals for a restoration fund; the Secretary of State should watch the situation carefully and collect adequate statistics with a view to taking a final decision in ten years (paragraph 9.29); two possible methods for securing restoration monies are considered (paragraphs 9.30 to 9.34), and factors to be taken into account in deciding the form of

any fund (should it be decided to establish one) are indicated (Annex 9C).

We are grateful to the Committee for their full analysis of the potential benefits and problems of restoration funds, or other forms of financial guarantee. It has been made very clear to us by many of the bodies which we have consulted that they are disappointed with the Committee's recommendation and that they wish us to take powers to require the institution of a restoration fund system. We have considered this very carefully but we feel bound to accept the Committee's analysis. A primary purpose of such a fund would be as a hedge against the possible effects of the financial failure of operators and we have no reason to dispute the Committee's evidence that such failure is rare. It is also clear, as the Committee find, that a fund or other arrangement would entail a substantial additional administrative burden for the public sector and we are not presently convinced, having due regard to the considerations which the Committee have described in Annex 9C of their Report, that the imposition of such arrangements could be justified by the results. However, we do not feel that it would be right to set any particular period for a review of the present decision. While the results of changes need to be seen, we would prefer to leave open the possibility of applying some form of guarantee or fund should the developing situation show it to be expedient and accordingly to make arrangements to keep the situation under continuing review. It is our hope that the industry will demonstrate to everyone's satisfaction that statutory arrangements are not necessary to guarantee restoration of the fullest standard but if that expectation is not fulfilled it may not be right to suspend action until the end of a ten year term.

CHAPTER 10 — DEVELOPMENT CONTROL:
V — THREE SPECIAL PROBLEMS

19.10(a) New procedure should be made available to determine whether abandoned working is ceased or legitimately suspended; in the event of legitimate suspension being confirmed the county planning authority shall have the power to impose 'tidying-up' conditions (paragraph 10.4).

We accept that a procedure is required for establishing for the purposes of planning law when a mineral working has ceased, although we do not consider that such a procedure should be brought into play unless working has been substantially or wholly stopped for a year. We also accept that if under such a procedure it is established that working has ceased, restoration conditions should become enforceable and the planning permission should then lapse without compensation.

We are concerned, however, that the procedure should not be too unwieldy and that any possible conflicts with other legislation should be avoided. Bearing these considerations in mind, we propose in due course to introduce legislation on the lines proposed by the Committee.

19.10(b) County planning authorities should be required to review all mineral permissions and to consolidate all the permissions relating to each operational working (paragraph 10.6).

Although we appreciate that consolidation of existing permissions as the Committee recommend would ensure a new start in mineral planning and that no permissions were overlooked on review, we are not convinced that this result would justify the effort involved in tackling consolidation as a special exercise. Moreover we are conscious that conditions attached to permissions relating to the same site may differ and the process of consolidation would not be easy. But we see no reason why the separate permissions relating to a single site could not be reviewed together and a degree of consistency achieved on review. Furthermore there might well be cases where both the planning authority and the operator wished to consolidate several permissions in which case it would be open to the authority by agreement to revoke the existing permissions without liability for compensation and grant a single new permission.

Accordingly, this is a matter which we propose to leave to planning authorities to pursue in the context of a review of conditions and with regard to staff and expense and we do not propose to make legislative provision for it.

19.10(c) Such re-working [of mineral waste] should be defined as development and subjected to planning control (paragraph 10.10).

We accept this recommendation in principle but its implementation will depend on the making of suitable legislative provision. We will consider at a later date whether the reworking of tips should be permitted development subject to standard conditions.

19.10(d) The Secretary of State should consider whether the working of mineral from heaps of non-mineral waste should also be brought under planning control (paragraph 10.10).

We have received little comment on this proposal and in the absence of evidence that removal of mineral from industrial waste tips is a cause of concern, we do not at present propose to bring such tips within control.

CHAPTER 11 — DEVELOPMENT CONTROL:

VI — ENFORCEMENT

19.11(a) Regulation 4 of the Town and Country Planning (Minerals) Regulations 1971 will not be needed as soon as the recommendations to strengthen mineral planning staffs (Chapter 4), to limit the life of every mineral permission (paragraphs 7.16 and 12.7) and to introduce a cessation procedure (paragraph 10.4) have been implemented, and it should then be revoked.

We appreciate the Committee's argument that if the recommendations mentioned are followed and, in particular, a cessation procedure were introduced the original purpose of Regulation 4 would be lost, but we consider that there could still be a risk of breaches of conditions being overlooked. We prefer not to reach a conclusion about the revocation of Regulation 4 at this stage.

19.11(b) A contravention notice procedure should be introduced to prevent operators profiting from unauthorised extraction of mineral (paragraph 11.18).

We have considered the Committee's new recommended procedures to deal with breaches of planning control most carefully in the light of the evidence given to them. Whilst it is clear that many of those who gave evidence took the view that the enforcement provisions were not adequate, (and the Committee list the inadequacies suggested in evidence in paragraph 11.7 of their Report), we think it is also true that much of the concern stems from deficiencies of the permissions which have to be enforced rather than from the powers themselves. In recent years knowledge has grown of what may be done under present powers to improve control and permissions to win and work minerals are now generally subject to detailed conditions. The implementation of recommendations in the Report itself should serve to improve the situation further and it is our view that, provided the permissions to be enforced are themselves adequate, the present powers of enforcement may be used to good effect.

We have also necessarily considered the Committee's recommendations in a wider context. Although there are various special considerations for minerals there are circumstances parallel with other forms of development and we have needed to consider whether any different treatment for minerals cases was warranted or, alternatively, whether the proposal should be applied more widely.

The Committee laid considerable emphasis on the difficulties which authorities face in dealing with unauthorised mineral working and, in particular, on the proposition that they are inhibited from applying stop notices by the possibility that they may become liable to pay substantial compensation for the period during which operations were stopped. The Committee therefore recommended the introduction of "contravention notices", which, by enabling authorities to exact large sums in civil damages, should act to deter operators from continuing to work during legal processes and thus should become an alternative to stop notices. We are in full accord with the Committee's view of the potential seriousness of unauthorised working, particularly since, in distinction from many other forms of development, it may not be practicable wholly to make good the damage. However, the proposed arrangements seem to us to be, at best, complex and it could be that in practice they would not meet the first of the stated criticisms of present enforcement procedures in paragraph 11.7 of the Report viz that they are slow and cumbersome. Again, while the Committee's proposal would enable authorities to obtain damages which would in effect be punitive fines for unauthorised working they do not appear to have contemplated making this an offence although they later recommend that quite minor breaches of control should themselves be offences. These considerations, and the potential damage which may be caused by the extraction of minerals otherwise than in accordance with planning permission, lead us to conclude that the institution of an offence of unauthorised mineral working would be justified (as in the case of the carrying out of works to a listed building without listed building consent, the penal provisions can co-exist with the ordinary enforcement procedures under Part IV of the Act). In due course therefore we propose to introduce legislation making unauthorised mineral working an offence subject to appropriate penalties; and to make provision to secure

restoration of the land. We further propose that for this purpose unauthorised working should include working beyond a date specified by a permission or a condition, or the commencement of operations (or a particular phase of operations) without obtaining an approval required by condition to be obtained before operations (or a particular phase of operations) should commence.

19.11(c) A compliance order procedure should be introduced to deal more quickly with other major breaches of conditions (paragraph 11.21). This procedure should not be applicable to an existing mineral permission until after it has been examined (and, if appropriate, reviewed) for the first time (paragraph 11.22).

We do not accept this recommendation. The system suggested by the Committee would result in some enforcement notices being dealt with by us and some by the Courts, a situation which we would regard as unsatisfactory. We are not satisfied that the procedure would necessarily achieve its stated purpose of speedier determinations. Moreover it would be necessary to consider whether a procedure of this kind could justifiably be instituted without giving persons affected a right to compensation in certain circumstances eg if the order was upset, particularly if provision were made for interim compliance orders.

19.11(d) It should be possible to prosecute summarily for a fine for minor breaches of conditions (paragraph 11.25).

We appreciate that the Committee is here referring primarily to transient breaches for which speedy action is required, but breaches of the kind envisaged are not peculiar to mineral workings and we do not think it would be proper to single out mineral workings for special treatment in this respect. Moreover we note that the Committee were not able to determine a line between "serious" and "minor", although this would be essential for the purposes of implementation. We believe that if mineral permissions are adequately drawn, the present procedures should serve to deal with this type of breach. No reason is seen why local planning authorities should not take enforcement action where they have evidence that conditions of a planning permission have been breached intermittently over a period of time even if they cannot show that the breach is taking place on the day when the enforcement notice is served. If the breach recurred before the enforcement notice came into effect, it would be open to them to consider serving a stop notice. Once the enforcement notice has come into effect, it would be an offence for the condition to be breached on any further occasion.

19.11(e) District planning authorities should be empowered to prosecute summarily for penalties in respect of breaches of conditions of mineral planning permissions subject to prior consultation with the county planning authority; all other enforcement powers in relation to mineral permissions should be reserved to county planning authorities and the Secretary of State (paragraph 11.26).

We see the force in the argument that county planning authorities who, because minerals applications are "county matters", are familiar with the permissions and the operators, should take the lead in enforcement matters. But we appreciate that the effects of mineral working are localised, that breaches are often mainly of local impact and that

ordinarily it is more likely that breaches will come to the notice of officials of district planning authorities, than those of county planning authorities. We are therefore reluctant to deprive district councils of their present role in this matter but we would hope that in each county suitable working arrangements could be evolved. In the light of this response we do not accept the proposal in the first part of this recommendation that district planning authorities should have a separate power to prosecute.

19.11(f) Maximum penalties for breaches of planning control in relation to mineral working should be enlarged (paragraph 11.28); county planning authorities and the Secretary of State should be able to prosecute for a fine in certain cases notwithstanding that no enforcement notice had been served and the breach has since been discontinued (paragraph 11.28).

We have noted this recommendation and, as we have indicated above, we have in mind that penalties for unauthorised working should be set at appropriate levels although we do not consider that the penalty of imprisonment would be apt. The latter part of the recommendation is covered by our proposal for a new offence in response to recommendation 19.11(b).

CHAPTER 12 — DEVELOPMENT CONTROL:
VII — SPECIAL PROBLEM OF APPLYING NEW CONTROL MEASURES TO EXISTING WORKINGS

19.12(a) Our recommended new regime should be applied to all mineral workings (paragraph 12.1).

Insofar as new provisions which are implemented may be applied to existing permissions, we accept that they should be so applied.

19.12(b) Each county planning authority should be required to assemble all existing mineral permissions and make a register of them (paragraph 12.3).

We accept that for administrative purposes, assembling minerals permissions will facilitate the review of these permissions (see 19.8 and 19.12(d) above). But we have already indicated in response to recommendation 19.6(1) that we consider that district planning authorities should continue to maintain registers, including mineral applications, and we do not propose to impose a requirement on county councils to make registers.

19.12(c) Powers should be provided to enable the mineral permission element of an existing planning permission to be separated from the remaining elements of that permission (paragraph 12.4).

We are not convinced that the potential results of such an exercise would justify the administrative effort involved although it may be desirable for "mixed" permissions to be identified by some distinguishing mark in the general register of permissions and for county planning

authorities to have "mixed" permissions noted in their records. Whilst some permissions might readily be split others might not, in which case revocation and the granting of new permissions might be the only course if an obligation to split were imposed. If an authority decide that a "mixed" permission needs to be reviewed, it should be possible for it to be modified to the degree necessary without recourse to the procedure proposed.

(Recommendation 19.12(d) is considered together with 19.8(a) to (g) above.)

CHAPTER 13 — PERMITTED DEVELOPMENT:

I — INVESTIGATORY ACTIVITIES

19.13(a) Applications for permission to explore for minerals should continue to be dealt with on their own merit without consideration of the possible merits of hypothetical further developments (paragraph 13.5).

We agree with the Committee's analysis of the situation and accept this recommendation.

19.13(b) All investigatory operations shall be a class of permitted development under the General Development Order subject to:

(i) standard conditions requiring restoration of the site substantially to its former condition immediately the operation is finished, and in any case within six months of the start of the operation;
(ii) notification by the operator to the county planning authority on a standard form of the nature and location of the proposed development, the measures that will be taken to protect amenity, and the proposed method of restoration;
the county planning authority should have a limited time (a maximum of 42 days) to consider the notification, and limited powers to intervene during that period by requiring the operator to apply for specific planning permission on the grounds that it is necessary to do so:
(iii) in order to protect sites of archaeological or special scientific interest; or
(iv) because the notified operations would be seriously prejudicial to the interests of the amenity of the neighbourhood (paragraph 13.15).

19.13(c) County planning authorities should monitor by site visits and have power to stop developments immediately if in contravention of a notification (paragraph 13.17).

19.13(d) Detailed illustrative General Development Order provision is put forward (Annex 13A).

We know from our consultations that there is some concern about this recommendation. Nevertheless, we have concluded that the Committee's analysis is broadly correct. Investigation is a purely fact finding exercise which does no more than provide information about the location, size and

quality of mineral deposits. While it is impossible to make sensible decisions on applications to work minerals without such information, the result of the investigatory work is only one factor in determining whether permission for working should be granted. However, if planning permission has specifically been granted for these essential preliminary operations, it may be more difficult to form an objective view on a subsequent application for the working of the minerals, and this difficulty is avoided if investigatory activities in general become a permitted operation.

Exploratory work is temporary and the operations involved are generally modest and exempting them from the need for specific planning permission is in line with our present intention of reducing the amount of detailed planning control. Moreover, in practice local planning authorities have in the past often considered that such work did not need permission on the "de minimis" principle or have considered that it was permitted under Class IV of the GDO if it did not continue for more than 28 days which the Committee suggested was a misinterpretation.

There are, however, a few occasions on which investigatory activities become matters of general concern. We accept the concept that advance notification of particulars of the investigatory activities should be given allowing a period of 42 days for intervention by the county planning authority. We shall look very carefully at the question of what other safeguards and conditions are required in such cases. We have noted the contentions by industry that the period of notice should be shorter but the period is precedented (for exploration for opencast coal working) and we are not aware that it has proved unsatisfactory. Bearing in mind that the period will serve the purposes of informing the authority so that they are prepared for any public response, of enabling them to pursue any necessary consultations with the applicants or other interests directly concerned, and of allowing time to consider whether the authority wish to issue an article 4 direction, a shorter period could prove inadequate.

The arrangements for monitoring will be a matter for county planning authorities to consider. We are not at present satisfied that any special provision is needed for bringing the development to an end but we will keep the position under review.

We shall consider further the details of the illustrative example of a General Development Order provision, in Annex 13A of the Committee's Report, and will consult the interests concerned about a provision for inclusion in a new or amending Order.

CHAPTER 14 — PERMITTED DEVELOPMENT: II — ANCILLARY PLANT AND BUILDINGS

19.14(a) Existing provisions in the General Development Order should be replaced, with some amendments, by one comprehensive provision (paragraph 14.6); detailed illustrative comprehensive provision is put forward (Annex 14A).

We accept this recommendation. We shall give further consideration to the wording of a General Development Order provision as proposed by

the Committee at Annex 14A, with a view to incorporating a provision into a new or amending General Development Order. We consider that the Committee's proposal that the broad intent of the present proviso to Class XIX2 should be extended to cover plant or machinery (which we accept) should afford authorities sufficient control over the installation of new plant and machinery for the purposes outlined by the Committee at Chapter 7.36. However, while we recognize the Committee's objective we are not satisfied that proviso (c) is practicable.

19.14(b) Consideration should be given to position of ancillary buildings in relation to industrial development certificate control (paragraph 14.10).

We note this recommendation and will consider it further in conjunction with the Secretary of State for Industry when we are considering other proposed amendments to the General Development Order.

19.14(c) County planning authorities should not withdraw General Development Order rights for ancillary plant and buildings as a matter of course (paragraph 14.12).

We endorse the Committee's view about the automatic withdrawal of Development Order rights and we hope that authorities might find that the proposed extension of the present proviso to Class XIX2 to plant and machinery, will meet the difficulties which have led to the withdrawal of Development Order rights in this way.

19.14(d) The Secretary of State should be responsible for giving approval to reserved matters in relation to any mineral permission granted to a county planning authority (paragraph 14.15).

We do not see the need for special provision for local authority development.

CHAPTER 15 — PERMITTED DEVELOPMENT: III — WASTE

19.15(a) Mineral waste should continue to be exempt from the licensing provisions of the Control of Pollution Act 1974 (paragraphs 15.5, 15.11 and 15.12).

We see no present need to alter the position.

19.15(b) Existing provisions in the General Development Order should be consolidated with amendments (paragraph 15.5); the right to tip mineral waste under the General Development Order should be subject to schemes controlling the manner of tipping and the restoration of tips (paragraphs 15.6 and 15.7); detailed illustrative General Development Order provision is put forward (Annex 15A).

We accept this recommendation subject to detailed study of the illustrative provision at Annex 15A and consulting with the interests concerned about a provision for incorporation in an amendment to the General Development Order. In doing so we note and accept the Committee's

proposal for a discretionary power for county planning authorities to require the submission of schemes of control over future tipping at existing tips.

19.15(c) Restoration conditions of a mineral permission should prevail over restoration conditions of a waste disposal licence in the event of conflict (paragraph 15.9).
19.15(d) A mineral operator should be entitled to immediate review of restoration conditions of a mineral permission if observance is frustrated by the refusal of a waste disposal licence (paragraph 15.10).

We see no reason why any difficulties should not be overcome by sensible administration and we would hope that legislative provision would not be necessary.

19.15(e) Definitions of mine and quarry proposed for planning purposes should be adopted into the Control of Pollution Act 1974 in lieu of the definitions from the Mines and Quarries Act 1954 (paragraph 15.13).

Although there is a small inconsistency here we have no evidence of it causing sufficient difficulty to warrant amending legislation.

19.15(f) Water authorities should have a right to refer to the Secretary of State for determination of any dispute in relation to a decision by a county planning authority to grant a mineral permission covering the dumping of toxic waste (paragraph 15.14).

We appreciate the reasons for seeking a safeguard in the circumstances described but we do not feel able to accept this recommendation which would introduce into planning law a new concept of a right of appeal against the decisions of planning authorities by third parties.

CHAPTER 16 — ADDITIONAL OR PERIPHERAL MATTERS

19.16(a) Undetermined applications covering current workings which are proceeding by virtue of class XIX(1) of the General Development Order should be determined (paragraph 16.6); when this has been done class XIX(1) should be revoked (paragraph 16.7).

We accept this recommendation and we will issue advice to authorities in due course. We would prefer to call in outstanding cases for our own decision only in the last resort.

19.16(b) Regulation 10 of the Minerals Regulations 1954 should be revoked (paragraph 16.9).

We accept this recommendation. It has been suggested to us that we should allow a period for operators to apply for extensions to those workings covered by Regulation 10, but we consider that the period which has elapsed from the time of the publication of the Committee's Report has provided a sufficient warning period.

19.16(c) Consideration should be given to a special judicial procedure to govern in camera *hearings, determine when they are justified and provide for proper representation of all interests (paragraphs 16.20 and 16.21).*

We are grateful to the Committee for their contribution "to further discussion of a very difficult issue" and we have considered this carefully in a general context since we do not consider that any such procedure could be confined to mineral applications.

While we see some force in the argument that there should be a formal procedure for seeking an *in camera* hearing, which would nevertheless not encourage an applicant to resort to it lightly, we consider that to legislate for a judicial procedure could be taken to imply a greater readiness to contemplate holding such hearings than in fact exists.

It appears to us also that the procedure suggested by the Committee would be bound to add to the costs, not only of the applicants but of the other parties involved, and to add substantially to the time that would be required to deal with the particular case.

It remains the Government's view that planning inquiries should be held in public and that any departure from this could only be justified in the most exceptional case. We do not therefore think it would be right to bring forward legislation. We consider it preferable, if such a case recurs, that an appropriate procedure should be devised, in consultation with the Council on Tribunals, to suit the particular circumstances.

19.16(d) County planning authorities should be encouraged to use the powers of section 112 of the Town and Country Planning Act 1971 to acquire land in appropriate mineral cases (paragraph 16.23).

In England this recommendation has been overtaken by the enactment of the Community Land Act, and English local authorities will no doubt wish to consider it in the light of their further powers under that Act.

In Wales local authorities are not community land authorities and their powers under section 112 have not been affected in any way.

19.16(e) Government should consider exempting from public acquisition of development land any land which is being restored and re-developed after mineral working in accordance with a scheme agreed by the county planning authority (paragraph 16.26).

In both England and Wales this recommendation has been overtaken by the enactment of the Community Land Act.

CHAPTER 17 — COAL, OIL AND NATURAL GAS

19.17(a) Classes XX(ii), (iii) and (iv) of the General Development Order (relating to ancillary development, waste tipping and exploration by the National Coal Board) should be revoked and the National Coal Board should rely on the general provisions applicable to all mineral operators (paragraph 17.15).

We agree with this recommendation in principle but its implementation will need to be subject to the modification of the general provisions recommended by the Committee which we have agreed to accept and to the proposed new General Development Order provision for investigatory activities.

19.17(b) All our recommendations (other than are covered in (a) above) should be applied to the National Coal Board; the procedure for establishing eligibility to compensation on a review of conditions shall be modified to take account of the status of the Board and the way in which its properties are assessed for rating purposes (paragraph 17.19).

We agree in principle that so far as practicable the provisions which apply to mineral operators generally should apply to the National Coal Board. As the Committee have pointed out, however, there are some significant differences and we are proposing to consult our rt hon Friend the Secretary of State for Energy about the implications of those proposals which we are intending to accept.

19.17(c) The question whether to apply our special regime to on-shore oil and natural gas is remitted to the Secretary of State (paragraph 17.21).

We note this point. In principle we propose that amendments to the planning law and procedures which are made in implementing the Report should apply to on-shore oil and natural gas extraction operations. But consideration will be given in conjunction with the Secretary of State for Energy to whether any special provisions are necessary for these operations.

CHAPTER 18 — APPLICATION TO SCOTLAND, GREATER LONDON AND THE SCILLY ISLES

19.18 All our recommendations should be applied to these areas, with only such modifications as are necessary to recognise differences in the relevant laws or administrative arrangements (Chapter 18).

In so far as this recommendation falls within the Secretary of State for the Environment's area of responsibility it is accepted. The Secretary of State for Scotland will be making a separate statement about the application to Scotland.

CHAPTER 19.19 — A PROGRAMME OF IMPLEMENTATION

We have considered the Committee's views and we are in sympathy with much of what they say but, for the reasons we have indicated we have not felt able to accept all of their recommendations. In some instances action and the timing of it will need to turn upon the ability to make staff and other resources available and in some instances legislation will be needed. Where further consideration of matters requiring legislation is needed we propose to proceed with this so that the opportunity may be taken when a suitable legislative opportunity

occurs. Other matters fall primarily under the following three heads, according to the action proposed, which is as follows:

(i) Amendments of the General Development Order. Drafts of provisions, taking into account the recommendations in Chapters 13, 14, 15 and 17 of the Report, as discussed above, will be prepared for consultation with the interests concerned.

(ii) Amendments to the Town and Country Planning (Minerals) Regulations 1971. A draft of regulations providing for the revocation of Regulation 10 of the Town and Country Planning (Minerals) Regulations 1954 (recommendation 19.16(b)) will be prepared and laid before Parliament.

(iii) The Control of Mineral Working (the "Green Book"). A draft of a revised version of the Green Book, incorporating comment and advice on matters indicated in this statement as appropriate to it, is being prepared and will be circulated to the interests concerned for comment.

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