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STATUTORY INSTRUMENTS

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**1998 No. 2914 (S. 170)**

**TOWN AND COUNTRY PLANNING, SCOTLAND**

**The Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) (Scotland) Regulations 1998**

*Approved by both Houses of Parliament*

*Made - - - - 17th November 1998*

*Laid before Parliament 25th November 1998*

*Coming into force in accordance with regulation 1(1)*

The Secretary of State, in exercise of the powers conferred on him by sections 275(1)(b) and 277(1) of, and paragraph 1 of Schedule 13 to, the Town and Country Planning (Scotland) Act 1997(1), and of all other powers enabling him in that behalf, having undertaken the consultations required by paragraph 1(4) of that Schedule, and with the consent of the Treasury, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) (Scotland) Regulations 1998 and shall come into force on the fourteenth day after the day on which they are approved by resolution of each House of Parliament.

**Interpretation**

2.—(1) In these Regulations—

“appropriate portion” has the meaning given by regulation 7;

“restriction on working rights”, in relation to any land, means that there is imposed on the land in question a restriction which has the effect that—

- (a) the size of the area which may be used for the winning and working of minerals or the depositing of mineral waste;
- (b) the depth to which operations for the winning and working of minerals may extend;
- (c) the height of any deposit of mineral waste;

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(1) 1997 c. 8. Section 277(1) contains a definition of “prescribed” relevant to the exercise of the statutory powers under which these Regulations are made.

- (d) the rate at which any particular mineral may be extracted;
- (e) the rate at which any particular mineral waste may be deposited;
- (f) the period at the expiry of which any winning and working of minerals or depositing of mineral waste is to cease; or
- (g) the total quantity of minerals which may be extracted from, or of mineral waste which may be deposited, on the land,  
is restricted or reduced.

(2) In these Regulations any reference to a numbered section or Schedule is a reference to the section or Schedule bearing that number in the Town and Country Planning (Scotland) Act 1997.

### **Compensation following modification of planning permission**

3.—(1) Where an order is made under section 65 (power to revoke or modify planning permission) modifying planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste, no compensation is payable if the conditions specified in paragraph (2) are met.

- (2) The conditions specified in this paragraph are—
- (a) that the order does not—
    - (i) impose any restriction on working rights; or
    - (ii) modify or replace any such restriction, other than a restoration or aftercare condition, subject to which the planning permission was granted or which was imposed by an earlier modification, discontinuance or prohibition order;
  - (b) (i) that the planning permission was granted not less than 5 years before the day on which the order was made; or
    - (ii) that the planning permission which is modified by the order was granted before 22nd February 1982; and
  - (c) that in respect of the land to which the order under section 65 relates, within the period of 5 years immediately preceding the day on which that order was made—
    - (i) the planning authority have not made any other modification order, or any discontinuance or prohibition order, and
    - (ii) no application under paragraph 14 of Schedule 8 or under Schedule 9 or 10 to determine conditions was finally determined.

### **Compensation following discontinuance order**

4.—(1) Where an order is made under paragraph 1 (orders requiring discontinuance of mineral working) of Schedule 8, no compensation is payable if the conditions specified in paragraph (2) are met.

- (2) The conditions specified in this paragraph are—
- (a) that the order does not—
    - (i) impose any restriction on working rights; or
    - (ii) modify or replace any such restriction, other than a restoration or aftercare condition, subject to which the planning permission was granted or which was imposed by an earlier modification, discontinuance or prohibition order;
  - (b) that the order—
    - (i) imposes a condition on the continuance of the use of the land; or

- (ii) requires the alteration or removal of any buildings, works, plant or machinery used in connection with the development;
- (c) that the development was begun not less than 5 years before the day on which the order was made; and
- (d) that in respect of the land to which the order under paragraph 1 of Schedule 8 relates, and within the period of five years immediately preceding the day on which that order was made—
  - (i) the planning authority have not made any other discontinuance order, or any modification or prohibition order, and
  - (ii) no application under paragraph 14 of Schedule 8 or under Schedule 9 or 10 to determine conditions was finally determined.

### **Compensation following prohibition order**

5.—(1) Where an order is made under paragraph 3 (prohibition of resumption of mineral working) of Schedule 8 prohibiting the resumption of the winning and working of minerals or the depositing of mineral waste, and the conditions specified in paragraph (2) are met—

- (a) section 83 shall have effect subject to the modification described in paragraph (3); and
  - (b) the amount to be paid by way of compensation shall be assessed in accordance with section 83 (as so modified) and section 87 and then abated by the deduction of the appropriate portion of the sum of £8,100.
- (2) The conditions specified in this paragraph are—
- (a) that the development was begun not less than 5 years before the day on which the order was made; and
  - (b) that the planning authority have not made any other prohibition order, or any discontinuance or modification order, in respect of the land to which the order under paragraph 3 of Schedule 8 relates within the period of 5 years immediately preceding the day on which that order was made.

(3) The modification referred to in paragraph (1) is the substitution for subsections (2) and (3) of section 83, of the following subsections:—

“(2) If, on a claim made to the planning authority within the time and in the manner prescribed by regulations under this Act, it is shown that a person with an interest in the land to which the order relates or in the minerals in, on or under it—

- (a) has incurred expenditure in carrying out work which is rendered abortive by the provisions of the order; or
- (b) has otherwise sustained loss or damage which is directly attributable to the provisions of the order;

that authority shall pay to that person compensation in respect of that expenditure, loss or damage.

(3) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to it, shall be taken to be included in the expenditure incurred in carrying out that work.

(3A) For the purposes of this section, works carried out for the purpose of removing or alleviating any injury to amenity caused by the winning and working of minerals on the land to which a prohibition order relates shall, unless included in another claim for compensation, be treated as loss or damage directly attributable to the provisions of the order.

(3B) In calculating, for the purposes of this section, the amount of any loss or damage attributable to a prohibition order, no account shall be taken of—

- (a) the value of any mineral which cannot be won or worked;
- (b) the value of any mineral waste which cannot be deposited;
- (c) the value of any void which cannot be filled; or
- (d) the cost of complying with any restoration or after care condition,

in consequence of that order.”.

### **Compensation following suspension or supplementary suspension order**

6.—(1) Where an order is made under paragraph 5 (orders after suspension of winning and working of minerals) or paragraph 6 (supplementary suspension orders) of Schedule 8—

- (a) section 83 shall have effect subject to the modification described in paragraph (2); and
- (b) the amount to be paid by way of compensation shall be assessed in accordance with section 83 (as so modified) and section 87 and then abated by the deduction of the appropriate portion of the sum of £8,100.

(2) The modification referred to in paragraph (1) is the substitution, for subsections (2) and (3) of section 83, of the following subsections:—

“(2) If, on a claim made to the planning authority within the time and in the manner prescribed by regulations under this Act, it is shown that a person with an interest in the land to which the order relates or in the minerals in, on or under it—

- (a) has incurred expenditure in carrying out work which is rendered abortive by the provisions of the order, or
- (b) has otherwise sustained loss or damage which is directly attributable to the provisions of the order,

that authority shall pay to that person compensation in respect of that expenditure, loss or damage.

(3) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to it, shall be taken to be included in the expenditure incurred in carrying out that work.

(3A) For the purposes of this section, works carried out for the purpose of removing or alleviating any injury to amenity caused by the mining and working of minerals on the land to which a suspension order or supplementary suspension order relates shall, unless included in another claim for compensation, be treated as loss or damage directly attributable to the provisions of the order.

(3B) In calculating, for the purposes of this section, the amount of any loss or damage attributable to a suspension order or supplementary suspension order, no account shall be taken of the value of—

- (a) any mineral which cannot be won or worked;
- (b) any mineral waste which cannot be deposited; or
- (c) any void which cannot be filled,

in consequence of that order.”.

### **Apportionment of compensation for prohibition and suspension orders**

7.—(1) Where the planning authority are satisfied, at the time of assessing the amount of compensation to be paid following the making of a prohibition, suspension or supplementary

suspension order, that the claimant is the only person entitled to claim compensation, the appropriate portion is £8,100.

- (2) Where the planning authority are not satisfied as mentioned in paragraph (1)–
- (a) they shall assess the value of the claimant’s interest in the land and in the minerals to which the order relates;
  - (b) they shall assess the value attributable to the aggregate of the land and of the minerals in, on or under it, on the assumption that a single person were entitled to all of the interests in the land and minerals; and
  - (c) they shall treat as the appropriate portion the sum which bears to £8,100 the same proportion as the value assessed under sub-paragraph (a) bears to the value assessed under sub-paragraph (b).

### **Revocations**

**8.—**(1) The Town and Country Planning (Compensation for Restrictions on Mineral Working) (Scotland) Regulations 1987<sup>(2)</sup> are hereby revoked.

(2) So much of article 2 of, and the Schedule to, the Coal Industry Act 1994 (Consequential Modifications of Subordinate Legislation) Order 1994<sup>(3)</sup> as relate to the Town and Country Planning (Compensation for Restrictions on Mineral Working) (Scotland) Regulations 1987 are hereby revoked.

St Andrew’s House,  
Edinburgh  
12th November 1998

*Calum MacDonald*  
Parliamentary Under Secretary of State, Scottish  
Office

We consent,

17th November 1998

*Jim Dowd*  
*Bob Ainsworth*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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(2) S.I.1987/433.  
(3) S.I. 1994/2567.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke and replace, with amendment, the Town and Country Planning (Compensation for Restrictions on Mineral Working) (Scotland) Regulations 1987. They apply not only in relation to development consisting of the winning and working of minerals but also in relation to development involving the depositing of mineral waste.

They define the circumstances in which compensation is not to be payable following the making of a modification or discontinuance order (regulations 3 and 4). They also modify section 83 of the Town and Country Planning (Scotland) Act 1997 in its application to claims for compensation following the making of a prohibition, suspension or supplementary suspension order (regulations 5 and 6).

Regulation 7 makes provision for the apportionment of compensation following the making of a prohibition, suspension or supplementary suspension order, when persons other than the claimant have an interest in the land concerned or in the minerals in, on or under that land.

Regulation 8 revokes the Town and Country Planning (Compensation for Restrictions on Mineral Working) (Scotland) Regulations 1987, and so much of article 2 of, and the Schedule to, the Coal Industry Act 1994 (Consequential Modifications of Subordinate Legislation) Order 1994 as relate to the Town and Country Planning (Compensation for Restrictions on Mineral Working) (Scotland) Regulations 1987.