

OPENCAST COAL WORKING

1959 No. 981

The Opencast Coal (Annual Value in Special Cases) Regulations, 1959

<i>Made</i> - - - -	4th June, 1959
<i>Laid before Parliament</i>	10th June, 1959
<i>Coming into Operation</i>	15th June, 1959

The Minister of Power, in exercise of the powers conferred upon him by paragraphs 12 and 13 of the Sixth 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 (Annual Value in Special Cases) 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;

(c) all other expressions to which meanings are assigned by the Act shall, unless the contrary intention appears, have the same respective meanings as in the Act;

(d) any reference to an enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment.

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

Annual compensation payable to occupier

3.—(1) Where compensation is payable by virtue of section seventeen of the Act in respect of a holding which consists of or includes—

(a) land which, immediately before the operative date of the compulsory rights order in question, was used for a purpose for which land would not normally be let from year to year, or

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

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

(b) land in respect of which, immediately before the operative date, there was in force permission granted under Part III of the Town and Country Planning Act, 1947(a), for the land to be used for such a purpose, then, for the purposes of section eighteen of the Act, and for the purposes of paragraph (b) of subsection (1) of section nineteen of the Act, and (where applicable) for the purposes of subsection (3) of the said section nineteen, the annual value of that land for any year shall be determined in accordance with the provisions of this regulation.

(2) For any of the purposes referred to in the preceding paragraph, the annual value for any year of any such land as is mentioned in that paragraph shall be taken to be an amount equal to such percentage of the market value of that land computed in accordance with paragraph (4) of this regulation as is for the time being prescribed by these regulations :

Provided that, where in any year different percentages are prescribed for different parts of that year, the annual value for that year shall be arrived at by—

(a) calculating in respect of each such part a sum equal to the relevant percentage of the market value of the land (computed as aforesaid) multiplied by the fraction of the year which the part in question constitutes, and

(b) by aggregating the sums so calculated.

(3) The percentage referred to in the preceding paragraph shall, for any period beginning with the coming into operation of these regulations, be five per cent.

(4) For the purpose of determining for any year the annual value of any land in accordance with paragraph (2) of this regulation, the market value of the land shall be taken to be the value which, immediately before the beginning of the year in question, a freehold interest in the land, in the appropriate circumstances, would have if it were offered for sale with vacant possession in the open market by a willing seller subject to a perpetual covenant the effect of which was that no operations could be carried out on the land, and no change could be made in the use thereof, except such operations or change of use as, immediately before the beginning of the year in question, it is reasonable to assume would (if the compulsory rights order had not been made) have been carried out or made during that year.

(5) In determining for any year, for the purposes of section eighteen of the Act, or for the purposes of paragraph (b) of subsection (1) of section nineteen of the Act, the annual value of the entirety of a holding, the appropriate circumstances, for the purposes of the last preceding paragraph, shall be taken to be the circumstances which would have existed, immediately before the beginning of that year, if—

(a) the compulsory rights order in question had not been made, and the authorisation referred to in that order had not been granted and no application had been made for such an authorisation; and

(b) the land in question had then been in the state in which it was immediately before the operative date of the order.

(6) In determining for any year, for the purposes of section eighteen of the Act, the annual value of land constituting so much of a holding as is not comprised in the compulsory rights order in question, the appropriate circumstances, for the purposes of paragraph (4) of this regulation, shall

be taken to be the circumstances which would have existed, immediately before the beginning of that year, if (all other relevant factors being taken to be as they actually were at that time) the land in question had been in the state in which it was immediately before the operative date of the order.

(7) In determining for any year, for the purposes of subsection (3) of section nineteen of the Act, the annual value of land constituting the remainder of a holding, the appropriate circumstances, for the purposes of paragraph (4) of this regulation, shall be taken to be the circumstances which would have existed, immediately before the beginning of that year, if—

(a) the compulsory rights order in question had not been made, and the authorisation referred to in that order had not been granted and no application had been made for such an authorisation ;

(b) the land constituting the remainder of the holding had then been in the state in which it was immediately before the operative date of the order ;

(c) all other relevant factors had been as they actually were immediately before the beginning of that year.

(8) In applying the provisions of paragraph (5) of this regulation in any case where—

(a) compensation is payable under section seventeen of the Act in respect of land which, at the commencement of the Act, was land already requisitioned for opencast operations or land requisitioned as an opencast storage site, and

(b) the land in question, immediately before the date of requisition, was used as woodlands, and

(c) in a certificate issued in respect of that land under paragraph 15 of the Tenth Schedule to the Act it is stated that a sum was paid on account of a prospective right to compensation under paragraph (b) of subsection (1) of section two of the Compensation (Defence) Act, 1939(a), and that the said sum was paid wholly or partly in respect of trees which, immediately before the date of requisition, were standing on that land, and

(d) the person who would, apart from the Act or any exercise of emergency powers, be entitled for the time being to occupy the land on which the said trees were standing is the owner of that land,

it shall be assumed that all the said trees in respect of which a sum was paid as aforesaid were felled immediately before the date of requisition.

(9) In this regulation, any reference to any of the provisions of sections seventeen to nineteen of the Act include a reference to that provision as applied by section twenty-nine of the Act.

Concurrent compulsory rights orders

4.—(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 compulsory rights order, or to two or more successive compulsory rights orders, a holding to which either of the said sections 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 this regulation, the provisions of regulation three, in their application to—

(a) any such land as, in relation to the latest compulsory rights order, for the time being forms part of the relevant holding for the purposes of paragraph (1) of this regulation, and

(b) any land which—

(i) immediately before the operative date of the latest compulsory rights order, 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 any of the earlier compulsory rights orders, constituted or formed part of 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,

shall have effect in relation to the latest compulsory rights order as if,—

(A) 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 sub-paragraph (a) of paragraph (5), paragraph (6) and sub-paragraph (a) of paragraph (7) of the said regulation three, 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; and

(B) in sub-paragraph (b) of paragraph (5), paragraph (6) and sub-paragraph (b) of paragraph (7) of the said regulation three, any reference to the operative date of a compulsory rights order were—

(i) as respects any such land as is mentioned in sub-paragraph (a) of this paragraph, a reference to the operative date of the latest compulsory rights order; and

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

(4) 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.

(5) 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

5.—(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 four ;
regulation four 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.

Annual compensation payable in respect of other land

6.—(1) Where any land to which section thirty-two of the Act applies in relation to a compulsory rights order is—

(a) land which, immediately before the operative date of the order, was used for a purpose for which land would not normally be let from year to year, or

(b) land in respect of which, immediately before the operative date, there was in force permission granted under Part III of the Town and Country Planning Act, 1947, for the land to be used for such a purpose, then, for the purposes of subsection (2) of that section, annual value shall be determined in accordance with the provisions of this regulation.

(2) The provisions of paragraphs (2) to (4) of regulation three shall apply for the purposes of the preceding paragraph as they apply for the purposes of that regulation, so however that the appropriate circumstances referred to in the said paragraph (4),—

(a) in determining the annual value of the relevant land for any year, shall be taken to be the actual circumstances existing immediately before the beginning of that year, and

(b) in determining what would have been the annual value of the relevant land in the circumstances specified in paragraphs (a) and (b) of the said subsection (2) of the said section thirty-two, shall be taken to be the circumstances specified in those paragraphs:

Provided that, in any case where the provisions of the said section thirty-two apply to the relevant land subject to modifications or adaptations made by regulations under paragraph 29 of the Sixth Schedule to the Act, the reference in sub-paragraph (b) of this paragraph to paragraphs (a) and (b) of subsection (2) of the said section thirty-two shall be construed as a reference to those paragraphs as modified or adapted as aforesaid.

Application to Scotland

7. In the application of these regulations to Scotland, for any reference to Part III of the Town and Country Planning Act, 1947, there shall be substituted a reference to Part II of the Town and Country Planning (Scotland) Act, 1947(a).

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 prescribe the method of calculating the annual value of land affected by a compulsory rights order which, immediately before the order in question came into operation, was used for a purpose for which land would not normally be let from year to year or which was covered by a permission under Part III of the Town and Country Planning Act, 1947, or Part II of the Town and Country Planning (Scotland) Act, 1947, which allowed its use for such a purpose. The regulations provide that the annual value of such land shall be a percentage of its market value calculated on certain assumptions which vary according to the purposes for which annual value is being determined. The percentage prescribed for any period beginning with the coming into operation of these regulations is five per cent. The regulations include special provisions for cases where requisitioned land was formerly used as woodlands, and for cases where there are concurrent compulsory rights orders or requisitions.