



# Opencast Coal Act 1958

1958 CHAPTER 69 6 and 7 Eliz 2

## PART I **E+W+S**

AUTHORISATION OF, AND FACILITIES FOR, OPENCAST WORKING OF COAL

### 1 Authorisation of opencast working of coal. **E+W+S**

.....<sup>F1</sup>

#### Textual Amendments

**F1** S. 1 repealed by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(1)(4), **Sch. 12 Pt. II**

### 2 Planning permission for authorised operations. **E+W+S**

.....<sup>F2</sup>

#### Textual Amendments

**F2** S. 2 repealed by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(1)(4), **Sch. 12 Pt. II**

### <sup>F3</sup> ..... **E+W+S**

#### Textual Amendments

**F3** S. 3 repealed (31.10.1994) by [1994 c. 21, s. 67, Sch. 11 Pt. II](#) (with s. 4(7)); S.I. 1994/2553, **art. 2**

*Status: Point in time view as at 28/11/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958. (See end of Document for details)*

#### 4 Compulsory rights orders. **E+W+S**

[<sup>F4</sup>(1) For the purpose of facilitating the working of coal by opencast operations, [<sup>F5</sup>the Coal Authority], by means of an order (in this Act referred to as a “compulsory rights order”) made by [<sup>F5</sup>the Coal Authority] and confirmed by the Secretary of State, [<sup>F6</sup>confer], in accordance with the following provisions of this Part of this Act, temporary rights of occupation and use of [<sup>F7</sup>the whole, or such part as (subject to the confirmation of the Secretary of State) the Coal Authority thinks fit, of any land on which the applicant for the order desires][<sup>F8</sup> to work coal by such operations or to carry out operations incidental to such working.]

[ The Coal Authority shall not make a compulsory rights order except on the application <sup>F9</sup>(1A) of a person who satisfies that Authority—

- (a) that he is either a licensed operator within the meaning of the Coal Industry Act 1994 or a person whose application to that Authority for a licence under Part II of that Act is pending; and
- (b) that he has served notice in the prescribed form of the application for the order on every person who is known to him to be a person who would, in relation to the order applied for, be directly concerned.

(1B) Subject to the provisions of section 5 of this Act, the rights conferred by an order made on such an application as is mentioned in subsection (1A) of this section shall be conferred on the applicant and his successors so as to be exercisable for the purposes only of—

- (a) operations which the applicant or, as the case may be, any such successor is authorised to carry out by virtue of being a licensed operator within the meaning of the Coal Industry Act 1994; and
- (b) operations which are incidental to operations falling within paragraph (a) above (including operations carried out at times when the authorisation for the operations falling within that paragraph is not in force).]

(2) Subject to the provisions of Part III of this Act as to the variation of orders, the period for which a compulsory rights order has effect shall be a period—

- (a) beginning with the date on which the order becomes operative (in this Act referred to as “the operative date”), and
- (b) of such duration, not exceeding twenty years, as may be specified in the order.]

[<sup>F10</sup>(4A) Parts II, III and IV of the Acquisition of Land Act 1981 shall apply to compulsory rights orders, subject to section 29 of that Act]

[<sup>F11</sup>(5) The provisions of Parts I, III and IV of the First Schedule to the [<sup>F12</sup>Scottish]Acquisition of Land Act (which relate to the procedure for authorising compulsory purchases by local authorities) shall apply to compulsory rights orders, subject to the adaptations, modifications and exceptions set out in Part I of the Second Schedule to this Act.]

[<sup>F13</sup>(6) A compulsory rights order may only be made if opencast planning permission has been applied for or granted in respect of the land comprised in the order or is deemed to have been granted in respect of it.

(6A) Where a compulsory rights order is made before opencast planning permission has been granted in respect of the land comprised in the order, the Secretary of State shall not confirm it unless such permission in respect of that land has first been granted.

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- (6B) Where a compulsory rights order is made in a case where opencast planning permission has been granted or is deemed to have been granted, the order, as from the time when it is made, shall include a reference to the permission.
- (6C) If opencast planning permission is granted in respect of land comprised in a compulsory rights order and the Secretary of State subsequently confirms the order, the order as confirmed shall include a reference to the permission.
- (6D) No compulsory rights order, as confirmed, shall extend to any land which is not comprised in the permission or deemed permission referred to in the order.]
- (7) The Lands Clauses Acts [<sup>F14</sup>and the Compulsory Purchase Act 1965] shall not apply to the compulsory acquisition of rights by virtue of a compulsory rights order, or to the taking or retention of possession of land in the exercise of such rights.

<sup>F15</sup>(8) .....

#### Textual Amendments

- F4** S. 4(1)(2) substituted for s. 4(1)-(4) by Coal Industry Act 1975 (c. 56), s. 4(1)
- F5** Words in s. 4(1) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 2(1)**; S.I. 1994/2553, **art. 2**
- F6** Word in s. 4(1) substituted (31.10.1994) by 1994 c. 21, s. 52(2), **Sch. 8 para. 2(1)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F7** Words in s. 4(1) substituted (31.10.1994) by 1994 c. 21, s. 52(2), **Sch. 8 para. 2(1)(c)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F8** Words substituted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 2(1)**
- F9** S. 4(1A)(1B) inserted (31.10.1994) by 1994 c. 21, s. 52(2), **Sch. 8 para. 2(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F10** S. 4(4A) inserted by Acquisition of Land Act 1981 (c. 67 SIF 28:1), Sch. 4 para. 11(2)
- F11** S. 4(5) repealed (E.W.) by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34(3), **Sch. 6 Pt. I**
- F12** Word in s. 4(5) inserted (31.10.1994) by 1994 c. 21, s. 52(2), **Sch. 8 para. 2(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F13** S. 4(6) substituted by s. 4(6)(6A)–(6D) by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 2(2)**
- F14** Words inserted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34(1), **Sch. 4 para. 11(3)**
- F15** S. 4(8) repealed (31.10.1994) by 1994 c. 21, ss. 52(2), 67, Sch. 8 para. 2(3), **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**

## 5 Effect of opencast site orders. **E+W+S**

- (1) Subject to the following provisions of this Part of this Act, the effect of [<sup>F16</sup>a compulsory rights order] shall be in accordance with the provisions of this section.
- (2) [<sup>F17</sup>The person on whose application the order has been made] shall publish, serve and affix notices specifying the date on which the rights conferred by the order are to become exercisable (in this Act referred to as “the date of entry”) being a date—
- (a) not less than fifty-six days after the first publication (in accordance with the provisions mentioned in the next following subsection) of a notice specifying that date, and
- (b) not more than six months after the operative date.
- (3) The provisions of Part II of the Second Schedule to this Act shall have effect as to the publication, service and affixing of notices under the last preceding subsection.

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- (4) As from the date of entry and during the period for which, on and after that date, the order has effect (in this Act referred to as “the period of occupation”), the order shall confer upon [<sup>F18</sup>the person entitled to the rights conferred by the order], and upon persons authorised by [<sup>F19</sup>that person], the like rights to occupy the land comprised in the order, and to exclude other persons therefrom, as if [<sup>F19</sup>that person] had acquired a freehold interest in the entirety of that land with vacant possession and free from incumbrances of any description.
- (5) In addition to the rights mentioned in the last preceding subsection [<sup>F16</sup>a compulsory rights order] shall confer upon [<sup>F18</sup>the person entitled to the rights conferred by the order], and upon persons authorised by [<sup>F19</sup>that person], the right during the period of occupation, as against all persons directly concerned, to carry out, on or in relation to any of the land comprised in the order, all such operations as may appear to [<sup>F19</sup>that person], in relation to the [<sup>F20</sup>opencast planning permission] referred to in the order, to be requisite for, or incidental to, the [<sup>F21</sup>permitted activities].
- [<sup>F22</sup>(5A) Subject to subsection (5B) of this section, the rights conferred by a compulsory rights order—
- (a) shall be exercisable by a successor of the original applicant for the order only where the Coal Authority has transferred to that successor the entitlement to exercise the rights conferred by the order; but
  - (b) where the Coal Authority has so transferred them, shall not, at any time after the transfer, be exercisable by any person in his capacity as the original applicant or as a previous successor of that applicant;
- and references in this Act to the person entitled to the rights conferred by a compulsory rights order are references to the person who is for the time being the person by whom those rights are exercisable in accordance with section 4(1B) of this Act and this section.
- (5B) Where at any time after an application for a compulsory rights order has been made and before any order made on that application is confirmed—
- (a) any person becomes the successor of the original applicant for the order and notifies that fact—
    - (i) if no order has been made on the application, to the Coal Authority, or
    - (ii) if such an order has been made, to the Secretary of State,
 and
  - (b) the Authority or, as the case may be, the Secretary of State decides to proceed in relation to the application or order in accordance with this subsection,
- the provisions of this Act and of any enactment applied by this Act shall have effect as if the application had been made by that person, as if he had the same right to make it as the original applicant and as if anything done for the purposes of the application by or in relation to the original applicant or a previous successor had been done by or in relation to that person.
- (5C) The Coal Authority or, as the case may be, the Secretary of State—
- (a) shall make a transfer under subsection (5A) of this section by giving written notice of the transfer to each of the persons who, in consequence of the transfer, is to cease to be, or is to become, entitled to the rights conferred by the order;

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- (b) may by notice to the successor make any modifications of a compulsory rights order which are necessary in consequence only of the making of a transfer under subsection (5A) of this section; and
  - (c) may make a decision to proceed in accordance with subsection (5B) of this section subject to compliance by the successor giving the notification with such conditions as that Authority or the Secretary of State thinks fit.]
- (6) Subject to the following provisions of this Act, in this Act “persons directly concerned”, in relation to [<sup>F16</sup>a compulsory rights order], means persons who for the time being have any interest in any of the land comprised in the order, or have (apart from the order) a right to occupy any of that land, or are entitled to any right restrictive of the use of any of that land.

#### Textual Amendments

- F16** Words substituted by [Coal Industry Act 1975 \(c. 56\)](#), [Sch. 3 para. 2](#)
- F17** Words in [s. 5\(2\)](#) substituted (31.10.1994) by [1994 c. 21, s. 52](#), [Sch. 8 para. 3\(1\)](#); S.I. 1994/2553. art. 2
- F18** Words in [s. 5\(4\)\(5\)](#) substituted (31.10.1994) by [1994 c. 21, s. 52](#), [Sch. 8 para. 3\(2\)\(a\)](#); S.I. 1994/2553. art. 2
- F19** Words in [s. 5\(4\)\(5\)](#) substituted (31.10.1994) by [1994 c. 21, s. 52](#), [Sch. 8 para. 3\(2\)\(b\)](#); S.I. 1994/2553. art. 2
- F20** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), [s. 39\(3\)](#), [Sch. 8 para. 3\(a\)](#)
- F21** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), [s. 39\(3\)](#), [Sch. 8 para. 3\(b\)](#)
- F22** [S. 5\(5A\)-\(5C\)](#) inserted (31.10.1994) by [1994 c. 21, s. 52\(2\)](#), [Sch 8 para. 3\(3\)](#) (with [s. 40\(7\)](#)); S.I. 1994/2553, [art. 2](#)

6 ..... <sup>F23</sup> **E+W+S**

#### Textual Amendments

- F23** [S. 6](#) repealed by [Coal Industry Act 1975 \(c. 56\)](#), [s. 5\(3\)](#), [Sch. 5](#)

7 **General limitations on effect of compulsory rights orders.** **E+W+S**

- (1) The rights conferred by a compulsory rights order in accordance with subsection (5) of section five of this Act . . . <sup>F24</sup> shall not affect any of the rights mentioned in subsection (2) or subsection (3) of this section.
- (2) Subject to the next following subsection, the said rights are:—
  - (a) any right of support for any land not comprised in the order, or for any building or structure on any such land, or any right of action of any person in so far as it arises from the withdrawal of support to which he is entitled for any such land, building or structure;
  - (b) any rights of any statutory water undertakers under any public general Act [<sup>F25</sup>relating to the supply of water], or under any byelaw made by virtue of such an Act, or under any local enactment, in so far as (apart from this Act) the Act, byelaw or enactment restricts, or enables the undertakers to restrict, the working of coal or other minerals, or the doing of any other act, on land comprised in the order;

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- (c) any rights of any statutory undertakers, [<sup>F26</sup>or of the body carrying on a sewerage undertaking or sewage disposal undertaking, or of any [<sup>F27</sup>water authority] or other drainage authority][<sup>F26</sup>or of any internal drainage board], in respect of any apparatus on, under or over land comprised in the order, being apparatus in respect of which, at any time since the granting of the [<sup>F28</sup>opencast planning permission] referred to in the order, [<sup>F29</sup>the person entitled to the rights conferred by the compulsory rights order has] been entitled to serve a notice [<sup>F30</sup>under the provisions of the Act of 1990, applied] by section thirteen of this Act.
- (3) . . . <sup>F24</sup> the said rights also include the following:—
- (a) the rights conferred by any agreement [<sup>F31</sup>to which the person entitled to the rights conferred by the compulsory rights order is or is deemed to be a party and which is] for the time being in force whereby (apart from this Act) [<sup>F31</sup>that person is] required to leave any coal unworked;
- (b) any rights of the body carrying on a railway, canal, inland navigation, harbour or dock undertaking (not being rights falling within the last preceding subsection) under any enactment (whether contained in a public general Act or in any other Act) in so far as (apart from this Act) the enactment would operate so as—
- (i) to restrict, or enable that body to restrict, the working of coal or other minerals on land comprised in the order which is adjacent to a railway, waterway, harbour, dock or other works situated on land not comprised in the order, being works vested in that body or works which they have any right or duty to maintain, or
- (ii) to require, or enable that body to require, coal or other minerals on land comprised in the order to be left unworked for the protection or support of such a railway, waterway, harbour, dock or other works.
- (4) Without prejudice to the preceding provisions of this section, the rights conferred by a compulsory rights order as mentioned in subsection (1) of this section—
- (a) shall not affect any right of action of a person who is not a person directly concerned, and
- (b) in the case of a person directly concerned, shall not affect any right of action of his in so far as it arises otherwise than by virtue of his being entitled to an interest in or right over land, or in so far as it arises by virtue of his being entitled to an interest in, or right over, land not comprised in the order.
- (5) Nothing in the preceding provisions of this section shall affect the operation of subsection (4) of section five of this Act, . . . <sup>F24</sup>
- (6) Without prejudice to the preceding provisions of this section, nothing in section five . . . <sup>F24</sup> shall be construed as authorising any interference with the exercise of a public right of way.
- (7) Notwithstanding anything in subsection (6) of section five of this Act, . . . <sup>F24</sup> a person shall not be taken to be a person directly concerned in relation to a compulsory rights order by reason only that he is entitled to any such right as is mentioned in subsection (2) or subsection (3) of this section.
- <sup>F32</sup>(8) In this section—
- “ statutory water undertakers ” means—

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- (i) in England and Wales, the [<sup>F33</sup>Environment Agency], a water undertaker or a sewerage undertaker; and
  - (ii) in Scotland, [<sup>F34</sup>Scottish Water]  
“local enactment” —
  - (i) in England and Wales, means any local statutory provision within the meaning of the Water Industry Act 1991; and
  - (ii) in Scotland, has the same meaning as in the Water (Scotland) Act 1980;
- and, in the application of this section to Scotland, for any reference to the Act of 1990 there shall be substituted a reference to [<sup>F35</sup>the Town and Country Planning (Scotland) Act 1997].]

#### Textual Amendments

- F24** Words repealed by [Coal Industry Act 1975 \(c. 56\)](#), s. 5(3), **Sch. 5**
- F25** Words repealed (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190(3), **Sch. 27 Part I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)
- F26** Words substituted (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190(1), **Sch. 25 para. 26(1)(a)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F27** Words substituted by virtue of [Water Act 1973 \(c. 37\)](#), **s. 9**
- F28** Words in s. 7(2)(c) substituted (31.10.1994) by [1994 c. 21](#), s. 52(2), **Sch. 8 para. 4(a)(i)** (with s. 40(7)); [S.I. 1994/2553](#), **art. 2**
- F29** Words in s. 7(2)(c) substituted (31.10.1994) by [1994 c. 21](#), s. 52, **Sch. 8 para. 4(a)(ii)** (with s. 40(7)); [S.I. 1994/2553](#), **art. 2**
- F30** Words in s. 7(2)(c) substituted (31.10.1994) by [1994 c. 21](#), **s. 52(2)**, Sch. 8 para. 4(a)(iii) (with s. 40(7)); [S.I. 1994/2553](#), **art. 2**
- F31** Words in s. 7(3)(a) substituted (31.10.1994) by [1994 c. 21](#), s. 52, **Sch. 8 para. 4(b)(i)(ii)** (with s. 40(7)); [S.I. 1994/2553](#), **art. 2**
- F32** S. 7(8) substituted (31.10.1994) for s. 7(8)(9) by [1994 c. 21](#), s. 52(2), **Sch. 8 para. 4(c)** (with s. 40(7)); [S.I. 1994/2553](#), **art. 2**
- F33** Words in para. (i) of the definition of "statutory water undertakers" substituted (1.4.1996) by [1995 c. 25](#), s. 120(1), **Sch. 22 para. 5(1)** (with ss. 115, 117); [S.I. 1996/186](#), **art. 2**
- F34** Words in s. 7(8) substituted (14.7.2004) by [Water Industry \(Scotland\) Act 2002 \(Consequential Modifications\) Order 2004 \(S.I. 2004/1822\)](#), art. 1(1), **Sch. para. 1**
- F35** Words in s. 7(8) substituted (27.5.1997) by [1997 c. 11](#), ss. 4, 6(2), **Sch. 2 para. 5(1)**

## 8 Limited compulsory rights orders. **U.K.**

- (1) A compulsory rights order . . . <sup>F36</sup> may provide that its operation shall be limited so as to extend only to such one or more interests or rights (being interests or rights of a description mentioned in the next following subsection) as may be specified in the order.
- (2) Any interest or right specified in an order made in accordance with the preceding subsection shall be of one of the following descriptions, that is to say,—
  - (a) an easement or similar right in respect of the whole or part of the land comprised in the order;
  - (b) a right restrictive of the use of the whole or part of that land;
  - (c) the interest or rights created or conferred by a mining lease or order conferring working rights in respect of minerals in or under that land or part thereof.



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- (3) In relation to a compulsory rights order which provides that its operation shall be limited as mentioned in subsection (1) of this section,—
  - (a) “persons directly concerned” in this Act means persons who for the time being are entitled to any interest or right specified in the order, and does not include any other person;
  - (b) subsection (4) of section five of this Act, . . . <sup>F36</sup> shall have effect as if for the words from “confer upon [<sup>F37</sup>the person entitled to the rights conferred by the order]” to the words “exclude other persons therefrom” there were substituted the words “as against all persons directly concerned, confer upon [<sup>F37</sup>the person entitled to the rights conferred by the order], and upon persons authorised by [<sup>F37</sup>that person], the like right to exclude persons from the land comprised in the order”;
  - (c) paragraph (b) of subsection (4) of the last preceding section shall have effect as if for the words “interest in, or right over, land not comprised in the order” there were substituted the words “interest or right not specified in the order”.

**Textual Amendments**

- F36** Words repealed by [Coal Industry Act 1975 \(c. 56\), s. 5\(3\), Sch. 5](#)
- F37** Words in [s. 8\(3\)\(b\)](#) substituted (31.10.1994) by [1994 c. 21, s. 52, Sch. 8 para. 5\(a\)](#) (with [s. 40\(7\)](#)); [S.I. 1994/2553, art. 2](#)

**9 Property exempt from inclusion in compulsory rights orders. E+W+S**

- (1) A compulsory rights order shall not comprise any part of a building which, at the time when the order is made, is a building whereof the whole or any part is occupied as a dwelling-house, or any part of the land adjacent to such a building which, at that time, is occupied together with the whole or part of that building and either—
  - (a) is within fifty yards from a part of that building, or
  - (b) not being land falling within the preceding paragraph, and not being agricultural land, forms part of a garden, yard, court or forecourt belonging to that building.
- (2) . . . . . <sup>F38</sup>
- (3) No compulsory rights order shall be made so as to comprise any land which is or has been comprised in a previous compulsory rights order as confirmed by the Minister, other than a previous order which, as so confirmed, provided that its operation should be limited as mentioned in subsection (1) of the last preceding section.
- (4) [<sup>F39</sup>A compulsory rights order], as confirmed by the Minister, shall not comprise any land of which possession—
  - (a) has previously been taken in the exercise of emergency powers, and
  - (b) has at any time (whether before or after the commencement of this Act) been retained in the exercise of those powers for the purpose of working coal on that land, or on land contiguous therewith, by opencast operations, and
  - (c) has before the confirmation of the order ceased to be retained in the exercise of those powers,

unless, at the time of confirming the order, the Minister is satisfied that there are special circumstances existing at that time, or special circumstances relating to the land in



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question, which justify its inclusion in [F39a compulsory rights order] notwithstanding that possession thereof has previously been so taken and retained.

**Textual Amendments**

**F38** S. 9(2) repealed (with saving) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(1)(4), [Sch. 12 Pt. II](#)

**F39** Words substituted by [Coal Industry Act 1975 \(c. 56\)](#), [Sch. 3 para. 6](#)

**10 Provisions as to minerals other than coal, and as to timber, crops etc.** **E+W+S**

- (1) A compulsory rights order shall confer upon [F40the person entitled to the rights conferred by the order], and upon persons authorised by [F40that person], the right to get and carry away any minerals worked in the exercise of rights conferred by the order, in so far as any such minerals are not already the property of [F40that person]; and any minerals got and carried away by virtue of this subsection, and removed from the land comprised in the order, shall become the property of [F40the person entitled to the rights conferred by the order] .
- (2) Where, in the exercise of rights conferred by a compulsory rights order, any trees are felled, or any buildings, fences, sheds or other fixtures or structures are dismantled, the order shall confer upon [F40the person entitled to the rights conferred by the order], and upon persons authorised by [F40that person], the right to carry away and dispose of the timber, or, as the case may be, of any resulting materials; and any timber or materials carried away by virtue of this subsection, and removed from the land comprised in the order, shall become the property of [F40the person entitled to the rights conferred by the order].
- (3) Where on the date of entry any crops are growing on any of the land comprised in a compulsory rights order, or any crops are grown on any of that land during the period of occupation, the order shall confer upon the [F40the person entitled to the rights conferred by the order], and upon persons authorised by [F40that person], the right during the period of occupation to harvest or lift those crops and to remove or otherwise dispose of them; and any crops harvested or lifted by virtue of this subsection shall become the property of the [F40the person entitled to the rights conferred by the order].

**Textual Amendments**

**F40** Words in s. 10(1)-(3) substituted (31.10.1994) by [1994 c. 21, s. 52](#), SCh. 8 para. 6

**11 Registration of compulsory rights orders.** **E+W+S**

- [F41(1) A compulsory rights order shall be a local land charge.]
- (2) .....<sup>F42</sup>
  - (3) Any rules made [F43under section 14 of the <sup>M1</sup>Local Land Charges Act 1975 for the purposes of this section] shall include provision—
    - (a) for cancelling the registration of a compulsory rights order if the Minister decides not to confirm the order, or if the order is revoked, or at the end of the period for which it has effect, and

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- (b) for varying the registration of such an order if the order as confirmed by the Minister differs from the order as made, or if the order is subsequently varied.
- (4) In the application of this section to Scotland, the following subsection shall be substituted for subsections (1) to (3) of this section:—

“(1) As soon as may be after a compulsory rights order has been confirmed it shall be recorded by [<sup>F44</sup>the person on whose application it was made] in the appropriate register of sasines; and any order revoking or varying such an order shall be so recorded; and at the end of the period for which such an order has effect [<sup>F45</sup>the person entitled immediately before it ceases to have effect to the rights conferred by the order] shall so record notice that the order has ceased to have effect.”

#### Textual Amendments

- F41** S. 11(1) substituted by [Local Land Charges Act 1975 \(c. 76\)](#), [Sch. 1](#)
- F42** S. 11(2) repealed by [Local Land Charges Act 1975 \(c. 76\)](#), [Schs. 1, 2](#)
- F43** Words substituted by [Local Land Charges Act 1975 \(c. 76\)](#), [Sch. 1](#)
- F44** Words in s. 11(4) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 7\(a\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F45** Words in s. 11(4) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 7\(b\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)

#### Marginal Citations

- M1** 1975 c. 76.

## 12 Removal and disposal of chattels from land comprised in compulsory rights order. **E+W+S**

- (1) At any time on or after the operative date of a compulsory rights order, [<sup>F46</sup>the person entitled to the rights conferred by the order] may serve notice on the person who is for the time being entitled to possession of any chattel which is on, under or over any of the land comprised in the order, requiring him to remove it from that land within such period, not being less than fifty-six days from the date of service of the notice, as may be specified in the notice:

Provided that this subsection shall not apply to any apparatus belonging to statutory undertakers, [<sup>F47</sup>or to the body carrying on a sewerage undertaking or sewage disposal undertaking, and used by those undertakers or that body for the purposes of their undertaking, or belonging to a [<sup>F48</sup>water authority] or other drainage authority and used by that authority][<sup>F47</sup>and used by those undertakers for the purposes of their undertaking or belonging to an internal drainage board and used by that board]for the purposes of their functions.

- (2) If the person on whom a notice is served under the preceding subsection fails to comply with the notice within the period specified therein, [<sup>F49</sup>the person who served the notice] may cause the chattel to which the notice relates to be removed from the land comprised in the order, or to be removed from one part of that land to another part thereof, and shall not be liable for any loss or damage attributable to the removal except any such loss or damage which is shown to be due to failure to exercise reasonable care.

*Status: Point in time view as at 28/11/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958. (See end of Document for details)*

- [<sup>F50</sup>(2A) Where the person who has served a notice under subsection (1) of this section ceases, without exercising any power under subsection (2) of this section, to be the person entitled to the rights under the compulsory rights order, that notice shall cease to have effect for the purposes of this section.]
- (3) Where [<sup>F51</sup>any person causes] a chattel to be removed under [<sup>F52</sup>subsection (2) of this section], [<sup>F51</sup>that person] may dispose of the chattel, by sale, destruction or otherwise, as [<sup>F51</sup>that person] may think fit, unless before the end of the period of three months beginning with the date of the removal the person for the time being entitled to possession of the chattel claims it from [<sup>F51</sup>the person who caused the chattel to be removed] and takes all reasonable steps for accepting custody of it.
- (4) Where a chattel is sold in the exercise of the powers conferred by the last preceding subsection, [<sup>F53</sup>the person who makes the sale] shall pay the proceeds of sale to the person who was entitled to possession of the chattel immediately before the sale, and the receipt of that person shall be a sufficient discharge to [<sup>F53</sup>the person who makes the sale] for those proceeds.
- (5) In this section “chattel” includes apparatus of any description, whether above or below the surface of the land.

#### Textual Amendments

- F46** Words in s. 12(1) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 8(1)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F47** Words substituted (E.W.) by **Water Act 1989** (c. 15, SIF 130), s. 190(1), **Sch. 25 para. 26(2)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F48** Words substituted by virtue of **Water Act 1973** (c. 37), **s. 9**
- F49** Words in s. 12(2) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 8(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F50** S. 12(2A) inserted (31.10.1994) by 1994 c. 21, s. 52(2), **Sch. 8 para. 8(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F51** Words in s. 12(3) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 8(1)(2)(4)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F52** Words in s. 12(3) substituted (31.10.1994) by 1994 c. 21, s. 52(2), **Sch. 8 para. 8(4)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F53** Words in s. 12(4) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 8(5)** (with s. 40(7)); S.I. 1994/1553, **art. 2**

<sup>F54</sup>13 ..... **E+W+S**

#### Textual Amendments

- F54** S. 13 repealed (31.10.1994) by 1994 c. 21, s. 52(2), 67, Sch. 8 para. 9, **Sch. 11 Pt. II** (with s. 40(7))

*Status: Point in time view as at 28/11/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958. (See end of Document for details)*

**[<sup>F55</sup>14 Provisions as to agricultural tenancies in England and Wales. E+W**

(1) Without prejudice to the provisions of Part III of this Act as to matters arising between landlords and tenants in consequence of compulsory rights orders, the provisions of this section shall have effect where—

- (a) opencast planning permission has been granted subject to a restoration condition and to an aftercare condition in which the use specified is use for agriculture or use for forestry, and
- (b) immediately before that permission is granted, any of the land comprised therein consists of an agricultural holding [<sup>F56</sup>held under a tenancy in relation to which the Agricultural Holdings Act 1986 (in this Act referred to as “the Act of 1986”) applies or part of such an agricultural holding]

whether any of that land is comprised in a compulsory rights order or not.

(2) For the purposes of <sup>M2</sup> the [<sup>F57</sup>Act of 1986]—

- (a) the holding shall not be taken to have ceased to be an agricultural holding; and
- (b) where only part of the holding is comprised in opencast planning permission, that part shall not be taken to have ceased to form part of an agricultural holding,

by reason only that, while occupied or used for the permitted activities, the land is not being used for agriculture within the meaning of that Act.

(3) For the purposes of the Act of 1986, the tenant of the holding shall not be taken to have failed to fulfill his responsibilities to farm in accordance with the rules of good husbandry—

- (a) by reason of his having permitted any of the land comprised in the opencast planning permission to be occupied for the purpose of carrying on any of the permitted activities, or by reason of any other thing done or omitted by him for facilitating the use of any of that land for that purpose;
- (b) where any of that land is comprised in a compulsory rights order, by reason of the occupation or use of any of that land in the exercise of rights conferred by the order, in so far as that occupation or use was not permitted or facilitated by the tenant as mentioned in the preceding paragraph.

(4) For the purposes of the Act of 1986 nothing done or omitted by the tenant or by the landlord of the holding by way of permitting any of the land in respect of which opencast planning permission has been granted to be occupied for the purpose of carrying on any of the permitted activities, or by way of facilitating the use of any of that land for that purpose, shall be taken to be a breach of any term or condition of the tenancy, either on the part of the tenant or on the part of the landlord.

(5) For the purpose of subsections (1) to (3) of section 27 of the Act of 1986 (Agricultural Land Tribunal’s consent to operation of notice to quit) the condition specified in paragraph (f) of subsection (3) of that section shall not be treated as satisfied if the use for the purpose for which the landlord proposes to terminate the tenancy is the use of the land for carrying on any of the permitted activities.

(6) On a reference to arbitration under section 12 of the Act of 1986 with respect to the rent which should be properly payable for the holding, in respect of any period for which [<sup>F58</sup>the person with the benefit of the opencast planning permission is] in occupation of the holding, or of any part thereof, for the purpose of carrying on any of the permitted activities, the arbitrator shall not take into account any increase or diminution in the rental value of the holding in so far as that increase or diminution is attributable to

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*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958. (See end of Document for details)*

the occupation of the holding, or of that part of the holding, by [<sup>F58</sup>that person]for the purpose of carrying on any of the permitted activities.

- (7) For the purpose of the operation of section 13 of the Act of 1986 (increases of rent for landlord’s improvements) in relation to improvements carried out on the holding, in a case where the improvements have been affected by anything done for the purpose of carrying on any of the permitted activities, the increase (if any) of the rental value of the holding attributable to the carrying out of the improvements shall be assessed as if it had not been done.

- (8) This section does not extend to Scotland.]

#### Textual Amendments

- F55** For s. 14 there is substituted ss. 14, 14A by [Housing and Planning Act 1986 \(c. 63, SIF 86\), s. 39\(3\), Sch. 8 para. 5](#)
- F56** Words in s. 14(1)(b) substituted (1.9.1995) by [1995 c. 8, ss. 40, 41\(2\), Sch. para. 13\(2\)](#) (with s. 37)
- F57** Words in s. 14(2) substituted (1.9.1995) by [1995 c. 8, ss. 40, 41\(2\), Sch. para. 13\(3\)](#) (with s. 37)
- F58** Words in s. 14(6) substituted (31.10.1994) by [1994 c. 21, s. 52, Sch. 8 para. 10\(a\)\(b\)](#) (with s. 40(7)); [S.I. 1994/2553, art. 2](#)

#### Marginal Citations

- M2** [1986 c. 5 \(2:3\)](#)

### [<sup>F59</sup>14A Provisions as to agricultural tenancies in Scotland. **E+W+S**

- (1) Without prejudice to the provisions of Part III of this Act as to matters arising between landlords and tenants in consequence of compulsory rights orders, the provisions of this section shall have effect in Scotland where—
- opencast planning permission has been granted subject to a restoration condition and to an aftercare condition in which the use specified is use for agriculture, and
  - immediately before that permission is granted, any of the land comprised therein consists of an agricultural holding or part of an agricultural holding, whether any of that land is comprised in a compulsory rights order or not.

- (2) In this section—

“ aftercare condition ” means a condition requiring that such steps shall be taken as may be necessary to bring land to the standard required for use for agriculture; and

“ restoration condition ” has the meaning given to it in [<sup>F60</sup> paragraph 2(2) of Schedule 3 to the Act of 1997 ] .

- (3) For the purposes of the [<sup>F61</sup>[<sup>F62</sup>the Scottish Act of 1991]] [<sup>F62</sup>the Scottish Acts of 1991 and 2003]—

- the holding shall not be taken to have ceased to be an agricultural holding, and
- where only part of the holding is comprised in the opencast planning permission, that part shall not be taken to have ceased to form part of an agricultural holding,

by reason only that, while occupied or used for the permitted activities, the land is not being used for agriculture within the meaning of that Act.

*Status: Point in time view as at 28/11/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958. (See end of Document for details)*

- (4) For the purposes of [F63[F64the Scottish Act of 1991]] [F64the Scottish Acts of 1991 and 2003], the tenant of the holding shall not be taken to have failed to fulfil his responsibilities to farm in accordance with the rules of good husbandry—
- (a) by reason of his having permitted any of the land comprised in the opencast planning permission to be occupied for the purpose of carrying on any of the permitted activities, or by reason of any other thing done or omitted by him for facilitating the use of any of that land for that purpose;
  - (b) where any of that land is comprised in a compulsory rights order, by reason of the occupation or use of any of that land in the exercise of rights conferred by the order, is so far as that occupation or use was not permitted or facilitated by the tenant as mentioned in the preceding paragraph.
- (5) For the purposes of [F63[F65the Scottish Act of 1991]] [F65the Scottish Acts of 1991 and 2003] nothing done or omitted by the tenant or by the landlord of the holding by way of permitting any land in respect of which opencast planning permission has been granted to be occupied for the purpose of carrying on any of the permitted activities, or by way of facilitating the use of any of that land for that purpose, shall be taken to be a breach of any term or condition of the tenancy, either on the part of the tenant or on the part of the landlord.
- (6) For the purposes of [F63 section 22(2) of the Scottish Act of 1991 ], no account is to be taken of permission granted as mentioned in paragraph [F63 ( b ) ] of that subsection [F66 or (as the case may be) section 17(1)(a) of the Scottish Act of 2003 ] if the permission —
- (a) is granted on an application by [F67a person who is a licensed operator within the meaning of the Coal Industry Act 1994 or whose application for a licence under Part II of that Act is pending]; and
  - (b) relates to the working of coal by opencast operations; and
  - (c) is granted subject to a restoration condition and an aftercare condition.
- (7) [F68 The condition specified in section 24(1)(e) of the Scottish Act of 1991 (consent of Land Court to notice to quit where land to be used for purposes other than agriculture)] shall not be treated as satisfied [F69, or (as the case may be) the resumption shall not be considered to be for a non-agricultural purpose under section 17(1)(a) of the Scottish Act of 2003,] if the use for the purpose of which the landlord proposes to terminate the tenancy is the use of the land for carrying on any of the permitted activities.
- (8) [F70On a reference to arbitration under [F68 section 13 of the Scottish Act of 1991]] [F70On a determination under section 13 of the Scottish Act of 1991 or (as the case may be) under section 9 of the Scottish Act of 2003,] with respect to the rent which should be properly payable for the holding, in respect of any period for which [F71the person with the benefit of the opencast planning permission is] in occupation of the holding, or of any part thereof, for the purpose of carrying on any of the permitted activities, the [F72arbiter] [F72Scottish Land Court or arbiter (as the case may be)] shall not take into account any increase or diminution in the rental value of the holding in so far as that increase or diminution is attributable to the occupation of the holding, or of that part of the holding, by [F71that person] for the purpose of carrying on any of the permitted activities.
- (9) For the purpose of the operation of [F68 section 15 of the Scottish Act of 1991] (which relates to increases of rent for improvements carried out by the landlord) [F73, or (as the case may be) section 10 of the Scottish Act of 2003 (increase in rent: landlord's improvements),] in relation to an improvement carried out on the holding, in a case



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where the improvement has been affected by anything done for the purpose of carrying on any of the permitted activities, the increase (if any) of the rental value of the holding attributable to the carrying out of the improvement shall be assessed as if the improvement had not been so affected.

- (10) The use of land for the working of coal by opencast operations shall not be a use for the purposes of which a landlord shall be entitled to resume the land.]

#### Textual Amendments

- F59** For S. 14 there is substituted ss. 14, 14A by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 5**
- F60** Words in s. 14A(2) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 5(2)**
- F61** Words in s. 14A(3) substituted (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88, 89(2), **Sch. 11 para. 12(a)**(with s. 45(3), Sch. 12 para. 3)
- F62** Words in s. 14A(3) substituted (S.) (27.11.2003) by Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (S.S.I. 2003/583), art. 1, **Sch. para. 2(a)**
- F63** Words in s. 14A(4)(5)(6) substituted (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88, 89(2), **Sch. 11**, para. 12(b)(c)(d)(with s. 45(3), Sch. 12 para. 3)
- F64** Words in s. 14A(4) substituted (S.) (27.11.2003) by Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (S.S.I. 2003/583), art. 1, **Sch. para. 2(a)**
- F65** Words in s. 14A(5) substituted (S.) (27.11.2003) by Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (S.S.I. 2003/583), art. 1, **Sch. para. 2(a)**
- F66** Words in s. 14A(6) inserted (S.) (27.11.2003) by Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (S.S.I. 2003/583), art. 1, **Sch. para. 2(b)**
- F67** Words in s. 14A(6)(a) substituted (31.10.1994) by 1994 c. 21, s. 52(2), **Sch. 8 para. 11(1)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F68** Words in s. 14A(7)(8)(9) substituted (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88, 89(2), **Sch. 11 para. 12(e)(f)(g)**(with s. 45(3), Sch. 12 para. 3)
- F69** Words in s. 14A(7) inserted (S.) (27.11.2003) by Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (S.S.I. 2003/583), art. 1, **Sch. para. 2(c)**
- F70** Words in s. 14A(8) substituted (S.) (27.11.2003) by Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (S.S.I. 2003/583), art. 1, **Sch. para. 2(d)(i)**
- F71** Words in s. 14A(8) substituted (31.10.1994) by 1994 c. 21, s. 52(2), **Sch. 8 para. 11(2)(a)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F72** Words in s. 14A(8) substituted (S.) (27.11.2003) by Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (S.S.I. 2003/583), art. 1, **Sch. para. 2(d)(ii)**
- F73** Words in s. 14A(9) inserted (S.) (27.11.2003) by Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (S.S.I. 2003/583), art. 1, **Sch. para. 2(e)**

#### [<sup>F74</sup>14B Provisions as to farm business tenancies. **E+W**

- (1) Without prejudice to the provisions of Part III of this Act as to matters arising between landlords and tenants in consequence of compulsory rights orders, the provisions of this section shall have effect where—
- (a) opencast planning permission has been granted subject to a restoration condition, and
  - (b) immediately before that permission is granted, any of the land comprised therein consists of the holding or part of the holding held under a farm business tenancy,
- whether any of that land is comprised in a compulsory rights order or not.



*Status: Point in time view as at 28/11/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958. (See end of Document for details)*

- (2) For the purposes of section 1 of the Agricultural Tenancies Act 1995 (in this Act referred to as “the Act of 1995”), the land shall be taken, while it is occupied or used for the permitted activities, to be used for the purposes for which it was used immediately before it was occupied or used for the permitted activities.
- (3) For the purposes of the Act of 1995, nothing done or omitted by the tenant or by the landlord under the tenancy by way of permitting any of the land in respect of which opencast planning permission has been granted to be occupied for the purpose of carrying on any of the permitted activities, or by way of facilitating the use of any of that land for that purpose, shall be taken to be a breach of any term or condition of the tenancy, either on the part of the tenant or on the part of the landlord.
- (4) In determining under subsections (1) and (2) of section 13 of the Act of 1995 the rent which should be properly payable for the holding, in respect of any period for which the person with the benefit of the opencast planning permission is in occupation of the holding, or of any part thereof, for the purpose of carrying on any of the permitted activities, the arbitrator shall disregard any increase or diminution in the rental value of the holding in so far as that increase or diminution is attributable to the occupation of the holding, or of that part of the holding, by that person for the purpose of carrying on any of the permitted activities.
- (5) In this section “holding”, in relation to a farm business tenancy, has the same meaning as in the Act of 1995.
- (6) This section does not extend to Scotland.]

#### Textual Amendments

**F74** S. 14B inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), Sch. para. 14 (with s. 37)

#### [<sup>F75</sup>15 Suspension of certain public rights of way. **E+W+S**

- (1) Where—
  - (a) [<sup>F76</sup>any person applies] for opencast planning permission; and
  - (b) over any part of the land to which the application relates there subsists a public right of way, not being a right enjoyed by vehicular traffic,  
[<sup>F76</sup>that person may also apply to the Coal Authority] for an order suspending the public right of way.
- (2) The [<sup>F77</sup>Coal Authority shall not make an order under this section] unless—
  - (a) opencast planning permission [<sup>F78</sup>has been applied for or granted]; and  
[ it is satisfied that the applicant—
    - <sup>F79</sup>(aa) (i) is a licensed operator within the meaning of the Coal Industry Act 1994 or a person whose application to the Coal Authority for a licence under Part II of that Act is pending; and
    - (ii) has complied with the requirements of section 15A of this Act before submitting the application;
 and
  - (b) it is also satisfied—
    - (i) that a suitable alternative way will be made available by the applicant] (whether on land comprised in the opencast planning permission or

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on other land) for use by the public during the period for which the order remains in force; or

(ii) that the provision of such an alternative way is not required.

[ An order under this section—

- <sup>F80</sup>(3) (a) shall not have effect unless confirmed by the Secretary of State; and  
(b) where it has been confirmed, shall have effect (with such modifications as the Secretary of State may in confirming it determine) so as to suspend the right of way to which it relates with effect (subject to section 15A(10) and (11) of this Act) from such date as may be determined by the Secretary of State and specified in the order as confirmed.

(3A) Where at any time after an application for an order under this section has been made and before any order made on that application is confirmed—

- (a) any person becomes the successor of the original applicant for the order and notifies that fact—  
(i) if no order has been made on the application, to the Coal Authority, or  
(ii) if such an order has been made, to the Secretary of State,  
and  
(b) the Authority or, as the case may be, the Secretary of State decides to proceed in relation to the application or order in accordance with this subsection,

the provisions of this Act shall have effect as if the application had been made by that person, as if he had the same right to make it as the original applicant and as if anything done for the purposes of the application by or in relation to the original applicant or a previous successor had been done by or in relation to that person.

(3B) The Coal Authority or, as the case may be, the Secretary of State may make a decision to proceed in accordance with subsection (3A) of this section subject to compliance by the successor giving the notification with such conditions as that Authority or the Secretary of State thinks fit.]

(4) Where an order has been made under this section the Secretary of State shall revoke it—

- (a) if—  
(i) no permitted activities have been carried on pursuant to the opencast planning permission on the land over which the right of way subsisted; and  
(ii) he is satisfied that there is no early prospect of such activities being so carried on; or  
(b) as soon after such permitted activities have been so carried on as he is satisfied that it is no longer necessary for the purpose of carrying on such permitted activities that the right of way should be suspended [<sup>F81</sup>or]

[ he is satisfied that it is appropriate to do so on account of any failure on the part of the person on whose application the order was made to comply with any of the requirements of section 15A(10) of this Act.]

(5) An order under this section shall [<sup>F82</sup>not be made except where such conditions for the making of the order are imposed or such other provision is included in the order as may] be appropriate for securing the reconstruction of the way on the restoration of the land over which the right of way subsisted immediately before the order was made.

*Status: Point in time view as at 28/11/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958. (See end of Document for details)*

[ For the purposes of subsection (5) above a local planning authority may enter into an <sup>F83</sup>(5A) agreement with any applicant for an order under this section as to the steps to be taken by that person or any of his successors for securing the reconstruction of the way in question; and such an agreement shall have effect, so far as it relates to steps to be taken by any successor of the applicant, as if that successor had been a party to it and was bound by it to the same extent as the applicant.]

(6) Where an order is made under this section then, in connection with the provision of such a suitable alternative way as is referred to in subsection (2) above,—

- (a) the order under this section may provide that, in so far as the carrying out of any operation, or any change in the use of land, involved in making the alternative way available or in permitting it to be used by the public, constitutes development within the meaning of [<sup>F84</sup>the Act of 1990], permission for that development shall be deemed to be granted under Part III of that Act subject to such conditions (if any) as may be specified in the order;
- (b) where the order under this section includes provisions in accordance with paragraph (a) above, [<sup>F84</sup>the Act of 1990] shall have effect as if they were conditions subject to which the opencast planning permission was granted;
- (c) if a compulsory rights order referring to the opencast planning permission is made, then, in the application to that order of section 5(5) above, the permitted activities shall be taken to include making an alternative way available for use by the public, and the right exercisable in accordance with that subsection, as against all persons directly concerned, shall include the right to permit the public to use any way so made available; and
- (d) if the land on which the alternative way is to be made available is specified in the order under this section and is land which does not form part of, but is contiguous with, the land to which the opencast planning permission relates, a compulsory rights order referring to the opencast planning permission may include that land as if it were part of the land comprised in the permission.

(7) In the application of this section to Scotland, it shall be read as if for [<sup>F84</sup>the Act of 1990] there were substituted [<sup>F85</sup>the Act of 1997]]

#### Textual Amendments

- F75** For S. 15 there is substituted ss. 15, 15A by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), ss. 39(3), [Sch. 8 para. 6](#)
- F76** Words in s. 15(1) substituted (31.10.1994) by [1994 c. 21, s. 52, Sch. 8 para. 12\(1\)\(a\)\(b\)](#) (with s. 40(7)); [S.I. 1994/2553, art. 2](#)
- F77** Words in s. 15(2) substituted (31.10.1994) by [1994 c. 21, s. 52, Sch. 8 para. 12\(2\)\(a\)](#) (with s. 40(7)); [S.I. 1994/2553, art. 2](#)
- F78** Words in s. 15(2)(a) substituted (31.10.1994) by [1994 c. 21, s. 52, Sch. 8 para. 12\(2\)\(b\)](#) (with s. 40(7)); [S.I. 1994/2553, art. 2](#)
- F79** S. 15(2)(aa)(b) substituted (31.10.1994) for words in s. 15(2)(b) by [1994 c. 21, s. 52, Sch. 8 para. 12\(2\)\(c\)](#) (with s. 40(7)); [S.I. 1994/2553, art. 2](#)
- F80** S. 15(3)(3A)(3B) substituted (31.10.1994) for s. 15(3) by [1994 c. 21, s. 52, Sch. 8 para. 12\(3\)](#) (with s. 40(7)); [S.I. 1994/2553, art. 2](#)
- F81** S. 15: word and para. (4)(c) inserted (31.10.1994) by [1994 c. 21, s. 52, Sch. 8 para. 12\(4\)](#) (with s. 40(7)); [S.I. 1994/2553, art. 2](#)
- F82** Words in s. 15(5) substituted (31.10.1994) by [1994 c. 21, s. 52, Sch. 8 para. 12\(5\)](#) (with s. 40(7)); [S.I. 1994/2553, art. 2](#)

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- F83** S. 15(5A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 12(6)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F84** Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 5(b)**
- F85** Words in s. 15(7) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 5(3)**

**Modifications etc. (not altering text)**

- C1** S. 15 restricted (31.10.1994) by 1994 c. 21, s. 52(1)(b)(3) (with s. 40(7)); S.I. 1994/2553, **art. 2**

[<sup>F86</sup>**15A. Suspension of public rights of way—supplementary.** **E+W+S**]

[<sup>F87</sup>(1) Before any person submits an application to the Coal Authority for an order under section 15 of this Act, that person] shall publish a notice in the prescribed form identifying the right of way and stating—

- (a) that [<sup>F88</sup>that person is] proposing to apply for an order suspending it in connection with the working of coal by open-cast operations;
- (aa) [<sup>F89</sup>whether the applicant is proposing to make available any alternative way and, if he is, what the alternative is; and]
- (b) that opencast planning permission has been applied for, or, as the case may be, has been granted; <sup>F90</sup> . . .
- (c) <sup>F90</sup> . . . . .

[ As soon as reasonably practicable after making an order under section 15 of this Act <sup>F91</sup>(1A) the Coal Authority shall submit the order to the Secretary of State for confirmation and publish a notice in the prescribed form identifying the right of way in question and stating—

- (a) that the Coal Authority has made an order that will suspend the right of way in connection with the working of coal by opencast operations and has submitted the order for confirmation to the Secretary of State;
- (b) whether the applicant for the order is to make any alternative way available and, if he is, what the alternative is;
- (c) that opencast planning permission has been applied for or, as the case may be, granted; and
- (d) that objections to the confirmation of the order may be made in writing to the Secretary of State within such time, not being less than 28 days from the publication of the notice, as may be specified.]

(2) The duty to publish a notice imposed by subsection (1) [<sup>F92</sup>or (1A)] above is a duty to publish it—

- (a) in two successive weeks in one or more local newspapers circulating in the locality in which the land over which the right of way subsists is situated; and
- (b) in the same or any other two successive weeks, in the appropriate Gazette.

[ The Secretary of State shall not confirm an order under section 15 of this Act unless <sup>F93</sup>(2A) he thinks fit and—

- (a) he is satisfied that the notice required by subsection (1A) above has been published in relation to that order and that the requirements of subsection (5) below have been satisfied in relation to that notice;
- (b) the period within which objections may be made in accordance with that notice has expired; and
- (c) the opencast planning permission has been granted.]

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- (3) The period within which objections may be made expires when the period specified in the last publication of the notice expires; and any period specified in earlier publications is to be treated as extended accordingly.
- (4) A notice under subsection (1) [<sup>F94</sup>or (1A)]above shall name a place in the locality where a copy of the application [<sup>F94</sup>or, as the case may be, the order]and of a map showing the right of way can be inspected.
- [ Where any person is required under subsection (1) or (1A) above to publish any notice,  
<sup>F95</sup>(5) he shall also -] ,—
- (a) inform—
- (i) in England <sup>F96</sup> . . . , the district council and, except in the case of a metropolitan district, the county council, and any parish <sup>F96</sup> . . . council or parish meeting;
- [ in Wales, the county council or county borough council, and any  
<sup>F97</sup>(ia) community council] and
- (ii) in Scotland, every local authority in whose area any part of the land over which the right of way subsists is situated  
 [<sup>F98</sup>of the submission of the application or, as the case may be, of the making of the order;]
- (b) send them a map showing the right of way and a copy of [<sup>F99</sup>the notice under subsection (1) or (1A) above]; and
- (c) affix to some conspicuous object at either end of the right of way a notice giving in the prescribed form the prescribed particulars of [<sup>F100</sup>the matters contained in the notice under subsection (1) or (1A) above].
- <sup>F101</sup>(6) . . . . .
- (7) The Secretary of State may, if he thinks fit, cause a public local inquiry to be held before determining whether to [<sup>F102</sup>confirm] an order, and shall cause such an inquiry to be held if an objection is made by any such authority [<sup>F103</sup>other than a parish or community council or parish meeting as is mentioned in subsection (5)(a) above] and is not withdrawn.
- (8) If the Secretary of State causes such an inquiry to be held, he shall consider all objections to the application which are duly made by any person and not withdrawn and the report of the person who held the inquiry before determining whether to [<sup>F104</sup>confirm] the order.
- (9) An order under section 15 of this Act may be made either in accordance with the [<sup>F105</sup> . . . ] application or subject to such modifications as [<sup>F106</sup>the Coal Authority] may determine [<sup>F107</sup>; and this subsection shall be without prejudice to the power of the Secretary of State, by virtue of subsection (3) of that section, to make further modifications when confirming the order.]
- [ A confirmed order under section 15A of this Act shall not have effect at any time  
<sup>F108</sup>(10) before the person on whose application the confirmed order was made has published] a notice in the prescribed form that the order [<sup>F109</sup>has been confirmed], describing the right of way which is suspended, stating the date on which the order [<sup>F109</sup>is to come] into operation and naming a place in the locality where a copy of the order and of any map to which it refers can be inspected at all reasonable hours, and [<sup>F109</sup>has served a like notice and a copy of the order and of such a map] on any body required under this section to be informed of the application for the order.

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- (11) The duty to publish a notice imposed by subsection (10) above is a duty to publish it—  
[<sup>F110</sup>in the manner specified in subsection (2) in relation to notices for the purposes of subsection (1) above; and an order that fails, by virtue of subsection (10) above, to come into operation on the date specified in the order shall come into operation on the date of the last publication required by virtue of this subsection.]
- (12) In this section “the appropriate Gazette” means—
- the London Gazette in a case where the land over which the right of way subsists is situated in England or Wales; and
  - the Edinburgh Gazette in a case where it is situated in Scotland.]

#### Textual Amendments

- F86** For S. 15 there is substituted ss. 15, 15A by Housing and Planning Act 1986 (c. 63, SIF 86), ss. 39(3), **Sch. 8 para. 6**
- F87** S. 15A(1) substituted (31.10.1994) for the words in s. 15A(1) by 1994 c. 21, s. 52, **Sch. 8 para. 13(1)(a)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F88** Words in s. 15A(1)(a) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 13(1)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F89** S. 15A(1)(aa) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 13(1)(c)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F90** S. 15A(1)(c) and word immediately preceding it repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 13(1)(d), **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F91** S. 15A(1A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 13(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F92** Words in s. 15A(2) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 13(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F93** S. 15A(2A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 13(4)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F94** Words in s. 15A(4) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 13(5)(a)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F95** S. 15A(5) substituted (31.10.1994) for words in s. 15A(5) by 1994 c. 21, s. 52, **Sch. 8 para. 13(6)(a)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F96** Words in s. 15A(5)(a)(i) repealed (1.4.1996) by 1994 c. 19, s. 66(6)(8), Sch. 16 para. 14, **Sch. 18** (with Sch. 17 para. 22(1)); S.I. 1996/396, **art. 3**, **Sch. 1**
- F97** S. 15A(5)(a)(ia) inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 14** (with Sch. 17 para. 22(1)); S.I. 1996/396, **art. 3**, **Sch. 1**
- F98** Words in s. 15A(5)(a) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 13(6)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F99** Words in s. 15A(5)(b) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 13(6)(c)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F100** Words in s. 15A(5)(c) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 13(6)(d)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F101** S. 15A(6) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 13(7), **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F102** Word in s. 15A(7) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 13(8)(a)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F103** Words in s. 15A(7) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 13(8)(b)**(with s. 40(7)); S.I. 1994/2553, **art. 2**
- F104** Word in s. 15A(8) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 13(9)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

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- F105** Word in s. 15A(9) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 13(10)(a), **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F106** Words in s. 15A(9) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 13(10)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F107** Words in s. 15A(9) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 13(10)(c)**(with s. 40(7)); S.I. 1994/2553, **art. 2**
- F108** S. 15A(10) substituted (31.10.1994) for words in s. 15A(10) by 1994 c. 21, s. 52, **Sch. 8 para. 13(11)(a)**(with s. 40(7)); S.I. 1994/2553, **art. 2**
- F109** Words in s. 15A(10) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 13(11)(b)(c)(d)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F110** Words in s. 15A(11) substituted (31.10.1994) for s. 15A(11)(a)(b) by 1994 c. 21, s. 52, **Sch. 8 para. 13(12)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**Modifications etc. (not altering text)**

- C2** S. 15A(1)(aa) excluded (31.10.1994) by 1994 c. 21, s. 67, **Sch. 10 para. 9(3)** (with s. 40(7)); S.I. 1994/2552, art. 2, **Sch. 1**

**16 Acquisition of rights for purposes of drainage or water supply. E+W+S**

- (1) For the purpose of draining land [<sup>F111</sup>in respect of which opencast planning permission has been][<sup>F112</sup>applied for or granted, the Coal Authority, on an application in accordance with subsection (2A) below, may, by means of an order made by that Authority and confirmed by the Secretary of State, confer on the person with the benefit of the permission] a right to place drainage works on any other land, whether above or below ground, and to use, repair and maintain those works, without purchasing any other interest in that land.
- (2) For the purpose of bringing a supply of water to land [<sup>F111</sup>in respect of which opencast planning permission has been][<sup>F112</sup>applied for or granted, the Coal Authority, on an application in accordance with subsection (2A) below, may, by means of an order made by that Authority and confirmed by the Secretary of State, confer on the person with the benefit of the permission]a right to place water pipes on any other land, whether above or below ground, and to use, repair and maintain those pipes, without purchasing any other interest in that land.
- [<sup>F113</sup>(2A) The Coal Authority shall not make an order under this section except on the application of a person who—
- (a) is the person with the benefit of the opencast planning permission or, where the permission has been applied for but has not been granted, the person who will have the benefit of that permission;
  - (b) satisfies that Authority that he is either a licensed operator within the meaning of the Coal Industry Act 1994 or a person whose application to that Authority for a licence under Part II of that Act is pending; and
  - (c) also satisfies that Authority that he has served notice in the prescribed form of the application for the order on every owner, lessee and occupier of the other land (except tenants for a month or any period of less than a month);
- and an order made before the opencast planning permission has been granted shall not be confirmed until after it has been granted.]
- (3) An order [<sup>F114</sup>conferring] a right by virtue of this section shall specify the land (being the whole or part of the land [<sup>F115</sup>in respect of which the permission was [<sup>F116</sup>applied for or] granted]) for the benefit of which the right is to be [<sup>F114</sup>conferred].



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[<sup>F117</sup>(4) Any right conferred by an order under this section shall be exercisable by, or by any person authorised by—

- (a) a person who—
  - (i) is for the time being in occupation of the land specified in accordance with subsection (3) of this section in the order;
  - (ii) is the person on whom the right was conferred; and
  - (iii) was in occupation of that land when it was conferred;

or

- (b) a person who is for the time being in occupation of the land by virtue of the transfer to him either—
  - (i) by, or with the written approval of, the Coal Authority, or
  - (ii) in any other case described in the order,of any interest or right which, at the time when the right was conferred under this section, was vested in a person who became entitled to exercise it by virtue of paragraph (a) above;

and a right conferred by an order under this section (whether or not conferred while the person on whom it was conferred was in occupation of the land) shall, in the case of land in England and Wales, be treated as an easement appurtenant in perpetuity to that land, and, in the case of land in Scotland, be recorded in the Register of Sasines or as the case may be registered in the Land Register of Scotland by the person on whom the right is conferred.]

[<sup>F118</sup> For the purposes of any order conferring rights exercisable under this section on any <sup>F119</sup>(4A) land in England and Wales—

- (a) Parts II to IV of the Acquisition of Land Act 1981 shall apply as they would apply in relation to a compulsory rights order in which that land is comprised, and section 29 of that Act shall apply accordingly but with the omission of subsections (4) and (5); and
- (b) the Compulsory Purchase Act 1965 shall have effect as if—
  - (i) the conferring of those rights were the compulsory acquisition of those rights by the person on whom they are conferred; and
  - (ii) references (whatever the terms used) to the land comprised in the compulsory purchase order were construed, where the context so requires, as references to the land on which the works or pipes are to be placed, and references to the obtaining or taking possession of the first mentioned land were construed as references to the exercise of the right]

[<sup>F120</sup>(4B) Where at any time after an application for an order under this section has been made and before any order made on that application is confirmed—

- (a) any person becomes the successor of the original applicant for the order and notifies that fact—
    - (i) if no order has been made on the application, to the Coal Authority, or
    - (ii) if such an order has been made, to the Secretary of State,
- and
- (b) the Authority or, as the case may be, the Secretary of State decides to proceed in relation to the application or order in accordance with this subsection,

the provisions of this Act shall have effect as if the application had been made by that person, as if he had the same right to make it as the original applicant and as if anything

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done for the purposes of the application by or in relation to the original applicant or a previous successor had been done by or in relation to that person.

(4C) The Coal Authority or, as the case may be, the Secretary of State may make a decision to proceed in accordance with subsection (4B) of this section subject to compliance by the successor giving the notification with such conditions as that Authority or the Secretary of State thinks fit.]

[<sup>F121</sup>(5) In relation to any order conferring rights exercisable under this section as regards any land in Scotland Parts I, III and IV of Schedule 1 to the Scottish Acquisition of Land Act (and the enactments incorporated with that Act) shall apply as they would apply in relation to a compulsory rights order in which that land is comprised, and section 4(5) of this Act shall apply accordingly but as if the section did not relate to paragraphs 3 and 4 of Schedule 2 to this Act.]

(6) The provisions of section eleven of this Act shall apply in relation to [<sup>F122</sup>an order made and confirmed under] this section as they apply in relation to a compulsory rights order.

(7) In this section “drainage works” includes any pipes or other works for draining land and any works accessory to such works; and—

(a) any right to maintain drainage works or water pipes in pursuance of an order made by virtue of this section shall include the right to remove those works or pipes, whether for the purpose of replacing them by other drainage works or water pipes or otherwise, and

(b) any right to maintain drainage works on any land in pursuance of such an order shall, if the order so provides, include a right to discharge water from those works on to that land.

[<sup>F123</sup>(7A) Subsections (2) and (3) of section 12 of the Acquisition of Land Act 1981 (statutory tenants etc. and ecclesiastical property) shall have effect in relation to the service of a notice under this section as respects any land in England and Wales as they have effect in relation to the service of a notice under that section.]

(8) Nothing in this section shall be construed as authorising any interference with the exercise of a public right of way, or any contravention of a prohibition or restriction imposed by or under any enactment (whether contained in a public general Act or in any other Act).

[<sup>F124</sup>(9) . . . . .]

#### Textual Amendments

- F111** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 7\(a\)](#)
- F112** Words in s. 16(1) and (2) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 14\(1\)](#) (with ss. 40(7), 67, [Sch. 10 para. 9\(5\)](#)); S.I. 1994/2553, [art. 2](#)
- F113** S. 16(2A) inserted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 14\(2\)](#) (with ss. 40(7), 67, [Sch. 10 para. 9\(5\)](#)); S.I. 1994/2553, [art. 2](#)
- F114** Word in s. 16(3) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 14\(3\)\(a\)\(c\)](#) (with ss. 40(7), 67, [Sch. 10 para. 9\(5\)](#)); S.I. 1994/2553, [art. 2](#)
- F115** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 7\(b\)](#)
- F116** Words in s. 16(3) inserted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 14\(3\)\(b\)](#) (with ss. 40(7), 67, [Sch. 10 para. 9\(5\)](#)); S.I. 1994/2553, [art. 2](#)
- F117** S. 16(4) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 14\(4\)](#) (with ss. 40(7), 67, [Sch. 10 para. 9\(5\)](#)); S.I. 1994/2553, [art. 2](#)
- F118** S. 16(4A) inserted by [Acquisition of Land Act 1981 \(c. 67, SIF 28:1\)](#), s. 34(1), [Sch. 4 para. 11\(4\)](#)

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- F119** S. 16(4A) substituted (31.10.1994) for words in s. 16(4A) by 1994 c. 21, s. 52, **Sch. 8 para. 14(5)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**
- F120** S. 16(4B)(4C) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(6)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**
- F121** S. 16(5) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(7)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**
- F122** Words in s. 16(6) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(8)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**
- F123** S. 16(7A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(9)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**
- F124** S. 16(9) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 14(10), **Sch. 11 Pt. II** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**

**Modifications etc. (not altering text)**

- C3** S. 16 restricted (31.10.1994) by 1994 c. 21, **s. 52(1)(c)(3)** (with ss. 40(7)); S.I. 1994/2553, **art. 2**
- C4** S. 16(9) amended by Land Registration (Scotland) Act 1979 (c. 33, SIF 31:3), **s. 29(2)(3)**

**PART II E+W+S**

COMPENSATION FOR COMPULSORY RIGHTS ORDERS

*Compensation in respect of agricultural land*

**17 General provisions as to annual compensation. E+W+S**

- (1) Where a compulsory rights order comprises the whole or part of a holding to which this section applies, compensation shall be payable<sup>F125</sup> . . . in respect of that holding—
- for the year beginning with the operative date, and
  - for each subsequent year which begins with an anniversary of that date and falls [F126 wholly or partly] within the period of occupation.
- [F127(1A) Subject (where different persons have been entitled to the rights for different parts of the year) to any apportionment under section 35(3) of this Act, the liability to pay compensation under this section shall fall on the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order.]
- (2) For the purposes of this Part of this Act, where land, immediately before the operative date of a compulsory rights order,—
- was occupied as a unit, and
  - was so occupied wholly or mainly for the purposes of agriculture carried on by way of a trade or business,
- the entirety of that land (excluding the coal and any other minerals vested [F128 in the Coal Authority or the person entitled to rights conferred by the order]) shall be taken, in relation to that compulsory rights order, to constitute a holding to which this section applies.
- (3) [F129 Subject to subsection (3A) of this section,] the person entitled to any compensation payable<sup>F125</sup> . . . for any year by virtue of this section in respect of a holding shall be the person who—

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- (a) in respect of so much (if any) of the holding as is not comprised in the compulsory rights order, is for the time being entitled to occupy that part of the holding, and
- (b) in respect of so much of the holding as is comprised in the order, would be entitled for the time being to occupy it if the order had not been made.

[<sup>F130</sup>(3A) Where—

- (a) any compensation is payable for any year by virtue of this section in respect of any holding, and
- (b) the amount of that compensation falls to be calculated in accordance with section 18 of this Act by reference to the market value of rights which, if the compulsory rights order were not in force, could not be conferred for that year or any part of it except by or with the consent of one or more persons who are included in the persons directly concerned but do not fall within subsection (3) of this section,

the entitlement to that compensation shall be apportioned, according to the extent to which those rights could not be conferred for that year or part of a year without their participation or consent, between those persons and any person falling within that subsection.

(3B) Subject to subsection (3C) of this section, the persons entitled under subsection (3A) of this section to a share of any compensation shall include persons whose participation in or consent to the conferring of any right would be required if the right were conferred at some time after the beginning of the year or part of a year in question; and any apportionment under subsection (3A) of this section shall take account of the length of the period for which any person is, during that year or part of a year, a person without whose participation or consent any right could not be conferred.

(3C) No person shall be entitled under subsection (3A) of this section to any share of any compensation in respect of any such easement or right as might give rise to an entitlement to compensation under section 31 of this Act.]

(4) .....

#### Textual Amendments

- F125** Words in s. 17(1)(3) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 15(1)(a), **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F126** Words in s. 17(1)(b) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 15(1)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F127** S. 17(1A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 15(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F128** Words in s. 17(2) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 15(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F129** Words in s. 17(3) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 15(4)(a)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F130** S. 17(3A)-(3C) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 15(5)(7)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

*Status: Point in time view as at 28/11/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958. (See end of Document for details)*

[<sup>F131</sup>18 **Calculation of compensation under section 17.** **E+W+S**

- (1) The compensation payable for any year in respect of a holding to which section 17 of this Act applies shall be a sum equal to the annual borrowing cost for that year of the market value of the rights conferred by the compulsory rights order in relation to the holding.
- (2) For the purposes of this section the market value of any rights conferred by a compulsory rights order shall be equal to the amount which, as at the date of entry, would (apart from the order) represent the fair market price, as between willing and independent parties, for the grant of those rights by a person entitled to grant them and for the period for which the order is to have effect.
- (3) In calculating for the purposes of this section the fair market price for the grant of any rights, due allowance shall be made for any entitlement to compensation which may arise, otherwise than by virtue of section 17, under any of the provisions of this Act.
- (4) For the purposes of this section the annual borrowing cost for any year of any amount (“the market price”) is the aggregate sum which would fall to be paid in that year by way of payments of interest and re-payments of capital if the market price had been borrowed on the date of entry on terms which—
  - (a) required interest to be paid and capital to be repaid by way of the relevant number of equal annual instalments; and
  - (b) provided for interest on outstanding capital to become due immediately before the time for the payment of each instalment, at an annual rate equal, as at the entry date, to the rate prescribed under section 35(8) of this Act;and in this subsection “the relevant number” means the number of years for which, when it was confirmed, the compulsory rights order was to have effect.
- (5) Nothing in section 17 of this Act or this section shall confer any entitlement to compensation in respect of the annual borrowing cost of—
  - (a) any amount representing the value of any person’s interest in coal, or
  - (b) any amount representing the value of any opportunity arising by virtue of an interest or right in or in relation to any land to obtain or make use of any rights to win, work or get any coal.
- (6) Where the period for which a compulsory rights order is to have effect is extended under this Act, section 17 of this Act and this section shall have effect in relation to the additional period as if the rights conferred for that period had been conferred by a new compulsory rights order.]

**Textual Amendments**

**F131** S. 18 substituted (31.10.1994) (in relation to any compulsory rights order confirmed on or after that date) by 1994 c. 21, s. 52, **Sch. 8 para. 16** (with s. 40(7)); S.I. 1994/2553, **art. 2**

[<sup>F132</sup>19 ..... **E+W**

*Status: Point in time view as at 28/11/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958. (See end of Document for details)*

#### Textual Amendments

**F132** S. 19 repealed (31.10.1994) by 1994 c. 21, s. 52, **Sch. 11 Pt. III** (with s. 40(7)); S.I. 1994/2552, art. 2, **Sch. 1**, Appendix

<sup>F133</sup>**20** ..... **E+W+S**

#### Textual Amendments

**F133** S. 20 repealed (31.10.1994) by 1994 c. 21, s. 67, **Sch. 11 Pt. III**, Appendix (with s. 40(7)); S.I. 1994/2552, art. 2, **Sch. 1**, Appendix

### **21 Terminal compensation.** **E+W+S**

- (1) Where a compulsory rights order comprises the whole or part of a holding to which this section applies, the provisions of this and the two next following sections shall have effect as to compensation payable [<sup>F134</sup>in respect of that holding by the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order.].
- (2) Subsection (2) of section seventeen of this Act shall have effect in relation to this section as it has effect in relation to that section, and references to a holding to which this section applies shall be construed accordingly.
- (3) Compensation payable in respect of a holding under the provisions referred to in subsection (1) of this section shall consist of either or both of the following, that is to say—
  - (a) compensation by way of payment of cost of works, and
  - (b) compensation by reference to the diminution in value of the holding.

#### Textual Amendments

**F134** Words in s. 21(1) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 18** (with s. 40(7)); S.I. 1994/2553, art. 2

### **22 Compensation by way of payment of cost of works.** **E+W+S**

- (1) Subject to the following provisions of this section, compensation by way of payment of cost of works shall, in the case of a compulsory rights order, be payable in respect of a holding to which the last preceding section applies if—
  - (a) at the end of the period of occupation, any land forming part of the holding and comprised in the order has not been restored to the condition in which it was immediately before the date of entry, and
  - (b) after the end of the period of occupation, expenses are reasonably incurred by any person in respect of work carried out (over and above the ordinary maintenance and use of the land) for the purpose of further restoring that land to or towards that condition or a condition substantially similar thereto.

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- (2) Where in accordance with the preceding subsection compensation by way of payment of cost of works is payable—
  - (a) the person entitled thereto shall be the person by whom the expenses in question are incurred, and
  - (b) the compensation shall be payable from time to time as the expenses are incurred and shall be of an amount equal to the amount of the expenses.
- (3) The provisions of the Third Schedule to this Act shall have effect with respect to compensation by way of payment of cost of works under this section.

### **23 Compensation by reference to the diminution in value of the holding. E+W+S**

- (1) Compensation by reference to the diminution in value of a holding to which section twenty-one of this Act applies shall be payable if the value of a freehold interest in the holding, computed in accordance with paragraph (a) of the next following subsection, or in accordance with paragraph (b) of that subsection, as the case may be, but (in either case) with the benefit of any prospective right to compensation by way of payment of cost of works in respect of the holding, is less than the value of such an interest computed in accordance with paragraph (c) of that subsection.
- (2) For the purposes of the preceding subsection there shall be computed the following values, that is to say,—
  - (a) where the entirety of the holding is comprised in the order, the value at the end of the period of occupation of a freehold interest in the holding;
  - (b) where part of the holding is not comprised in the order, the value which a freehold interest in the holding would have at the end of the period of occupation if that part of the holding were in the state in which it was immediately before the date of entry, the remainder of the holding being taken to be in the state in which it is at the end of the period of occupation;
  - (c) in either case, the value which a freehold interest in the holding would have at the end of the period of occupation if the entirety of the holding were in the state in which it was immediately before the date of entry.
- (3) Where in accordance with subsection (1) of this section compensation by reference to the diminution in value of a holding is payable, the amount of the compensation shall be the amount of the difference between the values mentioned in that subsection, and the person entitled to that compensation shall be the person who at the end of the period of occupation is the owner of the holding.
- (4) In computing value as mentioned in any of paragraphs (a), (b) and (c) of subsection (2) of this section, it shall be assumed that a freehold interest in the holding is, in the circumstances mentioned in the paragraph in question, being offered for sale in the open market by a willing seller immediately after the end of the period of occupation, with vacant possession of the holding and free from incumbrances, other than any easement or similar right, any right restrictive of the use of land, and any mining lease or order conferring working rights, affecting the holding or any part thereof at that time.

### **[<sup>F135</sup>23A Additional compensation on re-occupation. E+W+S**

- (1) Subject to the following provisions of this section, with a view to furthering the resumption of agriculture on land formerly comprised in a compulsory rights order, a



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person shall be entitled to compensation by virtue of this section in respect of a holding to which section 21 of this Act applies if he is in occupation of the holding at the end of the period of occupation or if he enters into occupation of the holding at or after the end of that period, provided that he is occupying the holding or (as the case may be) he enters into occupation of the holding wholly or mainly for the purposes of agriculture carried on by way of a trade or business.

- (2) No compensation shall be payable to a person by virtue of this section unless he is either the person who, immediately before the operative date of the compulsory rights order, was entitled to occupy the holding (in this subsection referred to as “ the original occupier ”) or a person who, before the end of the period of occupation, became entitled to the relevant interest in the holding 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.
- (3) In subsection (2) above—
  - “ the relevant interest ”, in relation to any person, means the interest by virtue of which he became entitled to occupy the holding (or would have become so entitled if the compulsory rights order had not been made); and
  - “ will ” includes a codicil.
- (4) The compensation payable in respect of a holding by virtue of this section shall be payable [<sup>F136</sup>by the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order] and, subject to the following provisions of this section, shall be an amount equal to the compensation payable in respect of that holding under [<sup>F137</sup>section 17] of this Act for the last twelve months of the period of occupation.
- (5) Subject to the following provisions of this section, in any case where the compensation last payable in respect of a holding under [<sup>F137</sup>section 17] was in fact payable by reference to a period of less than twelve months, the compensation payable in respect of that holding by virtue of this section shall be an amount equal to the compensation which was so payable under [<sup>F137</sup>section 17], multiplied by the fraction of which the numerator is 365 and the denominator is the number of days in the period by reference to which the compensation was so payable under those sections.
- (6) Where the person entitled, immediately after the end of the period of occupation, to occupy the holding concerned ceases, before he enters into occupation, to be entitled to occupy some part of it then, subject to subsection (7) below,—
  - (a) his entry into occupation of the part which he remains entitled to occupy shall be treated for the purposes of subsection (1) above as entry into occupation of the holding; but
  - (b) the compensation payable to him by virtue of this section shall be such proportion of the compensation which would have been so payable had he remained entitled to enter into occupation of the whole of the holding as is properly attributable to the part of the holding which he remains entitled to occupy.
- (7) If, immediately before the end of the period of occupation, only part of the holding concerned (in this subsection referred to as “ the compensatable portion ”) was comprised in the compulsory rights order and (after the end of the period of occupation) subsection (6) above applies, then—

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- (a) if the part of the holding which the person concerned ceased to be entitled to occupy comprises the whole of the compensatable portion, no compensation shall be payable to him by virtue of this section;
- (b) if the person concerned remains entitled to occupy the whole of the compensatable portion, the compensation so payable to him shall not be reduced under paragraph ( b ) of subsection (6) above; and
- (c) in any other case, for the purpose of determining the proportion of the compensation properly attributable to any part of the holding under paragraph ( b ) of subsection (6) above, the holding shall be treated as consisting of the compensatable portion only. ]

#### Textual Amendments

**F135** S. 23A inserted by [Coal Industry Act 1975 \(c. 56\), s. 6\(1\)](#)

**F136** Words in s. 23A(4) substituted (31.10.1994) by [1994 c. 21, s. 52](#), Sch. 8 para. 19(1)(b) (with s. 40(7)); [S.I. 1994/2553, art. 2](#)

**F137** Words in s. 23A substituted (31.10.1994) by [1994 c. 21, s. 52](#), [Sch. 8 para. 19\(1\)\(a\)\(2\)](#) (with s. 40(7)); [S.I. 1994/2553, art. 2](#)

## 24 Tenant's right to compensation for improvements and other matters. **E+W**

- (1) The provisions of this section shall have effect where the land comprised in a compulsory rights order consists of or includes land which—
- (a) immediately before the date of entry, constitutes or forms part of an agricultural holding [<sup>F138</sup>held under a tenancy in relation to which the Act of 1986 applies], and
  - (b) is land on which, before that date, there have been carried out long-term improvements qualifying for compensation under the [<sup>F139</sup>Act of 1986], or there has been adopted a special system of farming qualifying for compensation under that Act.

In the following provisions of this section land comprised in a compulsory rights order which falls within paragraphs (a) and (b) of this subsection is referred to as “the tenant's land”.

- (2) If at the end of the period of occupation—
- (a) the tenant's land has lost the benefit of any of the improvements, or of the special system of farming, as the case may be, and
  - (b) that land is subject to the same tenancy as immediately before the date of entry, or is subject to a subsequent tenancy under which the tenant has retained or succeeded to the relevant right to compensation,

and the tenancy under which that land is then held continues after the end of the period of occupation, the provisions of the [<sup>F140</sup>Act of 1986] as to compensation for long-term improvements, and as to compensation for a special system of farming, shall apply as mentioned in the next following subsection.

- (3) The said provisions of the [<sup>F141</sup>Act of 1986] shall apply as if—
- (a) the tenant's land were in the state in which it was immediately before the date of entry, and

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- (b) the tenancy under which that land is held at the end of the period of occupation had terminated immediately after the end of that period and the tenant thereunder had then quitted the holding:

Provided that (in a case where long-term improvements qualifying for compensation under the [F141] Act of 1986] had been carried out on the tenant's land) if the tenant's land has lost the benefit of some of those improvements, but has not lost the benefit of all of them, those provisions of the [F141] Act of 1986] shall apply as mentioned in paragraphs (a) and (b) of this subsection, but as if the improvements of which the tenant's land has not lost the benefit had not been long-term improvements qualifying for compensation under that Act.

- (4) For the purposes of subsections (2) and (3) of this section—
- (a) the tenant's land shall be taken to have lost the benefit of a long-term improvement if the benefit of that improvement has been lost (wholly or in part) without being replaced by another long-term improvement of comparable benefit to the land;
- (b) the tenant's land shall be taken to have lost the benefit of a special system of farming if the increased value attributable to that system of farming has been lost (wholly or in part) without being regained by the continuous adoption of a system of farming of comparable benefit to the land.
- (5) For the purposes of paragraph (b) of subsection (2) of this section, the tenant's land shall be taken to be subject to such a subsequent tenancy as is therein mentioned if either—
- (a) by virtue of [F142] section 69(1) of the Act of 1986 or paragraph 5(1) of Part I of Schedule 9 to that Act](which relate respectively to improvements made during one of a series of tenancies) the same tenant would have the like right to compensation in right of the subsequent tenancy as he would have had in right of the previous tenancy, or
- (b) by virtue of [F143] section 69(2) or (3) of the Act of 1986 or paragraph 5(2) of Part I of Schedule 9 to that Act](which relate respectively to improvements paid for by an incoming tenant) the tenant under the subsequent tenancy would have the like right to compensation as the tenant would have had under the previous tenancy.
- (6) The provisions of the [F144] Act of 1986] referred to in subsection (2) of this section shall be taken to include any provisions of that Act as to the making of claims for any such compensation as is mentioned in that subsection, as to the calculation of any such compensation and the settlement or determination of such claims, as to the recovery of any such compensation, and as to any other matters incidental thereto:

Provided that—

- (a) any provisions of the [F144] Act of 1986] as to the giving of notice of intention to make a claim shall apply with the modification that the time for giving such a notice shall be any time not later than three months after the end of the period of occupation;
- (b) [F145] section 83(4)] of that Act (which relates to the time for settling such claims) shall apply with the substitution, for the reference to [F146] eight] months from the termination of the tenancy, of a reference to [F146] eight] months from the end of the period of occupation.

- (7) In this section—

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- (a) any reference to long-term improvements qualifying for compensation under the [F147Act of 1986] is a reference to long-term improvements in respect of which, immediately before the date of entry, a tenant of the agricultural holding in question had a prospective right to compensation under that Act on quitting the holding on the termination of his tenancy;
- (b) any reference to a special system of farming qualifying for compensation under the [F147Act of 1986] is a reference to a system of farming in respect of which, immediately before the date of entry, a tenant of the agricultural holding in question had a prospective right to compensation under [F148section 70] of that Act on quitting the holding on the termination of his tenancy.
- (8) In determining whether the conditions specified in paragraph (a) or paragraph (b) of the last preceding subsection are fulfilled, no account shall be taken of any provision of the [F149Act of 1986] whereby a right to compensation is conditional upon the making of a claim, or the giving of notice of intention to make a claim, or is liable to be affected by the service of a notice by the landlord.
- (9) In this Act “long-term improvement” means any improvement (whether begun before or after the first day of March, nineteen hundred and forty-eight) of a description specified in Part I or Part II of [F150Schedule 7 to the Act of 1986].
- [F151(9A) In this section the references to the Act of 1986 in subsections (1)( b ), (7) and (8) and the second and fourth references to that Act in subsection (3) include references to the Agricultural Holdings Act 1948 (in this Act called the Act of 1948) and the reference to section 70 of the Act of 1986 in subsection (7)( b ) includes a reference to section 56 of the Act of 1948. ]
- [F152(10) In the application of this section to Scotland [F153the words “held under a tenancy in relation to which the Act of 1986 applies” in subsection (1)(a) of this section shall be omitted and]], for references—
- (a) to the Act of 1986 and to sections 70 and 83(4) of that Act there shall be substituted respectively references to the Scottish Act of 1991 and to sections 44 and 62(3) of that Act;
- (b) to subsections (1), (2) and (3) of section 69 of the Act of 1986 there shall be substituted respectively references to sections 34(5) and 35(4) and (5) of the Scottish Act of 1991 (as they apply to new improvements);
- (c) to Parts I and II of Schedule 7 to the Act of 1986 and to the first day of March 1948 there shall be substituted respectively references to Parts I and II of Schedule 5 to the Scottish Act of 1991 and to the first day of November 1948; and
- (d) to sub-paragraphs (1) and (2) of paragraph 5 of Part I of Schedule 9 to the 1986 Act there shall be substituted respectively references to sections 34(5) and 35(4) of the Scottish Act of 1991 (as they apply to old improvements).

#### Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

#### Textual Amendments

- F138** Words in s. 24(1)(a) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 15(2)** (with s. 37)

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- F139** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(2)**
- F140** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(3)**
- F141** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(4)**
- F142** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(5)(a)**
- F143** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(5)(b)**
- F144** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(6)(a)**
- F145** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(6)(b)**
- F146** Words in s. 24(6) substituted (E.W.) by virtue of Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(6)**
- F147** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(7)(a)**
- F148** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(7)(b)**
- F149** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(8)**
- F150** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(9)**
- F151** S. 24(9A) inserted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(10)**
- F152** S. 24(10) substituted (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88, 89(2), **Sch. 11 para. 13** (with s. 45(3), Sch. 12 para.3)
- F153** Words in s. 24(10) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 15(3)** (with s. 37)

## 24 Tenant's right to compensation for improvements and other matters. **S**

- (1) The provisions of this section shall have effect where the land comprised in a compulsory rights order consists of or includes land which—
- (a) immediately before the date of entry, constitutes or forms part of an agricultural holding [<sup>F317</sup>held under a tenancy in relation to which the Act of 1986 applies], and
  - (b) is land on which, before that date, there have been carried out long-term improvements qualifying for compensation under the [<sup>F318</sup>Act of 1986], or there has been adopted a special system of farming qualifying for compensation under that Act.

In the following provisions of this section land comprised in a compulsory rights order which falls within paragraphs (a) and (b) of this subsection is referred to as “the tenant's land”.

- (2) If at the end of the period of occupation—
- (a) the tenant's land has lost the benefit of any of the improvements, or of the special system of farming, as the case may be, and
  - (b) that land is subject to the same tenancy as immediately before the date of entry, or is subject to a subsequent tenancy under which the tenant has retained or succeeded to the relevant right to compensation,

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and the tenancy under which that land is then held continues after the end of the period of occupation, the provisions of the [F<sup>319</sup>Act of 1986] as to compensation for long-term improvements, and as to compensation for a special system of farming, shall apply as mentioned in the next following subsection.

- (3) The said provisions of the [F<sup>320</sup>Act of 1986] shall apply as if—
- (a) the tenant's land were in the state in which it was immediately before the date of entry, and
  - (b) the tenancy under which that land is held at the end of the period of occupation had terminated immediately after the end of that period and the tenant thereunder had then quitted the holding:

Provided that (in a case where long-term improvements qualifying for compensation under the [F<sup>320</sup>Act of 1986] had been carried out on the tenant's land) if the tenant's land has lost the benefit of some of those improvements, but has not lost the benefit of all of them, those provisions of the [F<sup>320</sup>Act of 1986] shall apply as mentioned in paragraphs (a) and (b) of this subsection, but as if the improvements of which the tenant's land has not lost the benefit had not been long-term improvements qualifying for compensation under that Act.

- (4) For the purposes of subsections (2) and (3) of this section—
- (a) the tenant's land shall be taken to have lost the benefit of a long-term improvement if the benefit of that improvement has been lost (wholly or in part) without being replaced by another long-term improvement of comparable benefit to the land;
  - (b) the tenant's land shall be taken to have lost the benefit of a special system of farming if the increased value attributable to that system of farming has been lost (wholly or in part) without being regained by the continuous adoption of a system of farming of comparable benefit to the land.
- (5) For the purposes of paragraph (b) of subsection (2) of this section, the tenant's land shall be taken to be subject to such a subsequent tenancy as is therein mentioned if either—
- (a) by virtue of [F<sup>321</sup>section 69(1) of the Act of 1986 or paragraph 5(1) of Part I of Schedule 9 to that Act](which relate respectively to improvements made during one of a series of tenancies) the same tenant would have the like right to compensation in right of the subsequent tenancy as he would have had in right of the previous tenancy, or
  - (b) by virtue of [F<sup>322</sup>section 69(2) or (3) of the Act of 1986 or paragraph 5(2) of Part I of Schedule 9 to that Act](which relate respectively to improvements paid for by an incoming tenant) the tenant under the subsequent tenancy would have the like right to compensation as the tenant would have had under the previous tenancy.
- (6) The provisions of the [F<sup>323</sup>Act of 1986] referred to in subsection (2) of this section shall be taken to include any provisions of that Act as to the making of claims for any such compensation as is mentioned in that subsection, as to the calculation of any such compensation and the settlement or determination of such claims, as to the recovery of any such compensation, and as to any other matters incidental thereto:

Provided that—

- (a) any provisions of the [F<sup>323</sup>Act of 1986] as to the giving of notice of intention to make a claim shall apply with the modification that the time for giving such a

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notice shall be any time not later than three months after the end of the period of occupation;

- (b) [<sup>F324</sup>section 83(4)] of that Act (which relates to the time for settling such claims) shall apply with the substitution, for the reference to four months from the termination of the tenancy, of a reference to five months from the end of the period of occupation.

(7) In this section—

- (a) any reference to long-term improvements qualifying for compensation under the [<sup>F325</sup>Act of 1986] is a reference to long-term improvements in respect of which, immediately before the date of entry, a tenant of the agricultural holding in question had a prospective right to compensation under that Act on quitting the holding on the termination of his tenancy;
- (b) any reference to a special system of farming qualifying for compensation under the [<sup>F325</sup>Act of 1986] is a reference to a system of farming in respect of which, immediately before the date of entry, a tenant of the agricultural holding in question had a prospective right to compensation under [<sup>F326</sup>section 70] of that Act on quitting the holding on the termination of his tenancy.

(8) In determining whether the conditions specified in paragraph (a) or paragraph (b) of the last preceding subsection are fulfilled, no account shall be taken of any provision of the [<sup>F327</sup>Act of 1986] whereby a right to compensation is conditional upon the making of a claim, or the giving of notice of intention to make a claim, or is liable to be affected by the service of a notice by the landlord.

(9) In this Act “long-term improvement” means any improvement (whether begun before or after the first day of March, nineteen hundred and forty-eight) of a description specified in Part I or Part II of [<sup>F328</sup>Schedule 7 to the Act of 1986].

[<sup>F329</sup>(9A) In this section the references to the Act of 1986 in subsections (1)( b ), (7) and (8) and the second and fourth references to that Act in subsection (3) include references to the Agricultural Holdings Act 1948 (in this Act called the Act of 1948) and the reference to section 70 of the Act of 1986 in subsection (7)( b ) includes a reference to section 56 of the Act of 1948. ]

<sup>F330</sup>[(10) In the application of this section to Scotland [<sup>F331</sup>the words “held under a tenancy in relation to which the Act of 1986 applies” in subsection (1)(a) of this section shall be omitted and]], for references—

[<sup>F332</sup>(a) to the Act of 1986 and to sections 70 and 83(4) of that Act there shall be substituted respectively references—

(i) in the case of a 1991 Act tenancy within the meaning of the Scottish Act of 2003, to the Scottish Act of 1991 and to sections 44 and 62(3) of that Act; or

(ii) in the case of a short limited duration tenancy or a limited duration tenancy, (within the meaning of the Scottish Act of 2003) to the Scottish Act of 2003 and to section 53(1) of that Act;]

[<sup>F332</sup>(b) to subsections (1), (2) and (3) of section 69 of the Act of 1986 there shall be substituted respectively references—

(i) in the case of a 1991 Act tenancy within the meaning of the Scottish Act of 2003, to sections 34(5) and 35(4) and (5) of the Scottish Act of 1991 (as they apply to new improvements); or



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- (ii) in the case of a short limited duration tenancy or a limited duration tenancy (within the meaning of the Scottish Act of 2003), to sections 45(4) and 46 of the Scottish Act of 2003;]
- (c) to Parts I and II of Schedule 7 to the Act of 1986 and to the first day of March 1948 there shall be substituted respectively references to Parts I and II of Schedule 5 to the Scottish Act of 1991 and to the first day of November 1948; and
- (d) to sub-paragraphs (1) and (2) of paragraph 5 of Part I of Schedule 9 to the 1986 Act there shall be substituted respectively references to sections 34(5) and 35(4) of the Scottish Act of 1991 (as they apply to old improvements).

#### Extent Information

- E2** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

#### Textual Amendments

- F317** Words in s. 24(1)(a) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 15(2)** (with s. 37)
- F318** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(2)**
- F319** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(3)**
- F320** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(4)**
- F321** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(5)(a)**
- F322** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(5)(b)**
- F323** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(6)(a)**
- F324** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(6)(b)**
- F325** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(7)(a)**
- F326** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(7)(b)**
- F327** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(8)**
- F328** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(9)**
- F329** S. 24(9A) inserted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(10)**
- F330** S. 24(10) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88, 89(2), **Sch. 11 para. 13** (with s. 45(3), Sch. 12 para.3)
- F331** Words in s. 24(10) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 15(3)** (with s. 37)
- F332** S. 24(10)(a)(b) substituted (27.11.2003) by [Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, **Sch. para. 3**

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## 25 Deductions from tenant’s compensation. **E+W+S**

(1) Where a tenant of an agricultural holding is entitled to compensation under section twenty-four of this Act in respect of land constituting or forming part of that holding, there shall be deducted from the amount of that compensation, calculated apart from this subsection, the amount of any compensation which would have been recoverable from the tenant by the landlord—

- (a) under [F154 section 71 of the Act of 1986] (which relates to compensation for dilapidation, deterioration or damage for which the tenant is responsible), or
- (b) under [F155 section 72] of that Act (which relates to compensation for general reduction in the value of the holding due to the tenant’s failure to fulfil his responsibilities),

if the tenancy under which that land was held immediately before the date of entry had terminated immediately before that date and the tenant thereunder had then quitted the holding on the termination of his tenancy:

Provided, that for the purposes of this subsection, no account shall be taken of any dilapidation or deterioration of, or damage to, any part of the holding which was not comprised in the compulsory rights order, or of any reduction in the value of any such part of the holding.

(2) For the purposes of the last preceding subsection, any provision of the [F156 Act of 1986], whereby any right to compensation is conditional upon the making of a claim, or the giving of notice of intention to make a claim, shall be disregarded.

[F157(2A) In this section references to the Act of 1986 and to sections 71 and 72 of that Act include respectively references to the Act of 1948 and to sections 57 and 58 of that Act]

[F158(3) In the application of this section to Scotland, for paragraphs (a) and (b) of subsection (1) above there shall be substituted the words “under section 45 of the Scottish Act of 1991 (which relates to compensation for deterioration of a holding or part thereof for which a tenant is responsible).”]

### Textual Amendments

**F154** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 27(2)(a)**

**F155** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 27(2)(b)**

**F156** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 27(3)**

**F157** S. 25(2A) inserted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 27(4)**

**F158** S. 25(3) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88, 89(2), **Sch. 11 para.14** (with s. 45(3), Sch. 12 para. 3)

## [F159] 25A Tenant’s right to compensation for improvements etc.: farm business tenancies. **E+W**

(1) The provisions of this section shall have effect where—

- (a) any part of the land comprised in a compulsory rights order is held, immediately before the date of entry, under a farm business tenancy;

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- (b) there have been provided in relation to the land which is both so comprised and so held ( “the tenant’s land”) tenant’s improvements in respect of which, immediately before that date, the tenant had a prospective right to compensation under section 16 of the Act of 1995 on quitting the holding on the termination of the tenancy;
  - (c) at the end of the period of occupation, the tenant’s land has lost the benefit of any such improvement; and
  - (d) immediately after the end of that period, the tenant’s land is comprised in the same tenancy as immediately before the date of entry, or is comprised in a subsequent farm business tenancy at the end of which the tenant is not deprived, by virtue of section 23(3) of that Act, of his right to compensation under section 16 of that Act in respect of any tenant’s improvement provided during the earlier tenancy in relation to the tenant’s land.
- (2) For the purposes of subsection (1) of this section, subsection (2) of section 22 of the Act of 1995 (which requires notice to be given of the intention to make a claim) shall be disregarded.
- (3) Subject to subsection (4) of this section, Part III of the Act of 1995 shall apply as if—
- (a) the tenant’s land were in the state in which it was immediately before the date of entry, and
  - (b) the tenancy under which that land is held at the end of the period of occupation had terminated immediately after the end of that period and the tenant had then quitted the holding.
- (4) Where the tenant’s land has lost the benefit of some tenant’s improvements but has not lost the benefit of all of them, Part III of the Act of 1995 shall apply as mentioned in subsection (3) above, but as if the improvements of which the tenant’s land has not lost the benefit had not been tenant’s improvements.
- (5) For the purposes of subsections (1) and (4) of this section, the tenant’s land shall be taken to have lost the benefit of a tenant’s improvement if the benefit of that improvement has been lost (wholly or in part) without being replaced by another improvement of comparable benefit to the land.
- (6) In this section “ holding ”, in relation to a farm business tenancy, “ tenant’s improvement ”, “ termination ”, in relation to a tenancy, and references to the provision of a tenant’s improvement have the same meaning as in the Act of 1995.
- (7) This section does not extend to Scotland.]

#### Textual Amendments

**F159** S. 25A inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 16** (with s. 37)

## 26 Compensation for short-term improvements and related matters. **E+W+S**

- (1) Where, in the exercise of rights conferred by a compulsory rights order, [<sup>F160</sup>any person occupies] any land which, immediately before the date of entry, was agricultural land [<sup>F161</sup>and was not comprised in a farm business tenancy], compensation shall be payable [<sup>F160</sup>by that person] in respect of any improvements or other matters to which this section applies in relation to that land.

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[<sup>F162</sup>(1A) Compensation shall not be payable by virtue of this section where a person's occupation of any land, in exercise of rights conferred by a compulsory rights order, is confined to replacing in occupation a person previously entitled to exercise the rights conferred by that order.]

- (2) This section applies, in relation to any land,—
- (a) to any improvements, of a description specified in Part I of the Fourth Schedule to this Act, which had been carried out on that land before the date of entry, and
  - (b) to any matters, of a description specified in Part II of the Fourth Schedule to this Act, which applied to that land immediately before that date:

Provided that, in relation to land which, immediately before the date of entry, was not occupied by a tenant, Part II of the Fourth Schedule to this Act shall apply subject to the modifications specified in Part III of that Schedule.

- (3) Where compensation is payable <sup>F163</sup>. . . under this section in respect of any improvements or other matters, the compensation shall be of an amount equal to the amount of the compensation which would have been payable in respect of those improvements or matters under the [<sup>F164</sup>Act of 1986] if—
- (a) where the land in question did not form part of an agricultural holding immediately before the date of entry, it had formed part of such a holding immediately before that date, and
  - (b) in any case, the tenancy of the agricultural holding comprising that land had terminated on the date of entry and the tenant thereunder had then quitted the holding.
- (4) The person entitled to any compensation payable by virtue of this section—
- (a) in the case of land which, immediately before the date of entry, was occupied by a tenant, shall be that tenant, and
  - (b) in any other case, shall be the person who was the owner of the land immediately before the date of entry.
- (5) If, by virtue of the power conferred by [<sup>F165</sup>section 91 of the Act of 1986, the provisions of Schedule 8] to that Act are varied, the Minister may by order make such corresponding variations in the provisions of Parts I, II and III of the Fourth Schedule to this Act as he may consider appropriate.

[<sup>F166</sup>(5A) the reference in subsection (3) of this section to the 1986 Act includes a reference to the 1948 Act]

(6) In the application of this section to Scotland

[<sup>F167</sup>(za) in subsection (1) of this section, the words “and was not comprised in a farm business tenancy” shall be omitted;]

, [<sup>F168</sup>(a)] the following subsection shall be substituted for subsection (2) of this section:

“(2) This section applies, in relation to any land, to any improvements of a description specified in Part IV of the Fourth Schedule to this Act, which had been carried out on that land before the date of entry:

Provided that, in relation to land which, immediately before the date of entry, is not occupied by a tenant, Part IV of that Schedule shall apply subject to the modifications set out in Part V of that Schedule”

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- [<sup>F169</sup>(b) in subsection (3) of this section for the reference to the Act of 1986 there shall be substituted a reference to the Scottish Act of 1991 or, as the case may be, to the Scottish Act of 2003; and]
- <sup>F170</sup>[(c) in subsection (5) of this section there shall be substituted—
- (i) for the reference to section 91 of the Act of 1986 a reference to section 73 of the Scottish Act of 1991;
  - (ii) for the reference to Schedule 8 to the Act of 1986 a reference to Part III of Schedule 5 to the Scottish Act of 1991;
  - (iii) for the reference to Parts I, II and III of the Fourth Schedule to this Act a reference to Parts IV and V of that Schedule. ]

#### Textual Amendments

- F160** Words in s. 26(1) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 20(1)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F161** Words in s. 26(1) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 17(1)(2)** (with s. 37)
- F162** S. 26(1A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 20(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F163** Words in s. 26(3) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 20(3), **Sch. 11 Pt. II**
- F164** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 28(2)**
- F165** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 28(3)**
- F166** S. 26(5A) inserted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 28(4)**
- F167** S. 26(6)(za) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 17(1)(3)** (with s. 37)
- F168** Word in s. 26(6) inserted (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88, 89(2), **Sch. 11 para. 15** (with s. 45(3), Sch. 12 para. 3)
- F169** S. 26(6)(b) substituted (27.11.2003) by Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (S.S.I. 2003/583), art. 1, **Sch. para. 4**
- F170** Words in s. 26(6) substituted (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88, 89(2), **Sch. 11 para. 15** (with s. 45(3), Sch. 11 para. 3)

## 27 Compensation in respect of forced sales. **E+W+S**

- (1) Where, in consequence of the confirmation of a compulsory rights order, a person incurs a loss in respect of a forced sale of any property consisting of—
- (a) livestock, vehicles, plant, equipment or other chattels which are kept on a holding to which (when the order becomes operative) section seventeen of this Act applies, or which are used for the purposes of such a holding, or
  - (b) a fixture or building (not falling within the preceding paragraph) which he has removed from such a holding in pursuance of [<sup>F171</sup>section 10 of the Act of 1986],
- he shall, subject to the following provisions of this section, be entitled to compensation from [<sup>F172</sup>the person on whose application the compulsory rights order was made] of an amount equal to that loss.
- (2) The preceding subsection shall not apply except where the person incurring the loss is the person who is for the time being entitled to occupy so much of the holding as is comprised in the order, or would be entitled for the time being to occupy it if the order had not been made.

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[<sup>F173</sup>(2A) Where, in the case of any sale in respect of which compensation is payable under this section, a person other than the person who applied for the order is entitled, on the effective date of the sale, to the rights conferred by the compulsory rights order, that compensation shall be payable by the person entitled to those rights, instead of by the person who applied for the order.]

(3) A person shall not be entitled to compensation under this section in respect of a forced sale unless he has given to [<sup>F174</sup>the person potentially liable] not less than ten days' notice of the intended sale, and has, before the sale, afforded to [<sup>F174</sup>the person to whom the notice was given, or any person designated for the purpose by him,] reasonable facilities to inspect the property intended to be sold, in so far as he was in a position to afford such facilities.

(4) In the application of this section to Scotland, for the reference to [<sup>F175</sup>section 10 of the Act of 1986] there shall be substituted a reference to [<sup>F176</sup>section 18 of the Scottish Act of 1991].

<sup>F177</sup>(5) In this section—

“effective date”, in relation to a sale, means the date on which the property sold becomes the property of the purchaser; and

“the person potentially liable”, in relation to a notice relating to a sale, means the person on whom the liability to pay the compensation will fall on the effective date of the sale if the person entitled to the rights conferred by the compulsory rights order in question does not change before that date.

#### Textual Amendments

**F171** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 29(2)**

**F172** Words in s. 27(1) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 21(1)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F173** S. 27(2A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 21(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F174** Words in s. 27(3) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 21(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F175** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 29(3)**

**F176** Words in s. 27(4) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88, 89(2), **Sch. 11 para. 16** (with s. 45(3), Sch. 12 para. 3)

**F177** S. 27(5) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 21(4)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

## 28 Special provisions as to market gardens. **E+W+S**

(1) The provisions of this section shall have effect where the land comprised in a compulsory rights order consists of or includes land which, immediately before the date of entry, was agricultural land used as a market garden [<sup>F178</sup>and was not comprised in a farm business tenancy].

(2) Subject to the next following subsection, section twenty-six of this Act shall have effect in relation to that land as if the descriptions of improvements specified in



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Part VI of the Fourth Schedule to this Act were included among the descriptions of improvements specified in Part I of that Schedule.

- (3) Where the land in question, immediately before the date of entry, was occupied by a tenant, the last preceding subsection shall not apply to any improvements of a description specified in Part VI of the Fourth Schedule to this Act unless they are improvements in respect of which [F179 subsections (2) to (5) of section 79 of the Act of 1986] (which relates to market gardens) has effect, whether by virtue of an agreement or of a direction given under [F180 subsections (2) of section 80] of that Act.
- (4) In relation to land falling within subsection (1) of this section, any reference in the preceding provisions of this Part of this Act to rights under [F181 sections 10 of the Act of 1986] shall include a reference to rights under that section as extended by [F182 subsection (3) of section 79 of the Act of 1986.]
- (5) If, by virtue of the power conferred by [F183 section 91 of the Act of 1986 the provisions of Schedule 10] to that Act are varied, the Minister may by order make such corresponding variations in the provisions of Part VI of the Fourth Schedule to this Act as he may consider appropriate.
- (6) In the application of this section to Scotland [F184 in subsection (1) of this section, the words “and was not comprised in a farm business tenancy” shall be omitted; and], for the references to [F185 subsections (2) to (5) of section 79 of the Act of 1986 and subsection (3) of that section] of that section, there shall be substituted respectively references [F186 section 40 of the Scottish Act of 1991 and to subsection (4)(a) of that section]; for the references to [F187 subsection (2) of section 80 of the Act of 1986 and to section 10] of that Act there shall be substituted respectively references [F186 to section 41(1) and to section 18 of the Scottish Act of 1991]; for the references to [F188 section 91 of the Act of 1986 and to Schedule 10] to that Act there shall be substituted respectively references [F186 to section 73 of the Scottish Act of 1991 and to Schedule 6 thereto]; and for the reference to Part I of the Fourth Schedule to this Act there shall be substituted a reference to Part IV of that Schedule.

#### Textual Amendments

- F178** Words in s. 28(1) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 18(1)(2)** (with s. 37)
- F179** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(2)(a)**
- F180** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(2)(b)**
- F181** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(3)(a)**
- F182** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(3)(b)**
- F183** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(4)**
- F184** Words in s. 28(6) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 18(1)(3)** (with s. 37)
- F185** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(5)(a)**
- F186** Words in s. 28(6) substituted (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88, 89(2), **Sch. 11 para. 17(a)(b)(c)** (with s. 45(3), Sch. 12 para. 3)
- F187** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(5)(b)**



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**F188** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 30\(5\)\(c\)](#)

*Compensation in respect of non-agricultural land*

**29 Annual and terminal compensation, and compensation in respect of forced sales.** **E+W+S**

- (1) Where land, immediately before the operative date of a compulsory rights order,—
- (a) was occupied as a unit, but
  - (b) was not so occupied wholly or mainly for the purposes of agriculture carried on by way of a trade or business,

the entirety of that land (excluding the coal and any other minerals vested in [<sup>F189</sup>the Coal Authority or any licensed operator (within the meaning of the Coal Industry Act 1994)]) shall be taken, in relation to that compulsory rights order, to constitute a holding to which this section applies.

- (2) The provisions of subsections (1), [<sup>F190</sup>(1A) and (3) to (3B) of section 17 of this Act and the provisions of section 18 of this Act], and the provisions of section twenty-seven of this Act, shall have effect in relation to a holding to which this section applies as they have effect in relation to a holding to which section seventeen of this Act applies:

Provided that the provisions of section twenty-seven of this Act shall have effect, in relation to a holding to which this section applies, as if, in paragraph (b) of subsection (1) of that section, for the reference to such a fixture or building as is therein mentioned, there were substituted a reference to any trade or other fixture (not falling within paragraph (a) of that subsection) which the person in question has lawfully removed from the holding.

- (3) The provisions of section twenty-one of this Act (except subsection (2) of that section) and the provisions of sections twenty-two and twenty-three of this Act shall have effect in relation to a holding to which this section applies as they have effect in relation to a holding to which section twenty-one of this Act applies.

**Textual Amendments**

**F189** Words in s. 29(1) substituted (31.10.1994) by [1994 c. 21, s. 52, Sch. 8 para. 22\(1\)](#) (with s. 40(7)); S.I. [1994/2553, art. 2](#)

**F190** Words in s. 29(2) substituted (31.10.1994) by [1994 c. 21, s. 52, Sch. 8 para. 22\(2\)](#) (with s. 40(7)); S.I. [1994/2553, art. 2](#)

**30 Non-agricultural tenant's improvements.** **E+W+S**

- (1) The provisions of this section shall have effect where the land comprised in a compulsory rights order consists of or includes land which—
- (a) immediately before the date of entry, constitutes or forms part of a holding to which Part I of the Act of 1927 applies, and
  - (b) is land on which, before that date, there have been carried out improvements qualifying for compensation under that Act.

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In the following provisions of this section land comprised in a compulsory rights order which falls within paragraphs (a) and (b) of this subsection is referred to as “the tenant’s land”.

- (2) If at the end of the period of occupation—
- (a) the tenant’s land has lost the benefit of any of the improvements, and
  - (b) that land is subject to the same tenancy as immediately before the date of entry, and that tenancy continues until after the end of the period of occupation, the provisions of the Act of 1927 as to compensation for improvements shall apply as mentioned in the next following subsection.
- (3) The said provisions of the Act of 1927 shall apply as if—
- (a) the tenant’s land were in the state in which it was immediately before the date of entry;
  - (b) the tenancy under which that land is held at the end of the period of occupation had terminated immediately after the end of that period and the tenant thereunder had then quitted the holding; and
  - (c) it were established that, after the termination of that tenancy, there was no intention to demolish or make structural alterations in any premises on the tenant’s land or any part of such premises or to change the use of that land or any premises thereon:

Provided that, if the tenant’s land has lost the benefit of some of the improvements in question, but has not lost the benefit of all of them, those provisions of the Act of 1927 shall apply as mentioned in paragraphs (a) to (c) of this subsection, but as if the improvements of which the tenant’s land has not lost the benefit had not been improvements qualifying for compensation under that Act.

- (4) For the purposes of the last preceding subsection the tenant’s land shall be taken to have lost the benefit of an improvement if the benefit of that improvement has been lost (wholly or in part) without being replaced by another improvement of comparable benefit to the land.
- (5) The provisions of the Act of 1927 referred to in subsection (2) of this section shall be taken to include any provisions of that Act as to the making of claims for any such compensation as is mentioned in that subsection, as to the calculation of any such compensation and the determination of such claims, as to the recovery of any such compensation, and as to any other matters incidental thereto:

Provided that the provisions of the Act of 1927 as to the making of such claims shall apply with the modification that the time for making a claim shall be any time not later than three months after the end of the period of occupation.

- (6) In this section any reference to an improvement qualifying for compensation under the Act of 1927 is a reference to an improvement in respect of which, immediately before the date of entry, the tenant of the holding in question had a prospective right to compensation under that Act on quitting the holding on the termination of his tenancy.
- (7) In determining whether the conditions specified in the last preceding subsection are fulfilled, no account shall be taken of any provisions of the Act of 1927 whereby a right to compensation is conditional upon the making of a claim, or is liable to be affected by the service of a notice by the landlord.

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- (8) In this section “the Act of 1927” means the <sup>M3</sup>Landlord and Tenant Act 1927, and “improvement” includes the erection of a building.
- (9) In the application of this section to Scotland, for any reference to the Act of 1927, or to any provision thereof, there shall be substituted a reference to any term of the tenant’s lease entitling him to compensation for improvements; and paragraph (c) of subsection (3) shall be omitted.

#### Marginal Citations

M3 1927 c. 36.

### *Compensation in respect of other matters*

#### **31 Compensation in respect of easements and other rights. E+W+S**

- (1) The provisions of this section shall have effect where, by reason of a compulsory rights order or of anything done in the exercise of rights conferred by such an order, the exercise of an easement or similar right over any land comprised in the order, or of any right restrictive of the use of any such land, is prevented or injuriously affected:

Provided that this section shall not apply to any easement or other right which consists of any such right as is mentioned in subsection (2) or subsection (3) of section seven of this Act.

- (2) For the year beginning with the operative date of the order, and for each subsequent year which begins with an anniversary of that date and falls [<sup>F191</sup>wholly or partly] within the period of occupation, the person for the time being entitled to the easement or right in question shall be entitled to compensation <sup>F192</sup> . . .

[<sup>F193</sup>(2A) Subject (where different persons have been entitled to the rights for different parts of the year) to any apportionment under section 35(3) of this Act, the liability to pay compensation under subsection (2) of this section shall fall on the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order.]

- (3) Where, after the end of the period of occupation, the exercise of the easement or right continues to be prevented or injuriously affected by reason of anything done during that period in the exercise of rights conferred by the compulsory rights order,—
- (a) if that easement or right is appurtenant to, or the benefit thereof is in any other way annexed to, any land, the person who, at the end of the period of occupation, is the owner of that land shall be entitled to compensation from [<sup>F194</sup>the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order] of an amount equal to the diminution (if any) in the value of that land, in so far as any such diminution is attributable to the fact that the exercise of the easement or right is so prevented or injuriously affected;
- (b) in any other case, the person who at the end of the period of occupation is entitled to the right in question shall be entitled to compensation from [<sup>F194</sup>the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order] of an amount equal to the market value which the right would then have if its exercise were not so

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prevented or affected, reduced by the amount of any market value which the right actually has at the end of that period.

- (4) For the purposes of paragraph (a) of the last preceding subsection the value of the land in question shall be taken to have been diminished if (and to the extent to which) the value of a freehold interest in that land at the end of the period of occupation is less than the value which such an interest would then have if the land comprised in the order, over which the easement or right is exercisable, were in the state in which it was immediately before the date of entry; and for the purpose of computing those values the provisions of subsection (4) of section twenty-three of this Act shall apply as they apply for the purposes of subsection (2) of that section, but with the substitution, for references to the holding, of references to the land to which the benefit of the easement or right is annexed.
- (5) In relation to common or waste lands (within the meaning of the <sup>M4</sup>Lands Clauses Consolidation Act 1845) the Minister may make regulations modifying the operation of the preceding provisions of this section so as to secure that compensation under this section in respect of commonable or other rights (being rights which, if the land were being compulsorily purchased in accordance with that Act, would be subject to compensation assessed globally, and apportioned among the persons entitled to the rights) shall be assessed globally, and apportioned among the persons entitled thereto, in such manner as the Minister may consider appropriate.
- (6) In the application of this section to Scotland, for the reference to common or waste lands within the meaning of the <sup>M5</sup>Lands Clauses Consolidation Act 1845, there shall be substituted a reference to lands of the nature of commonalty within the meaning of the Lands Clauses Consolidation (Scotland) Act 1845.

#### Textual Amendments

- F191** Words in s. 31(2) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 23(1)(a)** (with s. 40(7); S.I. 1994/2553, **art. 2**)
- F192** Words in s. 31(2) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, **Sch. 8 para. 23(1)(b)**, **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F193** S. 31(2A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 23(2)** (with s. 40(7); S.I. 1994/2553, **art. 2**)
- F194** Words in s. 31(3)(a)(b) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 23(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

#### Marginal Citations

- M4** 1845 c. 18.  
**M5** 1845 c. 19.

### [31A] <sup>F195</sup>Compensation in respect of disposable minerals. **E+W+S**

- (1) The provisions of this section shall have effect where—
- (a) any person ( “the operator”) exercises any right of his by virtue of a compulsory rights order and section 10(1) to this Act to get any minerals other than coal; and
- (b) the land where the right is exercised was not comprised in that order in the circumstances specified in section 33(1) of this Act.

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- (2) The person who, apart from the compulsory rights order and section 10(1) of this Act, would have been entitled to the minerals shall be entitled (subject to the following provisions of this section) to compensation from the operator of an amount equal to 12.5 per cent. of the market value of the minerals at the time when the right is exercised.
- (3) Where, in the case of any minerals, it would be reasonable for steps for making them saleable or for enhancing their value to be taken on the land between—
- (a) the time when those minerals are got, and
  - (b) any sale of the minerals by the operator from the land,
- it shall be assumed, for the purpose of determining the market value of those minerals as at the time mentioned in subsection (2) above, that the minerals were in the same condition at the time so mentioned as they would have been had those steps already been taken.
- (4) Any question for the purposes of subsection (3) above as to the extent to which it would be reasonable for any steps to be taken in relation to any minerals shall be determined as at the time mentioned in paragraph (a) of that subsection and on the assumption that it is not reasonable for steps to be taken where the total cost to the operator of taking those steps is equal to or more than the difference between—
- (a) what would be the market value of the minerals for the purposes of subsection (2) above if it were reasonable for those steps to be taken; and
  - (b) what would be their market value for those purposes if it were not;
- and for this purpose, where the minerals would not be saleable without the taking of those steps, the market value referred to in paragraph (b) above shall be taken to be nil.
- (5) Where more than one person is entitled to compensation under this section, the amount of compensation mentioned in subsection (2) above shall be apportioned between them according to the values of the interests or rights in respect of which each of them would have been entitled to, or to a share of, the minerals.
- (6) As soon as reasonably practicable, after the end of every period of twelve months during which any person has exercised such a right as is mentioned in subsection (1) above, that person shall give written notice under this subsection to every person appearing to him to be a person entitled to compensation under this section in respect of any exercise by him during that period of that right.
- (7) A notice under subsection (6) above shall—
- (a) describe the minerals in respect of which the entitlement to compensation of the person given the notice arises; and
  - (b) state the amount appearing to the person giving the notice to be the amount which for the purposes of subsection (2) above is to be taken to be the market value of those minerals as at the time when the right in question was exercised in relation to those minerals.]

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#### **Textual Amendments**

**F195** S. 31A inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 24(1)** (with s. 40(7)) and subject to saving in **Sch. 8 para. 24(2)**; S.I. 1994/2553, **art. 2**

*Status: Point in time view as at 28/11/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958. (See end of Document for details)*

## **32 Compensation for depreciation of other land in same ownership. E+W+S**

- (1) This section applies, in relation to a compulsory rights order, to any land which—
- (a) does not form part of the land comprised in the order, or of any holding to which section seventeen or section twenty-nine of this Act applies, but
  - (b) immediately before the operative date of the order, is land wherein the interest of the owner is held by a person who is also the owner of the whole or part of the land comprised in the order.
- (2) Where a compulsory rights order has become operative, and in the case of any land which, in relation to that order, is land to which this section applies (in this and the next following subsection referred to as “the relevant land”) it is shown that for any year (being either the year beginning with the operative date of the order, or a year beginning with an anniversary of that date and falling [<sup>F196</sup>wholly or partly] within the period of occupation) the annual value of the relevant land is less than the annual value of that land would have been if—
- (a) the land comprised in the order had not included any of the owner’s land comprised therein, and
  - (b) all the owner’s land comprised in the order had remained in the state in which it was immediately before the operative date,
- the person who is for the time being the owner of the relevant land shall be entitled to compensation <sup>F197</sup> . . . .
- [<sup>F198</sup>(2A) Subject (where different persons have been entitled to the rights for different parts of the year) to any apportionment under section 35(3) of this Act, the liability to pay compensation under subsection (2) of this section shall fall on the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order.
- (2B) For the purposes of subsection (2) of this section the annual value of any land for any year shall be taken to be an amount equal to the annual rent at which, immediately before the beginning of that year, that land, in the appropriate circumstances, might reasonably have been expected to be let from year to year under a contract of tenancy whereby the tenant undertook—
- (a) to pay all usual tenant’s rates and taxes and to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the land in a state to command that rent, and
  - (b) not to carry out any operations on the land, or to make any change in the use thereof, for which permission would be required under Part III of the Act of 1990 or [<sup>F199</sup>Part III of the Town and Country Planning (Scotland) Act 1997], except any operations for which such permission has been granted and is in force immediately before the beginning of that year.]
- [<sup>F200</sup>(3) For the purposes of subsection (2B) of this section , th appropriate circumstances—]
- (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 last preceding subsection, shall be taken to be the circumstances specified in those paragraphs:

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Provided that in either case the relevant land shall be assumed to have been available for letting with vacant possession immediately before the beginning of the year in question.

- (4) Where a compulsory rights order has become operative, and in the case of any land which, in relation to that order, is land to which this section applies it is shown that the value at the end of the period of occupation of the interest in that land which then constitutes the interest of the owner thereof (in this and the two next following subsections referred to as “the owner’s interest in the relevant land”), computed in accordance with paragraph (a) of the next following subsection, is less than the value of that interest computed in accordance with paragraph (b) of that subsection, the person who at the end of that period is entitled to the owner’s interest in the relevant land shall be entitled to compensation from [F201 the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order, and that compensation shall be] of an amount equal to the difference.
- (5) For the purposes of the last preceding subsection there shall be computed the following values, that is to say,—
  - (a) the value at the end of the period of occupation of the owner’s interest in the relevant land, assessed on the assumption that, in so far as any of the owner’s land comprised in the order has not then been restored to the condition in which it was immediately before the date of entry, there will be carried out on that land in due course all such work as would qualify for compensation under section twenty-two of this Act;
  - (b) the value which, at the end of the period of occupation, the owner’s interest in the relevant land would have if the entirety of the owner’s land comprised in the order were in the state in which it was immediately before the date of entry.
- (6) In computing value as mentioned in paragraph (a) or paragraph (b) of the last preceding subsection, it shall be assumed that the owner’s interest in the relevant land is, in the circumstances mentioned in the paragraph in question, being offered for sale subject to any incumbrances to which that interest is subject at the end of the period of occupation.
- (7) For the purposes of the operation of this section in relation to a compulsory rights order—
  - (a) any reference to the owner’s land comprised in the order is a reference to so much of the land comprised in the order as, immediately before the operative date, was land wherein the interest of the owner was held by the following person, that is to say,—
    - (i) where the reference in question is in subsection (2) of this section, the person who was then the owner of the relevant land within the meaning of that subsection;
    - (ii) where the reference is in subsection (5) of this section, the person who was then entitled to the owner’s interest in the relevant land within the meaning of that subsection;
  - (b) any reference to work which would qualify for compensation under section twenty-two of this Act, in relation to any land, is a reference to work for the purpose of further restoring that land to or towards the condition in which it was immediately before the date of entry, or a condition substantially similar thereto, being work in respect of which (in so far as the nature of the work is



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concerned) expenses would be treated as reasonably incurred for the purposes of subsection (1) of that section; and

- (c) any reference to the carrying out of any such work in due course is a reference to its being carried out at the first reasonable opportunity after the end of the period of occupation, or within a reasonable time after that opportunity arises.

#### Textual Amendments

**F196** Words in s. 32(2) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 25(1)(a)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F197** Words in s. 32(2) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, **Sch. 8 para. 25(1)(b)**, **Sch. 11 Pt. II**; S.I. 1994/2553, **art. 2**

**F198** S. 32(2A)(2B) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 25(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F199** Words in s. 32(2B)(b) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 5(4)**

**F200** S. 32(3) substituted (31.10.1994) for the words in s. 32(3) by 1994 c. 21, s. 52, **Sch. 8 para. 25(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F201** Words in s. 32(4) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 25(4)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

### 33 Compensation in respect of minerals. **E+W+S**

- (1) The provisions of the Fifth Schedule to this Act shall have effect where the land comprised in a compulsory rights order consists of or includes land which, immediately before the operative date of the order,—
- (a) is subject to a mining lease or order conferring working rights the benefit of which is held for the purposes of a mineral undertaking, or
- (b) is land wherein the interest of the owner of the land or of any stratum thereof (whether on or below the surface) is held for the purposes of a mineral undertaking.
- (2) The provisions of this Part of this Act, other than this section, shall have effect subject to the provisions of that Schedule in cases falling within that Schedule.

*Supplementary provisions as to compensation*

### 34 Provisions as to compensation in special cases. **E+W+S**

The provisions of the Sixth Schedule to this Act shall have effect as to the application of the preceding provisions of this Part of this Act in cases falling within that Schedule.

### 35 Time when compensation accrues due. **E+W+S**

- (1) Subject to the provisions of Part III of this Act as to claims for compensation under this Act, the provisions of this section shall have effect as to compensation payable [<sup>F202</sup>any person] by virtue of this Part of this Act.
- (2) In respect of any compensation payable by virtue of section seventeen of this Act, or by virtue of that section as applied by section twenty-nine of this Act, or by virtue of subsection (2) of section thirty-one or subsection (2) of section thirty-two of this Act or of paragraph 4, paragraph 5 or paragraph 12 of the Fifth Schedule to this Act,—

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- (a) [<sup>F202</sup>every person potentially liable for the compensation shall, on account of any compensation that may become payable by him at the end of the year,] make such quarterly payments as may be reasonable in the circumstances;
- (b) subject to the preceding paragraph, [<sup>F202</sup>the requirement to make payments shall not arise] until after the end of the year for which the compensation is payable;
- (c) if the amount of the compensation payable [<sup>F203</sup>for any year by any person to another] exceeds the aggregate amount of the quarterly payments made on account thereof during that year, the balance shall be payable together with interest on the amount of the balance from the end of that year to the date of payment;
- (d) if the aggregate amount of the compensation paid [<sup>F204</sup>for any year by any person to another] in respect of any such compensation (excluding any amount paid on account of interest) exceeds the principal amount of the compensation payable [<sup>F202</sup>for that year by that person to that other person, the person who paid it] (without prejudice to any right of recovery apart from this subsection) shall be entitled to deduct the amount of the overpayment from any compensation payable [<sup>F204</sup>by him to that other person] for any subsequent year.
- (3) Subject to the last preceding subsection, any such compensation as is therein mentioned shall be considered as accruing due from day to day and shall be apportionable in respect of time accordingly.
- (4) Any compensation payable—
- (a) under section twenty-three of this Act, or
  - (b) under that section as applied by section twenty-nine of this Act, or
  - (c) under subsection (3) of section thirty-one of this Act, or
  - (d) under subsection (4) of section thirty-two of this Act, or
  - (e) under paragraph 8, paragraph 10 or paragraph 13 of the Fifth Schedule to this Act, or
  - (f) under section fifty-two of this Act,
- shall accrue due at the end of the period of occupation.
- [<sup>F205</sup>(4A) Any compensation payable under section 23A of this Act shall accrue due on the date when the person entitled to compensation enters into occupation, if after the end of the period of occupation, and at the end of the period of occupation in any other case.]
- (5) Any compensation under section twenty-six of this Act shall accrue due at the beginning of the period of occupation.
- (6) Any compensation payable under section twenty-seven of this Act, or under that section as applied by section twenty-nine of this Act, in respect of a forced sale shall accrue due on the effective date of the sale, or, if that date was before the operative date of the order, shall be treated as having accrued due on the effective date of the sale.
- [<sup>F206</sup>(6A) Any compensation payable under section 31A of this Act shall accrue due at the end of the year in which the right in question is exercised.]
- (7) Any compensation payable <sup>F207</sup> . . . as mentioned in any of [<sup>F208</sup>subsections (4) to (6A)] of this section, if not paid within the period of thirty days beginning with the date on which it accrues due, shall be payable together with interest thereon, from the date on which it accrues due to the date of payment.

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*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958. (See end of Document for details)*

- (8) The Treasury may by order prescribe the rate of interest for the purposes of this section; and where in accordance with the preceding provisions of this section any compensation is payable with interest, the rate of interest shall be the rate for the time being in force by virtue of an order under this subsection.
- (9) In this section “quarterly payments” means payments calculated by reference to the usual quarter days, and “effective date”, in relation to a sale, means the date on which the property sold becomes the property of the purchaser <sup>F209</sup>; and references in this section to a person potentially liable to compensation, in relation to any time during a year at the end of which compensation may become payable under this Act, are references to the person on whom the liability to pay the compensation will fall at the end of the year if the person entitled to the rights conferred by the compulsory rights order in question does not change before the end of the year.]

#### Textual Amendments

- F202** Words in s. 35(1)(2) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 26(1)(2)**(with s. 40(7); [S.I. 1994/2553, art. 2](#))
- F203** Words in s. 35(2)(c) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 26(2)(c)** (with s. 40(7)); [S.I. 1994/2553, art. 2](#)
- F204** Words in s. 35(2)(d) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 26(2)(d)(i)(iii)** (with s. 40(7)); [S.I. 1994/2553, art. 2](#)
- F205** S. 35(4A) inserted by [Coal Industry Act 1975 \(c. 56\), s. 6\(2\)](#)
- F206** S. 35(6A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 26(3)** (with s. 40(7)); [S.I. 1994/2553, art. 2](#)
- F207** Words in s. 35(7) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, **Sch. 8 para. 26(4), Sch. 11 Pt. II** (with s. 40(7); [S.I. 1994/2553, art. 2](#))
- F208** Words in s. 35(7) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 26(4)** (with s. 40(7)); [S.I. 1994/2553, art. 2](#)
- F209** Words in s. 35(9) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 26(5)** (with s. 40(7)); [S.I. 1994/2553, art. 2](#)

#### Modifications etc. (not altering text)

- C5** S. 35 amended (11.2.1992) by [S.I. 1992/46, art. 2](#)

## 36 Record of condition of land. **E+W+S**

- (1) For the purpose of facilitating the assessment of compensation under this Part of this Act, <sup>F210</sup>a person entitled to the rights conferred by a compulsory rights order]shall cause records to be made in accordance with the following provisions of this section.
- (2) In the case of <sup>F211</sup>any compulsory rights order], where <sup>F210</sup>any person has] published, served and affixed notices under subsection (2) of section five of this Act, <sup>F210</sup>that person shall] cause a record to be made of the condition, as on the date of entry,—
- of all the land comprised in the order, and
  - of any other land which, in relation to that order, forms part of a holding to which section seventeen or section twenty-nine of this Act applies:

Provided that, in relation to an . . . <sup>F212</sup> order made in accordance with section eight of this Act, this subsection shall apply as if paragraph (b) thereof were omitted.

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*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958. (See end of Document for details)*

- (3) In the case of any compulsory rights order (other than any order made in accordance with section eight of this Act) [<sup>F210</sup>the person entitled immediately before the end of the period of occupation to the rights conferred by the order shall, at the end of that period], cause a record to be made of the condition, as at the end of that period, of all the land comprised in the order.
- (4) Any record of the condition of land made under this section shall be made in pursuance of a comprehensive survey of the land, in so far as such a survey can be carried out by inspection and without any operations involving the excavation of land or the making of borings therein, and shall include all such particulars of the land and of things in or on the land as are reasonably required for recording the results of such a survey.
- (5) Where [<sup>F210</sup>any person has caused a record to be made under this section, he] shall—
- (a) in the case of a record made under subsection (2) of this section, within twenty-one days after the date of entry, and
  - (b) in the case of a record made under subsection (3) of this section, within twenty-one days after the end of the period of occupation,
- serve on every person who is then known to them to be a person directly concerned a notice in the prescribed form together with a copy of the record.
- (6) If any person, to whom a copy of a record is sent under this section, gives notice of objection to [<sup>F210</sup>the person who served the record], within twenty-one days after the date on which the copy was sent to him, requiring the record to be amended in one or more respects specified in the notice, then—
- (a) if all the persons whose agreement is requisite agree on an amendment of the record (whether the amendment is that specified in the notice of objection or another amendment in substitution for it), [<sup>F210</sup>the person who served the record] shall cause the record to be amended accordingly;
  - (b) if no such agreement is reached, and the objection is not withdrawn, the matter in dispute shall be determined by arbitration.
- (7) For the purposes of the last preceding subsection, the persons whose agreement is requisite shall be [<sup>F210</sup>the person who served the record] the person who gave the notice of objection, and all other persons to whom copies of the record were sent under this section.
- (8) For the purposes of any arbitration under paragraph (b) of subsection (6) of this section—
- (a) the reference shall be to a single arbitrator appointed by [<sup>F210</sup>the person who served the record] and the person who gave the notice of objection in consequence of which the dispute arose;
  - (b) except in relation to the appointment of an arbitrator, all persons whose agreement is requisite for the purposes of that subsection shall be parties to the reference.
- (9) With respect to professional and other fees incurred by persons in obtaining advice or conducting negotiations with regard to any record made under this section, the Minister may make regulations requiring [<sup>F210</sup>persons required to make records under this section], within such limits (whether as to descriptions of fees, or as to amount, or otherwise) and subject to such conditions as may be prescribed, to pay fees so incurred:

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Provided that no regulations under this section shall apply to any fees in so far as they form part of the costs of an arbitration under this section, or shall affect any power of an arbitrator with respect to any such costs.

[<sup>F213</sup>(9A) If any person fails to cause any record to be made or served in accordance with any requirement imposed on him by this section—

- (a) his obligation to comply with that requirement shall be enforceable by the Coal Authority as if it were a duty owed by that person to that Authority; and
- (b) without prejudice to its rights by virtue of paragraph (a) above, that Authority may itself cause the record to be made and served in accordance with that requirement and may recover any expenses reasonably incurred in doing so from the person in contravention of that requirement.]

(10) In the application of this section to Scotland, for references to costs, and to an arbitrator, there shall be substituted respectively references to expenses and to an arbiter.

#### Textual Amendments

**F210** Words in s. 36 substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 27(1)-(6)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F211** Words substituted by **Coal Industry Act 1975 (c. 56), Sch. 3 para. 7**

**F212** Words repealed by **Coal Industry Act 1975 (c. 56), s. 5(3), Sch. 5**

**F213** S. 36(9A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 27(7)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

### PART III **E+W+S**

#### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### 37 **Consequential adjustments between landlords and tenants and in respect of mortgages and mining leases and orders.** **E+W+S**

The provisions of the Seventh Schedule to this Act shall have effect as to matters arising between landlords and tenants, or (in England and Wales) between mortgagees and mortgagors, or in respect of mining leases or orders conferring working rights, as mentioned in that Schedule, in consequence of the coming into operation of a compulsory rights order or the occupation or use of land in the exercise of rights conferred by such an order.

#### 38 **Protection from compulsory purchase of land occupied for authorised purposes.** **E+W+S**

Where a compulsory purchase order (within the meaning of the Acquisition of Land Act or, in Scotland, the Scottish Acquisition of Land Act) has been submitted or prepared, and—

- (a) the land comprised in the order includes land [<sup>F214</sup>in respect of which opencast planning permission has been granted]and is for the time being occupied by [<sup>F215</sup>a relevant person] for the [<sup>F216</sup>purpose of carrying on the permitted activities], and

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- (b) within the time limited for making objections to the order, [<sup>F215</sup>that relevant person gives] notice of that fact to the Minister to whom the order has been submitted, or by whom it has been prepared, as the case may be, specifying the land [<sup>F217</sup>in respect of which the permission was granted and] which is occupied as mentioned in the preceding paragraph,

the compulsory purchase order shall not be confirmed or made so as to authorise the compulsory purchase of any of the land specified in that notice, unless [<sup>F218</sup>the Secretary of State] is satisfied that it can be purchased without serious detriment to the [<sup>F219</sup>permitted activities]

[<sup>F220</sup>In this section “relevant person” means any licensed operator within the meaning of the Coal Industry Act 1994 or any person who is certified by the Coal Authority as a person whose application to that Authority for a licence under Part II of that Act is pending.]

#### Textual Amendments

- F214** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 9\(a\)\(i\)](#)
- F215** Words in s. 38(a)(b) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 28\(a\)\(b\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F216** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 9\(a\)\(ii\)](#)
- F217** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 9\(b\)](#)
- F218** Words substituted by virtue of S.I. 1969/1498, [arts. 2\(1\)](#), 5(6) and 1970/1537, [arts. 2\(2\)](#), 7(4)
- F219** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 9\(c\)](#)
- F220** Words in s. 38 inserted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 28\(c\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)

### 39 Entry on land. **E+W+S**

- (1) Where it appears to the Minister to be expedient that any land should be prospected—
- for the purpose of ascertaining whether the land contains coal suitable for working by opencast operations, and, if so, what quantity of such coal it contains, and how the coal in question could best be so worked, or
  - for the purpose of ascertaining whether the land would be suitable for use for any purposes connected with the working of coal on any adjacent land by opencast operations, including purposes of access and of restoring land affected by the working of coal by such operations,

the Minister may give a direction designating that land as land in relation to which, during such period as may [<sup>F221</sup>on the application of the Coal Authority] be specified in the direction, the powers conferred by the next following subsection are to be exercisable, subject to such conditions (if any) as may be specified in the direction.

- (2) Subject to the following provisions of this section, during any period for which, by virtue of such a direction, the powers conferred by this subsection are exercisable in relation to land designated in the direction, and subject to compliance with any conditions specified in the direction, any person authorised in writing by [<sup>F222</sup>the Coal Authority] may, at any reasonable time, for either of the purposes mentioned in the preceding subsection,—
- enter upon that land, or upon any other land to which entry is required for obtaining access to that land;

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- (b) carry out on the land designated in the direction such operations as may be requisite, in relation to that land, for either of the purposes mentioned in the preceding subsection; and
- (c) remove from the land designated in the direction any samples of minerals or of other substances obtained by carrying out any such operations thereon, and dispose of any such samples as [<sup>F222</sup>the Coal Authority may think fit to authorise him to dispose of]:

Provided that nothing in this subsection shall be construed as authorising any interference with the exercise of a public right of way, or any contravention of a prohibition or restriction imposed by or under an enactment (whether contained in a public general Act or in any other Act).

- (3) Subject to the following provisions of this section, any person authorised in writing by [<sup>F222</sup>the Coal Authority] may, at any reasonable time, enter upon and survey any land (whether comprised in a direction under subsection (1) of this section or not),—
  - (a) for any purpose in connection with, or preparatory to, an application for [<sup>F223</sup>opencast planning permission] or the making or confirmation of any order under Part I of this Act; or
  - (b) (where [<sup>F224</sup>opencast planning permission] has been granted) for any purpose in connection with, or preparatory to, the carrying [<sup>F225</sup>on of any of the permitted activities] or the performance of any functions under Part I of this Act, not being a purpose for which a right of entry is exercisable apart from this paragraph; or
  - (c) for the purpose of estimating value, or assessing loss, in connection with any claim for compensation under this Act; or
  - (d) for the purpose of affixing on land any notice in accordance with [<sup>F226</sup>section 15A(4)(c) or any of the provisions of the], Second or Ninth Schedule to this Act.
- (4) Nothing in this section shall authorise any person to enter upon any land which is covered by buildings.
- (5) A person authorised under this section to enter upon any land shall, if so required, produce evidence of his authority before entering thereon, or while remaining thereon, and (subject to the following provisions of this section) shall not demand admission as of right to any land which is occupied unless forty-two days' notice of the intended entry has been given to the occupier and to the owner of the land:

Provided that this subsection, in so far as it relates to the giving of notice, shall not apply where entry is required only for the purpose of affixing on land any notice in accordance with [<sup>F227</sup>section 15A(4)(c) or any of the provisions of the], Second or Ninth Schedule to this Act.

- (6) Where, in the exercise of the powers conferred by subsection (2) of this section, it is proposed to enter upon any land and carry out thereon any operations involving the excavation of the land, or the making of borings therein,—
  - (a) the power to carry out those operations shall not be exercisable unless the notice under the last preceding subsection included notice of the intention to carry out those operations; and
  - (b) if the land in question is held by the persons carrying on a statutory undertaking, or [<sup>F228</sup>a sewerage undertaking or sewage disposal undertaking, or is held by a [<sup>F229</sup>water authority] or other drainage authority, and those



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persons or that authority object to the proposed operations on the ground that the carrying out thereof would be seriously detrimental to the carrying on of their undertaking, or, in the case of a [<sup>F229</sup>water authority] or other drainage authority, to] [<sup>F228</sup>by an internal drainage board, and those persons or that board object to the proposed operations on the ground that the carrying out of the operations would be seriously detrimental to the carrying on of their undertaking, or, in the case of an internal drainage board, to] the performance of their functions, the operations shall not be carried out except with the consent of the appropriate Minister.

- (7) Where in the exercise of any power conferred by this section any damage is caused to land or to chattels, any person interested in the land or chattels shall be entitled to compensation in respect of that damage from [<sup>F222</sup>the Coal Authority]; and where in consequence of the exercise of any such power any person is disturbed in his enjoyment of any land or chattels, he shall be entitled to compensation from [<sup>F222</sup>the Coal Authority] in respect of the disturbance.
- [<sup>F230</sup>(7A) The persons who may be authorised by the Coal Authority to exercise the powers conferred by this section shall include any person who proposes to exercise those powers for the purposes and on behalf of any person who is or has applied to become a licensed operator within the meaning of the Coal Industry Act 1994; but where—
- (a) any person does exercise powers under this section for the purposes of such a person, and
  - (b) his written authority specifies that person and states that he is authorised to exercise those powers for the purposes and on behalf of that person,
- subsection (7) of this section shall have effect as if the references to the Coal Authority were references to the specified person.
- (7B) Any authorisation by the Coal Authority of any person for the purposes of the exercise of the powers conferred by this section, and any conditions of such an authorisation, may be revoked or varied by that Authority at any time.]
- (8) Any person who wilfully obstructs a person acting in the exercise of his powers under this section shall be liable on summary conviction to a fine not exceeding [<sup>F231</sup>level 1 on the standard scale].
- (9) Any power conferred on a person by virtue of this section shall be exercisable by him either alone or with other persons, and shall be exercisable together with any vehicles, apparatus, materials or animals required for the purpose for which the power is exercised.
- (10) Any reference in this section to Part I of this Act, or to the . . . <sup>F232</sup>Second Schedule thereto, includes a reference to the provisions of any enactment as applied by the said Part I, or by that Schedule, as the case may be.

#### Textual Amendments

- F221** Words in s. 39(1) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 29(1)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F222** Words in s. 39(2)(3)(7) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 29(2)(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F223** Words substituted by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(3), Sch. 8 para. 10(a)
- F224** Words substituted by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 10(b)(i)**
- F225** Words substituted by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 10(b)(ii)**

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- F226** Words substituted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 10(c)**
- F227** Words substituted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 11**
- F228** Words substituted (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190(1), **Sch. 25 para. 26(4)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 16(2), 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1), 17, 40(4), 57(6), 58)
- F229** Words substituted by virtue of Water Act 1973 (c. 37), **s. 9**
- F230** S. 39(7A)(7B) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 29(5)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F231** S. 39(8) for “twenty pounds” there is substituted “level 1 on the standard scale” by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), **ss. 38, 46** and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), **ss. 289F, 289G**
- F232** Words repealed by Housing and Planning Act 1986 (c. 63, (SIF 86), s. 39(4), Sch. 12 Pt. II

#### **Modifications etc. (not altering text)**

- C6** Functions of Minister of Agriculture, Fisheries and Food under s. 39 now exercisable (W.) by Secretary of State for Wales: S.I. 1978/272, **Sch. 3 para. 1**
- C7** S. 39 modified by Gas Act 1986 (c. 44, SIF 44:2), s. 67(1), **Sch. 7 para. 2(9)(b)**
- C8** S. 39 modified (E.W.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1), **Sch. 16 para. 3(1)(b)**
- C9** S. 39 modified (S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1), **Sch. 16 para. 3(2)(9)**
- C10** S. 39(2) restricted (31.10.1994) by 1994 c. 21, **s. 52(2)(3)**; S.I. 1994/2553, **art. 2**
- C11** S. 39: references in subsections (3)(d) and (5) to section 15A(4)(c) to be construed (*retrospective to 11.12.1987*) as references to 15A(5)(c) by 1994 c. 21, s. 52, **Sch. 8 para. 29(4)** (with s. 40(7)); S.I. 1994/2553, **art. 2**  
S. 39 modified (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. para. 10(a)**; S.I. 1996/218, **art. 2**
- C12** S. 39(6)(b) modified (1.4.2001) by 2000 c.38, s. 37, **Sch. 5 para. 1** (with s. 106); S.I. 2001/869, **art. 2**
- C13** S. 39(6)(b) extended by Post Office Act 1969 (c. 48), **Sch. 4, para. 93(1)(xiv)(2)(f)**
- C14** S. 39(6)(b) extended by Civil Aviation Act 1982 (c. 16, SIF 9), **Sch. 2 para. 4**

#### **40 Claims for compensation payable by [<sup>F233</sup>Corporation] **E+W+S****

- (1) Compensation under this Act shall not be payable by [<sup>F234</sup>any person] unless a claim for it is duly made to [<sup>F234</sup>that person].
- (2) Regulations made under this section by the Minister may—
- require claims for compensation under this Act to be made in such form, and within such time, as may be prescribed by the regulations;
  - require a claimant to provide such evidence in support of the claim, and such information as to the interest of the claimant in land to which the claim relates, and as to the interests of other persons therein which are known to the claimant, as may be so prescribed;
  - include provisions as to professional and other fees incurred by claimants in preparing and supporting claims for compensation under this Act, requiring [<sup>F234</sup>any person], within such limits (whether as to descriptions of fees, or as to amount, or otherwise) and subject to such conditions as may be prescribed, to pay fees so incurred:

Provided that no such regulations, in so far as they are made under paragraph (c) of this subsection, shall apply to the costs of any proceedings before a court or tribunal, or shall affect any power of a court or tribunal with respect to any such costs.

- (3) Any dispute—

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- (a) as to a right to compensation from [<sup>F234</sup>any person] under this Act, or as to the amount of any such compensation, or
- (b) as to a right to the payment of any fees by virtue of regulations made under this section, or under section thirty-six of this Act, or as to the amount of the fees payable in any case by virtue of any such regulations, or
- (c) as to the amount of the quarterly payments payable in accordance with subsection (2) of section thirty-five of this Act in respect of any such compensation as is mentioned in that subsection,
- shall be determined by the Lands Tribunal.
- (4) References in this section to compensation under this Act do not include any compensation payable in accordance with any enactment applied by section thirteen or section sixteen of this Act, or any sum payable in accordance with any enactment applied by section forty-five of this Act.
- (5) In the application of this section to Scotland, any reference to costs shall be construed as a reference to expenses.

#### Textual Amendments

**F233** Word substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**

**F234** Words in s. 40(1)(2)(c)(3) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 30(1)(2)** (with s. 40(7); S.I. 1994/2553, **art. 2**)

#### 41 Provisions as to allotment gardens and other allotments. **E+W+S**

- (1) The provisions of the Eighth Schedule to this Act shall have effect with respect to tenancies of allotments (including tenancies of allotment gardens).
- (2) In this Act “allotment” has the meaning assigned to it by section three of the <sup>M6</sup>Allotments Act 1922, and “allotment garden” has the meaning assigned to it by section twenty-two of that Act.
- (3) In the application of this Act to Scotland, “allotment” has the like meaning as in the Allotments (Scotland) Acts 1892 to 1950, and “allotment garden” has the meaning assigned to it by section nineteen of the <sup>M7</sup>Allotments (Scotland) Act 1922.

#### Marginal Citations

**M6** 1922 c. 51.

**M7** 1922 c. 52.

#### 42 Special provisions as to property held for religious purposes. **E+W+S**

- (1) The provisions of this section shall have effect where any compensation is payable by [<sup>F235</sup>any person (“the person liable”)] under this Act, and apart from this section would be payable to a person in right of an interest in land held by him for religious purposes:
- Provided that this section shall not apply to any compensation payable by virtue of section twenty-two of this Act.

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- (2) If the land, not being land in Scotland, Wales or Monmouthshire, is ecclesiastical property, the compensation shall be paid to the Church Commissioners.
- (3) If the land, being land in Scotland, is property belonging to the Church of Scotland, the compensation shall be paid to the general treasurer of that Church.
- (4) If, in the case of land not falling within subsection (2) or subsection (3) of this section, [<sup>F235</sup>the person liable is] so requested by or on behalf of a body of persons notified to [<sup>F235</sup>the person liable] by the Minister, after consultation with such persons or organisations as he may think appropriate, as the appropriate representative body, [<sup>F235</sup>the person liable] shall pay the compensation to that representative body.
- (5) Where apart from this section compensation would be payable to a person as the owner of land, and—
  - (a) by virtue of subsection (2) or subsection (4) of this section the compensation is payable to the Church Commissioners or a representative body, and
  - (b) by virtue of the operation in relation to that land of section twenty-four or section thirty of this Act, compensation is recoverable from him by another person,  
the Church Commissioners or representative body, as the case may be, shall indemnify him against any liability in respect of the compensation referred to in paragraph (b) of this subsection, and for that purpose may apply any money or securities held by them.
- (6) Where the fee simple of any ecclesiastical property, not being property in Wales or Monmouthshire, is in abeyance, it shall be treated for the purposes of this Act as being vested in the Church Commissioners.
- (7) In this section “ecclesiastical property” means property belonging to an ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a bishop of a diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction.

#### Textual Amendments

**F235** Words in s. 42(1)(4) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 31(1)(2)** (with s. 40(7); S.I. 1994/2553, **art. 2**)

### 43 Provisions as to mortgaged land and other special cases. **E+W+S**

- (1) For the purposes of Part II of this Act in its application to land in which there is an interest which is subject to a mortgage, a mortgagee shall not be taken to be entitled to occupy that land, or to be the person, who, but for a compulsory rights order, would be entitled to occupy it, unless—
  - (a) the interest which is subject to the mortgage is the interest of the person who (apart from the mortgage) is entitled to occupy that land, or who would, but for the compulsory rights order, be entitled to occupy it, and
  - (b) the mortgagee is, to the extent of the interest comprised in the mortgage, and subject to the rights conferred by the compulsory rights order, in possession of the land or of the rents and profits thereof.
- (2) If, in the circumstances specified in paragraphs (a) and (b) of the last preceding subsection, a mortgagee is the person entitled to any annual compensation under Part

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II of this Act, any such compensation paid to him shall be applied by him in or towards the satisfaction of interest arising under the mortgage, and, in so far as not so applied, shall be applied towards the reduction of the principal debt secured by the mortgage.

- (3) Where under subsection (2) of section thirty-two of this Act a person is entitled to compensation as the owner of any land, and his interest in that land is subject to a mortgage and the mortgagee is, to the extent of that interest, in possession of the land or of the rents and profits thereof, the compensation shall be paid<sup>F236</sup> . . . to the mortgagee, and shall be paid or applied by him as mentioned in the last preceding subsection.
- (4) Where any compensation payable<sup>F236</sup> . . . under this Act, not being annual compensation or compensation under section twenty-two of this Act, is payable in right of an interest in land which is subject to a mortgage,—
- (a) a claim for the compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest; and
  - (b) the compensation payable in respect of the interest shall be paid<sup>F236</sup> . . . to the mortgagee, or, where there is more than one mortgage, shall be payable to the first mortgagee, and, subject to the next following subsection, shall in either case be applied by him as if it were proceeds of sale.
- (5) Where apart from the last preceding subsection any compensation falling within that subsection would be payable to a person as the owner of land which is subject to a mortgage, and—
- (a) by virtue of the last preceding subsection that compensation is payable to a mortgagee, and
  - (b) by virtue of the operation in relation to that land of section twenty-four or section thirty of this Act, compensation is recoverable from him by another person,
- the compensation paid to the mortgagee shall be applied by him in the first place in or towards the payment of the compensation referred to in paragraph (b) of this subsection, and any balance shall be applied as if it were proceeds of sale.
- (6) Where any compensation falling within subsection (4) of this section is payable in right of an interest in land which is subject to a settlement, or is otherwise held in such a manner that the person entitled to that interest would not be competent to give an effective discharge for the proceeds of a sale thereof, that compensation shall be paid<sup>F236</sup> . . . to the person who would be competent to give such a discharge.
- (7) In this section “annual compensation” means any such compensation as is mentioned in subsection (2) of section thirty-five of this Act.
- (8) In the application of this section to Scotland—
- (a) for references to a mortgage, to a mortgagor and to a mortgagee there shall be substituted respectively references to a heritable security, to a debtor in a heritable security and to a heritable creditor;
  - (b) for references to the first mortgagee there shall be substituted references to that heritable creditor whose security has priority over any other heritable securities secured on the same interest; and
  - (c) for any reference to the application of a sum as if it were proceeds of sale there shall be substituted a reference to the application of a sum as if it were the price realised on the sale by a heritable creditor of land subject to a heritable security.

*Status: Point in time view as at 28/11/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958. (See end of Document for details)*

#### Textual Amendments

**F236** Words in s. 43 repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 32, **Sch. 11 Pt. II** (with s. 40(7); S.I. 1994/2553, **art. 2**)

#### 44 Crown land. **E+W+S**

- (1) Subject to the provisions of this section, the provisions of this Act shall apply in relation to land in which there is a Crown or Duchy interest as they apply in relation to land in which there is no such interest:

Provided that (subject to any express provision in this Act to the contrary) the provisions of this Act shall not apply to any land in which there is a Crown or Duchy interest, but no private interest other than any interest belonging to [<sup>F237</sup>the Coal Authority].

- (2) Except with the consent of the appropriate authority—
- no compulsory rights order shall be made in respect of any land in which for the time being there is a Crown or Duchy interest;
  - no order shall be made under section sixteen of this Act in respect of any such land;
  - the powers conferred by section thirty-nine of this Act shall not be exercisable in relation to any such land:

Provided that nothing in this section shall affect the validity or operation of an order, or the exercise of any power, as against any person having, in or over the land in question, any interest or right other than a Crown or Duchy interest.

- (3) Where a compulsory rights order is, with the consent of the appropriate authority, made in respect of land in which there is a Crown or Duchy interest, that interest (in so far as the order confers rights exercisable as against all persons directly concerned) shall be treated as not being the interest of a person directly concerned, and no compensation shall be payable <sup>F238</sup> . . . under Part II of this Act in respect of that interest.
- (4) In this section “Crown or Duchy interest” means an interest belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department; “private interest” means an interest which is not a Crown or Duchy interest; and “the appropriate authority”—
- in relation to land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners, and, in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land;
  - in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy;
  - in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; and
  - in relation to land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department;



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and if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

- (5) The preceding provisions of this section shall apply in relation to land which is subject to a right restrictive of the use thereof, being a right the benefit of which is annexed to land in which there is a Crown or Duchy interest, or (not being so annexed) belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belongs to the Duchy of Cornwall, or belongs to a government department, or is held in trust for Her Majesty for the purposes of a government department, as those provisions apply in relation to land in which there is a Crown or Duchy interest:

Provided that those provisions shall so apply with the necessary modifications, and, in particular, as if the proviso to subsection (1) of this section were omitted, and, in paragraphs (a) to (d) of the last preceding subsection, any reference to land belonging as therein mentioned were a reference to a right the benefit of which belongs, or is annexed to land belonging, as therein mentioned.

#### Textual Amendments

**F237** Words in s. 44(1) substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 33(a) (with s. 40(7); S.I. 1994/2553, art. 2

**F238** Words in s. 44(3) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 33(b), Sch. 11 Pt. II

#### 45 Provisions as to telegraphic lines. **E+W+S**

- (1) Notwithstanding anything in Part I of this Act, none of the rights or powers conferred thereby or by any order made thereunder shall authorise any interference with any [<sup>F239</sup>[<sup>F240</sup>electronic communications apparatus] kept installed for purposes of [<sup>F241</sup>an electronic communications code network] or include any right or power to require any such apparatus to be altered.]
- [<sup>F242</sup>(2) Where [<sup>F243</sup>opencast planning permission has been granted], paragraph 23 of [<sup>F244</sup>the electronic communications code] (which provides a procedure for certain cases where works involve the alteration of [<sup>F240</sup>electronic communications apparatus]) shall apply [<sup>F245</sup>for the purposes of any permitted activities to the person with the benefit of that permission].]
- <sup>F246</sup>(3) Where in pursuance of an order made under . . . <sup>F247</sup> section fifteen of this Act, a public right of way is suspended, and, immediately before the date on which that order became operative, there was under, in, upon, over, along or across the way to which the order relates a [<sup>F248</sup>[<sup>F240</sup>electronic communications apparatus] kept installed for the purposes of [<sup>F241</sup>an electronic communications code network], the operator of [<sup>F249</sup>that network] shall have the same rights in respect of that apparatus] as if the order had not become operative:
- Provided that this subsection shall have effect without prejudice to the provisions of the last preceding subsection.
- [<sup>F250</sup>(4) Paragraph 1(2) of [<sup>F244</sup>the electronic communications code] (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of subsection (1) above as it applies for the purposes of that code.]
- (5) . . . . . <sup>F251</sup>



*Status: Point in time view as at 28/11/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958. (See end of Document for details)*

### Textual Amendments

- F239** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 38(2), **Sch. 5 para. 45**
- F240** Words in s. 45 substituted (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 17 para. 27(1)(a)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))
- F241** Words in s. 45 substituted (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 17 para. 27(1)(b)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))
- F242** S. 45(2), substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 38(3), **Sch. 5 para. 45**
- F243** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), **Sch. 8 para. 12(a)**
- F244** Words in s. 45 substituted (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 17 para. 27(1)(c)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))
- F245** Words in s. 45(2) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 34** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F246** Word in s. 45(3) repealed (25.7.2003 for specified purposes and for further purposes 29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 3(3))
- F247** Words repealed by [Coal Industry Act 1975 \(c. 56\)](#), s. 5(3), **Sch. 5**
- F248** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 38(4), **Sch. 5 para. 45**
- F249** Words in s. 45 substituted (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 17 para. 27(1)(d)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))
- F250** S. 45(4) substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 38(5), **Sch. 5 para. 45**
- F251** S. 45(5) repealed by [Coal Industry Act 1975 \(c. 56\)](#), s. 5(3), **Sch. 5**

### 46 **E+W+S**

- F252**(1) .....
- (2) ..... **F253**

### Textual Amendments

- F252** S. 46(1) repealed (31.10.1994) by 1994 c. 21, s. 67, **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F253** S. 46(2) repealed by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), **Sch. 12 Pt. II**

### 47 **Provisions as to notices and public inquiries. E+W+S**

- (1) The provisions of the Ninth Schedule to this Act shall have effect as to the service of notices under this Act.

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*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958. (See end of Document for details)*

- (2) Subsections (2) to (5) of [<sup>F254</sup>section 250 of the <sup>M8</sup>Local Government Act 1972] (which relate to local inquiries) shall have effect in relation to any inquiry held under this Act in relation to land in England or Wales . . . <sup>F255</sup> . . . <sup>F256</sup>
- (3) [<sup>F257</sup>Subsections (2) to (8) of section 210 of the <sup>M9</sup>Local Government (Scotland) Act 1973], shall have effect in relation to any inquiry held under this Act in relation to land in Scotland, including any inquiry so held under any provisions of the Scottish Acquisition of Land Act as applied by this Act.

**Textual Amendments**

**F254** Words substituted by virtue of [Local Government Act 1972 \(c. 70\), s. 272\(2\)](#)

**F255** Words repealed by [Acquisition of Land Act 1981 \(c. 67, SIF 28:1\), s. 34\(3\), Sch. 6 Pt. I](#)

**F256** Words spent

**F257** Words substituted by virtue of [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 237\(2\)](#)

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**Marginal Citations**

**M8** [1972 c. 70.](#)

**M9** [1973 c. 65.](#)

**48 Transitional provisions. E+W+S**

F258

**Textual Amendments**

**F258** [S. 48](#) repealed by [Housing and Planning Act 1986 \(c. 63, SIF 86\), s. 39\(4\), Sch. 12 Pt. II](#)

**49 Provisions as to regulations and orders. E+W+S**

- (1) The Minister may make regulations prescribing anything authorised or required to be prescribed for the purposes of any provision of this Act, or for the purposes of any enactment applied by or incorporated with this Act, except any provision whereby anything is expressly authorised or required to be prescribed by some other Minister of the Crown or government department.
- (2) Any power to make regulations under this Act shall be exercisable by statutory instrument; and any instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) The power to make orders under subsection (5) of section twenty-six of this Act, under subsection (5) of section twenty-eight of this Act, and under subsection (8) of section thirty-five of this Act, shall be exercisable by statutory instrument; and any instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subject to the following provisions of this section, any power conferred by this Act to make an order or give any directions shall include power, subject to the like provisions and conditions, to vary or revoke the order or directions by a subsequent order or subsequent directions, as the case may be.

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[<sup>F259</sup>(4A) A compulsory rights order may, by notice to the person entitled to the rights conferred by the order, be revoked at any time—

- (a) by the Coal Authority, if it is satisfied that that person has consented to the revocation; or
- (b) by the Secretary of State, if he is satisfied that that person has contravened, or is contravening, any of the provisions of the order or any requirement otherwise imposed on that person by or under this Act.

(4B) Where in the case of any compulsory rights order made or confirmed at any time on or after the restructuring date (within the meaning of the Coal Industry Act 1994), it appears to the Coal Authority—

- (a) that the order would not have been made or confirmed, or would not have extended to certain interests or rights, if a person to whom a relevant offer was made had accepted it,
- (b) that that person has, since the making of the order, made a written offer to the person entitled to the rights conferred by it ( “the operator”) to enter into an agreement on the terms of the relevant offer,
- (c) that the written offer was made either at a time before the specification of a date in relation to the order as the date of entry or at a time more than twenty-eight days before any date so specified,
- (d) that the person making the offer will enter into an agreement with the operator on those terms if the order is revoked or varied under this subsection, and
- (e) that the circumstances (apart from the expiration or rejection of the relevant offer and the making and confirmation of the order) are not such as to make it unreasonable for the operator to be required to treat the terms of the relevant offer as still available for acceptance,

that Authority may, by notice to the operator and subject to such conditions as it thinks fit, either revoke the order or vary it by limiting it so that it does not extend to the interests and rights of the person who is offering to be bound by an agreement on the terms he previously failed to accept.

(4C) In subsection (4B) above “relevant offer”, in relation to a compulsory rights order, means any offer which—

- (a) was made by the applicant for the order to a person who is one of the persons directly concerned; and
- (b) was an offer as to the terms on which the applicant was willing (instead of requiring rights as against that person to be conferred by a compulsory rights order) to enter into an agreement with that person.]

(5) A compulsory rights order shall not be varied by extending the period for which it is to have effect:

[<sup>F260</sup>Provided that where the period specified in the order is less than twenty years, this subsection shall not prevent the variation of the order by the extension of that period, if the period as extended does not exceed twenty years].

(6) Subsection (4) of this section shall not affect the revocation of an order made by virtue of section fifteen of this Act where, in accordance with subsection (4) of that section, the Minister is required to revoke the order.

*Status: Point in time view as at 28/11/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958. (See end of Document for details)*

### Textual Amendments

**F259** S. 49(4A)-(4C) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 35** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F260** S. 49(5) proviso substituted by **Coal Industry Act 1975 (c. 56), Sch. 3 para. 8**

## 50 Expenses. **E+W+S**

Any expenses incurred for the purposes of this Act by the Minister shall be payable out of moneys provided by Parliament.

## 51 Interpretation. **E+W+S**

(1) In this Act, except in so far as the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

**F261**

[<sup>F262</sup>“the Act of 1986” means the <sup>M10</sup>Agricultural Holdings Act 1986;]

[<sup>F263</sup>“the Act of 1995” means the Agricultural Tenancies Act 1995;]

[<sup>F264</sup>“the Act of 1971” ] means the [<sup>F264</sup>Town and Country Planning Act 1971];

“The Act of 1948” means the Agricultural Holdings Act 1948;

[<sup>F265</sup>“The Act of 1990” means the Town and Country Planning Act 1990;]

“agriculture” has the same meaning as in the Agriculture Act 1947, and “agricultural” (except in the expressions “agricultural holding” and “agricultural land”) shall be construed accordingly;

“agricultural holding” has the meaning assigned to it by section one of the [<sup>F266</sup>Act of 1986]; “agricultural land” means land used for agriculture which is so used for the purposes of a trade or business;

**F267**

[<sup>F268</sup>“appropriate Minister” means—

(a) in relation to statutory undertakers carrying on any railway, light railway, tramway, road transport, dock, harbour or pier undertaking, [<sup>F269</sup> the Minister of Transport];

(b) in relation to statutory undertakers carrying on an undertaking for the supply of <sup>F270</sup> . . . hydraulic power, the [<sup>F271</sup>Secretary of State for Trade and Industry];

(c) in relation to the Civil Aviation Authority or statutory undertakers carrying on any lighthouse undertaking, the Secretary of State for Trade;

(d) <sup>F272</sup> . . . . .

(e) in relation to any [<sup>F273</sup> internal drainage board], the Minister of Agriculture, Fisheries and Food;

(f) <sup>F274</sup> . . . . . and

(g) in all other cases, the Secretary of State for the Environment.]

**F275**

**F276**

“coal” means bituminous coal, cannel coal and anthracite;

“compulsory rights order” has the meaning assigned to it by section four of this Act;

**F277**

. . . . .

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“date of entry” has the meaning assigned to it by section five of this Act;

F278

“emergency powers” means any powers exercisable by virtue of the Defence (General) Regulations, 1939, or by virtue of the Requisitioned Land and War Works Act 1945, or by virtue of the prerogative of the Crown;

[<sup>F279</sup>“farm business tenancy” has the same meaning as in the Act of 1995;]

“functions” includes powers and duties, and references to the performance of functions shall be construed accordingly;

“incumbrance”, in relation to any land, includes any interest in or right over that land (including any such right inuring for the benefit of the public or of a section thereof);

“land” includes land covered by water;

“local planning authority” and “local authority” have the meanings assigned to them by [<sup>F280</sup> the Act of 1971];

“minerals” includes stone, slate, clay, gravel, sand and similar deposits;

“mineral undertaking” means an undertaking for the working and getting of minerals, whether by underground or by surface working;

“mining lease” means a lease for the purpose of working and getting minerals, whether by underground or by surface working; and in this definition “lease” includes an underlease and an agreement for a lease or underlease and a tenancy agreement, and also includes a licence, but does not include an option to take a lease, underlease or tenancy agreement, and does not include a mortgage;

“the Minister” means [<sup>F281</sup>the Secretary of State];

“mortgage” includes any charge or lien on property for securing money or money’s worth, and “mortgagee” and “mortgagor” shall be construed accordingly;

“National Trust” has the same meaning as in the Act of 1947;

F282

[<sup>F283</sup>“opencast planning permission” means planning permission which permits [<sup>F284</sup>the working of coal by opencast operations or the carrying out of] operations incidental to such working;]

“operative date” has the meaning assigned to it by section four of this Act;

“order conferring working rights” means an order made under [<sup>F285</sup>the Mines (Working Facilities and Support) Act 1966];

“owner” in relation to land, subject to the next following subsection, means the estate owner in respect of the fee simple thereof;

“period of occupation” has the meaning assigned to it [<sup>F286</sup>by section 5 of this Act];

[<sup>F287</sup>“permitted activities” means—

(a) the working of coal by opencast operations pursuant to opencast planning permission and the carrying out of operations incidental to such working; and

(b) the carrying out of any conditions subject to which opencast planning permission has been granted;]

“persons directly concerned” has (subject to the provisions of sections seven and eight of this Act) the meaning assigned to it [<sup>F286</sup>by section 5 of this Act];

[<sup>F288</sup>“planning permission” means planning permission under Part III of [<sup>F289</sup>the Act of 1990]]

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“prescribed” means prescribed by regulations made under this Act;  
“restoration”, in relation to land, includes rehabilitation, and “restore” shall be construed accordingly;

F290 .....  
F291 .....  
F291 .....

“statutory undertakers” and “statutory undertaking” have the same meanings as in [F280 the Act of 1971][F292 (but excluding a universal service provider within the meaning of the Postal Services Act 2000 and his undertaking)];

[F293 “successor”, in relation to an applicant for an order under any provision of this Act, means any person (whether or not the immediate successor of the applicant) who—

- (a) in accordance with the provisions of any licence granted to the applicant under Part II of the Coal Industry Act 1994, succeeds to any entitlement of that applicant under that licence to work any coal by opencast operations; or
- (b) becomes entitled by virtue of the grant of a new licence under that Part of that Act to work by such operations any coal which the applicant was previously entitled so to work as a licensed operator within the meaning of that Act;]

.....  
“tenancy” has the meaning assigned to it by the Landlord and Tenant Act 1954;  
“termination”, in relation to a tenancy, means the cesser of the tenancy, whether by effluxion of time or for any other reason;  
“year” means any period of twelve months.

[F294(1A) References in this Act, in relation to any opencast planning permission, to the person with the benefit of that permission shall be construed as a reference to any person who—

- (a) is able, on account of his having all such interests or rights as (apart from that permission) he requires for the purpose, to carry out any of the permitted activities; or
- (b) would be so able if the rights which he had and was entitled to exercise included any such right as he has applied for, or is entitled to apply for, under this Act or any right which has been conferred on him under this Act but has not yet become exercisable.]

(2) In relation to any land which is subject to a long tenancy, “owner” in this Act means the person entitled to that tenancy, so however that for the purposes of this subsection a long tenancy, which is in reversion expectant (whether immediately or not) upon the termination of another long tenancy, shall be disregarded.

In this subsection “long tenancy” means a tenancy granted for a term of years certain, being a term of ninety-nine years or more, whether subsequently extended (by act of the parties or by virtue of any enactment) or not.

(3) In this Act “similar right”, where the reference is to an easement or similar right in relation to any land, means any of the following rights, that is to say, any right to take game or fish or other sporting right exercisable in respect of that land, any right to fell and remove trees standing thereon, any right to take timber or other wood, water, turf or other materials therefrom, any right to work minerals thereon (otherwise than by virtue of a mining lease or of an order conferring working rights), and any right

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to depasture cattle or other animals thereon, except any such sporting or other right which—

- (a) subsists only as a right incidental to the ownership of the land in question, or to some other interest therein, or to a right to occupy that land, or
- (b) is exercisable by virtue of a licence granted otherwise than for valuable consideration;

and any right over land which constitutes an easement or similar right in relation thereto, if apart from this subsection it would not constitute an interest in that land, shall be treated for the purposes of this Act as constituting an interest therein.

- (4) For the purposes of any provision of this Act, in so far as it refers to the state or condition in which land was at a time specified in that provision, regard shall be had to all matters relevant to the state or condition of the land at that time, including (but without prejudice to the generality of this subsection) the characteristics of the soil (whether on or below the surface), the presence of any minerals in or under the land, the growth of trees, hedges or other vegetation thereon, and any buildings, structures, apparatus or other works which were on, in, under or over the land at that time; and any reference in any provision of this Act to the state or condition in which land would have been, or might reasonably have been expected to be, in circumstances specified in that provision, shall be construed accordingly.
- (5) Any reference in this Act to the working of coal by opencast operations includes a reference to the getting and winning of coal worked by such operations, and to the carrying away of any such coal from the land on which it has been worked.
- (6) Any reference in this Act to the working of coal or other minerals on any land, or to the carrying out of any other operations on any land, shall be construed as including a reference to the working of the coal or other minerals, or the carrying out of those operations, as the case may be, in or under that land.
- (7) For the purposes of this Act waste heaps and other deposits resulting from the working of minerals shall be taken to form part of the land on which they are situated, if apart from this subsection they would not be taken to form part thereof, and any reference in this Act to the working of minerals on, in or under land, or to underground or surface working, shall be construed accordingly.
- (8) In relation to land comprised in a compulsory rights order, any reference in this Act to the person who would be entitled to occupy that land if the order had not been made shall be construed, in relation to any time before the date of entry thereunder, as a reference to the person who is for the time being entitled to occupy that land.
- (9) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment.
- (10) In the application of this section to Scotland, for references to an underlease there shall be substituted references to a sublease, references to the Public Health Act 1936, shall be omitted, and in subsection (2) the words from “so however that” to “disregarded” shall be omitted.

#### Textual Amendments

**F261** Definition “the Acquisition of Land Act” repealed (E.W.) by [Acquisition of Land Act 1981 \(c. 67, SIF 28:1\)](#), s. 34(3), [Sch 6 Pt. 1](#)



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- F262** Definition inserted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 4 para. 31(a)**
- F263** Definition in s. 51(1) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 19(a)** (with s. 37)
- F264** Words substituted by virtue of Town and Country Planning Act 1971 (c. 78), **Sch. 24 para. 2**
- F265** Definition inserted by 1990 c. 11, s. 4, **Sch. 2, para. 5(c)(i)**
- F266** Words substituted by Agricultural Holdings Act 1986 c. 5, ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 31(b)**
- F267** Definition repealed by S.I. 1970/1681, **Sch. 4**
- F268** Definition inserted by S.I. 1976/1775, **Sch. 3 para. 2(1)**
- F269** Words substituted by virtue of S.I. 1979/571, **arts. 2(1), 3(5)**
- F270** Words repealed by virtue of Gas Act 1986 c. 44, s. 67(4), **Sch. 9 Pt. I** and Electricity Act 1989 c. 29, s. 112(4), **Sch. 18**
- F271** Words in s. 51(1) in the definition of "appropriate Minister" substituted (5.7.1992) by S.I. 1992/1314, art. 3(3)(4), **Sch. para. 1(a)**
- F272** S. 51(1): para. (d) in the definition of "appropriate Minister" repealed (26.3.2001) by S.I. 2001/1149, art. 3(2), **Sch. 2** (with art. 4(11))
- F273** In the definition of "appropriate Minister" in para. (e) for "drainage authority" there is substituted (E.W.) "internal drainage board" by Water Act 1989 c. 15, ss. 190(1), **Sch. 25 para. 26(5)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1), 17, 40(4), 57(6), 58)
- F274** Para. (f) in the definition of "appropriate Minister" repealed (E.W.) by 1989 c. 15, s. 190(3), **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58) by
- F275** Definition repealed by Housing and Planning Act 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**
- F276** Definition repealed by Coal Industry Act 1987 c. 3, s. 10(3), **Pt. II**
- F277** Definition in s. 51(1) repealed (31.10.1994) by 1994 c. 21, s. 67, **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F278** Definition in s. 51(1) repealed (E.W.) (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(2), 3(1), **Sch. 3 Pt. I** (with Sch. 2 paras. 10, 14(1), 15)
- F279** Definition in s. 51(1) inserted (1.9.1995) by 1995 c. 8, ss. 41(2), 52, **Sch. para. 19(b)** (with s. 37)
- F280** Words in the definition of "statutory undertakers" and "statutory undertaking" in s. 51(1) substituted by virtue of Town and Country Planning Act 1971, c. 78, Sch. 24, para. 2 and by virtue of 1990 c. 11, ss. 2(3), 5, **Sch. 3 para. 3** the reference to "the Act of 1971" has effect as if it included a reference to 1990 c. 8
- F281** Words substituted by virtue of S.I. 1969/1498, **arts. 2(1), 5(6)** and S.I. 1970/1537, **arts. 2(2), 7(4)**
- F282** Definition repealed by Coal Industry Act 1975 c. 56, s. 5(3), **Sch. 5**
- F283** Definition inserted by Housing and Planning Act 1986 c. 63, s. 39(3), **Sch. 8 para. 13(a)**
- F284** Words in definition in s. 51(1) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 36(1)(a)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F285** Words substituted by virtue of Mines (Working Facilities and Support) Act 1966 c. 4, s. 15(4)
- F286** Words substituted by Coal Industry Act 1975 c. 56, s. 4(2), **Sch. 3 para. 9**
- F287** Definition inserted by Housing and Planning Act 1986 c. 63, s. 39(3), **Sch. 8 para. 13(b)**
- F288** Definition inserted by Housing and Planning Act 1986 c. 63, s. 39(3), **Sch. 8 para. 13(c)**
- F289** Words substituted by Planning (consequential Provisions) Act 1990 (c. 11), s. 4, **Sch. 2 para. 5(c)(ii)**
- F290** Definition repealed by Water Resources Act 1963 c. 38, **Sch. 14 Pt. I**
- F291** Definitions of "sewage disposal undertaking" and "sewerage undertaking" repealed (E.W.) by Water Act 1989 c. 15, s. 190(3), **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)
- F292** Words in the definition of "statutory undertakers" and "statutory undertaking" in s. 51(1) inserted by virtue of S.I. 2001/1149, art. 3(1), **Sch. 1 para. 16(2)**
- F293** Definition in s. 51(1) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 36(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F294** S. 51(1A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 36(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

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**Marginal Citations**

M10 1986 c. 5.

**52 General application to Scotland. E+W+S**

(1) The provisions of this section shall, in addition to any express provision for the application to Scotland of any provision of this Act, have effect for the general application of this Act to Scotland.

(2) In this Act, except in so far as the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

<sup>F295</sup> [ “ the Act of 1997 ” means the Town and Country Planning (Scotland) Act 1997 ]

“agriculture” has the same meaning as in the <sup>M11</sup> Agriculture (Scotland) Act 1948, and “agricultural” (except in the expressions “agricultural holding” and “agricultural land”) shall be construed accordingly;

[<sup>F296</sup> “ agricultural holding ” has the meaning assigned to it by section one of the Scottish Act of [<sup>F297</sup> 1991 ] ; ]

[<sup>F296</sup> “agricultural holding” means the land comprised in a lease constituting a 1991 Act tenancy within the meaning of the Scottish Act of 2003 or the land comprised in a lease constituting a short limited duration tenancy or a limited duration tenancy (within the meaning of that Act);]

<sup>F298</sup>

[<sup>F299</sup> “ appropriate Minister ” means—

(a) in relation to statutory undertakers carrying on any railway, light railway, tramway, road transport, dock, harbour or pier undertaking, [<sup>F300</sup> the Minister of Transport];

(b) in relation to statutory undertakers carrying on an undertaking for the supply of gas or hydraulic power, the Secretary of State for Energy;

(c) in relation to the Civil Aviation Authority or statutory undertakers carrying on any lighthouse undertaking, the Secretary of State for Trade;

(d) <sup>F301</sup> .....

(e) in relation to statutory undertakers carrying on an undertaking for the supply of . . . <sup>F302</sup> water, the Secretary of State for Scotland; and

(f) in all other cases, the Secretary of State for the Environment.]

“chattels” means corporeal moveables;

“easement” means servitude;

“freehold interest” means the interest of the owner <sup>F303</sup> ...;

“land” includes salmon fishings;

[<sup>F304</sup> “local authority” has the meaning assigned to it by section 235 of the <sup>M12</sup> Local Government (Scotland) Act 1973];

..... <sup>F305</sup> “local planning authority”, “statutory undertakers”, “statutory undertaking” , “heritable security”, “heritable creditor”, and “National Trust for Scotland” have the same meanings as in the Scottish Act of 1947 [<sup>F306</sup> (but “statutory undertakers” and “statutory undertaking” do not include a universal service provider within the meaning of the Postal Services Act 2000 and his undertaking).];

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“owner” in relation to land, subject to subsection (2) of the last preceding section, means the owner<sup>F303</sup>...;

[<sup>F307</sup>“planning permission” means planning permission under Part III of [<sup>F308</sup>Act of 1997]]

“the Landholders Acts” means the Small Landholders (Scotland) Acts 1886 to 1931;

“the Scottish Acquisition of Land Act” means the<sup>M13</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947;

[<sup>F309</sup>“the Act of 1972” ] means [<sup>F309</sup>the<sup>M14</sup>Town and Country Planning (Scotland) Act 1972];

[<sup>F297</sup>“the Scottish Act of 1991” means the Agricultural Holdings (Scotland) Act 1991;].

- (3) For any reference to a [<sup>F310</sup>water authority]there shall [<sup>F311</sup>, except in so far as the context otherwise requires,]be substituted a reference to [<sup>F312</sup>the Scottish Environment Protection Agency].
- (4) For any reference to the Lands Tribunal there shall be substituted a reference to the Lands Tribunal for Scotland: . . .<sup>F313</sup>
- (5) Where, immediately before the coming into operation of an authorisation under section one of this Act, any of the land comprised in the authorisation consists of or includes a holding to which any of the provisions of the Landholders Acts apply or a croft within the meaning of the<sup>M15</sup>Crofters (Scotland) Act 1955, or part of such a holding or croft, the provisions of this Act shall, in relation to that land, have effect subject to the following modifications, that is to say—
- (a) references to an agricultural holding, to the tenant of an agricultural holding and to [<sup>F314</sup>the Scottish Act of 1991] shall include respectively references to such a holding or croft as aforesaid, to a landholder or crofter, and to the Landholders Acts or the<sup>M16</sup>Crofters (Scotland) Act 1955, as the case may be and for references to [<sup>F314</sup>section 45 of the Scottish Act of 1991] there shall be substituted references to section ten of the<sup>M17</sup>Crofters Holding (Scotland) Act 1886, or section fourteen of the<sup>M18</sup>Crofters (Scotland) Act 1955, as the case may require:

Provided that for the purposes of section twenty-three of this Act any improvement on the holding for which the landholder or the crofter would on the termination of his tenancy be entitled to compensation under the Landholders Acts or the<sup>M19</sup>Crofters (Scotland) Act 1955, as the case may be, shall be treated as a separate holding, and any compensation payable under the said section in respect of the improvement shall be payable to the landholder or crofter as if he were the owner thereof; and sections twenty-four and twenty-five shall not apply to any improvement in respect of which compensation is so payable;

- (b) any dispute as to a right to compensation under this Act of a landholder or crofter or of the owner of a holding or croft in respect thereof or as to the amount of any such compensation, and any matter arising in relation to a holding or croft which is referred to arbitration under this Act, shall be determined by the Scottish Land Court, and the provisions of the Landholders Acts shall, with any necessary modifications, apply for the purpose as they apply for the determination of matters referred to that Court under those Acts.

<sup>F315</sup>(6) . . . . .

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F315(7) .....

F315(8) .....

### Textual Amendments

- F295** Definition in s. 52(2) inserted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 5(5)(a)**
- F296** Words in s. 52(2) substituted (S.) (27.11.2003) by Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (S.S.I. 2003/583), art. 1, **Sch. para. 5(a)**
- F297** Words in s. 52(2) substituted (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88, 89(2), **Sch. 11 para. 18** (a)(b) (with s. 45(3), Sch. 12 para. 3)
- F298** Definition repealed by S.I. 1970/1681, **Sch. 4**
- F299** Definition inserted by S.I. 1976/1775, **Sch. 3 para. 2(2)**
- F300** Words substituted by virtue of S.I. 1979/571, **arts. 2(1), 3(5)**
- F301** S. 52(2):para. (d) in the definition of “appropriate Minister” repealed (26.3.2001) by S.I. 2001/1149, art. 3(2), **Sch. 2** (with art. 4(11))
- F302** Words repealed by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(4), **Sch. 18**
- F303** Words in s. 52(2) repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), Sch. 12 para. 22(a), **13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F304** Definition inserted by Local Government (Scotland) Act 1973 (c. 65), **Sch. 27 Pt. II para. 141**
- F305** Words repealed by Local Government (Scotland) Act 1973 (c. 65), **Sch. 29**
- F306** Words in s. 52(2) inserted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 16(3)**
- F307** Definition inserted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 14**
- F308** Words in definition in s. 52(2) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 5(5)(b)**
- F309** Words substituted by virtue of Town and Country Planning (Scotland) Act 1972 (c. 52), **Sch. 22 para. 2**
- F310** Words substituted by virtue of Water Act 1973 (c. 37), **s. 9**
- F311** Words in s. 52(3) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 37** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F312** Words in s. 52(3) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 5(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F313** S. 52(4) proviso repealed by Statute Law (Repeals) Act 1981 (c. 19), **Sch. 1 Pt. XII**
- F314** Words in s. 52(5)(a) substituted (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88, 89(2), Sch. 11 para. 19(a)(b)(with s. 45(3), Sch. 12 para. 3)
- F315** S. 52(6)-(8) repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), Sch. 12 para. 22(b), **13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

### Modifications etc. (not altering text)

- C15** “The Scottish Act of 1947” means Town and Country Planning (Scotland) Act 1947 (c. 53)

### Marginal Citations

- M11** 1948 c. 45.  
**M12** 1973 c. 65.  
**M13** 1947 c. 42.  
**M14** 1972 c. 52.  
**M15** 1955 c. 21.  
**M16** 1955 c. 21.  
**M17** 1886 c. 29.  
**M18** 1955 c. 21.  
**M19** 1955 c. 21.

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*Changes to legislation: There are currently no known outstanding effects  
for the Opencast Coal Act 1958. (See end of Document for details)*

**53 Short title, commencement and extent. E+W+S**

(1) This Act may be cited as the Opencast Coal Act 1958.

(2) ..... <sup>F316</sup>

(3) This Act shall not extend to Northern Ireland.

**Textual Amendments**

**F316** S. 53(2) repealed by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), **Sch. 12 Pt. II**

**Status:**

Point in time view as at 28/11/2004.

**Changes to legislation:**

There are currently no known outstanding effects for the Opencast Coal Act 1958.