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STATUTORY INSTRUMENTS

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**1997 No. 1111**

**TOWN AND COUNTRY PLANNING,  
ENGLAND AND WALES**

**The Town and Country Planning (Compensation  
for Restrictions on Mineral Working and  
Mineral Waste Depositing) Regulations 1997**

*Made* - - - - 24th March 1997

*Coming into force* - - 25th March 1997

The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred by section 116 of the Town and Country Planning Act 1990(1), and of all other powers enabling them in that behalf, having undertaken the consultations required by section 116(4) of that Act, and with the consent of the Treasury, hereby make the following Regulations, a draft of which has been laid before, and has been approved by resolution of, both Houses of Parliament:

**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) Regulations 1997 and shall come into force on the day after the day on which they are made.

**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;

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(1) 1990 c. 8. Section 116 was substituted by the Planning and Compensation Act 1991 (c. 34), Schedule 1, paragraph 9, subject to the savings in paragraph 16(2) of that Schedule. See the definition of “prescribed” in section 336(1) of the Town and Country Planning Act 1990.

- (c) the height of any deposit of mineral waste;
  - (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 Act 1990.

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

**3.—**(1) Where an order is made under section 97 (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 five 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 97 relates, within the period of five years immediately preceding the day on which that order was made,—
  - (i) the mineral planning authority have not made any other modification order, or any discontinuance or prohibition order, and
  - (ii) no application under paragraph 2 of Schedule 2 to the Planning and Compensation Act 1991 or under Schedule 13 or 14 to the Environment Act 1995<sup>(2)</sup> 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)<sup>(3)</sup> of Schedule 9, 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

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(2) 1995 c. 25.

(3) Paragraph 1 of Schedule 9 was amended by the Planning and Compensation Act 1991, Schedule 1, paragraph 15.

- (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 five 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 9 relates, and within the period of five years immediately preceding the day on which that order was made,—
  - (i) the mineral planning authority have not made any other discontinuance order, or any modification or prohibition order, and
  - (ii) no application under paragraph 2 of Schedule 2 to the Planning and Compensation Act 1991 or under Schedule 13 or 14 to the Environment Act 1995 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)(4) of Schedule 9 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 115 shall apply(5) 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 115 (as so modified) and section 117 and then abated by the deduction of the appropriate portion of the sum of £7,800.
- (2) The conditions specified in this paragraph are—
- (a) that the development was begun not less than five years before the day on which the order was made; and
  - (b) that the mineral 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 1 relates within the period of five 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 115, of the following subsections—
- “(2) If on a claim made to the mineral 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,

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(4) Paragraph 3 of Schedule 9 was amended by the Planning and Compensation Act 1991, Schedule 1, paragraph 15.

(5) See section 115(5) of the Town and Country Planning Act 1990 as to the application of section 115 to orders made under paragraph 3 of Schedule 9.

the local planning authority shall pay to that person compensation in respect of the 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 preparatory matters, 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—

- (a) of the value of any mineral which cannot be won or worked,
- (b) of the value of any mineral waste which cannot be deposited,
- (c) of the value of any void which cannot be filled, or
- (d) of the cost of complying with any restoration or aftercare 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)(6) or paragraph 6 (supplementary suspension orders) of Schedule 9—

- (a) section 115 shall apply(7) 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 that section (as so modified) and section 117 and then abated by the deduction of the appropriate portion of the sum of £7,800.

(2) The modification referred to in paragraph (1) is the substitution, for subsections (2) and (3) of section 115, of the following subsections—

“(2) If on a claim made to the mineral 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,

the local planning authority shall pay to that person compensation in respect of the 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 preparatory matters, 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 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.

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(6) Paragraph 5 of Schedule 9 was amended by the Planning and Compensation Act 1991, Schedule 1, paragraph 15.

(7) See section 115(5) of the Town and Country Planning Act 1990 as to the application of section 115 to orders made under paragraph 5 of Schedule 9.

(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—

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

in consequence of that order.”.

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

7.—(1) Where the mineral 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 £7,800.

(2) Where the mineral 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 £7,800 the same proportion as the value assessed under sub-paragraph (a) bears to the value assessed under sub-paragraph (b).

### **Revocation of Regulations**

8.—(1) The Town and Country Planning (Compensation for Restrictions on Mineral Working) Regulations 1985<sup>(8)</sup> and the Town and Country Planning (Compensation for Restrictions on Mineral Working) (Amendment) Regulations 1990<sup>(9)</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>(10)</sup> as relates to the Town and Country Planning (Compensation for Restrictions on Mineral Working) Regulations 1985, is hereby revoked.

Signed by authority of the Secretary of State for the Environment

20th March 1997

*Paul Beresford*  
Parliamentary Under Secretary of State,  
Department of the Environment

20th March 1997

*William Hague*  
Secretary of State for Wales

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<sup>(8)</sup> S.I.1985/698.

<sup>(9)</sup> S.I. 1990/803.

<sup>(10)</sup> S.I. 1994/2567.

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**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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We consent,

24th March 1997

*Bowen Wells*  
*Gyles Brandreth*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## EXPLANATORY NOTE

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

These Regulations revoke and replace, with amendments, the Town and Country Planning (Compensation for Restrictions on Mineral Working) Regulations 1985. 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 115 of the Town and Country Planning Act 1990 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) Regulations 1985 and later amending Regulations, and so much of article 2 of, and the Schedule to, the Coal Industry Act 1994 (Consequential Modifications of Subordinate Legislation) Order 1994 as relates to the Town and Country Planning (Compensation for Restrictions on Mineral Working) Regulations 1985.