

*These notes refer to the Planning (Opencast Mining Separation Zones) Bill
as introduced in the House of Commons on 30 June 2010 [Bill 15]*

PLANNING (OPENCAST MINING SEPARATION ZONES) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Planning (Opencast Mining Separation Zones) Bill as introduced in the House of Commons on 30 June 2010. They have been prepared by Andrew Bridgen, the Member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause, or a part of a clause, does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Bill requires the Secretary of State to publish guidance on opencast mining policy in England. The guidance must include a specific policy requiring a 500 metre separation zone to be maintained between opencast mining sites and the nearest residential premises unless the circumstances are exceptional.

4. The existing guidance on opencast mining in England is contained in the Department of Communities and Local Government's *Minerals Planning Guidance 3: Coal mining and colliery soil disposal* (MPG3) (March 1999).¹ This establishes a general presumption against the grant of planning permission to carry out opencast mining but does not require any type of separation zone between opencast mining sites and residential premises.

¹ Available at <http://www.communities.gov.uk/publications/planningandbuilding/mineralsplanningguidance2>

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5. The overall purpose of the Bill is to bring the guidance on opencast mining in England more closely into line with the guidance that applies in Scotland and Wales, namely:

5.1 In Scotland, the policy on opencast mining is set out in *Scottish Planning Policy* (February 2010) which states that surface coal extraction is unlikely to be environmentally acceptable where site boundaries are within 500 metres of the edge of a community, subject to the following:

Site boundaries within 500m of the edge of a community may be acceptable where it would result in improvement of local amenity or future development opportunities by clearing a substantial area of derelict or despoiled land, the stabilisation of a previously undermined site or other similar benefit. Topography, the nature of the landscape, visibility and prevailing wind directions may result in a greater or lesser distance being required, depending on specific local circumstances. In this context, a community is a city, town or village, but can also include small clusters of housing. Planning authorities should decide what constitutes a community when applying this policy.²

5.2 In Wales, the policy on opencast mining is set out in *Minerals Technical Advice Note 2: Coal* (MTAN2) (January 2009) which provides for a 500 metre “buffer zone” between opencast sites and settlements, subject to the circumstances being exceptional:

Exceptional circumstances

49. Exceptionally, having considered the evidence put forward with a surface or underground coal working application, coal working may be permitted within 500m of settlements. Factors to be considered include:

- where coal working provides the most effective solution to prevent risks to health and safety arising from previous mineral working;
- to remediate land damaged by shallow coal workings or mine waste, where coal extraction appears to be the most sustainable option;
- where topography, natural features such as woodland, or existing development, would significantly and demonstrably mitigate impacts;
- where major roads or railways lie between the settlement and the proposed operational area and coal working would not result in appreciable cumulative and in-combination effects;
- where the surface expression of underground working does not include the significant

² Paragraph 245, available at <http://www.scotland.gov.uk/Publications/2010/02/03132605/8>

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handling or storage of the mineral or waste;

- when the proposal is of overriding significance for regeneration, employment and economy in the local area; or
- where extraction would be in advance of other, permanent, development which cannot reasonably be located elsewhere.³

THE BILL

6. The Bill has 3 clauses. Clause 1 contains the main interpretative provisions. Clauses 2 and 3 cover interpretation, the short title, commencement and extent.

TERRITORIAL EXTENT AND APPLICATION

7. The Bill extends to (that is, forms part of the law of) England and Wales. The terms of clause 1, however, mean that it will only take effect within England.

8. As the Bill does not make provision about a matter falling within the legislative competence of the National Assembly for Wales, the consent of the Assembly is not being sought.

COMMENTARY ON CLAUSES

Clause 1: Guidance on opencast mining policy in England

9. Clause 1(1) requires the Secretary of State to publish guidance on opencast mining policy in England.

10. Clause 1(2) requires the Secretary of State's guidance to include provision for a separation zone of 500 metres between an opencast mine and the nearest residential premises, unless the circumstances are exceptional. Pursuant to this clause, it would be for the Secretary of State to decide what (if any) elaboration should be provided within the guidance on the meaning of exceptional circumstances.

11. Clause 1(3) requires mineral planning authorities to take account of the guidance when reaching decisions about the grant of planning permission for opencast mining to be carried

³ Paragraph 49, available at <http://wales.gov.uk/docs/desh/policy/090120coalmtanen.pdf>. See also paragraphs 50 and 51.

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out in England.

Clause 2: Interpretation

12. . The definitions of “coal”, “opencast mining” and “opencast planning permission” are taken from definitions of the same (or materially the same) terms in the Opencast Coal Act 1958.

13. The definition of “mineral planning authorities” has the same meaning provided by section 1 of the Town and Country Planning Act 1990, namely:

(a) in respect of a site in a non-metropolitan county, the county planning authority; and

(b) in respect of a site in a metropolitan district or London borough, the local planning authority.

14. The definition of “residential property” has the same meaning provided by the Finance Act 2001.

COMMENCEMENT DATE

15. Clause 3 provides for the Bill to come into force on such day as the Secretary of State appoints within an order made by statutory instrument.

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