

1959 No. 980

## The Opencast Coal (Concurrent Orders and Requisitions) Regulations, 1959

Made - - - - -	4th June, 1959
Laid before Parliament	10th June, 1959
Coming into Operation	15th June, 1959

The Minister of Power, in exercise of the powers conferred upon him by paragraph 29 of the Sixth Schedule, and paragraphs 41 and 47 of the Tenth Schedule, to the Opencast Coal Act, 1958(a), and of all other powers him enabling, hereby makes the following regulations:—

### *Commencement and citation*

1. These regulations shall come into operation on the fifteenth day of June, nineteen hundred and fifty-nine, and may be cited as the Opencast Coal (Concurrent Orders and Requisitions) Regulations, 1959.

### *Interpretation*

2.—(1) In these regulations—

(a) “the Act” means the Opencast Coal Act, 1958;

(b) the following expressions, that is to say—

“the date of requisition”;

“land already requisitioned for opencast operations”;

“land requisitioned as an opencast storage site”;

“land requisitioned for opencast operations”;

“terminal date”;

have the meanings assigned to them respectively by paragraph 1 of the Tenth Schedule to the Act.

(2) All other expressions to which meanings are assigned by the Act shall (unless the contrary intention appears) have the same respective meanings in these regulations.

(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.

### *Concurrent compulsory rights orders*

3.—(1) This regulation applies in any case where land which, in relation to a compulsory rights order, forms part of a holding to which section seventeen or section twenty-nine of the Act applies, at any time after the operative date of that order and before the end of the period of occupation thereunder, constitutes, in relation to another such order, or to two or more successive compulsory rights orders, a holding to which either of the said sections applies.

(a) 6 & 7 Eliz. 2. c. 69.

(b) 52 & 53 Vict. c. 63.

(2) In this regulation the compulsory rights order which, of such of the orders in question as for the time being have effect, was the last to become operative is referred to as "the latest compulsory rights order", and the order or (as the case may be) orders which became operative before the latest compulsory rights order are referred to as "the earlier compulsory rights order" and "the earlier compulsory rights orders" respectively.

(3) Subject to the provisions of this regulation, the provisions of sections eighteen and nineteen of the Act, in their application to the land which, in relation to the latest compulsory rights order, for the time being constitutes the relevant holding for the purposes of this regulation, shall have effect in relation to that order as if—

(a) any reference in those sections to a holding (except the first such reference in each section and that in subsection (2) of the said section nineteen) were a reference to a holding which included land which—

(i) immediately before the operative date of the latest compulsory rights order, constituted, in relation to the earlier compulsory rights order, or (where there were in force at that time two or more such orders) in relation to each of the earlier compulsory rights orders, so much of the relevant holding to which section seventeen or section twenty-nine of the Act applied as was comprised in the order in question, and

(ii) is land the right to occupy which is, or (but for the relevant order) would be, for the time being vested in the person who is, or (but for the latest compulsory rights order) would be, entitled to occupy the land which, in relation to the latest compulsory rights order, constitutes the relevant holding to which the said section seventeen or the said section twenty-nine applies;

(b) for as long as the earlier compulsory rights order, or (as the case may be) any of the earlier compulsory rights orders, has effect, in subsection (1), paragraph (a) of subsection (3) and subsection (4) of the said section eighteen, and paragraph (a) of subsection (1), subsection (3) and paragraph (a) of subsection (4) of the said section nineteen, the references to a compulsory rights order each included a reference to the earlier compulsory rights order, or (as the case may be) to such of the earlier compulsory rights orders as for the time being have effect;

(c) in paragraph (b) of subsection (3) and subsection (4) of the said section eighteen, and paragraph (c) of subsection (1), paragraph (b) of subsection (4) and subsection (5) of the said section nineteen, any reference to the operative date of a compulsory rights order were—

(i) as respects any such land as is described in paragraphs (i) and (ii) of sub-paragraph (a) of this paragraph, a reference to the operative date of the order which comprises, or comprised, the land in question; and

(ii) as respects any other land, a reference to the operative date of the latest compulsory rights order.

(4) Any compensation which, apart from this paragraph, would be payable to any person for any year in respect of the latest compulsory rights order—

(a) by virtue of the provisions of the said section eighteen as modified by the provisions of this regulation, shall be reduced by the amount of—

(i) any compensation which accrues due to that person during that year by virtue of the said section eighteen in respect of the earlier

compulsory rights order or (as the case may be) any of the earlier compulsory rights orders, being compensation in respect of the land which, in relation to the order in question, constitutes for the time being the relevant holding for the purposes of this regulation ;

(ii) any compensation which, in relation to any of the compulsory rights orders in question, except the order which was the first to become operative, accrues due to that person during that year by virtue of subsection (2) of section thirty-two of the Act—

(A) in respect of any such land as is described in paragraphs (i) and (ii) of sub-paragraph (a) of paragraph (3) of this regulation, and

(B) in consequence of the inclusion in the order in relation to which the compensation in question accrues due of land which, in relation to that order, for the time being constitutes or forms part of the relevant holding for the purposes of this regulation ; and

(iii) any sum by which the rent payable by that person for the year in question under a tenancy subsisting immediately before the operative date of the latest compulsory rights order, being a tenancy of any such land as is described in paragraphs (i) and (ii) of sub-paragraph (a) of paragraph (3) of this regulation, has, under the terms and conditions of the tenancy, or under any enactment applicable thereto, been reduced in consequence of any of the compulsory rights orders in question or of anything done in the exercise of rights conferred by any of those orders, or, if the rent so payable has not been so reduced, any sum by which it is reasonable to suppose that it could be so reduced under those terms and conditions or under any such enactment ;

(b) by virtue of the provisions of the said section nineteen as modified by the provisions of this regulation, shall be reduced by the amount of any compensation which accrues due to that person during that year by virtue of the said section nineteen in respect of the earlier compulsory rights order or (as the case may be) any of the earlier compulsory rights orders, being compensation in respect of the land which, in relation to the order in question, constitutes for the time being the relevant holding for the purposes of this regulation :

Provided that, in any case where any part of a holding referred to in paragraph (i) of sub-paragraph (a) or sub-paragraph (b) of this paragraph is not comprised in the relevant order, and includes land (hereinafter referred to as "the separately occupied land") which, immediately before the operative date of the latest compulsory rights order, was not occupied as a unit with the land comprised in the latest compulsory rights order, any reference in the said paragraph (i) and the said sub-paragraph (b) to compensation which accrues due in respect of the land which, in relation to an order, constitutes for the time being the relevant holding for the purposes of this regulation shall be construed as a reference to the compensation which would accrue due by virtue of the relevant provision if the holding in question did not include the separately occupied land.

(5) The provisions of paragraphs 8 and 9 of the Sixth Schedule to the Act shall have effect in relation to the latest compulsory rights order as if—

(a) any reference to a holding in paragraphs (a) and (b) of sub-paragraph (1) of either of those paragraphs were a reference to a holding which

included any such land as is described in paragraphs (i) and (ii) of sub-paragraph (a) of paragraph (3) of this regulation; and

(b) for as long as the earlier compulsory rights order, or (as the case may be) any of the earlier compulsory rights orders, has effect, the reference to a compulsory rights order in sub-paragraph (1) of the said paragraph 8 included a reference to the earlier compulsory rights order, or (as the case may be) any of the earlier compulsory rights orders which for the time being have effect.

(6) (a) Where the earlier compulsory rights order, or any of the earlier compulsory rights orders, ceases to have effect during the course of the year beginning with the operative date of the latest compulsory rights order, or in the course of a year beginning with an anniversary of that date, the provisions of sections seventeen to nineteen of, and the Sixth Schedule to, the Act, as modified by this regulation, and the provisions of this regulation other than this sub-paragraph, shall, in their application in relation to the latest compulsory rights order, have effect as if any reference in those provisions to a year included a reference both to the part of that year during which the earlier compulsory rights order in question has effect (excluding any period during which any other such order which has ceased to have effect during that year itself had effect) and to the part of that year after that order ceases to have effect.

(b) Where at any time during the course of the year beginning with the operative date of the latest compulsory rights order, or in the course of a year beginning with an anniversary of that date, an act or event occurs whereby the person who would (but for the latest compulsory rights order) for the time being be entitled to occupy the land comprised in the latest compulsory rights order ceases to be the person who is, or (but for the relevant compulsory rights order) would be, for the time being entitled to occupy any such land as is described in paragraphs (i) and (ii) of sub-paragraph (a) of paragraph (3) of this regulation, the provisions of sections seventeen to nineteen of, and the Sixth Schedule to, the Act, as modified by this regulation, and the provisions of this regulation other than this sub-paragraph, shall, in their application in relation to the latest compulsory rights order, have effect as if any reference in those provisions to a year included a reference both to the part of that year ending with that act or event and to the part of that year after that act or event.

(c) Where the latest compulsory rights order ceases to have effect—

(i) during the periods of occupation under two or more of the earlier compulsory rights orders, and

(ii) during the course of a year beginning with the operative date of the order (hereinafter referred to as “the next latest compulsory rights order”) which, when the latest compulsory rights order ceases to have effect, itself becomes the latest compulsory rights order, or in the course of a year beginning with an anniversary of that date,

the provisions of sections seventeen to nineteen of, and the Sixth Schedule to, the Act, as modified by this regulation, and the provisions of this regulation other than this sub-paragraph, shall, in their application in relation to the next latest compulsory rights order, have effect as if any reference in those provisions to a year included a reference both to the part of that year during which the latest compulsory rights order has effect and to the part of that year after that order ceases to have effect.

(d) In the application of any of the said provisions to a part of a year, in accordance with the preceding provisions of this paragraph, any reference to annual value, or to any other amount which is required to be assessed by a reference to a year, shall be construed as a reference to so much of the annual value for that year, or of the amount in question assessed by reference to that year, as (on a rateable apportionment of that value or amount as between different parts of that year) is properly attributable to that part of that year.

(7) In any case where, at any time on or after the operative date of the earlier compulsory rights order, or (as the case may be) any of the earlier compulsory rights orders, but before the operative date of the order next following the order in question,—

(a) a new tenancy was created comprising the land which, in relation to the order in question, for the time being constituted the relevant holding, or

(b) the person entitled to compensation payable under section seventeen of the Act in respect of that holding was not the person who was entitled to occupy that holding on the operative date of the order in question (in this sub-paragraph referred to as "the original occupier") and was not a person who had become entitled to the relevant interest in the holding—

(i) on or after the death of the original occupier, in accordance with the disposition of the original occupier's estate effected by his will, or the law relating to intestacy, or the combination of his will and that law, or

(ii) under an agreement which was made for valuable consideration by the person entitled to the compensation and was in force immediately before the operative date of the order in question, or under a disposition creating or transferring the relevant interest in the holding in pursuance of such an agreement,

then—

(A) if only one of the orders which are relevant for the purposes of this regulation became operative after the operative date of the order in question, the order which became so operative shall be disregarded for the purposes of this regulation ;

(B) if more than one such order became operative after that date, this regulation shall apply as if those orders, on the one hand, and the order or orders which became operative on or before that date, on the other hand, constituted separate and unconnected cases.

(8) The provisions of sub-paragraph (2) of paragraph 3 of the Sixth Schedule to the Act shall apply for the purposes of the last preceding paragraph as they apply for the purposes of the said paragraph 3.

#### *Concurrent requisitions*

4.—(1) In any case where—

(a) compensation is payable under section seventeen of the Act in respect of two or more parcels of land, being parcels—

(i) both or all of which are, on the coming into operation of these regulations, land requisitioned for opencast operations or land requisitioned as opencast storage sites, or

(ii) of which one or more are, at that time, land requisitioned for opencast operations and the other or others are at the same time land requisitioned as opencast storage sites, and

(b) if the circumstances specified in the next following paragraph had existed, the case would have fallen within regulation three,

then the said regulation three shall apply in relation to those parcels of land as if those circumstances had existed.

(2) The said circumstances are those which would have existed if—

(a) in the case of land already requisitioned for opencast operations or land requisitioned as an opencast storage site, the Act had been in operation before the date of requisition of each parcel of land in question, and had contained no restrictions as to the duration of the period for which a compulsory rights order could have effect ;

(b) in any case, a compulsory rights order comprising each parcel of land had come into operation on the date of requisition of that parcel, and the requirements of subsection (2) of section five of the Act in relation to that order had, where necessary, been duly complied with ; and

(c) the period of occupation under each order had been a period ending on the date which, in relation to the land in question, is the terminal date.

#### *Other land in same ownership*

5.—(1) This regulation applies in any case where land which, in relation to a compulsory rights order, is land to which section thirty-two of the Act applies, at any time after the operative date of that order and before the end of the period of occupation thereunder, in relation to one or more other such orders, is land to which the said section thirty-two applies.

(2) In this regulation the compulsory rights order which, of such of the orders in question as for the time being have effect, was the last to become operative, is referred to as “the latest compulsory rights order”, and the order or (as the case may be) orders which became operative before the latest compulsory rights order are referred to as “the earlier compulsory rights order” and “the earlier compulsory rights orders” respectively.

(3) Subject to the provisions of paragraphs (4) and (5) of this regulation, the provisions of section thirty-two of the Act shall have effect in relation to the latest compulsory rights order as if—

(a) in paragraphs (a) and (b) of subsection (2) of the said section thirty-two, any reference to a compulsory rights order were a reference to each of the orders referred to in paragraph (1) of this regulation and for the time being having effect ; and

(b) in the said paragraph (b) of that subsection, the reference to the operative date were a reference to the operative date of the order in question.

(4) Any compensation which apart from this paragraph would be payable to any person for any year in respect of the latest compulsory rights order by virtue of the provisions of the said section thirty-two as modified by the provisions of this regulation shall be reduced by the amount of any compensation which accrues due to that person during that year by virtue of the said section thirty-two in respect of the same land but in respect of the earlier compulsory rights order or (as the case may be) any of the earlier compulsory rights orders.

(5) Where, by virtue of paragraph 17 or paragraph 18 of the Sixth Schedule to the Act, no compensation is payable under the said section thirty-two for any year in respect of any such compulsory rights order as is mentioned in paragraph (1) of this regulation, that order shall, for the year in question, be disregarded for the purposes of this regulation.

Dated this fourth day of June, nineteen hundred and fifty-nine.

Mills,  
Minister of Power.

### EXPLANATORY NOTE

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

These regulations modify the provisions of sections 17, 18, 19 and 32 of the Opencast Coal Act, 1958, in their application in certain circumstances.

Regulation 3 modifies the provisions of sections 17 to 19 of the Act (which provide for the payment of annual compensation to the person who would be entitled to occupy land comprised in a compulsory rights order if the order had not been made), and also some related provisions of the Sixth Schedule to the Act, in certain cases where, after a compulsory rights order has become operative over part of a holding, one or more other such orders comprising land in that holding become operative. The object of regulation 3 is, broadly speaking, to provide that the total compensation payable to the person who but for the orders would be entitled to occupy the land in question comprised in those orders shall be calculated as though the whole of that land were comprised in one order instead of in the two or more separate orders. This is done by providing that, in calculating the compensation payable in respect of the second or (where there are more than two orders) the latest of the orders in question—

- (a) the holding in relation to that order is assumed to include the land comprised in the earlier order or orders; and
- (b) depreciation of annual value and loss of profits are both assessed by reference to the combined effect of such of the orders as for the time being are in operation.

In order to avoid a double payment of compensation, the sum so calculated for any year is then reduced by the amount of any similar compensation which has accrued due to the same person for that year in respect of the earlier order or orders.

In the case of land which at the date of the coming into force of these regulations is held under requisition for opencast coal operations or for use as an opencast storage site, regulation 4 applies the provisions of regulation 3 where the circumstances are such that regulation 3 would have applied if the land in question had been comprised in compulsory rights orders instead of being taken under emergency powers.

Regulation 5 modifies the provisions of section 32 (2) of the Act in their application to land the annual value of which is reduced as a result of the operation of more than one compulsory rights order. The regulation provides that in assessing compensation under the second or latest compulsory rights order the effect of the earlier order or orders shall be taken into account; the amount so assessed for any year shall then be reduced by the compensation which accrued due in that year as a result of the operation of the earlier order or orders.