STATUTORY INSTRUMENTS

1974 No. 1006

TOWN AND COUNTRY PLANNING, ENGLAND AND WALES

The Town and Country Planning (National Coal Board) Regulations 1974

Made - - - -	10*th June* 1974
Laid before Parliament	24*th June* 1974
Coming into Operation	15*th July* 1974

The Secretary of State for the Environment in exercise of the powers conferred on him by section 273 of the Town and Country Planning Act 1971(a), and the Secretary of State for Energy in excercise of powers conferred by the said section 273 and now vested in him(b), 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 1974 and shall come into operation on 15th July 1974.

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 1971;

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

"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;

"excepted land" means land an interest in which is held by the Board and—

(*a*) is acquired by the Board on or after the date when these regulations come into operation; or

(*b*) was held by the Board immediately before that date but in such circumstances that it did not fall to be treated as specified land within the meaning of regulation 2(1) of the Town and Country Planning (National Coal Board) Regulations 1963(d),

(a) 1971 c. 78.
(b) S.I. 1974/692 (1974 I, p. 2711).
(c) 1946 c. 59.
(d) S.I. 1963/855 (1963 I, p. 1268).

and in respect of which there is not, and has not at any time been, in force a planning permission granted on an application made under Part III of the Act for the carrying out of 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);

"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 cannot be economically worked except in association with the working of coal, or which cannot be economically brought to the surface except by the use of a mine of coal vested in the Board;

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

(*d*) other surface land (other than excepted 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, in respect of its nature and situation, is comparable 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 for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament.

3. 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

(a) 1889 c. 63.

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.

4. Any compensation payable to the Board by virtue of any of the provisions of sections 225 to 228 and sections 237 and 238 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 238 to 240 of the Act, be assessed in accordance with the provisions of Schedule 2 to these regulations.

5. Any compensation payable to the Board by virtue of any of the provisions of sections 225 to 228 and sections 237 and 238 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 238(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 238 to 240 of the Act and references therein to "the undertaking" and "their undertaking" shall be construed as references to functions of the Board.

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

SCHEDULE 1

Regulation 3

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 22(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 132(4)(*c*) (which provides for references in the Compulsory Purchase Act 1965(a) 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 165(3) (which provides that section 165 of the Act shall not apply in relation to planning permission for the development of operational land of statutory undertakers).	None.

(a) 1965 c. 56.

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 225 (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 (3), (4) and (5).
Section 227 (which relates to revocation and modification of permissions granted to statutory undertakers to develop operational land).	Omit the words from "as if" to the end.
Section 228 (which relates to the making of orders under section 51 of the Act as to operational land of statutory undertakers).	Omit the words from "as if" to the end.
Section 237 (which relates to the right to compensation in respect of certain decisions and orders).	1. In relation to specified land which consists of unworked coal, unworked minerals other than coal or any space excavated underground for the purposes of colliery activities (but not in relation to other specified land), omit paragraph (*a*) of subsection (1) and substitute the following paragraph: "(*a*) in respect of any decision made in accordance with section 225 whereby planning permission to develop operational land of the undertakers is refused or is granted subject to conditions;". 2. Omit subsections (2) and (3). 3. In subsection (4) omit the words from "if the decision or order" to "and the appropriate Minister are satisfied" and substitute the words "if the Secretary of State for the Environment (in respect of decisions or orders relating to land in England) or the Secretary of State for Wales (in respect of decisions or orders relating to land in Wales) and the Secretary of State for Energy are satisfied".
Section 238 (which relates to the measure of compensation payable to statutory undertakers).	In subsection (1)— (1) omit the words "(2) or (3)" in paragraph (*a*); (2) add after the word "undertaking" in paragraph (*c*) 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" in that paragraph;

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
	(3) insert between the words "be" and "an amount" the words "as respects any land specified in regulations made under section 273 of this Act"; and (4) at the end of the subsection add the following:— "Provided that 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, the provisions of Part VIII of the Act shall, subject to any direction given under subsection (4) of that section, 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 239 (which relates to the exclusion of section 238 at the option of statutory undertakers).	None.
Section 240 (which prescribes the procedure for assessing compensation where section 238 applies).	None.
Section 241 (which makes special provisions as to display of advertisements on operational land).	None.
Section 255(2) (which empowers statutory undertakers to contribute towards certain expenses of local planning authorities and councils of county districts).	None.
Section 281(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).	For the words "appropriate Minister" substitute the words "Secretary of State for Energy".
Section 290(2), so far as it relates to the determination of questions whether land of statutory undertakers is operational land.	For the words "the Minister who is the appropriate Minister in relation to those undertakers" substitute the words "the Secretary of State for Energy"

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
Schedule 24, paragraph 54.	The reference to the refusal or grant of planning permission before 6th December 1968 is to be construed as a reference to the refusal or grant of planning permission before the date of the coming into operation of these regulations.
Schedule 24, paragraph 63.	The reference to a decision made before 6th December 1968 is to be construed as a reference to a decision made before the date of coming into operation of these regulations.

SCHEDULE 2

Regulation 4

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 238 TO 240 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 225 of the Act, as applied by these regulations, refusing planning permission for the working underground of minerals, or for 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 227 of the Act, as so applied, revoking or modifying permission for such working or works;

(*c*) an order made under section 228 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 15 kilometres 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 240 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 the 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 227 or section 228 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.

Anthony Crosland,
28th May 1974. Secretary of State for the Environment.

Eric Varley,
30th May 1974. Secretary of State for Energy.

We consent.

Donald R. Coleman,
James A. Dunn,
10th June 1974. Two of the Lords Commissioners of Her Majesty's Treasury.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations, made under section 273 of the Town and Country Planning Act 1971, revoke and re-enact with amendments the provisions of the Town and Country Planning (National Coal Board) Regulations 1963. They apply to the National Coal Board, and to land of the Board of the categories specified in regulation 2, those provisions of the Town and Country Planning Act 1971 relating to statutory undertakers and to land of statutory undertakers which are set out in column (1) of Schedule 1 to the regulations. The provisions are applied subject to the adaptations, modifications and exceptions set out in column (2) of Schedule 1.

Schedule 2 to the regulations lays down a special basis for calculating the compensation payable to the National Coal Board where planning decisions adverse to the Board are given by the Secretary of State in relation to the underground working of coal.

The principal amendments made by these regulations to the previous regulations are as follows:—

(*a*) references to the provisions of the Act of 1971 are substituted for references to the provisions of the Town and Country Planning Act 1962 (c.38) (which that Act repealed and re-enacted);

(*b*) the definition of "specified land" has been amended to exclude surface land of the Board which was not specified land for the purposes of the regulations of 1963 (either because it was not acquired before the date of the coming into operation of the present regulations or because, although it was acquired before that date, the circumstances were such that it did not come within any of the classes of "specified land" described in regulation 2(1) of those regulations) and in respect of which there has been no grant of planning permission on an application under Part III of the Act of 1971 for the carrying out of coal industry activities or any of the other activities mentioned in Parts I, II and III of Schedule 1 to the Coal Industry Nationalisation Act 1946 (this amendment is made in order to apply to the lands of the National Coal Board restrictions similar to those contained in the provisions of section 223 of the Act of 1971, which restricts the classes of land which are to be treated for the purposes of that Act as operational land of statutory undertakers);

(*c*) the more restrictive provisions concerning the rights of statutory undertakers to compensation for refusal of permission, or grant of permission subject to conditions, which were imposed by section 71 of the Town and Country Planning Act 1968 (1968 c. 72) (and which are now contained in section 237 of the Act of 1971) are applied to surface land of the National Coal Board. (The compensation provisions relating to unworked coal and other minerals and to spaces excavated underground for the purposes of colliery activities are in substance the same as before.)

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