STATUTORY INSTRUMENTS

1971 No. 778 (S.111)

TOWN AND COUNTRY PLANNING, SCOTLAND

The Town and Country Planning (Minerals) (Scotland) Regulations 1971

Made - - - -	*25th March* 1971
Laid before Parliament	*1st April* 1971
Coming into Operation	*5th May* 1971

In exercise of the powers conferred on me by (1) sections 78(1) and 107 of the Town and Country Planning (Scotland) Act, 1947(a), as amended by section 105 of and Schedule 9 to the Town and Country Planning (Scotland) Act 1969(b), and (2) sections 56(3) and 68 of the Town and Country Planning (Scotland) Act, 1954(c), and of all other powers enabling me in that behalf, I hereby, with the consent of the Treasury, make the following regulations:—

PART I

PRELIMINARY

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Town and Country Planning (Minerals) (Scotland) Regulations 1971, and shall come into operation on the day following the day on which the regulations have been approved by a resolution of each House of Parliament.

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

(3) In these regulations, unless the context otherwise requires:—

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

"the Act of 1954" means the Town and Country Planning (Scotland) Act 1954;

"the Act of 1969" means the Town and Country Planning (Scotland) Act 1969;

(a) 1947 c. 53.
(b) 1969 c. 30.
(c) 1954 c. 73.
(d) 1889 c. 63.

"excepted minerals" means—

(*a*) minerals won and worked on land held or occupied with land used for the purposes of agriculture which are reasonably required for the purpose of that use including the fertilisation of the land so used and the mainteance, improvement or alteration of buildings or works thereon which are occupied or used for those purposes;

(*b*) minerals vested in the National Coal Board which are specified land to which any of the provisions of the Act of 1947 and of the Act of 1969 relating to operational land of statutory undertakers apply by virtue of regulations made under section 86 of the Act of 1947; and

(*c*) peat won and worked by any person for the domestic requirements of that person;

"mining operations" means the winning and working of minerals other than excepted minerals in, on, or under land, whether by surface or underground working.

Revocation of existing regulations

2.—(1) The Town and Country Planning (Minerals) (Scotland) Regulations 1955(**a**) and the Town and CountryPlanning (Minerals) (Amendment) (Scotland) Regulations 1957(**b**) 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.

PART II

ADAPTATIONS AND MODIFICATIONS OF PROVISIONS OF THE ACTS OF 1947 AND 1969

3. In relation to development consisting of mining operations, the provisions of the Act of 1947 and the provisions of the Act of 1969 shall have effect subject to the adaptations and modifications prescribed by this part of these regulations.

4. For the purposes of those provisions, "use" in relation to the development of land does not include the use of land by the carrying out of mining operations:

Provided that:—

(*a*) section 10(3) of the Act of 1947 (as to the circumstances in which the deposit of refuse or waste materials on land involves a material change in the use thereof) shall operate in relation to the deposit of refuse or waste materials in the course of mining operations; and

(*b*) in the following provisions of the Act of 1947, namely, section 12(2)(*b*) (as to conditions requiring the discontinuance of a use after a specified period) section 16(1) and (2) (as to permission for the continuance of a use of land already instituted) section 22(3) (as to uses in contravention of enforcement notices,) and section 73 (as to development existing prior to 1 July 1948 and authorised subject to conditions) and in the following provisions of the Act of 1969, namely, sections 15(7) and 16(5) (as to enforcement notices) section 17 (as to the effect of enforcement notices

(**a**) S.I. 1955/346 (1955 II, p. 2665). (**b**) S.I. 1957/1421 (1957 II, p. 2574).

against subsequent development) and section 66(4) (as to duration of planning permissions) references to the use of land or the purpose for which land may be used 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.

5. An enforcement notice in respect of non-compliance with any condition or limitation subject to which permission for mining operations was granted may be served under section 15 of the Act of 1969 at any time within four years after the non-compliance has come to the knowledge of the local planning authority.

6. Section 20(1) of the Act of 1947 (which provides for the payment of compensation in the event of a revocation or modification of permission to develop) shall have effect subject to the modification that a claim for expenditure or loss shall not be entertained under the subsection 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 Lands Tribunal for Scotland 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 Tribunal either in such directions or subsequently on application by either party.

7. Section 66(1) of the Act of 1969 (which provides for a limit of duration of planning permissions granted before the commencement of the section) shall have effect in relation to permissions for mining operations subject to the substitution of the period of ten years for the period of five years therein prescribed.

8. Section 68(1) of the Act of 1969 (which defines the date on which development shall be taken to be begun for the purposes of sections 66 and 67 of the Act) shall have effect subject to the modification that development consisting of mining operations shall be taken to be begun on the earliest date on which any of the mining operations to which the relevant grant of planning permission relates begin to be carried out.

9.—(1) Where mining operations have been carried out in any land on or after 7th January 1937 and at any time an application is made under Part II of the Act of 1947, or is treated as having been so made, for permission to resume or continue any such operations in adjoining land, section 76 of the said Act (which provides for compensation for abortive expenditure on refusal of planning permission for certain development authorised before 1st July 1948) shall apply as if the operations in respect of the resumption or continuance of which the application is made or is treated as having been made, were buildings or works begun or contracted for before 1st July 1948, but subject to the following modifications—

(i) the reference in paragraph (*a*) of subsection (1) to permission granted by an interim development order shall include a reference to such a permission granted on or after 11th November 1943;

(ii) the reference in paragraph (*c*) of that subsection to expenditure in carrying out work which is rendered abortive and the following reference in that subsection to expenditure shall include a reference to loss by way of depreciation of value or otherwise in respect of

buildings, plant and machinery required for the purposes of the said mining operations or of their continuance under a development order or for the purpose of processing minerals thereby got but a claim for expenditure or loss in respect of buildings, plant and machinery shall not be entertained unless the claimant proves 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 Lands Tribunal for Scotland 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 Tribunal either in such directions or subsequently on application by either party; and

(iii) no compensation shall be payable in respect of—

(*a*) work which was carried out at a time when permission required under the said Act or obtainable under any enactment relating to town and country planning repealed by the said Act was not in force in relation to such work or was not in force in relation to the said mining operations or their continuance; or

(*b*) work which involved a breach of a condition imposed on the grant of any such permission as is referred to in sub-paragraph (*a*), or was in excess of that required for the carrying out of continuance of the said mining operations in accordance with such permission or for the processing of minerals thereby got.

(2) Where on refusal of an application to which the last preceding paragraph applies, or on the grant of permission on such an application subject to conditions, compensation is payable under that paragraph or would be so payable but for the provisions of sub-paragraph (iii) thereof and it is shown that the applicant in addition to such expenditure or payment as is referred to in section 76 of the Act of 1947 or the said paragraph has sustained loss or damage which is directly attributable to such refusal or conditional grant of permission, section 20(1) of the Act of 1947 shall apply in respect of such loss or damage as it applies to loss or damage which is directly attributable to a revocation or modification of permission, but no compensation shall be payable thereunder in respect of loss or damage consisting of the depreciation in value of any interest in the land by virtue of such refusal or conditional grant of permission, or in respect of any loss or damage for which a claim may be made under paragraph (1) of this regulation or could have been so made but for the provisions of sub-paragraph (iii) thereof.

PART III

ADAPTATIONS AND MODIFICATIONS OF PROVISIONS OF THE ACT OF 1954

10. In relation to interests in land consisting of or comprising minerals and in relation to claims established (as mentioned in section 1(3) of the Act of 1954) wholly or partly in respect of such land, the provisions of the Act of 1954 shall have effect, subject to the adaptations and modifications prescribed by this part of the regulations.

11. Any provision of the Act of 1954 which refers to a provision of the Act of 1947 which is modified in any manner by Part II of these regulations shall have effect as if it were a reference to that provision as so modified.

12.—(1) Where an established claim relates to an interest in land comprising minerals, and since 1st July 1948 the interest of the superior, 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 mining lease as the case may be (hereinafter referred to as "the relevant interest") in those minerals or part of them has, by sale or reservation or otherwise, been severed from the relevant interest in the remainder of the land, then if a payment falls to be made under the Act of 1954 in respect of an act or event subsequent to the date of the severance, the claim holding, or, as the case may be, the unexpended balance of establishment development value shall first be apportioned between the minerals and the remainder of the land and for this purpose section 2(4) of the Act of 1954 shall apply as if the minerals and the remainder of the land were respectively parts of the claim area; and thereafter for all the purposes of the Act of 1954, the minerals and the remainder of the land shall be regarded as separate claim areas.

(2) Nothing in section 17 of the Act of 1954 (which relates to original unexpended balances of established development value) shall be taken to require the aggregation of a claim holding in respect of land consisting only of minerals with any other claim holding relating to the same area, but any claim holding or claim holdings in respect of any such minerals shall in accordance with the provisions of that section constitute a separate unexpended balance of establishment development value in respect of those minerals.

13. Section 18(4) of the Act of 1954, shall have effect in relation to any new development consisting of mining operations in respect of which the Mineral Development Charge Set-Off (Scotland) Regulations 1951(**a**) applied as if a development charge was not and would not have fallen to be determined in respect of those operations after 1st July 1951.

14. In determining under section 26 of the Act of 1954 whether or to what extent the value of an interest in land is depreciated by a planning decision, no account shall be taken of any depreciation in the value of buildings, plant or machinery in respect of which compensation has been paid or is, or would be payable under regulation 9 of these regulations.

Gordon Campbell,
One of Her Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh.

22nd March 1971.

We consent to these regulations.

25th March 1971.

Bernard Weatherill,
H. S. P. Monro,
Two of the Lords Commissioners of Her Majesty's Treasury.

(**a**) S.I. 1951/2170 (1951 II, p. 825).

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations, which revoke the Town and Country Planning (Minerals) (Scotland) Regulations 1955 and the Town and Country Planning (Minerals) (Scotland) Amendment Regulations 1957, contain adaptations and modifications of certain of the provisions of the Town and Country Planning (Scotland) Acts of 1947, 1954 and 1969 in relation to minerals. They re-enact those of the provisions of the 1955 and 1957 Regulations which are not spent, without amendment, except that references to the provisions of the Act of 1969 have, where necessary, been substituted for references to provisions in the Acts of 1947 and 1954. In addition certain provisions of the Act of 1969 which are new and which relate to the duration of planning permissions have been adapted and modified in relation to minerals as indicated in Regulations 4(*b*), 7 and 8.

The Regulations come into operation on 5th May 1971.