

1987 No. 433 (S. 45)

TOWN AND COUNTRY PLANNING, SCOTLAND

**The Town and Country Planning (Compensation for
Restrictions on Mineral Workings) (Scotland)
Regulations 1987**

Approved by both Houses of Parliament

<i>Made</i>	- - - -	<i>21st January 1987</i>
<i>Laid before Parliament</i>		<i>6th February 1987</i>
<i>Coming into force</i>		<i>30th March 1987</i>

The Secretary of State, in exercise of the powers conferred upon him by section 167A of the Town and Country Planning (Scotland) Act 1972(a) and all other powers enabling him in that behalf, with the consent of the Treasury and after consultation with persons and bodies appearing to him to be representative of persons carrying out mining operations, of owners of interests in land containing minerals and of planning authorities, hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Town and Country Planning (Compensation for Restrictions on Mineral Workings) (Scotland) Regulations 1987 and shall come into force on the twenty first day after the day on which they are approved by resolution of each House of Parliament.

(2) These Regulations do not apply to compensation in respect of orders made under the Town and Country Planning (Scotland) Act 1972 in relation to the winning and working of minerals by the National Coal Board.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the 1972 Act” means the Town and Country Planning (Scotland) Act 1972;

“the appropriate portion” has the meaning assigned to it by regulation 7;

“order” means an order made under section 42, section 49, section 49A or section 49B(b) of the 1972 Act;

“relevant mineral” means any mineral to which an order relates in, on or under a site;

“site” means the area of land to which an order relates.

(2) References in these Regulations to a mineral or minerals in, on or under a site shall include references to a mineral or minerals contained in any deposit of material in, on or under the site or contained in any disused railway embankment on the site.

(a) 1972 c.52; section 167A was added by section 31 of the Town and Country Planning (Minerals) Act 1981 (c.36).
(b) Sections 49A and 49B were added by section 27 of the Town and Country Planning (Minerals) Act 1981; sections 42 and 49 were amended by sections 25 and 26 of that Act.

(3) A numbered section in these Regulations means the section so numbered in the 1972 Act; and a numbered regulation or numbered Schedule means a regulation or Schedule so numbered in these Regulations.

Modifications of sections 153 and 159

3.—(1) Where in accordance with section 153A(a) mineral compensation requirements are satisfied in relation to an order made under section 42 (revocation or modification of planning permission), section 153 shall apply in relation to that order subject to the modification set out in paragraph (2) below.

(2) Where a person making a claim for compensation under section 153 has carried out works for the purpose of removing or alleviating any injury to amenity caused by the winning and working of a relevant mineral, or for the purpose of restoring land after the extraction of a relevant mineral, under an agreement in writing with the planning authority which was entered into after the date on which these Regulations come into force but before the date when the order takes effect, the expenditure incurred in carrying out those works shall be treated for the purposes of section 153(1)(b) as constituting loss or damage directly attributable to the revocation or modification; but such a claim under section 153 as so modified can only include expenditure so incurred in respect of which no such claim has already been made.

4.—(1) Where in accordance with section 159B(b) mineral compensation requirements are satisfied in relation to an order made under section 49 (discontinuance of use), section 49A (prohibition on resumption of operations) or section 49B (suspension of operations), section 159 shall apply in relation to that order subject to the modifications set out in paragraphs (2) to (4) below.

(2) For subsections (2) and (3) of section 159 there shall be substituted the following:-

“(2) If, on a claim made to the planning authority within the time and in the manner prescribed by regulations under this Act, it is shown that a person interested in the land to which the order relates—

(a) has incurred expenditure in carrying out work which is rendered abortive by the provisions of the order; or

(b) has otherwise sustained loss or damage which is directly attributable to the provisions of the order,

the planning authority shall (subject to the provisions of any regulations made under section 167A of this Act which are for the time being in force) pay to that person compensation in respect of that expenditure, loss or damage.

(3) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory thereto, shall be taken to be included in the expenditure incurred in carrying out that work.

(3A) In calculating, for the purposes of this section, the amount of any loss or damage consisting of depreciation of the value of an interest in land, it shall be assumed that planning permission would be granted for development of the land of any class specified in Schedule 6 to this Act.”.

(3) Where a person making a claim for compensation under section 159 (as modified by these Regulations) has carried out works for the purpose of removing or alleviating any injury to amenity caused by the winning and working of a relevant mineral, or for the purpose of restoring land after the extraction of a relevant mineral, under an agreement in writing with the planning authority which is entered into after the date on which these Regulations come into force but before the date on which the order takes effect, the expenditure incurred in carrying out those works shall be treated, for the purposes of section 159(2)(b), as constituting loss or damage directly attributable to the provisions of the order; but such a claim under section 159 as so modified can only include expenditure so incurred in respect of which no such claim has already been made.

(4) In the case of an order made under section 49A, section 159 shall apply with the further modification that in calculating the amount of any loss or damage, no account shall be taken

(a) Section 153A was added by section 29 of the Town and Country Planning (Minerals) Act 1981.

(b) Section 159B was added by section 30 of the Town and Country Planning (Minerals) Act 1981.

of the value of any mineral in, on or under the site which cannot be won or worked in consequence of the order.

Assessment of compensation

5. Where mineral compensation requirements are satisfied in relation to an order under section 49A or 49B, the amount to be paid by way of compensation to a person making a claim under section 159 (as modified by regulation 4) shall be determined by assessing the amount of compensation which would be payable to him in accordance with section 159 as so modified and deducting therefrom the appropriate portion of the sum of £5,000.

6.—(1) Where mineral compensation requirements are satisfied in relation to an order made under section 42 or 49, the amount to be paid by way of compensation to a person making a claim under section 153 or 159 (both as modified by these Regulations) shall be determined as follows:—

- (a) an assessment shall be made of the amount of compensation which would be payable to him in accordance with the provisions of section 153 or section 159 (as the case may be) as modified by these Regulations; and
- (b) from that amount there shall be deducted the appropriate portion of whichever is the greater of—
 - (i) the sum of £2,500; or
 - (ii) 10 per cent of a sum calculated in accordance with paragraph (2) below:
Provided that the deduction shall not in any case exceed a sum which represents the appropriate portion of the sum of £100,000.

(2) In respect of one relevant mineral being won and worked at the date when the order took effect, the sum for the purposes of paragraph (1)(b)(ii) above shall be the product of the annual value of the right to win and work that mineral (calculated in accordance with Schedule 1) multiplied by the multiplier (arrived at in accordance with Schedule 2) and where there are two or more relevant minerals being won and worked the sums so calculated in respect of each shall be added together to give the sum for the purposes of the said paragraph.

7.—(1) References in regulations 5 and 6 to “the appropriate portion” are to be construed in accordance with paragraphs (2) to (4) below.

(2) Where the planning authority are satisfied, at the time when they assess the amount to be paid in respect of a claim for compensation, that at the date of the coming into operation of an order the person making the claim was the only person interested in the site, the appropriate portion is the whole sum.

(3) Where, at the time when they are assessing the amount to be paid in respect of a claim for compensation, the planning authority are aware that at the date of the coming into operation of an order there were persons other than the claimant interested in the site, they shall calculate the appropriate portion as follows:—

- (a) they shall take the value of the claimant’s interest in the site and in any relevant mineral;
- (b) they shall take the total value which the site and the minerals in, on or under the site would have if there were a single person entitled to all of the interests in the site and all of the minerals; and
- (c) they shall take the appropriate portion as being the sum which represents the same proportion of the whole sum as the value referred to in sub-paragraph (a) is of the total value referred to in sub-paragraph (b).

(4) In this regulation, “the whole sum” means—

- (a) the sum of £5,000 specified in regulation 5; or
- (b) the sum of £2,500 specified in regulation 6(1)(b)(i); or
- (c) the sum which represents the 10 per cent proportion referred to in regulation 6(1)(b)(ii); or
- (d) the sum of £100,000 specified in regulation 6(1)(b),

as the case may be.

New St. Andrew's House
Edinburgh
14th January 1987

Michael Ancram
Parliamentary Under Secretary of State,
Scottish Office

We consent,

21st January 1987

Tim Sainsbury
Tony Durant
Two of the Lord Commissioners of Her Majesty's Treasury

SCHEDULE 1

Regulation 6(2)

The annual value of the right to win and work a relevant mineral as at the date when the order took effect shall be calculated by multiplying—

- (a) the royalty rate of the unit of sale of that mineral which if it were to be the subject of a lease in the open market at that date a willing landlord and a willing tenant might be expected to agree, and
- (b) the anticipated average annual sales of that mineral which if it were to be the subject of a lease in the open market at that date a willing landlord and a willing tenant might be expected to agree:

Provided that no account shall be taken of any grassum or consideration other than rent payable in respect of the lease.

SCHEDULE 2

Regulation 6(2)

1. The multiplier is the years' purchase, which shall be appropriate to the estimated life of a relevant mineral being won and worked at the site as at the date when the order took effect, and which, if the site were sold in the open market on that date, a willing vendor and a willing purchaser might be expected to agree.

2. For the purposes of paragraph 1 above the estimated life shall be calculated by dividing—

- (a) the quantity of the relevant mineral remaining unworked in the site at that date, being the amount which, if the site were sold in the open market, a willing vendor and a willing purchaser might be expected to agree as being economically workable and saleable mineral reserves; by
- (b) the anticipated average annual sales at that date of that unworked mineral, being the identical figure arrived at as under paragraph (b) of Schedule 1.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision with respect to the payment of compensation where an order is made under Part III of the Town and Country Planning (Scotland) Act 1972 revoking or modifying planning permission for mineral working (section 42), requiring the discontinuance of mineral working (section 49), prohibiting the resumption of mining operations which have ceased (section 49A) or imposing requirements in relation to a site where mining operations are temporarily suspended (section 49B). Sections 153A and 159B of the 1972 Act set out certain "mineral compensation requirements" in relation to such orders and provide that where such requirements are satisfied in respect of an order, the provisions of section 153 (compensation in respect of orders under section 42) and section 159 (compensation in respect of orders under sections 49, 49A and 49B) shall have effect subject to mineral compensation modifications. These Regulations provide for such modifications.

The following modifications are made:-

- (1) the amount of compensation payable under section 153 or section 159 will take account of expenditure incurred in voluntarily carrying out works for the purpose of removing or alleviating injury to amenity caused by mineral working on the land to which the order relates or works for restoring the land after the extraction of minerals (regulations 3 and 4);
- (2) the basis on which compensation under section 159 is assessed is modified by the substitution of provisions equivalent to those set out in section 153(1), (2) and (4) (regulation 4(2));
- (3) in relation to orders made under section 49A, the value of any mineral in the site which cannot be won or worked because of the order is to be ignored in calculating compensation under section 159 (regulation 4(4));
- (4) the total amount of compensation payable under section 159 in respect of an order made under section 49A or section 49B is to be reduced by £5,000 (regulation 5); and
- (5) the total amount of compensation payable under section 153 or section 159 in respect of an order made under section 42 or section 49 is to be reduced by (a) the sum of £2,500 or (b) 10% of the sum which is to be calculated by multiplying the annual value of the right to win and work minerals to which the order relates by a multiplier, whichever is the greater (but subject to a maximum deduction of £100,000) (regulation 6 and Schedules 1 and 2).

Regulation 7 provides for the apportionment between claimants of the sum to be deducted from the total amount of compensation, in a case where there is more than one interest held in the site to which the order relates.

By virtue of regulation 1(2), the Regulations do not apply to orders made in relation to mineral working by the National Coal Board.

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