STATUTORY INSTRUMENTS

1975 No. 1280 (S.189)

TOWN AND COUNTRY PLANNING, SCOTLAND

The Town and Country Planning (National Coal Board) (Scotland) Regulations 1975

Made - - - -	29*th July* 1975
Laid before Parliament	12*th August* 1975
Coming into Operation	1*st November* 1975

The Secretary of State for Scotland in exercise of the powers conferred on him by section 259 of the Town and Country Planning (Scotland) Act 1972**(a)** and the Secretary of State for Energy in exercise of the powers conferred by the said section 259 and now vested in him**(b)** and of all other powers enabling them in that behalf hereby with the consent of the Treasury make the following regulations:—

Citation, Commencement and Interpretation

1. These regulations may be cited as the Town and Country Planning (National Coal Board) (Scotland) Regulations 1975 and shall come into operation on 1st November 1975.

2.—(1) In these regulations, subject to the provisions of the next succeeding paragraph, the following expressions have the meanings hereby respectively assigned to them, namely:

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

"the Act of 1946" means the Coal Industry Nationalisation Act 1946**(c)**;

"the Board" means the National Coal Board;

"coal industry activities" and "colliery activities" have the meanings respectively assigned to them by section 63 of the Act of 1946;

"excepted land" means land in which—

(*a*) an interest is acquired by the Board on or after the date when these regulations come into operation; or

(*b*) an interest is held by the Board and was so held immediately before the said date but in such circumstances that the land did not fall to be treated as specified land within the meaning of regulation 2(1) of the Town and Country Planning (National Coal Board) (Scotland) Regulations 1951**(d)**,

and in respect of which there is not, and has not at any time been, in force a planning permission granted on an application made under Part III of the Act for the carrying out of any of the activities mentioned in Part I, II or III of Schedule 1 to the Act of 1946 (except paragraphs 13

(a) 1972 c. 52.
(b) S.I. 1974/692 (1974 I, p. 2711).
(c) 1946 c. 59.
(d) S.I. 1951/725 (1951 II, p. 848).

and 14 thereof) or for the carrying out of any coal industry activities;

"planning proceedings" has the meaning assigned to it by Schedule 2 to these Regulations;

"specified land" means land (including mines) of the Board of the following classes—

(*a*) unworked coal or any space excavated underground for the purposes of colliery activities;

(*b*) unworked minerals other than coal being minerals which cannot be economically worked except in association with the working of coal, or which cannot be economically brought to the surface except by the use of a mine of coal vested in the Board;

(*c*) surface land (other than excepted land) in the immediate vicinity of a shaft or adit for the winning or working of coal, being either land on which any of the activities mentioned in Part I, II or III of Schedule 1 to the Act of 1946 (except paragraphs 13 and 14 thereof) is ordinarily carried on or land in which an interest is held by the Board for the purpose of any of those activities and which in respect of its nature and situation is comparable rather with land on which these activities are carried on than with land in general; and

(*d*) other surface land (other than excepted land), being either land on which coal industry activities are ordinarily carried on or land in which an interest is held by the Board for the purpose of those activities and which, in respect of its nature and situation is comparable rather with land on which those activities are carried out than with land in general, but excluding in either case shops and offices not adjacent to any other surface land which is specified land by virtue of this definition;

Provided that—

(i) land of class (*c*) shall include any dwellinghouse at a colliery, in which an employee of the Board is required by the terms of his employment to reside for the purpose of enabling him to perform his duties properly; and

(ii) land of class (*d*) shall not include any land used for the deposit of refuse or waste materials, or comprised in a site used or held for that purpose.

(2) For the purposes of these regulations none of the activities mentioned in Schedule 1 to the Act of 1946 shall be regarded as subject to the provisions of paragraph 22(2) of that Schedule.

(3) The Interpretation Act 1889**(a)** shall apply for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament.

Application of provisions relating to Statutory Undertakers

3. The provisions of the Act relating to statutory undertakers and to land of such undertakers which are set out in column (1) of Schedule 1 to these regulations shall apply in relation to the Board, and in relation to specified land of the Board as if the Board were statutory undertakers, and as if

(a) 1889 c. 63.

references in such provisions to operational land were references to specified land, subject to the adaptations, modifications and exceptions set out opposite such provisions in column (2) of the said Schedule 1.

Compensation

4. Any compensation payable to the Board by virtue of any of the provisions of sections 214 to 217 and sections 226 and 227 of the Act as applied by these regulations in respect of a planning proceeding shall, in lieu of being assessed in accordance with sections 227 to 229 of the Act, be assessed in accordance with the provisions of Schedule 2 to these regulations.

5. Any compensation payable to the Board by virtue of any of the provisions of sections 214 to 217 and sections 226 and 227 of the Act as applied by these regulations in respect of any decision or order relating to specified land, other than a planning proceeding, or by virtue of section 227(1)(*c*) of the Act as so applied in respect of the compulsory acquisition of specified land shall be assessed in accordance with the provisions of sections 227 to 229 of the Act and references therein to "the undertaking" or "their undertaking" shall be construed as references to the functions of the Board.

Revocations

6.—(1) The Town and Country Planning (National Coal Board) (Scotland) Regulations 1951 are hereby revoked.

(2) Section 38 of the Interpretation Act 1889 shall apply as if these regulations were an Act of Parliament and as if the regulations revoked by these regulations were Acts of Parliament repealed by an Act of Parliament.

New St. Andrew's House,
Edinburgh.
29th July 1975.

William Ross,
Secretary of State for Scotland.

29th July 1975.

Tony Benn,
Secretary of State for Energy.

We consent,

M. Cocks,
J. Dormand,
Two of the Lords Commissioners of
Her Majesty's Treasury.

29th July 1975.

SCHEDULE 1

Regulation 3

Column (1) Provisions of the Act relating to Statutory Undertakers and to land of such Undertakers applied to the Board	*Column* (2) Adaptations, modifications and exceptions
Section 19(2)(c) (which provides that the carrying out by a statutory undertaker of any work for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose shall not involve development).	None.
Section 121(4)(c) (which provides for references in the Lands Clauses Acts and Section 6 of the Railways Clauses Consolidation (Scotland) Act 1845**(a)** as incorporated by virtue of paragraph 1 of Schedule 2 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947**(b)** to the execution of works to be construed as including references to any erection, construction or carrying out of buildings or works by or on behalf of statutory undertakers).	None.
Section 154(3) (which provides that Section 154 of the Act shall not apply in relation to planning permission for the development of operational land of statutory undertakers).	None.
Section 214 (which relates to applications for permission to develop operational land by statutory undertakers).	1. In subsection (1) omit the words "and the appropriate Minister". 2. Omit subsections (3), (4) and (5).
Section 216 (which relates to revocation and modification of permissions granted to statutory undertakers to develop operational land).	Omit the words from "as if" to the end.
Section 217 (which relates to the making of orders under section 49 of the Act as to operational land of statutory undertakers).	Omit the words from "as if" to the end.
Section 226 (which relates to the right to compensation in respect of certain decisions and orders).	1. In relation to specified land which consists of unworked coal, unworked minerals other than coal or any space excavated underground for the purposes of colliery activities (but not in relation

(a) 1845 c. 33.

(b) 1947 c. 42.

SCHEDULE 1—*continued*

Column (1) Provisions of the Act relating to Statutory Undertakers and to land of such Undertakers applied to the Board	*Column* (2) Adaptations, modifications and exceptions
	to other specified land) omit paragraph (*a*) of subsection (1) and substitute the following paragraph: "(*a*) in respect of any decision made in accordance with section 214 whereby planning permission to develop operational land of the undertakers is refused or is granted subject to conditions". 2. Omit subsections (2) and (3). 3. In subsection (4) omit the words from "if the decision or order" to "and the appropriate Minister are satisfied" and substitute the words "if the Secretary of State for Scotland and the Secretary of State for Energy are satisfied".
Section 227 (which relates to the measure of compensation payable to statutory undertakers).	1. In subsection (1)— (*a*) Omit the words "(2) or (3)" in paragraph (*a*); (*b*) Add after the word "undertaking" in paragraph (*c*) the words "including any land vested in the National Coal Board by virtue of the Coal Industry Nationalisation Act 1946"; and omit the words "confirmed or made without the appropriate Minister's certificate" in that paragraph; (*c*) Insert between the words "be" and "an amount" the words "as respects any land specified in regulations made under section 259 of this Act"; and (*d*) At the end of the subsection add the following: "provided that where entitlement arises under subsection (1) of the last preceding section in respect of a decision or order relating wholly or in part to the deposit of refuse or waste materials on land or to any ancillary development required for that purpose, the provisions of Part VIII of the Act shall, subject to any direction given under subsection (4) of that section, apply in relation to that decision or order or that part of the decision or order, as the case may be, instead of the following provisions". 2. Omit subsection (4) and in subsection (6), paragraph (*b*) of the definition of "proceeding giving rise to compensation".

SCHEDULE 1—*continued*

Column (1) Provisions of the Act relating to Statutory Undertakers and to land of such Undertakers applied to the Board	*Column* (2) Adaptations, modifications and exceptions
Section 228 (which relates to the exclusion of section 227 at the option of statutory undertakers.	None.
Section 229 (which prescribed the procedure for assessing compensation where section 227 applies).	None.
Section 230 (which makes special provisions as to display of advertisements on operational land).	None.
Section 242(2) (which empowers statutory undertakers to contribute towards certain expenses of planning authorities).	None.
Section 266(6)(b) (which entitles statutory undertakers to object to works, on land held by them, for the purpose of ascertaining the nature of the subsoil or the presence of minerals therein).	For the words "appropriate Minister" substitute the words "Secretary of State for Energy".
Section 275(2) so far as it relates to the determination of questions as to whether land of statutory undertakers is operational land.	For the words "the Minister who is the appropriate Minister in relation to those undertakers" substitute the words "the Secretary of State for Energy".
Schedule 22, paragraph 45.	The reference to the refusal or grant of planning permission before 8th December 1969 is to be construed as a reference to the refusal or grant of planning permission before the date of the coming into operation of these regulations.
Schedule 22, paragraph 54.	The reference to a decision made before 8th December 1969 is to be construed as a reference to a decision made before the date of the coming into operation of these regulations.

SCHEDULE 2

Regulation 4

Provisions as to the assessment of compensation in respect of underground workings of coal and other minerals which are specified land, to be applied in lieu of the provisions of sections 227 to 229 of the Act.

1. In this Schedule, the following expressions have the meanings hereby respectively assigned to them, namely:—

"minerals" means underground coal and other minerals which are specified land;

"planning proceeding" means any of the following decisions or orders in respect of minerals, namely:—

(*a*) decision given under section 214 of the Act as applied by these regulations, refusing planning permission for the working underground of minerals, or the carrying out of underground works in a mine for the purpose of facilitating such working (whether with or without any other development), or granting such permission subject to conditions;

(*b*) an order made under section 216 of the Act and so applied revoking or modifying provision for such working or works; and

(*c*) an order made under section 217 of the Act as so applied in relation to such working or works;

"existing mine", in relation to a planning proceeding, means a mine from which the winning and working of minerals has been commenced before that proceeding takes effect, and, where such commencement was on or after 1st July 1948, with planning permission granted or deemed to be granted under Part III of the Act;

"new mine" means a mine, or proposed mine, other than an existing mine;

"affected mine" means an existing mine in relation to which a planning proceeding has taken effect;

"neighbouring mine" means a mine worked by the Board from which minerals are brought to the surface by means of a shaft or adit situated within 15 kilometres of the main shaft or adit of an affected mine; and

"decrease in net receipts" means the amount by which a balance of receipts over expenditure is decreased or of expenditure over receipts is increased, or, where a balance of receipts over expenditure is converted into a balance of expenditure over receipts, the aggregate of the two balances; and "increase in net receipts" shall be construed accordingly.

2. The compensation to be paid in respect of a planning proceeding shall in default of agreement be assessed by the arbitration of the tribunal constituted in accordance with the provisions of section 229 of the Act and the amount of such compensation shall be calculated in accordance with the provisions of the next following paragraph.

3.—(1) In the case of a planning proceeding relating to an existing mine, the amount of such compensation shall, subject to the provisions of this paragraph, be the aggregate of the following amounts, that is to say

(*a*) such amounts as is reasonable in respect of any expenditure at the affected mine which, as a result of the planning proceeding, is necessary for the purpose of maintaining the estimated output of that mine;

(*b*) such amount as is reasonable in respect of any further expenditure incurred by the Board in taking steps to comply with the planning proceeding; and

(*c*) such amount as appears reasonable compensation for any decrease in net receipts directly attributable to the planning proceeding, being receipts which it is estimated would have been derived from the affected mine if the planning proceeding had not had effect.

Provided that nothing shall be included under head (*a*) or (*b*) of this sub-paragraph in respect of:

SCHEDULE 2—*continued*

(i) any expenditure that would be necessary if there had been no planning proceeding, except where such expenditure must by reason of such proceeding be incurred earlier than would otherwise have been the case, in which event compensation in respect of such expenditure shall be limited to the loss of interest on the expenditure for the period between the time when it is necessary to incur such expenditure as a result of the planning proceeding and the time when such expenditure would normally have been incurred; or

(ii) any expenditure of which account has been taken in arriving at the amount payable under head (*c*) of this sub-paragraph.

(2) In assessing the amounts payable under this paragraph regard shall be had to all the relevant circumstances, and in particular—

(*a*) to the time or times when such expenditure will be incurred and when such decrease in net receipts will occur;

(*b*) to the extent to which it is practicable from the affected mine to work minerals in substitution for minerals sterilised by the planning proceeding;

(*c*) to the extent to which any minerals rendered unworkable from the affected mine by reason of the planning proceeding may be workable by the Board from any neighbouring mine;

(*d*) to the extent (if any) to which the potential liability of the Board for subsidence or other damage to the surface of the land is diminished or increased by reason of the planning proceeding;

(*e*) to the extent to which as a direct result of loss of output from the affected mine due to the planning proceeding an increased output at any neighbouring mine (after making due allowance for any expenses necessary to obtain the increased output in the neighbouring mine and for the shortening of the life of such mine) can be obtained;

(*f*) to the extent to which buildings, plant or machinery rendered unusable at the affected mine by reason of the planning proceeding may be used by the Board otherwise than at that mine; and,

(*g*) if, as a result of the incurring of expenditure in respect of which compensation is payable under head (*a*) or (*b*) of the preceding sub-paragraph, the net receipts derived from the affected mine will be increased, to the estimated amount of such increase in net receipts.

4. In the case of a planning proceeding relating to a new mine, compensation shall be payable only in respect of an order made under section 216 or 217 of the Act as applied by these regulations and the amount of such compensation shall be the amount of any expenditure incurred by the Board in carrying out work (including the preparation of plans for any such work or other similar matters preparatory thereto) which is rendered abortive by such order and in taking steps to comply with such order:

Provided that, in computing such amount, regard shall be had to the extent to which buildings, plant or machinery rendered unusable at the new mine by reason of the planning proceeding may be used by the Board otherwise than at that mine.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations, made under section 259 of the Town and Country Planning (Scotland) Act 1972, revoke and re-enact with amendments the provisions of the Town and Country Planning (National Coal Board) (Scotland) Regulations 1951. They apply to the National Coal Board and to land of the Board of the category specified in Regulation 2 those provisions of the Town and Country Planning (Scotland) Act 1972 relating to statutory undertakers and to land of statutory undertakers which are set out in Column (1) of Schedule 1 to the Regulations. The provisions are applied subject to the adaptations, modifications and exceptions set out in Column (2) of Schedule 1.

Schedule 2 to the Regulations lays down a special basis for calculating the compensation payable to the National Coal Board where planning decisions adverse to the Board are given by the Secretary of State in relation to the underground working of coal.

The principal amendments made by these Regulations to the previous Regulations are as follows:

(*a*) References to the provisions of the Act of 1972 are substituted for references to the provisions of the Town and Country Planning (Scotland) Act 1947 (which together with later Town and Country Planning (Scotland) Acts was consolidated in the 1972 Act).

(*b*) The definition of "specified land" has been amended to exclude surface land of the Board which was not specified land for the purposes of the Regulations of 1951 (either because it was not acquired before the date of the coming into operation of the present Regulations or because, although it was acquired before that date, the circumstances were such that it did not come within any of the classes of "specified land" described in Regulation 2(i) of those Regulations) and in respect of which there has been no grant of planning permission on an application under Part III of the Act of 1972 for the carrying out of coal industry activities or any of the activities mentioned in Part I, II or III of Schedule I to the Coal Industry Nationalisation Act 1946. (This amendment is made in order to apply to the lands of the National Coal Board restrictions similar to those contained in the provisions of section 212 of the Act of 1972 which restricts the classes of land which are to be treated for the purposes of that Act as operational land of statutory undertakers).

(*c*) The more restrictive provisions concerning the rights of statutory undertakers to compensation for refusal of permission or grant of permission subject to conditions imposed under section 226 of the Act of 1972 are applied to surface land of the National Coal Board. (The compensation provisions relating to unworked coal and other minerals and to spaces excavated underground for the purposes of colliery activities are in substance the same as before.)

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