## 14. MINERALS

# The Town and Country Planning (Minerals) (Scotland) Regulations, 1948†

## 1948 No. 1525 (S. 136)

*Made* - - - - 13*th May*, 1948
*Coming into Operation* 1*st July*, 1948*

In exercise of the powers conferred on me by subsection (1) of section 78 and section 107 of the Town and Country Planning (Scotland) Act, 1947(a), and of all other powers enabling me in that behalf, I hereby, with the consent of the Treasury, make the following Regulations:—

### PART I

*Citation, Commencement and Interpretation*

**1.**—(1) These Regulations may be cited as the Town and Country Planning (Minerals) (Scotland) Regulations, 1948, and shall come into operation on the appointed day.*

(2) In these Regulations—

"the Act" means the Town and Country Planning (Scotland) Act, 1947;

"the appointed day" means the day appointed for the coming into force of the Act;

"Crown land" and "appropriate authority" have the meanings assigned to them in section 83 of the Act;

"mining operations" means the winning and working of minerals in, on or under land, whether by surface or underground working, and "mineral undertaker" means any person engaged in mining operations.

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

### PART II

*Adaptations and modifications of the Act*

**2.** In relation to development consisting of the winning and working of minerals, the provisions of the Act shall have effect subject to the adaptations and modifications prescribed by the following regulations.

**3.**—(1) For the purposes of the Act, "use" in relation to land does not include the use of land by the carrying out of mining operations, provided that in the following provisions of the Act, viz.—paragraph (*b*) of subsection (2) of section 12, subsections (2) and (3) of section 21, subsection (3) of section 22, and subsection (2) of section 69—references to the use of land shall include the carrying out of mining operations and references to the continuance or discontinuance of a use of land shall include the continuance or discontinuance of mining operations.

(2) Subsection (1) of section 20 (which provides for the payment of compensation in the event of a revocation or modification of planning permission) of the Act shall have effect subject to the following modifications:—

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

* *See* S.I. 1948 No. 265, p. 4236 above.

† These Regulations were approved by Resolution of the House of Commons, 28th June, 1948, and the House of Lords, 30th June, 1948, in accordance with section 78 (5) of the Town and Country Planning (Scotland) Act, 1947.

(*a*) The compensation awarded under that subsection shall not include compensation for loss of minerals, the winning and working of which has been prevented by the revocation or modification of the permission referred to in that subsection, but the claimant shall be at liberty to prove that any sum paid by him in respect of development charge (or any part of such sum) is expenditure which has been rendered abortive by the revocation or modification and is not otherwise recoverable and thereupon compensation shall be payable in respect of that expenditure; but save as aforesaid the proviso to the said subsection shall apply as if (*a*) and (*b*) of the proviso to that subsection had not been excepted therefrom.

(*b*) A claim for expenditure or loss shall not be entertained under the said section 20 in respect of buildings, plant or machinery unless the claimant can prove that he is unable to use such buildings, plant or machinery or (as the case may be) to use them except at the loss claimed, and for this purpose the arbiter may give directions that such claim be severed from the remainder of the claim and be dealt with at such later date as may be fixed by the arbiter either in such directions or subsequently on application by either party.

**4.**—(1) Where at the appointed day a mineral undertaker has any interest in land which entitles him (whether subject to the consent of another person or not) to win and work the minerals therein (or has a right to acquire such an interest), no development charge shall be payable in respect of the winning and working of minerals in that land during the period of three years from the appointed day.

(2) The restricted and unrestricted values of an interest in any such land as aforesaid shall be calculated for the purposes of Part V of the Act as if any operations carried out for the winning and working of minerals therein during the period referred to in the preceding paragraph had been carried out before the appointed day; provided that it shall not be assumed that any other operations would have been advanced thereby, and in all other respects the values shall be calculated as if this Regulation had not been made.

(3) No claim for compensation on compulsory acquisition of land or on the revocation or modification of any permission to develop land shall be increased by reason of the provisions of this Regulation.

**5.** In assessing compensation under section 48 of the Act for the compulsory acquisition of an interest in any land in respect of which a planning permission to win and work minerals is in force at the date of the notice to treat—

(*a*) any sum (or any part of a sum) which has been paid under Part VI of the Act by way of development charge in respect of that permission shall, if it can be shown that it is expenditure which has been rendered abortive by the acquisition of the interest and that it is not otherwise recoverable, be recoverable by way of compensation;

(*b*) for the purpose of assessing the value of any buildings, plant or machinery on the land regard shall be had to that permission;

(*c*) in so far as that permission has diminished the value of the surface of the land by rendering it liable to subsidence or otherwise, regard shall be had to that diminution;

but save as aforesaid the value of the interest to which the notice to treat relates shall (notwithstanding that any sum has been paid under Part VI of the Act as mentioned in (*a*) of subsection (4) of the said section, or that no such charge as is mentioned in (*b*) of that subsection is payable) be calculated as if the said permission had not been granted.

**6.** Subsection (3) of section 57 of the Act (which provides that a claim for a payment under the Treasury Scheme referred to in Part V of the Act may be made in respect of any interest in land being the interest of the superior, or of the creditor in a ground annual, or of the person who is the proprietor of the *dominium utile* or, in the case of land other than feudal land is the owner of the land, or of the lessee under a lease as defined by the Act) shall have effect as if the interests therein specified included an interest in land under a mining lease as defined by the Act.

**7.** For the purposes of section 58 of the Act (which provides for the ascertainment of development values of land) in calculating the restricted and unrestricted values of an interest in any land used for the purpose of winning and working minerals regard shall be had to any increase in the value of the interest arising from the presence of any buildings, plant and machinery used for such purpose, but the value of the buildings, plant and machinery as such shall be excluded.

**8.**—(1) Without prejudice to anything contained in section 68 of the Act the Central Land Board may after taking into account any representations made by the applicant calculate the amount (or any part of the amount) of the development charge payable under Part VI of the Act in respect of any development consisting of the winning and working of minerals by reference to the amount of minerals got from time to time, and for this purpose the amount of minerals got may be measured by reference to the amount of the manufactured article produced, or by any other method recognised as appropriate to the type of minerals concerned.

(2) The Central Land Board may require the mineral undertaker to furnish in such form as the Board may prescribe such periodical returns and other information (including an auditor's certificate) as may be necessary in order to ensure that payment is made in accordance with the Board's determination of the development charge, and the Board may, in any case where a mineral undertaker neglects to furnish any such information as aforesaid to their satisfaction, require the mineral undertaker to permit such examination of his books and accounts as may be necessary for the said purpose.

(3) Information obtained by the Board under the preceding paragraph shall be treated as confidential by the Board and the Secretary of State.

**9.**—(1) Where a development charge is payable under Part VI of the Act in respect of the winning and working of minerals comprised in a mining lease which was in force on the appointed day, the royalty or other payment required to be made under the lease may be varied by the tribunal prescribed by paragraph (4) of this Regulation so far as may be just having regard to the amount of the development charge.

(2) Where a development charge is payable under the said Part VI in respect of the winning and working of minerals authorised by an order made under Part I of the Mines (Working Facilities and Support) Act, 1923(a), the provisions of the order may be varied by the Railway and Canal Commission so far as may be just having regard to the amount of the development charge.

(3) The powers of the tribunal under paragraph (1), and of the Railway and Canal Commission under paragraph (2), of this Regulation may, with the consent of the appropriate authority, be exercised in relation to any interest of the Crown in Crown land.

(4) The tribunal referred to in paragraph (1) of this Regulation shall consist of a member or members of the panel constituted under Part I of the Schedule to these Regulations, being a member or members selected in

(a) 13 & 14 Geo. 5. c. 20.

accordance with the provisions of Part II of that Schedule, and the provisions of Part III of that Schedule shall have effect in relation to any reference to that tribunal under the provisions of this Regulation.

**10.**—(1) Where an application is made under Part II of the Act, or is treated as having been so made,

(*a*) for permission to carry out such mining operations as are mentioned in paragraph 1 of Class XVII of the First Schedule to the Town and Country Planning (General Development) (Scotland) Order, 1948(a), and the application is made or is treated as having been made within the period specified in that paragraph; or

(*b*) for permission to resume any mining operations by an undertaker who suspended such operations—

(i) at any time during the war period in consequence of any arrangement for the concentration of production approved, or in consequence of any order for that purpose made, by a Government Department in the exercise or purported exercise of emergency powers;

(ii) at any time since the seventh day of January, nineteen hundred and thirty-seven, in the normal course of his operations, where such suspension was ordinarily incidental to the particular class of mining operations in which he is engaged;

section 76 of the Act (which provides for compensation for abortive expenditure on refusal of planning permission for certain development authorised before the appointed day) shall apply as if the operations in respect of which the application is made or is treated as having been made were buildings or works to which that section applies and as if the reference in paragraph (*c*) of subsection (1) of that section to expenditure in carrying out work which is rendered abortive included expenditure or loss in respect of buildings, plant and machinery required for the purposes of the said mining operations:

Provided that a claim for expenditure or loss in respect of buildings, plant and machinery shall be subject to the provisions set out in regulation 3 (2) (*b*) of these Regulations.

(2) In this Regulation—

(*a*) the expression "the war period" means the period beginning with the third day of September, nineteen hundred and thirty-nine and ending with the twenty-sixth day of February, nineteen hundred and forty-six;

(*b*) the expression "emergency powers" means powers conferred by Defence Regulations.

*Arthur Woodburn,*
One of His Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh, 1.
13*th May*, 1948.

We consent,

*J. W. Snow,*
*Joseph Henderson,*
Two of the Lords Commissioners of His Majesty's Treasury.

13*th May*, 1948.

(a) S.I. 1948 No. 1030, p. 4288 above.

## SCHEDULE

### PART I

*Constitution of Panel*

1. For the purposes of these Regulations there shall be constituted a panel consisting of a Chairman and such number of other members as the Lord President of the Court of Session may from time to time determine, to be appointed by the Lord President of the Court of Session.

2. The Chairman shall be an advocate or solicitor of at least seven years' standing, and of the other members of the panel such number as the Lord President may determine shall be advocates or solicitors of at least seven years' standing and the others shall be persons who have had experience in the valuation of land and minerals appointed after consultation with the Chairman of the Scottish Committee of the Royal Institution of Chartered Surveyors.

3. In the case of temporary absence or inability to act of the Chairman, the Lord President may appoint another member of the panel to act as deputy for the Chairman, and a member so appointed shall, when so acting, have all the functions of the Chairman.

4. The appointment of a member of the panel shall be for such term as may be determined by the Lord President with the approval of the Treasury, before his appointment, and shall be subject to such conditions as may be so determined, and a person who ceases to hold office as a member of the panel shall be eligible for re-appointment thereto.

### PART II

*Constitution of Tribunals*

5. The member or members of the panel who is or are to be the tribunal for the purposes of any reference shall be selected as follows, that is to say—

(*a*) the Chairman may select a member or members to be the tribunal for a particular reference or for each of a group of references; or

(*b*) the Chairman may select as respects a group of references members of the panel from amongst whom the tribunal for any reference in the group is to be selected, and in that case the tribunal for any reference in the group shall be such one or more of those members as is or are selected either by the Chairman or, if he so directs, by one of those members appointed by the Chairman to be their Chairman.

6. Where the tribunal for any reference consists of two or more members of the panel—

(*a*) if the Chairman is one of them he shall preside at the hearing, and, if he is not, one of them shall be nominated to preside at the hearing by the person by whom the members of whom the tribunal consists were selected;

(*b*) a decision of the tribunal shall be taken, in case of difference between the members of whom the tribunal consists, by the votes of the majority, and, in the case of an equality of votes, the person presiding at the hearing shall be entitled to a second or casting vote.

### PART III

*Provisions as to references to a Tribunal*

7. The Court of Session shall have power by Act of Sederunt to make rules for regulating, subject to the provisions of this Schedule, references to a tribunal under these Regulations and any procedural matters arising out of such references, and such rules may in particular make provision—

(*a*) as to the time within which, and the manner in which, any such reference is to be made;

(*b*) for limiting the number of expert witnesses who may be heard at the instance of any party to one, except where the tribunal otherwise determines.

EXPLANATORY NOTE

*(This Note is not part of these Regulations, but is intended to indicate their general purport.)*

These regulations, which are made under Section 78 (1) of the Town and Country Planning (Scotland) Act, 1947, prescribe the adaptations and modifications to which the Act is to be subject in relation to development consisting of the winning and working of minerals.

(By Section 78 (6) the Regulations have no application to:—

(1) the winning and working, on land held or occupied with land used for the purposes of agriculture, of any minerals reasonably required for the purposes of that use;

(2) the winning and working of peat by any person for the domestic requirements of that person;

(3) the winning and working of any minerals vested in the National Coal Board.)

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# The Town and Country Planning (Modification of Mines Act) (Scotland) Regulations, 1948†

## 1948 No. 1526 (S. 137)

*Made* - - - - 13*th May*, 1948
*Coming into Operation* 1*st July*, 1948*

The Secretary of State for Scotland and the Minister of Fuel and Power in exercise of the powers conferred on them by subsection (4) of section 78 of the Town and Country Planning (Scotland) Act, 1947(a), and of all other powers enabling them in that behalf, hereby make the following Regulations:—

*Citation, Commencement and Interpretation*

**1.**—(1) These regulations may be cited as the Town and Country Planning (Modification of Mines Act) (Scotland) Regulations, 1948, and shall come into operation on the appointed day*.

(2) In these regulations—

" the appointed day " means the day appointed for the coming into force of the Town and Country Planning (Scotland) Act, 1947;

" the Commission " means the Railway and Canal Commission;

" the Mines Act " means the Mines (Working Facilities and Support) Act, 1923(b).

(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.

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(a) 10 & 11 Geo. 6. c. 53. (b) 13 & 14 Geo. 5. c. 20.
(c) 52 & 53 Vict. c. 63. * *See* S.I. 1948 No. 265, p. 4236 above.

† These Regulations were approved by Resolution of the House of Commons, 28th June, 1948, and the House of Lords, 30th June, 1948, in accordance with section 78 (5) of the Town and Country Planning (Scotland) Act, 1947.