STATUTORY INSTRUMENTS

1963 No. 855

TOWN AND COUNTRY PLANNING, ENGLAND AND WALES

The Town and Country Planning (National Coal Board) Regulations 1963

Made - - - -	*25th April* 1963
Laid before Parliament	*1st May* 1963
Coming into Operation	*2nd May* 1963

The Minister of Housing and Local Government and the Minister of Power, in exercise of the powers conferred on them by section 204 of the Town and Country Planning Act 1962(a), and of all other powers enabling them in that behalf, hereby with the consent of the Treasury make the following regulations: —

1. These regulations may be cited as the Town and Country Planning (National Coal Board) Regulations 1963, and shall come into force on 2nd May 1963.

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

" the Act " means the Town and Country Planning Act 1962 ;

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

" the Board " means the National Coal Board ;

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

" planning proceeding " 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 can only be economically worked in association with the working of coal, or which can only be economically brought to the surface by the use of a mine of coal vested in the Board ;

(*c*) surface 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 Parts I, II and III of Schedule 1 to the Act of 1946 (except paragraphs 13 and 14 thereof) are ordinarily

(a) 10 & 11 Eliz. 2. c. 38. (b) 9 & 10 Geo. 6. c. 59.

carried on, or land in which an interest is held by the Board for the purpose of any of those activities and which is comparable in respect of its nature and situation rather with land on which those activities are carried on than with land in general;

(*d*) other surface 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 is comparable, in respect of its nature and situation, rather with land on which those activities are carried on 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 properly to perform his duties, 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 to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

3. The Town and Country Planning (National Coal Board) Regulations 1951(b) are hereby revoked without prejudice to any right, privilege, claim, obligation or liability acquired, accrued or incurred or to anything duly done or suffered thereunder.

4. 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 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.

5. Any compensation payable to the Board by virtue of any of the provisions of sections 159 to 162 and sections 170 and 171 of the Act as applied by these regulations in respect of a planning proceeding shall, in lieu of being assessed in accordance with the provisions of sections 171 to 173 of the Act, be assessed in accordance with the provisions of Schedule 2 to these regulations.

6. Any compensation payable to the Board by virtue of any of the provisions of sections 159 to 162 and sections 170 and 171 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 171(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 171 to 173 of the Act and references therein to "the undertaking" and "their undertaking" shall be construed as references to the functions of the Board.

(a) 52 & 53 Vict. c. 63. (b) S.I. 1951/716 (1951 II, p. 815).

SCHEDULE 1

Regulation 4

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 4(3)(*b*) (which relates to the designation, as land subject to compulsory acquisition by statutory undertakers, of any land allocated by a development plan for the purposes of any of their functions).	None.
Section 9 (which relates to the modification of development plans in relation to land designated as subject to compulsory acquisition by statutory undertakers if such land has not been acquired within a specified period).	None.
Section 12(2)(*c*) (which provides that the carrying out by a statutory undertaker of any works 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 67 (which relates to the compulsory acquisition of designated land).	In subsection (2) substitute for the words "who is the appropriate Minister for the purposes of those undertakers", the words "of Power".
Section 86(6)(*c*) (which provides for references in the Lands Clauses Acts to the execution of works to be construed as references to any erection, construction or carrying out of buildings or works by or on behalf of statutory undertakers).	None.
Section 159 (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 (2), (3), (4) and (5).
Section 161 (which relates to revocation and modification of permissions granted to statutory undertakers to develop operational land).	1. In subsection (1) omit the words from "as if" to the end. 2. Omit subsection (2).

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 162 (which relates to the making of orders under section 28 of the Act as to operational land of statutory undertakers).	1. In subsection (1) omit the words from " as if " to the end. 2. Omit subsection (2).
Section 170 (which relates to the right to compensation in respect of certain decisions and orders).	1. Omit paragraph (*b*) of subsection (1). 2. Omit subsection (2). 3. In subsection (3) for the words " Notwithstanding anything . . . decision or order: " substitute the following:—" Notwithstanding anything in subsection (1) of this section, if the Minister and the Minister of Power are satisfied, having regard to the nature, situation and existing development of the land and of any neighbouring land, and to any other material considerations, that it is unreasonable that compensation should be recovered in respect of the decision or order in question, the Minister may include therein a direction that subsection (1) of this section shall not apply to the whole or any part of that decision or order: ". 4. In the proviso to subsection (3), for the words " in relation to a decision falling within paragraph (*b*) of subsection (1) of this section, if the land in question " substitute the words " in relation to a decision or order falling within paragraphs (*a*) or (*c*) of subsection (1) of this section, if the land to which the decision or order relates "; and add after the words " development to which the decision " the words " or order ".
Section 171 (which relates to the measure of compensation payable to statutory undertakers).	1. In paragraph (*a*) of subsection (1) omit the words " or subsection (2) ". 2. In paragraph (*c*) of subsection (1) add after the word " undertaking " 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 ".

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 171 (which relates to the measure of compensation payable to statutory undertakers)—*cont.*	3. In subsection (1) insert between the words "be" and "an amount" the words "as respects any land specified in regulations made under section 204 of this Act"; and add at the end of the subsection the following:—"Save 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 then, subject to any direction given under subsection (3) of that section, the provisions of Part VII of the Act shall 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."
Section 172 (which relates to the exclusion of section 171 at the option of statutory undertakers).	None.
Section 173 (which prescribes the procedure for assessing compensation where section 171 applies).	None.
Section 174 (which makes special provisions as to display of advertisements on operational land).	None.
Section 189(2) (which empowers statutory undertakers to contribute towards certain expenses of local planning authorities and councils of county districts).	None.
Section 212(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).	Substitute for the words "appropriate Minister", the words "Minister of Power".
Section 221(2) so far as it relates to the determination of questions whether land of statutory undertakers is operational land.	Substitute for the words "who is the appropriate Minister in relation to those undertakers", the words "of Power".

SCHEDULE 2

Regulation 5

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 171 to 173 of the Act.

1. In this Schedule, the following expressions have the meanings 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*) a decision given under section 159 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 161 of the Act as so applied revoking or modifying permission for such working or works;

(*c*) an order made under section 162 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 10 miles of the main shaft or adit of an affected mine;

"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 Lands Tribunal in accordance with the provisions of section 173 of the Act and the amount of such compensation shall be calculated in accordance with the provisions of the next following paragraphs.

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 amount 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;

(*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—

(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;

(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;

(*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 161 or section 162 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.

Given under the official seal of the Minister of Housing and Local Government on 25th April 1963.

(L.S.)

Keith Joseph,
Minister of Housing and Local Government.

Given under the official seal of the Minister of Power on 25th April 1963.

(L.S.)

Richard Wood,
Minister of Power.

We consent.

25th April 1963.

John Hill,
G. T. C. Campbell,
Two of the Lords Commissioners of Her Majesty's Treasury.

EXPLANATORY NOTE

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

These regulations, made under section 204 of the Town and Country Planning Act 1962, replace the Town and Country Planning (National Coal Board) Regulations 1951 made under section 90 of the Town and Country Planning Act 1947 (10 & 11 Geo. 6. c. 51) and are consequential upon the consolidation in the Act of 1962 of the previous planning legislation. In the same way as the 1951 Regulations applied with modifications the provisions of the Act of 1947 (relating to statutory undertakers and to land of statutory undertakers) to the National Coal Board and to specified land of the Board, these regulations apply the relevant provisions of the Act of 1962, which are specified in column (1) of Schedule 1 to the regulations, to the National Coal Board, and to land of the Board specified in regulation 2. This land includes all unworked coal and surface land belonging to the Board which is used or held for a wide range of activities connected with coal mining, including transport, sales, welfare and similar activities as well as the actual getting and treatment of coal. The modifications to the provisions of the Act of 1962 are set out in column (2) of Schedule 1. With regard to the provisions of the Act relating to development by statutory undertakers, the modifications provide that applications and orders which are dealt with ministerially shall be dealt with by the Minister of Housing and Local Government; but the Minister of Power must concur before any direction is issued excluding the Board's right to recover compensation in respect of the decision or order. The provisions so modified, formerly contained in Schedule 5 to the Act of 1947, are now comprised in sections 159, 161, 162, 170(1)(*a*), (1)(*c*) and (3), and section 171(1) of the Act of 1962.

Schedule 2 to the regulations lays down a special basis for calculating the compensation payable to the National Coal Board where decisions adverse to the Board are given by the Minister in relation to the underground working of coal. If the decision affects an existing mine, the compensation will cover any increased expenditure made necessary by the decision, together with a sum for any decrease in net receipts. In the case of a new mine the compensation will cover only abortive expenditure. Compensation in respect of other decisions affecting the specified land will in general be on the basis laid down for statutory undertakers by sections 171 to 173 of the Act (formerly Schedule 4 to the Town and Country Planning Act 1944 (7 & 8 Geo. 6. c. 47)); but under section 170(3) (as modified by the regulations) no compensation will be payable where the two Ministers consider it unreasonable. The normal provisions for compensation laid down in Part VII of the Act of 1962 will apply to decisions or orders relating to tipping sites.