STATUTORY INSTRUMENTS

1967 No. 493 (S. 36)

LAND COMMISSION

The Betterment Levy (Minerals) (Scotland) Regulations 1967

Made - - -	*6th March* 1967
Laid before the House of Commons	*8th March* 1967
Coming into Operation	*6th April* 1967

In exercise of the powers conferred on me by sections 74 and 98 of the Land Commission Act 1967(a), and of all other powers enabling me in that behalf, I, being for the purposes of these regulations the appropriate Minister in relation to Scotland, hereby make the following regulations:—

PRELIMINARY

Citation, extent and commencement

1. These regulations, which may be cited as the Betterment Levy (Minerals) (Scotland) Regulations 1967, apply to Scotland and shall come into operation on 6th April 1967 (being the first appointed day under the Act (b)).

Interpretation

2.—(1) In these regulations the following expressions have the meanings hereby assigned to them respectively, that is to say:—

"the Act" means the land Commission Act 1967;

"the Commission" means the Land Commission;

"minerals" includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or surface working except that it does not include peat cut for purposes other than sale;

"mineral undertaker" means any person engaged in the winning and working of minerals by way of trade or business in, on or under land, whether by surface or underground working, other than the winning and working, on land held or occupied with land used for the purposes of agriculture, of any such minerals as are mentioned in paragraph 3 of Part II of Schedule 3 to the Town and Country Planning (Scotland) Act 1947(c);

"the Mines Act" means the Mines (Working Facilities and Support) Act 1966(d);

"mining lease" has the meaning assigned to it by section 85(1) of the Act;

"mining licence" means a licence or agreement (not being a lease), as the case may be, for the purpose of winning and working, whether by underground or surface working, any minerals in or under any land the right to the exclusive possession of which is not conferred on the licensee or by the agreement, as the case may be;

(a) 1967 c. 1.
(b) *See* S.I. 1967/146 (1967 I, p. 241).
(c) 1947 c. 53.
(d) 1966 c. 4.

"the Notification Regulations" means the Betterment Levy (Notification) (Scotland) Regulations 1967(a);

"rent" includes a toll, duty, royalty or other consideration stipulated for, by the acre or the ton or otherwise; and, in relation to rent "payment" includes delivery and "payable" shall be construed accordingly;

"rights order" means an order made under sections 1 and 5 of the Mines Act granting all or any of the following rights:

(i) a right to search for minerals;

(ii) a right to bore for coal (as defined in paragraph 3 of the Table in section 1 of the Mines Act);

(iii) a right to work minerals (within the meaning of section 14(3) of the Mines Act);

(iv) an ancillary right (as defined in section 2 of the Mines Act); and in relation to a rights order;

"rights compensation" means the compensation or consideration agreed or determined by the court under the Mines Act as the compensation or consideration to be paid or given in respect of the acquisition by the person to whom it is granted of the right granted by the order;

"rental compensation" means any part of the rights compensation which is payable at intervals (whether regular or irregular); and

"project of mineral development" has the meaning assigned to it by regulation 10.

(2) In these regulations the expression "grantor" in relation to a mining licence constituted by an agreement means the person conferring the right under the agreement to win and work minerals; and the expressions "grantee" and "granting" shall be construed accordingly.

(3) Any other expression used in these regulations of which there is a definition in the Act, or in respect of which there is in the Act any provision relating to the construction thereof or of any reference thereto, has the meaning assigned to it by the Act, whether for the purpose of the Act as a whole or for the purpose only of Part III thereof or of any Schedule to the Act or any Part of any such Schedule.

(4) Except in so far as the context otherwise requires—

(*a*) any reference in these regulations to any provision of the Act shall be construed as a reference to that provision as modified by these regulations;

(*b*) any such reference to a section or a Schedule bearing a number is a reference to the section or (as the case may be) the Schedule bearing that number in the Act;

(*c*) any such reference to a regulation bearing a number is a reference to the regulation bearing that number in these regulations; and

(*d*) any reference in any regulation to a paragraph bearing a number is a reference to the paragraph bearing that number in that regulation.

(5) The Interpretation Act 1889(b) applies for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament.

MODIFICATION OF LAND COMMISSION ACT 1967

Scope of Regulations

3.—(1) The provisions of Part III of the Act shall have effect in relation to land which has been, or is, or is to be, the subject of—

(a) S.I. 1967/326 (1967 I, p. 1122). (b) 1889 c. 63.

(*a*) a disposition relating wholly or partly to any minerals within the meaning of these regulations, or

(*b*) development consisting of or including the winning and working of any such minerals, or

(*c*) a right to compensation to which section 33 applies, whether that right accrues partly or wholly in respect of any such minerals,

subject to the following provisions of these regulations.

(2) Any reference in these regulations to the modification of Part III of the Act or any provision thereof shall include a reference to the making of any exception, or the addition of any provision, to the said Part III or any such provision which may be made by these regulations.

Mining leases

4.—(1) In these regulations any reference to a mining lease is a reference to a mining lease granted for a term of years certain of not less than, or less than, seven years, or on a periodic tenancy.

(2) The reference to a mining lease in paragraph (1) includes a reference to any disposition which by virtue of regulation 5 or 6 is to be treated as a mining lease.

Mining licences

5.—(1) A disposition granting a mining licence shall be treated for the purposes of Part III of the Act as a mining lease (in this regulation referred to as "the notional lease") whereby the land which in accordance with paragraph (2) is treated as the land comprised in the disposition is leased by the person who in accordance with paragraph (3) is treated as the grantor to the grantee of the mining licence for the term of years specified in paragraph (4) at the rent specified in paragraph (5) and subject to the payment of any capital sum which is payable under the disposition and otherwise on the terms and conditions contained in the disposition.

(2) The land over which any rights granted by the disposition are granted and in respect of which the right to exclusive possession of the land is not conferred on the grantee shall be treated as the land comprised in the disposition, and the rights thereby granted shall be treated as being an interest in that land created by the grantor out of his interest in that land.

(3) The grantor of the mining licence shall be treated as the grantor of the notional lease, and the interest which he has in the land described in paragraph (2) subject to the mining licence shall be treated as being the landlord's interest under the notional lease.

(4) The term of years which shall be treated as having been granted by the notional lease shall be a term equal to the period during which the rights under the disposition are exercisable, or if no such period is stipulated for in the disposition, a term equal to the period of fifteen years from the date on which the rights under the disposition become exercisable.

(5) The rent which shall be treated as being stipulated for by the notional lease shall consist of all sums payable under the disposition at intervals (whether regular or irregular) and shall be treated as being payable to a landlord and recoverable in the same way as rent.

Orders under the Mines (Working Facilities and Support) Act 1966

6.—(1) A disposition which is a rights order shall be treated for the purposes of Part III of the Act as a mining lease (in this regulation referred to as "the notional lease") whereby the land which in accordance with paragraph (2) is treated as the land comprised in the disposition is leased by the person who in accordance with paragraph (3) is treated as the grantor to the person to whom the rights granted by the order are granted (in this regulation referred to as "the grantee") for the term of years specified in paragraph (4) at the rent specified in paragraph (5) and subject to the payment of the rights compensation in so far (if at all) as it exceeds the rental compensation and to any conditions imposed by the order.

(2) The land over which the rights granted by the disposition are granted shall be treated as the land comprised in the disposition, and the rights granted by the disposition shall be treated as being an interest in that land created by the grantor out of his interest in that land.

(3) The person determined by the court under the Mines Act to be the person to whom compensation or consideration is to be paid or given in respect of the acquisition by the grantee of the rights granted by the rights order shall be treated as the grantor, and the interest which he has in the land described in paragraph (2) subject to the rights order shall be treated as being the landlord's interest under the notional lease.

(4) The term of years which shall be treated as having been granted by the notional lease shall be a term equal to the period during which the rights conferred by the rights order are made exercisable.

(5) The rent which shall be treated as being stipulated for by the notional lease shall be a rent equal to the rental compensation and shall be treated as being payable to a landlord and recoverable in the same way as rent.

Levy and notification in Cases A and B

7.—(1) Sections 29 (Levy in Case A) and 37 (Notification in Cases A and B) shall apply to an assignation on sale of a mining lease as they apply to any such disposition as is mentioned in paragraphs (*a*) to (*c*) of subsection (1) of section 29.

(2) Sections 30 (Levy in Case B) and 37 shall, subject to paragraph (3), apply to a disposition granting a mining lease as they apply to such a disposition as is mentioned in paragraph (*a*) of subsection (1) of section 30.

(3) For the purpose of assessing levy in respect of a disposition granting a mining lease the following shall be substituted for sub-paragraph (2) of paragraph 12 of Schedule 4 (ascertainment of reversionary value of chargeable interest):

"(2) For the purpose of ascertaining that value it shall be assumed that the relevant land will at the end of the tenancy be in the state in which, on an estimate made immediately after the disposition, it can reasonably be expected to be at the end of the tenancy.".

(4) In accordance with paragraphs (1) and (2) the Notification Regulations shall apply as if the dispositions mentioned in Schedule 1 Part I thereof included—

(*a*) an assignation on sale of a mining lease, and

(*b*) a mining lease.

Levy in Case C

8.—(1) The provisions of this regulation shall apply for the purpose of assessing levy in Case C.

(2) A mining lease, whether or not it is a minor tenancy, shall be an assessable interest, and accordingly for the purpose of section 32 (Assessable interests in Case C) it shall be deemed to fulfil the conditions specified in subsection (1) of that section.

(3) "Developing owner" in relation to a project of mineral development shall mean any person who, in respect of every part of the land comprised in the project fulfils—

(*a*) one or other of the conditions specified in section 32(5), or

(*b*) the condition that on the date on which the carrying out of the project is begun he is under a contract, fulfilling the conditions specified in section 32(3), to take a mining lease, whether or not it is a minor tenancy,

and accordingly any reference in section 32(7)(*c*) to such a tenancy as is therein mentioned shall include a reference to such a mining lease as aforesaid.

Notification in Case C

9. A mining lease shall be a material interest within the meaning of section 38 (Notification in Case C), and the Notification Regulations shall apply as if in Part I of Schedule 2 to those regulations—

(*a*) paragraph 8 (grounds of exemption from levy) contained a reference to regulation 11 in addition to the sections therein mentioned; and

(*b*) any reference in paragraph 9 (details relating to Schedule 5 base value) to a tenancy were a reference to a mining lease.

Meaning of "project of mineral development" and provisions relating thereto

10.—(1) In these regulations "project of mineral development" means any project or scheme in pursuance of which any mineral development is, or is to be, carried out, whether with or without any other development.

(2) In these regulations "mineral development" means material development which consists of the winning, working, grading and washing of minerals and the grinding or crushing of any minerals or any of those operations, but, save as aforesaid, does not include any operations subsequent to the extraction of the minerals from the soil.

(3) In relation to a project of mineral development "specified operation" shall include, in addition to what is specified in section 64(3), any operation in the course of winning or working minerals.

Exempted mineral development

11.—(1) Where under section 38 a person who is a mineral undertaker (in this regulation referred to as "the mineral undertaker") serves notice of intention to carry out a project of material development to which this regulation applies, and—

(*a*) he is the developing owner in relation to the project, and

(*b*) he satisfies the provisions of either paragraph (3) or paragraph (4), no levy in Case C shall be charged in connection with the project in respect of any assessable interest by virtue of which he is the developing owner in relation to the project.

(2) This regulation applies to—

(*a*) a project of material development which consists exclusively of mineral development; and

(*b*) so much of any other project of material development as consists of mineral development.

(3) The mineral undertaker shall satisfy the provisions of this paragraph if—

(*a*) he was a mineral undertaker immediately before 23rd September 1965;

(*b*) in respect of every part of the land comprised in the project he would have fulfilled one or other of the conditions specified in section 32(5) if the carrying out of the project had been begun on 23rd September 1965; and

(*c*) within six months after the first appointed day or such extended period as the Commission may allow in his particular case he serves a notice, containing the particulars specified under regulation 12 on the Commission at the following address—

The Land Commission,
Office for Scotland,
Town Centre,
Cumbernauld,
Glasgow.

(4) The mineral undertaker shall satisfy the provisions of this paragraph if, in respect of every part of the land comprised in the project, he fulfils one or other of the following conditions, that is to say—

(*a*) that on the date on which the carrying out of the project is begun he is entitled to an interest fulfilling the conditions specified in section 32(1) and has become so entitled by virtue of a qualifying disposition, or

(*b*) that on that date he is under an enforceable contract, not being a contract made with a connected person, to purchase such an interest, or

(*c*) that on that date he is under a contract, not being a contract made with a connected person, fulfilling the conditions specified in section 32(3), to take a mining lease,

and for the purposes of this paragraph it is immaterial whether the mineral undertaker fulfils the same condition specified in this paragraph in relation to every part of the land comprised in the project or fulfils different conditions so specified in relation to different parts of that land.

(5) In this regulation a disposition of an interest shall be treated as a qualifying disposition if it was a disposition for valuable consideration (not made between connected persons) under which the mineral undertaker became entitled to that interest, and either—

(*a*) it was made on or after 23rd September 1965 and before the first appointed day; or

(*b*) it was made on or after the first appointed day and constituted a chargeable act or event which was notified in accordance with the provisions as to notification contained in Part III of the Act.

(6) The operation of paragraph (1) in relation to any such interest as is therein mentioned in the land comprised in the project, or in any part of that land shall not affect the charging of levy in respect of any other interest in that land or in any part of that land.

(7) For the purpose of this regulation any contract or disposition shall be treated as being made between connected persons where in accordance with the provisions of paragraph 5 of Schedule 13 the persons between whom the contract or (as the case may be) the disposition was made would be treated as connected with each other.

Particulars to be included in notice under regulation 11(3)(*c*)

12. A notice served by a mineral undertaker under regulation 11(3)(*c*) shall contain the following particulars:—

(1) his name and, if he carries on business under another name, that name;

(2) the address at which he carries on business;

(3) the name and address of any agent acting on his behalf in relation to his business as a mineral undertaker;

(4) evidence that he was carrying on business as a mineral undertaker immediately before 23rd September 1965;

(5) the situation of the land in respect of which he claims to satisfy the provisions of regulation 11(3)(*b*); and

(6) a brief description of the minerals which he proposes to win or work on such land.

General Saving

13.—(1) Save as specified in these regulations and in any other regulations made under the Act, all the provisions of Part III of the Act shall have effect in relation to land which has been, or is, or is to be, the subject of any such disposition, development or right to compensation as is referred to in regulation 3 as they have effect in relation to land which has been or is, or is to be, the subject of—

(*a*) any disposition to which section 29(1), section 30(1) or section 34(1) applies, or

(*b*) the carrying out of any project of material development which is begun on or after the first appointed day, or

(*c*) any right to compensation to which section 33 applies,

as the case may be.

(2) The reference to any provision of the Act in the preceding paragraph is a reference to that provision apart from any modification made thereto in these regulations.

William Ross,

One of Her Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh, 1.

6th March 1967.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations adapt the provisions of Part III of the Land Commission Act 1967, relating to betterment levy, to the special circumstances affecting mineral-bearing land.

In the first place all mining leases are dealt with on the same basis, for whatever term they are granted. Regulation 4 provides for references in the Regulations to a mining lease being so construed, and Regulations 5 and 6 provide for licences (including certain agreements) for working minerals and orders under the Mines (Working Facilities and Support) Act 1966 conferring rights to work minerals being treated in the same way as mining leases.

Regulations 7 to 9 then make specific provision in relation to assessments of levy and notifications in Cases A to C. Regulation 7 provides for all mining leases and licences and all rights orders, as well as any assignations thereof, being compulsorily notifiable and accordingly subject to levy. Regulation 8 makes them all assessable interests in Case C and adapts the definition of "developing owner" to take account of this. Regulation 9 makes certain additions to the particulars required to be given in a notice under section 38. These additions are in fact only relevant in respect of a notice of intention to carry out a project of mineral development; this and two other expressions being defined in Regulation 10.

Regulation 11 grants exemption from levy in Case C for projects of mineral development in two cases:—

(1) where the developing owner was in business as a mineral undertaker on 23rd September 1965, would have been developing owner if he had begun mineral working on that day, and serves on the Land Commission notice containing the particulars required by Regulation 12; and

(2) where the developing owner has acquired, or is under contract to acquire, every assessable interest by virtue of which he is developing owner for valuable consideration otherwise than from a connected person within the meaning of Schedule 13 to the Act,

Regulation 13 is a general saving which leaves the provisions of Part III of the Act to operate without any modification made by these Regulations in relation to chargeable acts or events affecting mineral-bearing land where the Regulations do not deal with them. For instance on an assessment of levy in Case A on a conveyance on sale of the *dominium utile* together with the mines and minerals, the provisions of Part III will apply without any modification by these Regulations.

The Regulations apply to Scotland.