EXPLANATORY MEMORANDUM TO

THE PERIODIC REVIEW OF MINERAL PLANNING PERMISSIONS (CONYGAR QUARRY) ORDER 2006

2006 No. 226

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order specifies that the date for the first periodic review of the conditions to which an interim development order (IDO) for minerals development at Conygar Quarry, Norton's Wood Lane, Clevedon, Somerset ("Conygar Quarry") is subject is 4th June 2007.

3. Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Schedule 14 to the Environment Act 1995 provides for the periodic review by mineral planning authorities of conditions which are attached to planning permissions for development consisting of the winning and working of minerals or of the depositing of mineral waste. Paragraph 3 of Schedule 14 sets out the method for calculating the first periodic review date for any particular site - it varies according to the circumstances, but broadly the first review date is 15 years after the conditions were last reviewed by the mineral planning authority, or if there has been no review, from the date of the latest mineral permission relating to the site. Subsequent reviews are carried out at 15 year intervals.

4.2 Paragraph 3 of Schedule 14 was amended by the Planning and Compulsory Purchase Act 2004[1] by the insertion of paragraph 3A. Paragraph 3A(1) gives the Secretary of State power by order to specify a first review date which differs from that found by applying paragraph 3. Sub-paragraphs (2) to (4) apply if no first review date can be found by applying paragraph 3.

4.3 Council Directive 85/337/EEC (the Environmental Impact Assessment Directive) came into force in 1988. Directive 97/11/EC, which amended Directive 85/337/EEC, came into force on 14 March 1999. It extended the range of development to which the Directive applies and made a number of small but important changes to EIA procedures.The Directive's main aim is to ensure that the authority giving the

[1] 2004 c. 5 - see section 118 and paragraph 19 of Schedule 7. See Hansard 14th October 2003 columns 67-70.

primary consent (the "competent authority") for a particular project makes its decision in the knowledge of any likely significant effects on the environment. The Directive, therefore, sets out a procedure that must be followed for certain types of project before they can be given "development consent". This procedure, known as environmental impact assessment ("EIA"), is a means of drawing together, in a systematic way, an assessment of a project's likely significant environmental effects. This helps to ensure that the importance of the predicted effects, and the scope for reducing them, are properly understood by the public and the relevant competent authority before it makes its decision. Projects of the types listed in Annex I to the Directive must always be subject to EIA. Projects of the types listed in Annex II must be subject to EIA whenever they are likely to have significant effects on the environment. A determination of whether or not EIA is required must be made for all projects of a type listed in Annex II.

4.4 In relation to projects requiring planning permission, the EIA Directive was implemented in England and Wales by the Town and Country Planning (Environmental Impact etc) Regulations 1999[2] and amended in 2000 to apply to reviews of conditions attached to mineral permissions[3].

5. Extent

5.1 This instrument applies in relation to Conygar Quarry.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 This Order gives effect to a European Court Judgement and enables the early review of operating conditions with the benefit of an EIA for the currently dormant[4] Conygar Quarry. The Order is of interest to those who own and live near the Quarry and the mineral planning authority (North Somerset District Council).

7.2 Consent for the extraction of sandstone from Conygar Quarry was granted in 1947 under an interim development order ("IDO"), a rudimentary form of permission under wartime emergency powers then still in force, predating modern planning law and the post-war improvements in the environmental standards of mining and quarrying. Legislation in 1991 and 1995 introduced a procedure for registering and reviewing IDO consents and also old mineral permissions granted between 1948 and 1982, as well as reviewing all permissions granted after 1982. The aim of these initial and subsequent periodic (15 year) reviews is to ensure that these long running permissions (which can run to 2042 if no definite end date was set initially) meet up to date environmental standards, while not adversely affecting either the economic viability of operating the site or the asset value of the site to an unreasonable degree.

[2] S.I. 1999/293.
[3] S.I. 2000/2867.
[4] i.e. not working.

7.3 Conygar Quarry was classified by the then mineral planning authority, Avon County Council, as dormant in 1992 and applications were made to the authority in 1993 and 1994 for new operating conditions in order to resume working. At that time, and also when the Secretary of State subsequently considered appeals by the Quarry owners against conditions determined by the authority in 1994, it was not appreciated that the EIA Directive requires the consideration of the need for (and if necessary the application of) EIA to reviews of conditions at existing mineral sites. Consequently, no consideration was given to the EIA issue when the conditions for Conygar Quarry were finally determined on appeal by the Secretary of State in June 1997.

7.4 However, court judgements from 1998 onwards[5] established that the EIA Directive applies to reviews of old mining permissions, and in November 2000 the Town and Country Planning (Environmental Impact etc) Regulations 1999 were amended[6] to apply the EIA Directive to reviews of IDOs and old mineral permissions. The amendments were not, however, retrospective and so they did not apply to cases such as Conygar Quarry, where new conditions had been determined in accordance with what had been thought to be the law at the time, namely without regard to EIA.

7.5 In 1999 Mrs Delena Wells, who lives adjacent to Conygar Quarry, challenged the Secretary of State's determination on appeal of conditions without having considered whether environmental assessment was required. Following proceedings in the High Court and referral to the European Court of Justice (ECJ) of certain questions about the interpretation and application of the EIA Directive, the ECJ confirmed that:

A) determination of conditions attached to a planning permission and approval of matters reserved by new planning conditions, taken as a whole, constitutes a development consent to which EIA should be applied;

B) the environmental effects of a proposed development must be considered at the earliest possible stage in the consenting process; and

C) it was for Member States to take whatever measures were available under domestic law to remedy a failure to carry out an EIA.

7.6 In August 2004, by order of the High Court, the Secretary of State consulted interested parties on the options for applying the provisions of the EIA Directive to Conygar Quarry in order to give effect to the ECJ ruling. The consultees were North Somerset District Council, as the current mineral planning authority, the two owners of the Quarry and Mrs Wells and their representatives. Two stages were identified. First, a decision was needed as to whether the application for determination of conditions in 1993 was EIA development and secondly, if it was EIA development, what was the most appropriate way (from a choice of one voluntary and two statutory proposed options) of rectifying the failure to apply EIA in this case. The proposed options were, firstly, voluntary provision of an environmental statement which could then inform a determination of new conditions. The second proposed option was the making of an order under paragraph 3(A) of Schedule 14 to the Environment Act 1995 to bring forward the first periodic review of conditions at the Quarry and so apply EIA and require the submission of an environmental statement

[5] See R v North Yorkshire County Council ex parte Brown and Cartwright [1999] 2 WLR 452 and R v Peak District National park ex parte Bleaklow Industries Ltd)
[6] S.I. 2000/2867.

as part of the review in accordance with the amending regulations of November 2000 (see paragraph 4.4 above). The final option was to revoke or modify the current IDO consent, leaving the mineral planning to consider any fresh application for the approval of new conditions which the owners of the Quarry might wish to submit in the future, again, again requiring the submission of an environmental statement. In the event of revocation or modification of the consent, the owners would be entitled to seek appropriate compensation for any loss of mineral working rights.

7.7 North Somerset District Council subsequently took the view that the 1993 application was an application for EIA development and that an environmental statement was needed for the authority to reconsider the application. The Quarry owners refused to provide an environmental statement voluntarily and the interested parties expressed different preferences on which of the two proposed statutory options should be pursued. North Somerset District Council preferred the option of making an order under paragraph 3A of Schedule 14, while the representatives of one of the owners of the Quarry and Mrs Wells preferred the revocation option. The Secretary of State carefully considered the comments of the interested parties and he notified the parties in July 2005 that he had concluded that the making an order under paragraph 3(A)(1) of Schedule 14 to the Environment Act 1995 to bring forward the first periodic review of conditions at Conygar Quarry from 2012 to 2007, with the owners being required to produce an environmental statement as part of the review, is the most proportionate response to the ECJ ruling. It seeks to put the site and the parties into the position they would have been in if the present understanding of the relevant law had been available at the time when the current conditions were determined.

7.8 In notifying the parties of his decision, the Secretary of State invited comments on a draft of the order and a draft Regulatory Impact Assessment. The representatives of one of the owners of the Quarry commented on the drafts and some small amendments have been made to the final versions of the order and Regulatory Impact Assessment as a result.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

Mary Dyer at the Office of the Deputy Prime Minister Tel: 020 7944 3878 or e-mail: mary.dyer@odpm.gsi.gov.uk can answer any queries regarding the instrument.

FINAL REGULATORY IMPACT ASSESSMENT (RIA)

Title of Proposal

2. The application of Environmental Impact Assessment to the review of the mineral permission relating to Conygar Quarry, Norton's Wood Lane, Clevedon, Somerset.

Purpose and Intended Effect of Measure

Objective

3. To apply Environmental Impact Assessment (EIA) to the determination of conditions attached to an Interim Development Order (IDO) permitting the winning and working of minerals at Conygar Quarry.

Background

4. Consent for the extraction of sandstone from Conygar Quarry was granted in 1947 under an IDO, a rudimentary form of permission under wartime emergency powers then still in force, predating modern planning law and the post-war improvements in the environmental standards of mining and quarrying. Legislation in 1991 and 1995 introduced a procedure for registering and reviewing IDO consents and also old mineral permissions granted between 1948 and 1982, as well as reviewing permissions granted after 1982. The aim of these initial and subsequent periodic (15 year) reviews is to ensure that these long running permissions (which can run to 2042 if no definite end date was set initially) meet up to date environmental standards, while not adversely affecting either the economic viability of operating the site or the asset value of the site to an unreasonable degree.

5. Conygar Quarry was classified by the then mineral planning authority (mpa), Avon County Council, as dormant in 1992 and applications were made to the mineral planning authority in 1993 and 1994 for new operating conditions in order to resume working. At that time, and also when the Secretary of State for the Environment, Transport and the Regions (SofS) subsequently considered appeals by the Quarry operators against conditions determined by the mpa in 1994, it was not appreciated that the EIA Directives of 1985 and 1997 required the consideration of the need for (and if necessary the application of) EIA to reviews of conditions at existing mineral sites. Consequently, no consideration was given to the EIA issue when the conditions for Conygar Quarry were finally determined on appeal by the SofS in June 1997.

6. However, subsequent decisions by the courts from 1998 onwards established that the EIA Directives applied to reviews of old mining permissions, and so they had not been fully transposed. Amending regulations (the Town and Country Planning (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2000) were made in November 2000 applying the Directives to reviews of IDOs and old mineral permissions.

7. The 2000 Regulations were not, however, retrospective. Therefore they did not apply to cases such as Conygar Quarry, where new conditions had been determined in accordance with what had been thought to be the law at the time, namely without regard to EIA.

Mrs Wells' legal challenge

8. In 1999 Mrs Delena Wells, who lives adjacent to Conygar Quarry, challenged the SofS's determination on appeal of conditions, without having considered whether environmental assessment was required. Following initial proceedings in the High Court, the SofS issued a letter on 28 March 2001 explaining why he did not propose to modify or revoke the determination of the new conditions. In February 2002, by agreement of the parties, the High Court

referred to the European Court of Justice (ECJ) certain questions about the interpretation and application of the EIA Directives. In its judgement of 7 January 2004, the ECJ confirmed that:

A) determination of conditions attached to a planning permission and approval of matters reserved by new planning conditions, taken as a whole, constitutes a development consent to which EIA may be applied;
B) the environmental effects of a proposed development must be considered at the earliest possible stage in the consenting process; and
C) it was for Member States to take whatever measures were available under domestic law to remedy a failure to carry out an EIA.

In the meantime, several of the conditions determined by the SofS for Conygar Quarry which required approval of detailed matters by the mpa remain to be approved, and so quarrying has not yet resumed.

Rationale for government intervention

9. The First Secretary of State (FSS) by order of the High Court, therefore agreed on 25 June 2004 to consult on the options for applying the provisions of the EIA Directive to Conygar Quarry in order to give effect to the ECJ ruling. He has identified two stages in the application of the Directive. First, the current mpa (North Somerset District Council, successor to Avon County Council) needs to consider whether the application for determination of conditions in 1993 was an application for EIA development as defined in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, as amended by the 2000 Regulations. If the mpa decides that the application was EIA development, then the second stage would be to consider the most appropriate way of rectifying the failure to apply EIA in this case.

10. In August 2004 the FSS commenced consultation with the interested parties to the application (see paragraphs 10 and 11 below) on the options for taking forward these two stages. In November 2004 North Somerset Council took the view that the 1993 application was an application for EIA development as now defined and that an environmental statement would be needed for the authority to reconsider the application. The remaining, second, stage is therefore to find an appropriate procedure for applying EIA in this case through the preparation of an environmental statement, reconsideration of the application in the light of that statement, and the application of any different conditions resulting from that reconsideration. Both of the Quarry owners have refused to provide an environmental statement voluntarily, and so some form of government intervention is therefore required.

3. Consultation

Public consultation

11. A consultation with interested parties to the application was conducted between 3 August 2004 and the end of January 2005 on the options for assessing the need for, and if necessary, the application of an EIA in respect of the 1993 application for new conditions at Conygar Quarry.

12. The consultees were:

- North Somerset Council (the current mpa);
- Conygar Quarry Ltd, part owner of the Quarry, and its representatives Eversheds LLP;
- Mrs S Tyler, part owner of the Quarry and her representatives, David James & Partners ; and
- Mrs Delena Wells and her representative, Richard Buxton [Solicitors].

The FSS's letter of 3 August setting out the various options was also copied, for information, to Dr Liam Fox MP in whose constituency Conygar Quarry is situated.

12. On 21 July 2005 the FSS issued his decision to the parties listed in paragraph 11 above that he intended to apply EIA in respect of the 1993 application for new conditions at Conygar Quarry by making an order bringing forward the first periodic review of the conditions determined in 1997 (option B below). The decision letter enclosed for comment a draft order and draft Regulatory Impact Assessment

(RIA). The letter and enclosures were copied, for information, to Dr Liam Fox MP. Only Eversheds LLP commented on the description of the site in the draft order and on the draft RIA, suggesting that the estimated costs of producing environmental statements were too low (see paragraph 28 and summary table below) and that the draft RIA omitted any estimate of operators' costs of the management time involved in periodic reviews of mineral permissions. Eversheds were invited to submit estimates of both types of costs but declined to do so. The RIA has therefore been finalised on the basis of the options and costs included in the draft, although an additional reference has been made to the costs of operators' management time for periodic reviews in paragraph 28 and the summary table below. The description of the site has been expanded in the final order.

4. Options

13. Three options have been identified to achieve the second stage described in paragraph 9 above:

A) Do nothing;

B) Make an Order to bring forward the first periodic review of the conditions determined in 1997; or

C) Revoke or modify the IDO consent or discontinue the use of the land for mineral working or impose conditions on its continued use and invite the owners to submit new schemes of conditions for approval.

Option A

14. This is not a feasible option. The mpa has now expressed its view that the 1993 application was EIA development, and that an environmental statement will be needed to enable the application to be reconsidered. A lawful means must be found to give effect to this decision in order to comply with the ECJ ruling.

Option B

15. Using the power in paragraph 3A (1) of Schedule 14 to the Environment Act 1995 (introduced by paragraph 19 of Schedule 7 to the Planning and Compulsory Purchase Act 2004), the FSS could make an order to bring forward the first periodic review (which normally occurs 15 years after an initial review of conditions or after the grant of a new mineral permission) of the conditions determined in 1997. This first review could therefore take place in 2007 rather than 2012.

16. Once the specified first review date was reached, the review would be subject to the application of EIA as required by the 2000 Regulations i.e. there would be a statutory duty on the Quarry owners, as part of the review, to produce an environmental statement within a specified timescale to inform the mpa's determination of new conditions. Once the results of the EIA are known, the mpa can consider whether modification or revocation of the IDO consent or discontinuance of the use of the land for mineral working or imposition of conditions on its continued use would be appropriate (see next paragraph).

Option C

17. Using powers in section 97 and section 100 of the Town and Country Planning Act 1990 (the 1990 Act) the mpa or the FSS respectively could revoke or modify the IDO consent. Using powers in Schedule 9 to the 1990 Act, the mpa or the FSS could require discontinuance of the use of the Quarry or the imposition of conditions on the continuation of the use.

18. In the event of revocation, modification or discontinuance the holders of the IDO consent would be entitled to seek appropriate compensation for any loss of mineral working rights. In addition, it would be open to the mpa to consider any application for the approval of new schemes of conditions which the Quarry owners or future operators wished to submit. While revocation of the IDO consent is an option now, it would be premature to consider modification or discontinuance before the results of the EIA are known (see paragraph 16 above).

<u>Alternative options considered</u>

19. The further options involving voluntary provision of an environmental statement which the mpa would then use to reconsider the 1993 application and then implement new conditions by either a section 106 agreement or following the issue of a revocation or modification or discontinuance order, have already been rejected by both Quarry owners (see paragraph 9 above).

5. Costs and Benefits

Sectors and groups affected

20. Option A would lead to further litigation against the FSS and associated public costs. Options B and C would both have a direct impact on the mpa, the Quarry owners and residents living close to the Quarry.

Race equality assessment

21. These proposals do not have any race equality impacts.

Health impact assessment

22. Conygar Quarry has existed for almost 60 years but has only been worked intermittently in that time, including during the 1950s and from 1990 to 1992. The Quarry has been dormant since 1992. There are some dwellings surrounding the Quarry but protected from it to an extent by high quarry faces. There is more housing to the west of and protected from the Quarry by Court Hill and the main bulk of housing in Clevedon is further away to the south west of the Quarry. There is a potential health benefit to residents in the immediate vicinity of the Quarry remaining dormant, in terms of reduced noise and other impacts eg from heavy goods traffic. Under both options B and C the Quarry would remain dormant until an environmental statement is produced to inform new conditions and the resumption of operations, either following an early first periodic review (option B) or the submission and approval of a new application (option C), should the owners decide to submit one.

23. Under both options B and C mineral working cannot restart without the submission of an environmental statement to inform the mpa's consideration of new conditions. Such a statement would assess the impact of continued mineral working on residents, wildlife and landscape. Its provisions could help to reduce the health impact of future mineral working to a greater degree than if no EIA was carried out if the mpa was then able to determine conditions which better reflected the up to date assessments in the environmental statement than the conditions already determined in the process found to be unlawful.

Rural considerations

24. Minerals can only be worked where they are found and most mineral working therefore takes place in rural areas. When working, Conygar Quarry would provide employment opportunities. As a dormant site, the Quarry is not being maintained and this may have a deleterious effect on the landscape. The conditions determined in 1997 included requirements for the restoration of the Quarry and aftercare of the restored land when mineral extraction finally ceases.

Breakdown of costs and benefits

Option A - do nothing

25. Economic

There are no economic benefits to this option. However, there would be significant (but at this stage, unquantifiable) costs to the Government arising from the failure to comply with the ECJ's ruling, through further litigation nationally and possibly on return to the ECJ. At present, the Quarry is dormant and so there is an opportunity cost to the economy of both the sandstone which has been permitted to be extracted from the site and also of jobs in the local community. It is impossible to quantify these costs, but they are likely to be limited, since the Somerset area generally is well-endowed with sources of crushed rock for aggregate.

26. Environmental

Mineral working cannot recommence at Conygar Quarry without carrying out an EIA. Should the quarry remain dormant, there would be an environmental benefit in that noise and other impacts associated with sandstone extraction, would not occur.

There may be an environmental cost associated with this option in terms of any deterioration in the landscape while the Quarry remains dormant.

27. Social

This option would maintain the status quo and hence with it the social impacts of the quarry remaining dormant i.e. the continuing loss of jobs.

Option B - bring forward the first periodic review of conditions

28. Economic

This option would require a review of the 1997 conditions to be carried out in 2006, informed by the production of an environmental statement and thus avoid any costs to the Government of further legal action resulting from not addressing the finding of the ECJ. Producing an environmental statement (as part of the review) might cost the owners of Conygar Quarry somewhere in the region of £10,000 to £25,000. Because the cost of each environmental statement varies according to its scope and the complexity of the site, this is a necessarily very broad estimate based on a random sample of relatively recently produced environmental statements informing reviews of mineral planning conditions. Although under option B the owners of Conygar Quarry would be required to produce an environmental statement earlier than the normal 15 years after conditions were finally determined on initial review ie in 2007 instead of 2012, the costs of providing a statement are in other respects no different to those falling to operators of any mineral site which is either above the size or mineral extraction thresholds specified in the 2000 Regulations, for which an environmental statement is mandatory or whose operations are judged by the relevant mpa to have a significant environmental effect and so to require the preparation of an environmental statement to inform the determination of new conditions. In addition, the costs to operators of the management time involved in the first periodic review would occur in 2007 rather than 2012 but again, these costs are no different to the costs falling on all mineral operators now that, under schedule 14 to the 1995 Act, all mineral permissions are to be periodically reviewed every 15 years. Additionally, the costs to the mpa of carrying out the first periodic review of the Quarry would fall in 2007 rather than 2012, after which a 15 year period would run until the next review. The holder of the IDO consent would be entitled to seek appropriate compensation for any loss of mineral working rights as a result of the review. That would be at a cost to the mpa and hence to council tax payers and general government revenues. The amount of any possible compensation cannot be calculated at this stage. This would depend on the parties agreeing to a professional mineral valuation of the asset value of the site under its present operating capability, and in the event of dispute would be subject to adjudication by the Lands Tribunal.

29. Environmental

Mineral working cannot restart at the Quarry without the submission of an environmental statement, to inform the mpa's consideration of new conditions. Such a statement would assess the impact of continued mineral working on residents, wildlife and landscape. Conditions determined following the submission of an environmental statement could help to improve local amenity by reflecting up to date environmental standards against which the environmental assessment had been made.

No environmental costs have been identified from this option.

30. Social

Completion of the first periodic review of the conditions for Conygar Quarry would bring to a conclusion the long-running litigation concerning this site and the consequential uncertainty for the owners and local residents. It would enable the Quarry to start working with new conditions, generating employment opportunities and producing material for economic use.

No social costs have been identified from this option.

Option C - revoke/modify the IDO consent or discontinue the use of the land for mineral working or impose conditions on its use and invite the owners to submit new schemes of conditions for approval

31. Economic

Revocation of the IDO consent now would also avoid any costs to government arising from further litigation as a result of inaction on the ECJ ruling. If the consent is revoked now or, following EIA, modified or the use of the land is discontinued or conditions are imposed on its continued use, there could be a monetary benefit to the Quarry owners in terms of compensation for loss of their existing permitted rights to work sandstone at the site, though in strict economic terms this would be conversion of an existing asset to monetary form. That would be at a cost to the mpa and hence to council tax payers and general government revenues. The amount of any possible compensation cannot be calculated at this stage. This would depend on the parties agreeing to a professional mineral valuation of the asset value of the site under its present operating capability, and in the event of dispute would be subject to adjudication by the Lands Tribunal. There could be economic benefits to the owners and the wider economy if, following revocation, the owners decided not to submit new schemes of mineral operating conditions for approval but to apply for an alternative use of the site (see paragraph 33 below).

There would be costs to the owners of complying with the restoration and aftercare conditions already determined for the Quarry, even if the current permission is revoked or modified or discontinued and, following revocation, the owners subsequently chose not to submit new schemes of conditions for approval, or secure permission for alternative development which subsumed the restoration requirement. While these are costs which would now apply to most mineral sites, in this case they would be brought forward, rather than deferred until a later stage or until after extraction had ceased. If the owners of Conygar Quarry did submit new schemes of conditions for approval, then the same broad estimate of the costs of producing an environmental statement and the cost to the mpa of early consideration of new conditions would apply as in option B (see paragraph 28 above).

32. Environmental

Option C would initially result in the permission for the working of Conygar Quarry being revoked or, following EIA, being modified or the use of the land discontinued, in the short to medium term preventing the extraction of minerals and any environmental damage that this might cause, such as noise or other pollution. If, following revocation, new schemes of conditions were subsequently submitted together with an environmental statement then the statement would assess the impact of continued mineral working on residents, wildlife and landscape. Conditions subsequently determined could help to improve local amenity by reflecting up to date environmental standards against which the environmental assessment had been made. However, the ultimate net benefit to the environment would depend on the impacts of any alternative use of the site which might be permitted if the owners decided to move away from minerals operations.

No environmental costs have been identified from this option, though the possibility that the site could move into alternative use that did have some environmental impacts should be noted.

33. Social

A possible benefit from this option could be using the land for alternate purposes that yield social and economic benefits (such as housing, local amenities, or other employment activities) if the owners decided not to submit new schemes of mineral operating conditions for approval but to apply for an alternative use of the site.

However, there are several risks to this option. Revocation of the current consent would mean that the Quarry remained dormant with the consequent continuing loss of employment opportunities. There would be continued uncertainty about the future of the Quarry unless the owners quickly submitted new schemes of conditions for approval making clear their intention to continue mineral working or apply for and secure permission for an alternative use.

6. Small Firms' Impact Test (SFIT)

34. Both options B and C would require the Quarry owners to produce an environmental statement under the 2000 regulations, costing in the region of perhaps £10,000 to £25,000 (see paragraph 28 above) if they wish to continue working the site. This is now part of the normal operating costs for this type of business, and indeed any size of mineral operator, since the introduction of the 2000 Regulations.

While the requirement to produce and EIA will tend to bear more heavily on smaller businesses as a proportion of turnover, it is a requirement that is applied to the mineral industry in general, since there is no provision in environmental regulation for smaller firms to operate to lower environmental standards than larger ones. Similarly, the costs of operators' management time involved in periodic reviews applies to all operators.

7. Competition Assessment

35. The 2000 Regulations now apply the provisions of the EIA Directive to reviews of Interim Development Orders and old mineral permissions for applications made after 15 November 2000. However, the 2004 ECJ ruling stated that EIA should have been considered when conditions were determined for Conygar Quarry in 1997.

36. This RIA examines ways in which the ECJ ruling can be applied to Conygar Quarry. There are no competition issues arising because EIA is now applied to all minerals conditions reviews, and the owners of this quarry are being treated no differently than any other firm in the same circumstances.

8. Enforcement, Sanctions and Monitoring

37. If the owners started to work the Quarry again in advance of either the final approval of detailed matters relating to the 1997 conditions or in advance of any new application for approval of conditions under options B or C, the mpa could take enforcement action under the provisions in the 1990 Act, with the ultimate sanction of fines imposed by a court. If, under option B, the owners failed to comply with the proposed order and failed to submit schedules of new conditions and an environmental statement by the specified date, then the IDO consent will cease to have effect except as regards the restoration and aftercare conditions.

Monitoring and review

38. The proposed order is not amending or creating an across the board regulatory burden, but would provide a remedy to a specific issue at one Quarry. As 'do nothing' is not an option, the only monitoring needed is to ensure that the ruling is appropriately and proportionately implemented in respect of the specific issue at Conygar Quarry. This is no different in principle or substance from the routine monitoring of compliance with conditions at active mineral sites.

9. Implementation and Delivery Plan

39. Under option B, implementation will take the form of making an order, under paragraph 3A(1) of Schedule 14 to the Environment Act 1995 to bring forward the first periodic review of conditions of Conygar Quarry from 2012 to 2007. The date of submission of new schemes of conditions to be specified in the order has been suggested to be 15 months after the order is made. The owners of Conygar Quarry will be required to produce an environmental statement as part of the review by the specified date.

40. Under option C, any revocation or modification or discontinuance order would or is likely to need to be confirmed by the FSS following the making of the order by the mpa and advertising it for at least 28 days to interested parties. The order can be made under accelerated procedures for unopposed cases of revocation or modification of planning permission under section 97. If there are objections to the order then they will need to be heard at a local inquiry or by exchange of written representations before the FSS is in a position to decide whether to confirm the order. The making of any order and the process of deciding whether it should be confirmed is therefore likely to take a number of months.

10. Summary and Recommendation

Option	Total cost per annum Economic, environmental, social	Total benefit per annum Economic, environmental, social
A - Do nothing	- Unquantified but potentially substantial legal costs. - Loss of job opportunities and aggregate if the Quarry remains dormant. - Possible deterioration in landscape while the Quarry remains dormant.	- No noise or other impacts from mining activity while the Quarry remains dormant.
B - Bring forward the first periodic review of conditions	- Cost of EIA to owners of Conygar Quarry broadly estimated between £10,000 and £25,000, and 5 years earlier than a review 15 years after the 1997 determination. - Cost of management time involved in undertaking the first periodic review 5 years earlier than 15 years after the 1997 determination. - Mpa costs of undertaking the first periodic review 5 years earlier than 15 years after the 1997 determination. - Noise and other impacts when the Quarry resumes working.	- Compliance with ECJ ruling. - Certainty as to the future use of the site for local residents - New operating conditions based on an up to date environmental assessment. - Creation of employment and supply of material from re-opening of quarry.
C - Revoke or modify the IDO consent or discontinue the use of the land for mineral working or impose conditions on its continued use and invite owners to submit new schemes of conditions for approval	- Loss of employment opportunities from the local economy and of mineral. - Uncertainty for local residents. - Cost to local and national taxpayers of compensating loss of working rights. - Costs to owners of restoration and aftercare of site earlier than originally anticipated unless requirements are subsumed by alternative development. - Unquantifiable net cost or benefit from alternative use. - If new schemes of conditions subsequently submitted then costs would be as option B.	- Compliance with ECJ ruling. - Compensation for owners for loss of working rights. - Possible use of site for other purposes if the owners choose not to submit new schemes of conditions for approval; unquantifiable net benefit or cost from alternative use. - No noise or other impacts from mining activity while the Quarry remains dormant. - Any new operating conditions will be based on an up to date environmental assessment.

41. Having assessed the costs and benefits of option C, in paragraphs 31 to 33 above, the ODPM does not consider that revocation of the IDO consent is a proportionate or appropriate option for resolving this case.

42. After considering all of the above, it is our opinion that **Option B** is the most proportionate response to the ECJ ruling. It seeks to put the site and the parties into the position they would have been in if the present understanding of the relevant law had been available at the time. The FSS has issued his decision that he intends to proceed with this option immediately.

12. Declaration and Publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

***Signed* …Kay Andrews……..**

Date 2nd February 2006

Baroness Andrews

Parliamentary Under Secretary of State
Office of the Deputy Prime Minister

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