



Opencast Coal Act 1958

1958 CHAPTER 69 6 and 7 Eliz 2

PART I

AUTHORISATION OF, AND FACILITIES FOR, OPENCAST WORKING OF COAL

1 Authorisation of opencast working of coal.

..... F1

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F1 S. 1 repealed by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(1)(4), [Sch. 12 Pt.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

..... F2

Textual Amendments

F2 S. 2 repealed by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(1)(4), [Sch. 12 Pt.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

F3

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F3 S. 3 repealed (31.10.1994) by [1994 c. 21, s. 67, Sch. 11 Pt.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Status: Point in time view as at 28/11/2004.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, Part I. (See end of Document for details)

4 Compulsory rights orders.

[^{F4}(1) For the purpose of facilitating the working of coal by opencast operations, [^{F5}the Coal Authority], by means of an order (in this Act referred to as a “compulsory rights order”) made by [^{F5}the Coal Authority] and confirmed by the Secretary of State, [^{F6}confer], in accordance with the following provisions of this Part of this Act, temporary rights of occupation and use of [^{F7}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][^{F8} 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 ^{F9}(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.]

[^{F10}(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]

[^{F11}(5) The provisions of Parts I, III and IV of the First Schedule to the [^{F12}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.]

[^{F13}(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.

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, Part I. (See end of Document for details)

- (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 [^{F14}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.

^{F15}(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.

- (1) Subject to the following provisions of this Part of this Act, the effect of [^{F16}a compulsory rights order] shall be in accordance with the provisions of this section.
- (2) [^{F17}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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Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958, Part I. (See end of Document for details)

- (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 [^{F18}the person entitled to the rights conferred by the order], and upon persons authorised by [^{F19}that person], the like rights to occupy the land comprised in the order, and to exclude other persons therefrom, as if [^{F19}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 [^{F16}a compulsory rights order] shall confer upon [^{F18}the person entitled to the rights conferred by the order], and upon persons authorised by [^{F19}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 [^{F19}that person], in relation to the [^{F20}opencast planning permission] referred to in the order, to be requisite for, or incidental to, the [^{F21}permitted activities].
- [^{F22}(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 [^{F16}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](#)

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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.**

- (1) The rights conferred by a compulsory rights order in accordance with subsection (5) of section five of this Act . . . ^{F24} 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 [^{F25}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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Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958, Part I. (See end of Document for details)

- (c) any rights of any statutory undertakers, [^{F26}or of the body carrying on a sewerage undertaking or sewage disposal undertaking, or of any [^{F27}water authority] or other drainage authority][^{F26}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 [^{F28}opencast planning permission] referred to in the order, [^{F29}the person entitled to the rights conferred by the compulsory rights order has] been entitled to serve a notice [^{F30}under the provisions of the Act of 1990, applied] by section thirteen of this Act.
- (3) . . . ^{F24} the said rights also include the following:—
- (a) the rights conferred by any agreement [^{F31}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) [^{F31}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, . . . ^{F24}
- (6) Without prejudice to the preceding provisions of this section, nothing in section five . . . ^{F24} 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, . . . ^{F24} 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.
- ^{F32}(8) In this section—
- “ statutory water undertakers ” means—

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

- (i) in England and Wales, the [^{F33}Environment Agency], a water undertaker or a sewerage undertaker; and
- (ii) in Scotland, [^{F34}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 [^{F35}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.

- (1) A compulsory rights order . . . ^{F36} 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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Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958, Part I. (See end of Document for details)

- (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, . . . ^{F36} shall have effect as if for the words from “confer upon [^{F37}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 [^{F37}the person entitled to the rights conferred by the order], and upon persons authorised by [^{F37}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.

- (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) ^{F38}
- (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) [^{F39}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.

- (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.

- [F41(1) A compulsory rights order shall be a local land charge.]
- (2) F42
- (3) Any rules made [F43under section 14 of the M1Local 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 [^{F44}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 [^{F45}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.

- (1) At any time on or after the operative date of a compulsory rights order, [^{F46}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, [^{F47}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 [^{F48}water authority] or other drainage authority and used by that authority][^{F47}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, [^{F49}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, Part I. (See end of Document for details)

- [^{F50}(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 [^{F51}any person causes] a chattel to be removed under [^{F52}subsection (2) of this section], [^{F51}that person] may dispose of the chattel, by sale, destruction or otherwise, as [^{F51}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 [^{F51}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, [^{F53}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 [^{F53}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**

^{F54}13

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, Part I. (See end of Document for details)

[^{F55}14 Provisions as to agricultural tenancies in England and Wales.

(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 [^{F56}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 ^{M2} the [^{F57}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 [^{F58}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

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, Part I. (See end of Document for details)

the occupation of the holding, or of that part of the holding, by [^{F58}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 \(2:3\)](#)

[^{F59}14A Provisions as to agricultural tenancies in Scotland.

- (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 [^{F60} paragraph 2(2) of Schedule 3 to the Act of 1997] .
- (3) For the purposes of the [^{F61}[^{F62}the Scottish Act of 1991]] [^{F62}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, Part I. (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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Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958, Part I. (See end of Document for details)

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\(e\)](#)

[^{F74}14B Provisions as to farm business tenancies.

- (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—
- opencast planning permission has been granted subject to a restoration condition, and
 - 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, Part I. (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)

[^{F75}15 Suspension of certain public rights of way.

- (1) Where—
 - (a) [^{F76}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,
 [^{F76}that person may also apply to the Coal Authority] for an order suspending the public right of way.
- (2) The [^{F77}Coal Authority shall not make an order under this section] unless—
 - (a) opencast planning permission [^{F78}has been applied for or granted]; and
 [it is satisfied that the applicant—
 - ^{F79}(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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Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958, Part I. (See end of Document for details)

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—

- ^{F80}(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 [^{F81}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 [^{F82}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, Part I. (See end of Document for details)

[For the purposes of subsection (5) above a local planning authority may enter into an ^{F83}(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 [^{F84}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, [^{F84}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 [^{F84}the Act of 1990] there were substituted [^{F85}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](#)

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, Part I. (See end of Document for details)

- 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**

[^{F86}15A. Suspension of public rights of way—supplementary.

[^{F87}(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 [^{F88}that person is] proposing to apply for an order suspending it in connection with the working of coal by open-cast operations;
- (aa) [^{F89}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; ^{F90} . . .
- (c) ^{F90}

[As soon as reasonably practicable after making an order under section 15 of this Act ^{F91}(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) [^{F92}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 ^{F93}(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) [^{F94}or (1A)]above shall name a place in the locality where a copy of the application [^{F94}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,
^{F95}(5) he shall also -],—
- (a) inform—
- (i) in England ^{F96} . . . , the district council and, except in the case of a metropolitan district, the county council, and any parish ^{F96} . . . council or parish meeting;
- [in Wales, the county council or county borough council, and any
^{F97}(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
 [^{F98}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 [^{F99}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 [^{F100}the matters contained in the notice under subsection (1) or (1A) above].
- ^{F101}(6)
- (7) The Secretary of State may, if he thinks fit, cause a public local inquiry to be held before determining whether to [^{F102}confirm] an order, and shall cause such an inquiry to be held if an objection is made by any such authority [^{F103}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 [^{F104}confirm] the order.
- (9) An order under section 15 of this Act may be made either in accordance with the [^{F105} . . .] application or subject to such modifications as [^{F106}the Coal Authority] may determine [^{F107}; 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
^{F108}(10) before the person on whose application the confirmed order was made has published] a notice in the prescribed form that the order [^{F109}has been confirmed], describing the right of way which is suspended, stating the date on which the order [^{F109}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 [^{F109}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—
[^{F110}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—
- (a) the London Gazette in a case where the land over which the right of way subsists is situated in England or Wales; and
 - (b) 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.

- (1) For the purpose of draining land [^{F111}in respect of which opencast planning permission has been][^{F112}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 [^{F111}in respect of which opencast planning permission has been][^{F112}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.
- [^{F113}(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 [^{F114}conferring] a right by virtue of this section shall specify the land (being the whole or part of the land [^{F115}in respect of which the permission was [^{F116}applied for or] granted]) for the benefit of which the right is to be [^{F114}conferred].

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[^{F117}(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.]

[^{F118} For the purposes of any order conferring rights exercisable under this section on any ^{F119}(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]

[^{F120}(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.]

[^{F121}(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 [^{F122}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.

[^{F123}(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).

[^{F124}(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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Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958, Part I. (See end of Document for details)

- 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)**

Status:

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Changes to legislation:

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