
S T A T U T O R Y I N S T R U M E N T S

1970 No. 457 (S. 29)

LAND COMMISSION

**The Betterment Levy (Minerals) (Scotland) (Amendment)
Regulations 1969**

<i>Made - - - -</i>	<i>19th December 1969</i>
<i>Laid before the House of Commons - -</i>	<i>11th February 1970</i>
<i>Coming into Operation</i>	<i>1st April 1970</i>

In exercise of the powers conferred on me by sections 35, 74 and 98 of the Land Commission Act 1967(a) and by section 40 of the Finance Act 1968(b), and of all other powers enabling me in that behalf, I, being for the purposes of these regulations the appropriate Minister in relation to Scotland, hereby make the following regulations :—

PART I

PRELIMINARY

Citation, extent, commencement and revocation

1.—(1) These regulations, which may be cited as the Betterment Levy (Minerals) (Scotland) (Amendment) Regulations 1969, apply to Scotland and shall come into operation on 1st April 1970.

(2) The Betterment Levy (Minerals) (Scotland) (No. 2) Regulations 1967(c) are hereby revoked, but without prejudice to the validity of any exemption thereunder given before the date of the coming into operation of these regulations.

Interpretation

2.—(1) In these regulations the following expressions have the meanings hereby assigned to them respectively, that is to say :—

“ the Act ” means the Land Commission Act 1967 ;

“ the Act of 1968 ” means the Finance Act 1968 ;

“ certificate of effective rate ” has the meaning assigned to it by regulation 8(1) ;

“ effective rate ” has the meaning assigned to it by regulation 5(1)(c) ;

“ levy demand ” has the meaning assigned to it by regulation 11(1) ;

“ mining lease levy ” has the meaning assigned to it by regulation 9 ;

“ notice of assessment of effective rate ” has the meaning assigned to it by regulation 4(1) ;

“ payment ” means the amount of any payment of rent, royalties, annual or periodical payments in the nature of rents, and any grassum whether payable in money or money's worth or otherwise, which is made under the mining lease in question such amount being ascertained without any

(a) 1967 c. 1.

(b) 1968 c. 44.

(c) S.I. 1967/1061 (1967 II, p. 3148).

deduction which, under the terms of the mining lease or otherwise, the person making the payment is entitled or required to make ;

“person entitled to payment”, in relation to a payment, shall be ascertained in like manner as the person receiving or entitled to income (within the meaning of the Income Tax Act 1952(a)) is ascertained, notwithstanding that the right to the payment may be waived and on the assumption that the payment is income within the meaning of that Act ;

“Lands Tribunal” has the meaning assigned to it by section 100 of the Act ; and

“the principal regulations” means the Betterment Levy (Minerals) (Scotland) Regulations 1967(b).

(2) Any other expression used in these regulations of which there is a definition in the Act or in the principal regulations, or in respect of which there is in the Act or in the principal regulations any provision relating to the construction thereof or of any reference thereto, has the meaning assigned to it by the Act, whether for the purposes of the Act as a whole or for the purposes only of Part III thereof or of any Schedule to the Act or any Part of any such Schedule, or by the principal regulations as the case may be.

(3) Except in so far as the context otherwise requires—

- (a) any reference in these regulations to any provision of the Act shall be construed as a reference to that provision as modified by these regulations and by the principal regulations ;
- (b) any such reference to a section bearing a number is a reference to the section bearing that number in the Act ;
- (c) any such reference to a regulation bearing a number is a reference to the regulation bearing that number in these regulations ; and
- (d) any reference in any regulation to a paragraph bearing a number is a reference to the paragraph bearing that number in that regulation.

(4) Regulation 13 of the principal regulations shall apply for the purposes of these regulations as it applies for the purposes of the principal regulations.

(5) Subject to the foregoing provisions, the Interpretation Act 1889(c) applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

PART II

LEVY IN CASE B

3.—(1) This Part of these regulations applies to :—

- (a) a disposition made on or after 6th April 1967 granting a mining lease ;
- (b) a disposition made on or after the date on which these regulations come into operation :—
 - (i) renewing or extending a mining lease, or
 - (ii) varying the terms and conditions of a mining lease by releasing or modifying an obligation or agreement whereby the development of any land comprised in the mining lease is restricted,

(a) 1952 c. 10.

(b) S.I. 1967/493 (1967 I, p. 1644).

(c) 1889 c. 63.

provided that the disposition granting any such mining lease as is referred to in sub-paragraph (a) or sub-paragraph (b) of this paragraph is one in respect of which the election mentioned in regulation 6(1) is not exercised or is one in respect of which the election mentioned in regulation 6(3) is exercised.

(2) Sections 30 (Levy in Case B) and 37 (Notification in Cases A and B) shall, subject to the provisions of this Part of these regulations, apply to a disposition mentioned in paragraph (1) above as they apply to such a disposition as is mentioned in section 30(1)(a), and sections 27 (General provisions as to betterment levy) and 81 (other offences and penalties) and all other provisions of Part III of the Act and regulation 7(3) of the principal regulations shall apply accordingly.

(3) Section 30 shall apply in relation to any disposition mentioned in paragraph (1) above as if for the definition of "the grantor" contained in subsection (5) there were substituted :—

"the grantor" means the person by whom a disposition to which Part II of the Betterment Levy (Minerals) (Scotland) (Amendment) Regulations 1969 applies is made and "the grantee" means the person to whom such a disposition is so made.

(4) The Betterment Levy (Notification) (Scotland) Regulations 1967(a) shall apply as if the dispositions mentioned in Schedule 1, Part I thereof included a disposition to which regulation 3(1)(b) applies.

(5) The Case F General (Scotland) Regulations 1967(b) shall not apply to any disposition to which this part of these regulations applies.

Notice of assessment of effective rate

4.—(1) Where it appears to the Commission that a disposition to which this Part of these regulations applies has been made and that levy or mining lease levy is or may be chargeable in respect of it, the Commission may serve a notice under this regulation (in these regulations referred to as a "notice of assessment of effective rate").

(2) Where the Commission serve a notice of assessment of effective rate, the notice shall be served on the grantor.

Contents of notice of assessment of effective rate

5.—(1) A notice of assessment of effective rate shall :—

- (a) indicate the disposition to which it relates ;
- (b) specify what (ascertained in accordance with the provisions of the Act and the principal regulations) appears to the Commission to be
 - (i) the amount of the consideration for the disposition,
 - (ii) the base value realised by that disposition,
 - (iii) the amount of any expenditure on improvements and ancillary rights in so far as it has increased the development value realised by that disposition, and
 - (iv) the principal amount of the levy payable in respect of that disposition.

(a) S.I. 1967/326 (1967 I, p. 1122).

(b) S.I. 1967/492 (1967 I, p. 1631).

- (c) specify the proportion (in these regulations referred to as the “effective rate”) which the principal amount of levy specified in the notice pursuant to sub-paragraph (b)(iv) of this paragraph bears to the amount of the consideration for that disposition ;
- (d) where the disposition is one to which regulation 3(1)(a) applies, specify a date (not being earlier than two months from the date of service of the notice) as the date on which, if the notice is deemed to be a notice of assessment of levy in consequence of an election made under regulation 6(1), the levy is charged.

(2) Every notice of assessment of effective rate relating to a disposition to which regulation 3(1)(a) applies shall state that, if it is deemed to be a notice of assessment of levy in consequence of an election made under regulation 6(1), the levy will become chargeable in accordance with the notice (which shall be construed as if no reference were made therein to the effective rate) unless before the end of the period of two months beginning with the date of service of the notice, or such extended period as the Commission may in any particular case allow, the person on whom the notice is served (or, where the notice is served on two or more persons, one of those persons) has served on the Commission a counter-notice under section 46.

Election as to application of Part II

6.—(1) Where, in the case of a disposition to which regulation 3(1)(a) applies made on or after 6th April 1968, the Commission serve upon the grantor in accordance with the provisions of this part of these regulations a notice of assessment of effective rate, the grantor may, before the end of the period of two months beginning with the date upon which that notice results in an operative assessment of effective rate serve on the Commission a notice of election to treat the Commission's notice as a notice of assessment of levy served in accordance with the provisions of the Act and the principal regulations.

(2) Where an election is made under paragraph (1) the notice of assessment of effective rate shall be deemed to be a notice of assessment of levy in which the date on which the levy was charged was the date specified in pursuance of regulation 5(1)(d) and in which no reference was made to the effective rate.

(3) Where, in the case of a disposition to which regulation 3(1)(a) applies made before 6th April 1968, the Commission have served or serve upon the person liable to pay the levy in accordance with section 36, a notice of assessment of levy, that person may, before the end of the period of two months or such extended period as the Commission may in any particular case allow, beginning with the date on which these regulations came into operation or before the end of the period of two months beginning with the date on which the notice results in an operative assessment of levy (whichever is the later), serve on the Commission a notice of election to treat the operative assessment of levy which has occurred or (as the case may be) which may be about to occur, as an operative assessment of effective rate.

Provided that this paragraph shall not apply to that person if, after making the disposition in question, he has disposed of this interest as landlord in the mining lease to which it related.

(4) Where, in consequence of an election made under paragraph (3), an operative assessment of levy is to be treated as an operative assessment of effective rate, the effective rate shall be determined in the manner set out in regulation 5(1)(c) and the operative assessment of effective rate shall have effect as if it had arisen in accordance with a notice of assessment of effective rate in which the effective rate so determined had been specified pursuant to the said regulation 5(1)(c).

(5) Where any such election as is mentioned in paragraph (3) is made, the operative assessment of levy shall be deemed to have occurred, or to be about to occur, as an operative assessment of effective rate in which no date was specified as that on which the levy was charged and in which the effective rate was specified.

(6) If any such person, as is mentioned in paragraph (3), shall have paid levy, before serving on the Commission the notice of election therein mentioned, he may make an application in writing to the Commission within the period mentioned in subsection (1) of section 54 and subsections (2) and (3) of that section shall apply, as if the levy had been paid in circumstances to which that section applies.

(7) Any election made under this regulation shall be irrevocable and shall be binding on all persons from time to time entitled to the interest out of which the mining lease was created or to any part thereof, notwithstanding that they may not have been the person making the election.

Operative assessment of effective rate

7. A notice of assessment of effective rate which has not ceased to have effect (whether on being withdrawn or treated as withdrawn or on being discharged by the Lands Tribunal) shall, unless by reason of an election duly made under regulation 6(1) the notice is deemed to be a notice of assessment of levy, be taken to have resulted in an operative assessment of effective rate on the occurrence of whichever of the following events last occurs, that is to say:—

- (a) the latest time within which a counter-notice under section 46 objecting to the notice can be served expires ;
- (b) the Commission and the objector, in pursuance of section 48(1) make an agreement that the notice shall be treated as confirmed, or as varied in a particular manner ;
- (c) the notice is treated as confirmed in pursuance of section 48(3) ;
- (d) a reference to the Lands Tribunal relating to an objection to the notice is finally determined in accordance with section 49(2).

Certificate of effective rate

8.—(1) As soon as may be after an operative assessment of effective rate has occurred, the Commission may make a certificate (in these regulations called a “certificate of effective rate”), and may serve a copy upon:—

- (a) the grantor,
 - (b) any person known to the Commission to be receiving or entitled to payment under the mining lease in question.
- (2) A certificate of effective rate shall:—
- (a) indicate the disposition to which it relates,
 - (b) specify the effective rate applicable to that disposition.

(3) A certificate of effective rate (together with any amendment made under regulation 16(3) or in consequence of any further notice of assessment of effective rate or of any reduction of the effective rate made under regulation 20(e)) shall be conclusive evidence of any matters required to be stated therein and shall have effect as regards all payments under the disposition whenever made.

(4) When the Commission serve a copy of a certificate of effective rate pursuant to paragraph (1) they may serve a notice stating that they have done so on:—

- (a) the grantee in relation to the disposition to which the certificate applies, and
- (b) any person who has been, is or will become liable to make any payment under that disposition.

Payment of mining lease levy

9. Mining lease levy in respect of all payments shall be charged from time to time at the effective rate stated in the certificate of effective rate (together with any amendment mentioned in regulation 8(3)) which relates to the disposition in question and shall be paid by the grantor, or, if some other person is the person entitled to payment thereof, by that person.

Notification of payments

10.—(1) Any person, who has made any payment under a mining lease before the service upon him of a notice under regulation 8(4) shall within 30 days of such service or such extended period as the Commission may in any particular case allow notify to the Commission all such payments in accordance with the following provisions of this regulation.

(2) Any person, who makes any payment in accordance with the terms of a mining lease after service upon him of a notice under regulation 8(4) shall within 30 days of any such payment (or such extended period as aforesaid) notify to the Commission that payment, in accordance with the following provisions of this regulation.

(3) Any notice served under this regulation shall contain particulars of the following matters:—

- (a) the date of, parties to and land comprised in the mining lease and any such disposition relating thereto as is mentioned in regulation 3(1)(b);
- (b) the date upon which and the person to whom the payment was made and the amount thereof;
- (c) if known to the persons serving the notice, the person entitled to payment of each such payment, if different from the person to whom it was made; and
- (d) the date upon which each such payment was payable.

Provided that if the reference number of the certificate of effective rate in pursuance of which the notice is given is stated in such notice, the particulars in sub-paragraph (a) of this paragraph shall not be required.

Demand for mining lease levy

11.—(1) Subject to the following provisions of this regulation, where (whether in consequence of the service of a notice under regulation 10 or not) it appears to the Commission that a payment has been made and that mining lease levy is chargeable in respect of it, the Commission may serve a notice (in these regulations referred to as a “levy demand”).

(2) A levy demand shall:—

- (a) be served upon the person entitled to such payment ;
- (b) indicate the appropriate certificate of effective rate ;
- (c) specify the payment or payments to which it relates ;
- (d) specify the amount appearing to the Commission to be the principal amount of mining lease levy payable in respect of such payment or payments ; and
- (e) specify a date (not being earlier than two months from the date of service of the levy demand) as the date on which the mining lease levy is charged.

(3) Subsections (3) and (4) of section 44 (notice of assessment of levy) shall apply to levy demands as they apply to notices of assessment of levy but as if for the words “the relevant date” in subsection (3) there were substituted “the date upon which a payment was made”.

Operative assessment of mining lease levy

12. A levy demand shall be taken to have resulted in an operative assessment of mining lease levy immediately before the date specified in such demand as the date on which the mining lease levy is charged, on which date the mining lease levy shall become due and payable to the Commission.

Proceedings for recovery of mining lease levy

13. Any sum payable to the Commission by way of mining lease levy (including any sum payable by way of interest on the mining lease levy) shall be recoverable by the Commission as a debt in any court of competent jurisdiction.

Power for Commission to require further information and documents

14. Without prejudice to the generality thereof, in section 43 (power for the Commission to require further information and documents) subsection (1) shall also apply in relation to any notice served upon any person who appears to the Commission at any time to be or have been:—

- (i) any such person as is referred to in regulation 8(1) ;
- (ii) liable to make any payment under the mining lease in question, or
- (iii) entitled to, or to any interest in or derived out of, the mining lease in question ;

for the purpose of determining whether mining lease levy should be charged, the amount thereof and person liable therefor.

Penalties for failure to notify payment of rent and for false statements

15.—(1) Section 81(1)(a) (penalties for failure to notify chargeable act or event) shall apply to any person who fails to notify a payment which he is required by virtue of regulation 10(1) or regulation 10(2) to notify, in accordance with the provisions of that regulation, and section 82 (proceedings in respect of certain offences) shall apply to any such offence as it applies to any offence under section 81(1).

(2) Section 81(5) shall apply to any person who, in serving any notice or giving any information, which he is required to give under these regulations, knowingly or recklessly makes a statement which is false in a material particular in like manner as it applies to any such person as mentioned in that subsection.

(3) Section 97 (offences by bodies corporate) shall apply to offences under the Act as modified by these regulations as it applies to offences under the Act.

Relief in respect of Estate Duty, Capital Gains Tax and Corporation Tax

16.—(1) Where, for the purpose of assessing the effective rate in connection with a disposition to which this Part of these regulations applies:—

- (a) an allowance under Schedule 7 is or may be required to be made but no certificate relevant to the assessment of the principal amount of levy has been issued under Part III of that Schedule, or
- (b) the appropriate deduction under Schedule 8 is or may be required to be made, but no certificate as to the amount of the deduction has been issued under Part IV of that Schedule,

the Commission may serve a notice of assessment of effective rate which does not take account of that allowance or deduction and subsections (2) to (4) of section 70 shall, in respect of any such certificate as is referred to in sub-paragraphs (a) or (b), apply to a notice of assessment of effective rate as they apply to a notice of assessment of levy and shall be construed accordingly.

(2) Where, in consequence of the issue of a certificate under Part III of Schedule 7 or Part IV of Schedule 8, the principal amount of levy specified in the assessment falls to be reconsidered, with a view to its being either reduced or increased, the provisions of section 71 shall have effect and shall be construed accordingly and the effective rate shall be adjusted.

(3) The Commission shall, following an adjustment to the effective rate made under paragraph (2), amend the certificate of effective rate.

Saving for certain contractual provisions

17. Section 83(2)(c) (avoidance of certain contractual provisions) shall not make it unlawful for any person to incur a liability to indemnify any other person for any mining lease levy in excess of that which would have been payable but for any adjustment to the effective rate made under the provisions of regulation 16 or any further notice of assessment of effective rate which is served after the date of the agreement under which that liability is incurred.

Avoidance of certain contractual provisions

18. Subject to the provisions of regulation 17, section 83 shall have effect in relation to any notice required or authorised to be served under this Part of these regulations and to mining lease levy as it applies in relation to a notice required or authorised to be served under Part III of the Act and to levy respectively.

Death, Bankruptcy, Winding-up and Floating Charges

19.—(1) Schedule 12 (Death, Bankruptcy, Winding-up and Floating Charges) shall have effect in relation to the payment of mining lease levy and, subject to the following provisions of this regulation, shall be construed accordingly.

(2) The following expressions in that Schedule as applied by paragraph (1) above shall have the meanings hereby respectively assigned to them, that is to say:—

“the levy” means “mining lease levy chargeable in respect of the payment”;

“net capital proceeds” means “payment” as defined in regulation 2(1);

“notice of assessment of levy” means “levy demand” as defined in regulation 11 ;

“operative assessment of levy” means “operative assessment of mining lease levy” ;

“person prospectively liable for levy” means “person entitled to payment” as defined in regulation 2(1) ; and

“relevant date” means the date upon which the payment in question was made.

(3) That Schedule as applied by paragraph (1) above shall be construed as if

(a) all references to chargeable acts or events and to chargeable interests were omitted ;

(b) in paragraphs 9, 14 and 18 all the words after “levy” in sub-paragraph (1) of each of the said paragraphs respectively were omitted and there were substituted in paragraph 9 “in their capacity as his personal representatives”, in paragraph 14 “in his capacity as trustee in bankruptcy of the bankrupt” and in paragraph 18 “in his capacity as liquidator of the company”.

(4) Nothing in this regulation shall have effect for the purposes of assessment of effective rate.

Other modifications of the Act and additional provisions

20. For the purposes of assessment of effective rate and (subject to the provisions of regulation 19) of assessment and payment of mining lease levy, the following provisions of this regulation shall have effect, that is to say :—

(a) any provision of the Act or of any Schedules thereto (or of any regulations made in pursuance thereof) referring to or affecting a notice of assessment of levy, a further notice of assessment of levy, an operative assessment of levy, levy, interest on levy or a sum recoverable by the Commission in respect of levy, shall be construed respectively as referring to or affecting a notice of assessment of effective rate, a further notice of assessment of effective rate, an operative assessment of effective rate, mining lease levy, interest thereon or a sum recoverable by the Commission in respect of mining lease levy except in so far as that construction would be inconsistent with the provisions of these regulations ;

(b) where, in the case of a counter-notice served under section 46 (as applied by paragraph (a) of this regulation) objecting to a notice of assessment of effective rate, the grounds thereof consist of or include a claim that any amount or value or the effective rate should be different from that specified in the notice, the counter-notice shall state what is alleged by the person serving the counter-notice to be the proper amount, value or effective rate ;

(c) the provisions of section 47 (reference of objection to Lands Tribunal) shall apply as if the following were substituted for sub-section (3) thereof :—

“(3) The Lands Tribunal shall not vary a notice of assessment of effective rate served under the Betterment Levy (Minerals) (Scotland) (Amendment) Regulations 1969 by increasing the effective rate” ;

(d) the provisions of sub-section (1) of section 51 (interest on levy and payments on account) shall apply with the substitution of a reference to a levy demand, an operative assessment of mining lease levy and mining

lease levy for respectively the reference to a notice of assessment of levy, an operative assessment of levy and levy, and sub-sections (2) and (9) of that section shall apply accordingly but sub-sections (3) to (8) shall not apply ;

- (e) in addition to the relief which may be given on an application under section 54 (relief in respect of mistake of fact) the effective rate may be reduced and in this event the Commission shall amend the certificate of effective rate accordingly ;
- (f) the provisions of paragraph 3 of Schedule 13 shall apply to liability for and recovery of mining lease levy as if the references to the relevant date in sub-paragraph (2) thereof were references to the date upon which the payment, in respect of which the mining lease levy is charged, was made and regulation 13 shall be construed accordingly.

PART III

PROJECTS OF MINERAL DEVELOPMENT AND EXEMPTED MINERAL DEVELOPMENT

Effect of termination of mining lease before completion of project of mineral development

21.—(1) The following provisions of this regulation shall have effect where, following a disposition to which Part II of these regulations applies a project of mineral development consisting of or including the relevant land or part thereof is begun and the mining lease to which that disposition related comes to an end before the project is completed on the relevant land.

(2) Where, after the coming to an end of the mining lease—

- (i) levy falls to be assessed in any case, and
- (ii) the relevant land in that case consists of or includes any part of the land on which the project was not completed when the mining lease came to an end and which was comprised in such mining lease,

then in determining the value of the relevant interest (or in Case B of the chargeable interest) referred to in paragraph 3, 11, 29 or 38(2) of Schedule 4 to the Act in so far as it subsists in that part:—

- (a) notwithstanding anything in paragraph 7 of Schedule 6, no account shall be taken of any planning permission authorising the project of the mineral development to be carried out, and
- (b) the value shall be calculated as if that part of the relevant land were in the state in which it was, and were being used in the manner in which it was being used, immediately before the date on which the carrying out of the project was begun.

(3) For the purpose of this Part of these regulations, a mining lease shall be taken to come to an end on the happening of any of the following events, that is to say:—

- (a) when it is terminated
 - (i) by either party giving notice to the other, or
 - (ii) upon the exercise of any right of repossession or forfeiture, or
 - (iii) upon being abandoned ; or
- (b) when the same person becomes entitled in the same capacity to the whole or part of the mining lease and to the landlord's interest therein or in such part ; or
- (c) upon the occurrence in relation to the mining lease of a disposition to which regulation 3(1)(b) applies.

Case C—limitation of liability for levy in respect of assessable interest in reversion

22. Where, in relation to a project of mineral development to which regulation 21(1) applies, levy is assessed in Case C in respect of any assessable interest (other than any assessable interest in respect of which the developing owner is liable to pay the levy) subsisting in land comprised both in the project and in the mining lease, and the principal amount of levy in respect of any such assessable interest exceeds what would have been that amount if the project had comprised only the development carried out before the mining lease had been taken to come to an end, the Commission shall repay the excess.

Enlargement of exemption for mineral development

23.—(1) Where under section 38 a company which is a mineral undertaker (in this regulation called “the mineral company”) serves notice of intention to carry out a project of material development to which regulation 11 of the principal regulations applies, and that company—

- (a) is the developing owner in relation to the project ; and
- (b) satisfies the provisions of this regulation,

no levy in Case C shall be charged in connection with the project in respect of any assessable interest by virtue of which that company is the developing owner in relation to the project.

(2) The mineral company shall, subject to the provisions of paragraph (4) below, satisfy the provisions of this regulation if, in respect of every part of the land comprised in the project, it fulfils one or other of the following conditions, that is to say :—

- (a) that on the date on which the carrying out of the project is begun it is entitled to an interest fulfilling the conditions specified in section 32(1) and derives title to that interest through one or more dispositions within a group from a company which had acquired that interest, or (as the case may be) the interest in the land comprised in the project out of which that interest was granted, either before 23rd September 1965 or by virtue of a qualifying acquisition, or
- (b) that on the date on which the carrying out of the project is begun, being a member of a group of companies, it is under an enforceable contract to purchase an interest fulfilling the conditions specified in section 32(1) from another member of that group which is, or derives title as mentioned in (a) above from, a company which became entitled to that interest either before 23rd September 1965 or by virtue of a qualifying acquisition, or
- (c) that on the date on which the carrying out of the project is begun, being a member of a group of companies, it is under a contract, fulfilling the conditions specified in section 32(3), to take a mining lease from another member of that group which is, or derives title as mentioned in (a) above from, a company which became entitled to the interest in the land comprised in the project out of which the mining lease is to be granted either before 23rd September 1965 or by virtue of a qualifying acquisition.

(3) In this regulation a disposition of an interest shall be treated as a qualifying acquisition if it was a disposition for valuable consideration (not

made between connected persons) under which the company became entitled to that interest, and either—

- (a) it was made on or after 23rd September 1965 and before the first appointed day, or
 - (b) it was made on or after the first appointed day and constituted a chargeable act or event which was notified in accordance with the provisions as to notification contained in Part III of the Act.
- (4) This regulation shall apply only where the company which acquired the interest referred to in paragraph (2) above was on 22nd September 1965 or on the date on which it acquired that interest by a qualifying acquisition, whichever is the later, a mineral undertaker or a member of a group of companies of which another member was a mineral undertaker.
- (5) The operation of paragraph (1) of this regulation in relation to any such interest as is therein mentioned in the land comprised in the project, or in any part of that land, shall not affect the charging of the levy in respect of any other interest in that land or in any part of that land.
- (6) For the purpose of this regulation any contract or disposition shall be treated as being made between connected persons where in accordance with the provisions of paragraph 5(5) of Schedule 13 the persons between whom the contract or (as the case may be) the disposition was made would be treated as connected with each other.
- (7) In this regulation “company” includes any body corporate, “disposition within a group” means a disposition by a member of a group of companies to another member of the group, and “group of companies” has the same meaning as in paragraph 1 of Schedule 13, but with the references to “company” in that paragraph including any body corporate.

Limitation of exemption in Case C

24. In relation to any project of material development to which regulation 11 of the principal regulations applies begun to be carried out on or after the date on which these regulations come into operation, sub-paragraphs 4(b) and (c) of regulation 11 of the principal regulations shall give no exemption unless the contract :—

- (i) is performed within a period of twelve months beginning with the beginning of the project, or such longer period as the Commission may in their discretion allow, and
- (ii) is performed for the consideration, and in accordance with all the other terms, specified in or determined under the contract as subsisting on the relevant date, save that if, before the date specified in paragraph 20(2) of Schedule 5, the provisions of the contract have been varied, and the Commission are satisfied that it is just and reasonable so to do, the Commission may direct that this regulation shall have effect as if the variation had been made before the relevant date.

William Ross,
One of Her Majesty's
Principal Secretaries of State.

St. Andrew's House,
Edinburgh.
19th December 1969.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations adapt the provisions of Part III of the Land Commission Act 1967 relating to the assessment of betterment levy in Case B to enable levy to be charged from time to time on mining leases by reference to the actual amounts of rents, royalties and other payments which are received or become receivable under the lease in this Note called the "royalty basis". Also, they extend the existing exemption from levy in Case C on the commencement of a project of mineral development to certain additional mineral undertaker companies and contain anti-avoidance provisions.

Part II of the Regulations applies to all dispositions made on or after 6th April 1968 granting a mining lease, renewing or extending a mining lease already assessed on the "royalty basis" or varying the terms or conditions of such a mining lease to facilitate the carrying out of material development (Regulation 3). Levy is to be assessed in Case B on the "royalty basis" unless the levy payer elects that it shall be assessed as a capital sum under Part III of the Act. A levy payer may also elect that the "royalty basis" of assessment shall apply to dispositions granting a mining lease and made on or after 6th April 1967 (the first appointed day under the Act) and before 6th April 1968 (Regulation 6).

The "royalty basis" requires firstly that there shall be ascertained the effective rate applicable to the disposition and secondly that the rate shall be applied to all payments under the lease. Regulation 4 enables the Commission to serve a notice of assessment of effective rate, the contents of which are set out in Regulation 5. The effective rate is the proportion which the principal amount of levy, ascertained under Part III of the Act apart from these Regulations bears to the amount of the consideration given for the disposition (Regulation 5(1)(c)). The levy payer may object to the assessment of effective rate in the same way as he can object to an assessment of levy under Part III of the Act and an operative assessment of effective rate occurs under Regulation 7.

The Commission then make a certificate of effective rate which is conclusive evidence of the rate at which levy will be payable, subject to any alterations which may be necessary on account of adjustments for estate duty, or capital gains or corporation tax, or on account of a further notice of assessment of effective rate. The Commission may notify the grantee (i.e., the mineral undertaker) that they have issued a certificate and this serves as a warning to him that he is required to notify the Commission of any payments he makes under the lease (Regulation 8).

Instead of reference to the Lands Tribunal for Scotland, the arbitration procedure outlined in section 100(2)(g) of the Act will remain effective until sections 1 to 3 of the Lands Tribunal Act 1949 come into force as regards Scotland.

Levy charged at the effective rate is called mining lease levy. The grantor or any other person entitled to receive payments under the lease (which are defined in Regulation 2(1)) is liable to pay the mining lease levy (Regulation 9). The grantee is required to notify the Commission of all payments he makes (Regulation 10) and the Commission then serve a levy demand for payment of mining lease levy at the effective rate on the actual payments which have been made under the lease (Regulation 11). Mining lease levy becomes operative, which means that payment of it may be enforced by the Commission, from a date stated in the levy demand (Regulation 12) and may be recovered as a debt (Regulation 13).

Regulation 14 contains provisions supplemental to section 43 of the Act (power for the Commission to require further information and documents). It specifies the persons who may be required to furnish information and documents and sets out the purposes for which these may be required.

The penalty provisions of the Act relating to failure to notify and for making false statements are also extended to matters connected with the assessment of levy on the "royalty basis" (Regulation 15).

Regulation 16 makes detailed adaptations to the assessment of levy on the "royalty basis" of the provisions of the Act dealing with relief in respect of estate duty, capital gains tax and corporation tax and Regulation 19 makes similar adaptations to provisions of the Act dealing with death, bankruptcy, winding up of companies and floating charges.

Regulations 17 and 18 concern contractual provisions whereby one person may become liable to pay or to make indemnity for levy properly payable by another. Regulation 18 applies section 83 of the Act, which avoids certain contractual provisions, to the assessment of mining lease levy but Regulation 17 enables a person, e.g., the mineral landlord, to contract, on the assignation of his interest in the mining lease, to indemnify another person, e.g. the assignee of that interest, from any increase in liability for mining lease levy which may arise from an adjustment under Regulation 16 or following a further notice of assessment of effective rate.

Regulation 20 contains detailed modifications of the Act and certain additional minor provisions.

Part III of the Regulations contains, in Regulation 21, special provision for the ascertainment of base value on a subsequent chargeable act or event when a mining lease assessed on the "royalty basis" has been terminated before a project begun during the continuance of that lease has been completed. As this anti-avoidance provision could mean that the mineral landlord might have to pay levy again in respect of the same development value, Regulation 22 provides for an appropriate repayment.

Regulation 23 replaces and extends the exemption given to certain mineral undertaker companies by the Betterment Levy (Minerals) (Scotland) (No. 2) Regulations 1967 which are revoked by Regulation 1(2). An exemption in addition to that provided by Regulation 11 of the Betterment Levy (Minerals) (Scotland) Regulations 1967 is made available where on 23rd September, 1965, or on the date of acquisition by a transaction at arm's length, if later, land is held or, as the case may be, acquired by a company which is not a mineral undertaker but which is a member of a group of companies of which another member is a mineral undertaker. The exemption is not lost by any number of subsequent transfers within that group of companies. Similarly the potential exemption available to a company which was a mineral undertaker holding land on 23rd September, 1965, or acquiring it at a later date by a transaction at arm's length is not lost by any number of subsequent transfers within a group of companies.

Regulation 24 provides that a mineral undertaker who is developing owner as being under contract to purchase the assessable interest shall lose his exemption in Case C under Regulation 11 of the Betterment Levy (Minerals) (Scotland) Regulations 1967 unless the contract is completed both within 12 months of the start of the project or such longer period as may be allowed and, also, in accordance with the original terms of the contract or, if it has been varied, with such variations as the Commission are satisfied that it is just and reasonable to direct shall be treated as if they had been made before the project was started.

These regulations apply to Scotland.

SI 1970/ 457
ISBN 0-11-000457-4

