1959 No. 982

The Opencast Coal (Other Land) Regulations, 1959

Made - - - -	*4th June*, 1959
Laid before Parliament	*10th June*, 1959
Coming into Operation	*15th June*, 1959

The Minister of Power, in exercise of the powers conferred upon him by paragraphs 32 and 46 of the Tenth Schedule to the Opencast Coal Act, 1958(a), and of all other powers enabling him in that behalf, hereby makes the following regulations :—

Commencement and citation

1. These regulations shall come into operation on the fifteenth day of June, nineteen hundred and fifty-nine, and may be cited as the Opencast Coal (Other Land) Regulations, 1959.

Interpretation

2.—(1) In these regulations, unless a contrary intention appears, the following expressions have the meanings hereby assigned to them respectively, that is to say—

" the Act " means the Opencast Coal Act, 1958 ;

" the Board " means the National Coal Board ;

" compulsory rights order " has the meaning assigned to it by section four of the Act ;

" the date of requisition ", in relation to any land, has the meaning assigned to it by paragraph 1 of the Tenth Schedule to the Act ;

" emergency powers " has the meaning assigned to it by subsection (1) of section fifty-one of the Act ;

" land already requisitioned for opencast operations " and " land requisitioned as an opencast storage site " have the meanings assigned to them respectively by paragraph 1 of the Tenth Schedule to the Act ;

" owner " has the meaning assigned to it by section fifty-one of the Act, or, in relation to Scotland, by section fifty-two thereof ;

" period of occupation ", in relation to any land, means the period after the commencement of the Act during which possession of the land is, or has been, retained in the exercise of emergency powers or in the exercise of rights conferred by a compulsory rights order—

(*a*) for the purpose of working coal on that land, or on land contiguous therewith, by opencast operations ;

(*b*) for the purpose of restoring that land after it has been affected by the working of coal by such operations ; or

(*c*) in the case of land which, at the commencement of the Act, was land requisitioned as an opencast storage site, for the purpose of storing, cleaning or sorting coal or otherwise preparing it for disposal.

(a) 6 & 7 Eliz. 2. c. 69.

"terminal date" has the meaning assigned to it by paragraph 1 of the Tenth Schedule to the Act.

(2) Any reference in these regulations to the Town and Country Planning Act, 1947(a), or to the Town and Country Planning (Scotland) Act, 1947(b), shall be construed as a reference to the enactment in question as amended by or under any other enactment.

(3) The Interpretation Act, 1889(c), shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

Land depreciated by opencast site requisitioned before 30th September, 1958

3.—(1) In this regulation any reference to a requisition is a reference to a taking of possession of land before the commencement of the Act in the exercise of emergency powers, and any reference to the land comprised in the requisition is a reference to so much of the land possession of which was so taken as, at the commencement of the Act, was land already requisitioned for opencast operations.

(2) This regulation applies, in relation to a requisition, to any land which—

(*a*) does not form part of the land comprised in the requisition and is not land which, in the circumstances specified in the next following paragraph, would have formed part of any holding—

(i) to which section seventeen or section twenty-nine of the Act would have applied, and

(ii) of which any of the land comprised in the requisition would have formed part, but

(*b*) at the commencement of the Act, was land wherein the interest of the owner was held by a person who was also the owner of the whole or part of the land comprised in the requisition.

(3) The said circumstances are those which would have existed if—

(*a*) the Act had been in operation before the date of requisition of the land in question, and had contained no restriction as to the duration of the period for which a compulsory rights order could have effect; and

(*b*) a compulsory rights order comprising that land had come into operation on the date of requisition.

(4) Subject to the provisions of regulation seven, where in the case of any land which, in relation to a requisition, is land to which this regulation applies (in this paragraph and in paragraphs (5), (6) and (12) of this regulation referred to as "the relevant land") it is shown that for any year (being either the year beginning with the commencement of the Act, or a year beginning with an anniversary of such commencement and falling within the period of occupation of the land comprised in the requisition) the annual value of the relevant land is less than the annual value of that land would have been if—

(*a*) the land comprised in the requisition had not included any of the owner's land comprised therein, and

(*b*) all the owner's land comprised in the requisition had remained in the state in which it was immediately before the date of requisition,

the owner for the time being of the relevant land shall be entitled to compensation from the Board for that year of an amount equal to the difference:

(a) 10 & 11 Geo. 6. c. 51. (b) 10 & 11 Geo. 6. c. 53. (c) 52 & 53 Vict. c. 63.

Provided that if possession of the whole or any part of the owner's land comprised in the requisition ceases to be retained in the exercise of emergency powers by reason of the coming into operation of a compulsory rights order comprising that land, any compensation payable under this paragraph for any year shall be reduced by the amount of any compensation which, in relation to that order, accrues due during that year under subsection (2) of section thirty-two of the Act in respect of the relevant land.

(5) Subsection (2) of section eighteen of the Act shall apply for the purposes of the last preceding paragraph as it applies for the purposes of that section, so however that the appropriate circumstances referred to in the said subsection (2),—

(*a*) in determining the annual value of the relevant land for any year, shall be taken to be the actual circumstances existing immediately before the beginning of that year, and

(*b*) in determining what would have been the annual value of the relevant land in the circumstances specified in sub-paragraphs (*a*) and (*b*) of the last preceding paragraph, shall be taken to be the circumstances specified in those sub-paragraphs :

Provided that in either case the relevant land shall be assumed to have been available for letting with vacant possession immediately before the beginning of the year in question.

(6) Where in the case of any land which, in relation to a requisition, is land to which this regulation applies it is shown that, at the date which in relation to the land comprised in the requisition is the terminal date, the value of the interest in the relevant land which then constitutes the interest of the owner thereof (in this and the two next following paragraphs referred to as " the owner's interest in the relevant land "), computed in accordance with sub-paragraph (*a*) of the next following paragraph, is less than the value of that interest computed in accordance with sub-paragraph (*b*) of that paragraph, the person who at that date is entitled to the owner's interest in the relevant land shall be entitled to compensation from the Board of an amount equal to the difference.

(7) For the purposes of the last preceding paragraph there shall be computed the following values, that is to say,—

(*a*) the value at the said terminal date of the owner's interest in the relevant land, assessed on the assumption that, in so far as any of the owner's land comprised in the requisition has not been restored to the condition in which it was immediately before the date of requisition, there will be carried out on that land in due course all such work as would qualify for compensation under section twenty-two of the Act ;

(*b*) the value which, at the said terminal date, the owner's interest in the relevant land would have if the entirety of the owner's land comprised in the requisition were in the state in which it was immediately before the date of requisition.

(8) In computing value as mentioned in sub-paragraph (*a*) or sub-paragraph (*b*) of the last preceding paragraph, it shall be assumed that the owner's interest in the relevant land is, in the circumstances mentioned in the sub-paragraph in question, being offered for sale subject to any incumbrances to which that interest is subject at the terminal date.

(9) For the purposes of the operation of this regulation in relation to a requisition—

(*a*) any reference to the owner's land comprised in the requisition is a reference to so much of the land comprised in the requisition as, at the commencement of the Act, was land wherein the interest of the owner was held by the following person, that is to say,—

(i) where the reference in question is in paragraph (4) of this regulation, the person who was then the owner of the relevant land within the meaning of that paragraph ;

(ii) where the reference is in paragraph (7) of this regulation, the person who was then entitled to the owner's interest in the relevant land within the meaning of that paragraph ;

(*b*) any reference to work which would qualify for compensation under section twenty-two of the Act, in relation to any land, is a reference to work for the purpose of further restoring that land to or towards the condition in which it was immediately before the date of requisition, or a condition substantially similar thereto, being work in respect of which (in so far as the nature of the work is concerned) expenses would be treated as reasonably incurred for the purposes of subsection (1) of the said section twenty-two or, as the case may be, for the purposes of that subsection as applied by paragraph 26 of the Tenth Schedule to the Act ; and

(*c*) any reference to the carrying out of any such work in due course is a reference to its being carried out at the first reasonable opportunity after the terminal date, or within a reasonable time after that opportunity arises.

(10) (*a*) The provisions of subsections (2), (3), (4), (7) and (9) of section thirty-five of the Act (which relates to the payment of compensation and the time when compensation accrues due) shall have effect as to compensation payable by virtue of this regulation as if,—

(i) in the said subsection (2), the reference to compensation payable by virtue of subsection (2) of section thirty-two of the Act included a reference to compensation payable under paragraph (4) of this regulation ; and

(ii) in the said subsection (4), the reference to compensation payable under subsection (4) of section thirty-two of the Act included a reference to compensation payable under paragraph (6) of this regulation, and the reference to the end of the period of occupation were a reference to the date which, in relation to the land comprised in the requisition in question, is the terminal date.

(*b*) Where in accordance with the provisions of the said subsection (2) of the said section thirty-five as applied by this paragraph, or in accordance with the said subsection (7) as so applied, any compensation is payable with interest, the rate of interest shall be the rate for the time being in force by virtue of an order under subsection (8) of the said section thirty-five.

(11) (*a*) Where, in the case of land to which this regulation applies in relation to a requisition, a person is or was the owner of that land for part, but not the whole, of a year, paragraph (4) of this regulation shall apply as if in that paragraph any reference to a year included a reference to that part of a year.

(*b*) Where the period of occupation of the land comprised in the requisition is part, but not the whole, of a year, or is one or more complete years

followed by part of another year, any reference in paragraph (4) of this regulation to a year shall be construed as including a reference to that part of a year.

(*c*) In the application of paragraph (4) of this regulation to a part of a year in accordance with any of the preceding provisions of this paragraph, any reference to annual value shall be construed as a reference to so much of the annual value for that year as (on a rateable apportionment of that value as between different parts of that year) is properly attributable to that part of that year.

(12) No compensation shall be payable under paragraph (4) of this regulation for any year for which the interest of the owner of the relevant land is or has been held subject to, and with the benefit of, a tenancy which was subsisting immediately before the date of requisition of the land comprised in the requisition, unless the rent payable under that tenancy for that year is or was a rent which is or was subject to a liability to be reduced in consequence of the requisition or of anything done, pursuant to the requisition, in the exercise of emergency powers, or in consequence of any compulsory rights order comprising any of the land comprised in the requisition or of anything done in the exercise of rights conferred by such an order, or is a rent which has been so reduced in pursuance of such a liability.

(13) Sub-paragraph (2) of paragraph 17 of the Sixth Schedule to the Act shall apply for the purposes of the last preceding paragraph as it applies for the purposes of sub-paragraph (1) of the said paragraph 17.

(14) The provisions of paragraph 18 of the Sixth Schedule to the Act shall apply in relation to compensation payable under paragraph (4) of this regulation as they apply in relation to compensation payable under subsection (2) of section thirty-two of the Act, so however that, in the application of those provisions in accordance with this paragraph,—

(*a*) the reference in paragraph (*a*) of sub-paragraph (2) of the said paragraph 18 to the land comprised in the compulsory rights order in question shall be construed as a reference to the land comprised in the requisition in question;

(*b*) for paragraph (*c*) of the said sub-paragraph (2) of the said paragraph 18, there shall be substituted the following provision:—

"(*c*) that the exercise of the right, in relation to any land comprised in the requisition, could, apart from the requisition or any compulsory rights order comprising any of the land comprised in the requisition, have prevented that land from being used for the purpose of working coal by opencast operations or restoring land affected by the working of coal by opencast operations or by operations connected therewith.";

and

(*c*) any reference to the relevant land shall be construed in accordance with paragraph (4) of this regulation.

(15) The provisions of subsection (3) of section forty-three of the Act (which relates to mortgaged land) shall apply to compensation payable under paragraph (4) of this regulation as they apply to compensation payable under subsection (2) of section thirty-two of the Act.

Land depreciated by storage site

4. The provisions of regulation three shall apply to land which, at the commencement of the Act, was land wherein the interest of the owner was

held by a person who was also the owner of land requisitioned as an opencast storage site as if—

(*a*) in paragraph (1) of that regulation, any reference to land already requisitioned for opencast operations were a reference to land requisitioned as an opencast storage site;

(*b*) in paragraph (9) of that regulation, the reference to paragraph 26 of the Tenth Schedule to the Act included a reference to paragraph 45 of the said Schedule; and

(*c*) for sub-paragraph (*b*) of paragraph (14) of that regulation there were substituted the following provision:—

"(*b*) for paragraph (*c*) of the said sub-paragraph (2) of the said paragraph 18, there shall be substituted the following provision:—

"(*c*) that the exercise of the right, in relation to any land comprised in the requisition, could, apart from the requisition or any compulsory rights order comprising any of the land comprised in the requisition, have prevented that land from being used for the purpose of storing, cleaning or sorting coal or otherwise preparing it for disposal".

Land depreciated by opencast site requisitioned on or after 30th September, 1958.

5.—(1) In this regulation any reference to a requisition is a reference to a taking of possession of land after the commencement of the Act in the exercise of emergency powers for the purpose of working coal on that land, or on land contiguous therewith, by opencast operations, and any reference to the land comprised in the requisition is a reference to the land possession of which was so taken.

(2) This regulation applies, in relation to a requisition, to any land which—

(*a*) does not form part of the land comprised in the requisition, and is not land which, if the land comprised in the requisition had been comprised in a compulsory rights order which became operative on the date of requisition of the land, would have formed part of any holding—

(i) to which section seventeen or section twenty-nine of the Act would have applied, and

(ii) of which any of the land comprised in the requisition would have formed part, but

(*b*) immediately before the date of requisition, was land wherein the interest of the owner was held by a person who was also the owner of the whole or part of the land comprised in the requisition.

(3) The provisions of paragraphs (4) to (15) of regulation three shall apply in relation to land to which this regulation applies as they apply in relation to land to which that regulation applies, so however that, in the application of those provisions in accordance with this paragraph—

(*a*) the reference to the commencement of the Act where it appears in the said paragraph (4) shall be construed as a reference to the date of requisition of the land comprised in the requisition in question;

(*b*) the reference to the commencement of the Act where it appears in paragraph (9) of the said regulation three shall be construed as a reference to the expiration of the day immediately preceding the date of requisition; and

(*c*) in the said paragraph (9), the reference to paragraph 26 of the Tenth Schedule to the Act shall be construed as a reference to paragraph 25 of that Schedule.

Assessment of annual value in special cases

6.—(1) Where any land to which regulation three, regulation four or regulation five applies is—

(*a*) land which, immediately before the date of requisition of the land comprised in the requisition in question, was used for a purpose for which land would not normally be let from year to year, or

(*b*) land in respect of which, immediately before that date, there was in force permission granted under Part III of the Town and Country Planning Act, 1947, for the land to be used for such a purpose,

paragraph (5) of regulation three shall not apply, and for the purposes of paragraph (4) of regulation three, for the purposes of that paragraph as applied by regulation four, and for the purposes of that paragraph as applied by paragraph (3) of regulation five, annual value shall be determined in accordance with the provisions of this regulation.

(2) For the purposes referred to in the preceding paragraph, the annual value for any year of any such land as is mentioned in that paragraph shall be taken to be an amount equal to such percentage of the market value of that land computed in accordance with paragraph (4) of this regulation as is prescribed by these regulations:

Provided that, where in any year different percentages are prescribed for different parts of that year, the annual value for that year shall be arrived at by—

(*a*) calculating in respect of each such part a sum equal to the relevant percentage of the market value of the land (computed as aforesaid) multiplied by the fraction of the year which the part in question constitutes, and

(*b*) by aggregating the sums so calculated.

(3) The percentage referred to in the preceding paragraph shall, for any period beginning with the coming into operation of these regulations, be five per cent.

(4) For the purpose of determining for any year the annual value of any land in accordance with paragraph (2) of this regulation, the market value of the land shall be taken to be the value which, immediately before the beginning of the year in question, a freehold interest in the land, in the appropriate circumstances, would have, or would have had, if it were, or (as the case may be) if it had at that time been, offered for sale with vacant possession in the open market by a willing seller subject to a perpetual covenant the effect of which was that no operations could be carried out on the land, and no change could be made in the use thereof, except such operations or change of use as, immediately before the beginning of the year in question, it is, or was, reasonable to assume would (if possession had not been taken, in the exercise of emergency powers, of the land comprised in the requisition in question) have been carried out or made during that year.

(5) For the purposes of the last preceding paragraph, the appropriate circumstances—

(*a*) in determining the annual value of the relevant land for any year shall be taken to be the circumstances existing immediately before the beginning of that year, and

(*b*) in determining what would have been the annual value of the relevant land in the circumstances specified in sub-paragraphs (*a*) and (*b*) of paragraph (4) of regulation three, shall be the circumstances specified in those sub-paragraphs:

Provided that, in any case where the provisions of regulation three, regulation four or regulation five apply to the relevant land as modified by paragraph (3) of regulation seven, the reference in sub-paragraph (*b*) of this paragraph to sub-paragraphs (*a*) and (*b*) of paragraph (4) of regulation three shall be construed as a reference to those sub-paragraphs as modified as aforesaid.

Concurrent requisitions

7.—(1) In this regulation—

(*a*) any reference to a requisition is a reference to a requisition within the meaning of regulation three or regulation five;

(*b*) any reference to a requisition for the time being having effect is a reference to a requisition the land comprised wherein is or was for the time being—

(i) retained in the possession of the Minister or the Board in the exercise of emergency powers ; or

(ii) comprised in a compulsory rights order;

(*c*) any reference to the latest requisition is a reference to the requisition which, of such of the requisitions as are relevant for the purposes of this regulation and for the time being have effect, was the last to become effective ; and

(*d*) any reference to the earlier requisition or requisitions is a reference to the requisition or requisitions, relevant for the purposes of this regulation, which became effective before the latest requisition.

(2) This regulation applies to any land to which, on the coming into operation of these regulations,—

(*a*) in relation to more than one requisition, regulation three, regulation four or regulation five applies ; or

(*b*) more than one of those regulations apply.

(3) In respect of any land to which this regulation applies—

(*a*) the provisions of whichever of the following regulations, that is to say, regulation three, regulation four and regulation five, applies in relation to the latest requisition, shall have effect in relation to that requisition as if in sub-paragraphs (*a*) and (*b*) of paragraph (4) of regulation three, or, as the case may be, in those sub-paragraphs as applied by regulation four or regulation five, any reference to a requisition were a reference to each of the requisitions which are relevant for the purposes of this regulation and for the time being have effect ; and

(*b*) in the application of the relevant regulation (having effect as aforesaid) in relation to the latest requisition, any reference in the said sub-paragraphs (*a*) and (*b*) to the owner's land comprised in the requisition shall be construed in relation to each of the requisitions in question in accordance with whichever of the following provisions, that is to say, the provisions of paragraph (9) of regulation three, of that paragraph as applied by regulation four, and of that paragraph as applied by regulation five, is appropriate in relation to the requisition in question.

(4) Any compensation which apart from this paragraph would be payable to any person for any year in respect of the latest requisition by virtue of the provisions of regulation three, regulation four or regulation five, as applied by this regulation, shall be reduced by the amount of any compensation which has accrued due during that year by virtue of any of the said regulations in respect of the same land but in respect of the earlier requisition or any of the earlier requisitions.

(5) Where, for any year, by virtue of paragraph (12) or paragraph (14) of regulation three, or (as the case may be) of either of those paragraphs as applied by regulation four, or by paragraph (3) of regulation five, no compensation is payable under paragraph (4) of regulation three, or under that paragraph as applied by regulation four or regulation five, in respect of any of the requisitions in question, that requisition shall, for the year in question, be disregarded for the purposes of this regulation.

Application to Scotland

8. In the application of these regulations to Scotland, the expression "freehold interest" has the meaning assigned to it by section fifty-two of the Act, and for any reference to Part III of the Town and Country Planning Act, 1947, there shall be substituted a reference to Part II of the Town and Country Planning (Scotland) Act, 1947.

Dated this fourth day of June, nineteen hundred and fifty-nine.

Mills,
Minister of Power.

EXPLANATORY NOTE

(This note is not part of the regulations, but is intended to indicate their general purport.)

Section 32 of the Opencast Coal Act, 1958, provides for the payment by the National Coal Board of annual and terminal compensation in respect of land which, immediately before a compulsory rights order made under the Act comes into operation, is in the same ownership as land comprised in the order (but is not itself comprised in the order or occupied as a unit with any land comprised in the order), and which is reduced in value in consequence of the order.

Regulations 3, 4 and 5 provide for the payment of similar compensation in respect of—

(*a*) land which, when the Act came into operation on the 30th September, 1958, was in the same ownership as land held under requisition for opencast coal operations, or for restoration after being affected by such operations, or as an opencast coal storage site; and

(*b*) land which, immediately before the date of the relevant requisition, was in the same ownership as land requisitioned for opencast coal operations on or after the 30th September, 1958.

Regulations 6 and 7 contain special provisions for the assessment of annual value in special cases and for land affected by more than one requisition.