



# Opencast Coal Act 1958

1958 CHAPTER 69 6 and 7 Eliz 2

## PART II

### COMPENSATION FOR COMPULSORY RIGHTS ORDERS

#### *Compensation in respect of agricultural land*

#### 17 General provisions as to annual compensation.

- (1) Where a compulsory rights order comprises the whole or part of a holding to which this section applies, compensation shall be payable <sup>F1</sup> . . . in respect of that holding—
  - (a) for the year beginning with the operative date, and
  - (b) for each subsequent year which begins with an anniversary of that date and falls [<sup>F2</sup>wholly or partly]within the period of occupation.

[<sup>F3</sup>(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,—
  - (a) was occupied as a unit, and
  - (b) 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 [<sup>F4</sup>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) [<sup>F5</sup>Subject to subsection (3A) of this section,]the person entitled to any compensation payable <sup>F1</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>F6</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**

- F1** 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**
- F2** 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**
- F3** 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**
- F4** 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**
- F5** 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**
- F6** 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**

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[<sup>F7</sup>18 **Calculation of compensation under section 17.**

- (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**

**F7** 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>F8</sup>19 .....

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#### Textual Amendments

**F8** 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

**F9**<sup>20</sup> .....

#### Textual Amendments

**F9** 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.

- (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>F10</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

**F10** 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.

- (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.**

- (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>F11</sup>23A Additional compensation on re-occupation.**

- (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>F12</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>F13</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>F13</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>F13</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

- F11** S. 23A inserted by [Coal Industry Act 1975 \(c. 56\), s. 6\(1\)](#)
- F12** 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](#)
- F13** 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>F14</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>F15</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>F16</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>F17</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 [F17] 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 [F17] 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 [F18] 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 [F19] 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 [F20] 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 [F20] 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) [F21] section 83(4)] of that Act (which relates to the time for settling such claims) shall apply with the substitution, for the reference to [F22] eight] months from the termination of the tenancy, of a reference to [F22] 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 [F<sup>23</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 [F<sup>23</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 [F<sup>24</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 [F<sup>25</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 [F<sup>26</sup>Schedule 7 to the Act of 1986].
- [F<sup>27</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. ]
- [F<sup>28</sup>(10) In the application of this section to Scotland [F<sup>29</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—
- (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

- F14** 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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- F15** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(2)**
- F16** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(3)**
- F17** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(4)**
- F18** 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)**
- F19** 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)**
- F20** 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)**
- F21** 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)**
- F22** 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)**
- F23** 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)**
- F24** 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)**
- F25** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(8)**
- F26** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(9)**
- F27** 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)**
- F28** 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)
- F29** 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>F90</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>F91</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>92</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>93</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>93</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>93</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>94</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>95</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>96</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>96</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>F97</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>F98</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>F98</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>F99</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>F100</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>F101</sup>Schedule 7 to the Act of 1986].

[<sup>F102</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>F103</sup>(10) In the application of this section to Scotland [<sup>F104</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>F105</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 [<sup>F106</sup>, a limited duration tenancy or a modern 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>F105</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 [<sup>F107</sup>, a limited duration tenancy or a modern 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

- F90** 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)
- F91** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(2)**
- F92** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(3)**
- F93** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(4)**
- F94** 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)**
- F95** 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)**
- F96** 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)**
- F97** 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)**
- F98** 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)**
- F99** 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)**
- F100** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(8)**
- F101** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(9)**
- F102** 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)**
- F103** 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)
- F104** Words in s. 24(10) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 15(3)** (with s. 37)
- F105** 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**
- F106** Words in s. 24(10)(a)(ii) substituted (S.) (30.11.2017) by [The Land Reform \(Scotland\) Act 2016 \(Supplementary, Consequential, Transitory and Saving Provisions\) Regulations 2017 \(S.S.I. 2017/416\)](#), reg. 1(1), **sch. 1 para. 1(2)(a)**

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**F107** Words in s. 24(10)(b)(ii) substituted (S.) (30.11.2017) by [The Land Reform \(Scotland\) Act 2016 \(Supplementary, Consequential, Transitory and Saving Provisions\) Regulations 2017 \(S.S.I. 2017/416\)](#), reg. 1(1), [sch. 1 para. 1\(2\)\(b\)](#)

## 25 Deductions from tenant’s compensation.

- (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 [<sup>F30</sup>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 [<sup>F31</sup>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 [<sup>F32</sup>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.

[<sup>F33</sup>(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]

[<sup>F34</sup>(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

- F30** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 27\(2\)\(a\)](#)
- F31** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 27\(2\)\(b\)](#)
- F32** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 27\(3\)](#)
- F33** 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\(4\)](#)
- F34** 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)

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<sup>F35</sup>**[25A Tenant’s right to compensation for improvements etc.: farm business tenancies.**

- (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;
  - (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**

**F35** S. 25A inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 16** (with s. 37)

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## 26 Compensation for short-term improvements and related matters.

- (1) Where, in the exercise of rights conferred by a compulsory rights order, [<sup>F36</sup>any person occupies] any land which, immediately before the date of entry, was agricultural land [<sup>F37</sup>and was not comprised in a farm business tenancy], compensation shall be payable [<sup>F36</sup>by that person] in respect of any improvements or other matters to which this section applies in relation to that land.
- [<sup>F38</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>F39</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>F40</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>F41</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>F42</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>F43</sup>(za) in subsection (1) of this section, the words “and was not comprised in a farm business tenancy” shall be omitted;]
  - , [<sup>F44</sup>(a)] the following subsection shall be substituted for subsection (2) of this section:
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“(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”

[<sup>F45</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>F46</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

- F36** 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**
- F37** 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)
- F38** 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**
- F39** 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**
- F40** Words substituted by **Agricultural Holdings Act 1986 (c. 5, SIF 2:3)**, ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 28(2)**
- F41** Words substituted by **Agricultural Holdings Act 1986 (c. 5, SIF 2:3)**, ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 28(3)**
- F42** 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)**
- F43** S. 26(6)(za) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 17(1)(3)** (with s. 37)
- F44** 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)
- F45** 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**
- F46** 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.

- (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>F47</sup>section 10 of the Act of 1986],

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he shall, subject to the following provisions of this section, be entitled to compensation from [<sup>F48</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.
- [<sup>F49</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>F50</sup>the person potentially liable] not less than ten days' notice of the intended sale, and has, before the sale, afforded to [<sup>F50</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>F51</sup>section 10 of the Act of 1986] there shall be substituted a reference to [<sup>F52</sup>section 18 of the Scottish Act of 1991].
- [<sup>F53</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

- F47** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 29(2)**
- F48** 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**
- F49** 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**
- F50** 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**
- F51** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 29(3)**
- F52** 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)
- F53** 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**

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## 28 Special provisions as to market gardens.

- (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>F54</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 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 [<sup>F55</sup>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 [<sup>F56</sup>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 [<sup>F57</sup>sections 10 of the Act of 1986] shall include a reference to rights under that section as extended by [<sup>F58</sup>subsection (3) of section 79 of the Act of 1986.]
- (5) If, by virtue of the power conferred by [<sup>F59</sup>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 [<sup>F60</sup>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 [<sup>F61</sup>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 [<sup>F62</sup> section 40 of the Scottish Act of 1991 and to subsection (4)(a) of that section]; for the references to [<sup>F63</sup>subsection (2) of section 80 of the Act of 1986 and to section 10] of that Act there shall be substituted respectively references [<sup>F62</sup>to section 41(1) and to section 18 of the Scottish Act of 1991]; for the references to [<sup>F64</sup>section 91 of the Act of 1986 and to Schedule 10] to that Act there shall be substituted respectively references [<sup>F62</sup>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

- F54** 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)
- F55** 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)**
- F56** 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)**
- F57** 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)**
- F58** 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)**
- F59** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, [Sch. 13 para. 3](#), **Sch. 14 para. 30(4)**

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

- F60** 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)
- F61** 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)**
- F62** 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)
- F63** 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)**
- F64** 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.**

- (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>F65</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>F66</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**

- F65** 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**
- F66** 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.**

- (1) The provisions of this section shall have effect where the land comprised in a compulsory rights order consists of or includes land which—

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- (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.

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

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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.

- (8) In this section “the Act of 1927” means the <sup>M1</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

M1 1927 c. 36.

### *Compensation in respect of other matters*

#### **31 Compensation in respect of easements and other rights.**

- (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>F67</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>F68</sup> . . . .

[<sup>F69</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>F70</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>F70</sup>the person who immediately before the end of the period of occupation is the

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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 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>M2</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>M3</sup>Lands Clauses Consolidation Act 1845, there shall be substituted a reference to lands of the nature of commonity within the meaning of the Lands Clauses Consolidation (Scotland) Act 1845.

#### Textual Amendments

- F67** 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**)
- F68** 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**
- F69** 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**)
- F70** 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

- M2** 1845 c. 18.  
**M3** 1845 c. 19.

### [31A <sup>F71</sup>Compensation in respect of disposable minerals.

- (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

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- (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.
- (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.]

#### Textual Amendments

**F71** 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**



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

### **32 Compensation for depreciation of other land in same ownership.**

- (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>F72</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>F73</sup>. . . .

[<sup>F74</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>F75</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>F76</sup>(3) For the purposes of subsection (2B) of this section, the 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 [F77]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

- F72** 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**
- F73** 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**
- F74** 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**
- F75** Words in s. 32(2B)(b) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 5(4)**
- F76** 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**
- F77** 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.

- (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.

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.

- (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 [F78 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>F78</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>F78</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>F79</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>F80</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>F78</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>F80</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>F81</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>F82</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>F83</sup> . . . as mentioned in any of [<sup>F84</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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- (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>F85</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

- F78** 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](#))
- F79** 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](#)
- F80** 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](#)
- F81** S. 35(4A) inserted by [Coal Industry Act 1975 \(c. 56\), s. 6\(2\)](#)
- F82** 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](#)
- F83** 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](#))
- F84** 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](#)
- F85** 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)

- C1** S. 35 amended (11.2.1992) by [S.I. 1992/46, art. 2](#)

### 36 Record of condition of land.

- (1) For the purpose of facilitating the assessment of compensation under this Part of this Act, [<sup>F86</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>F87</sup>any compulsory rights order], where [<sup>F86</sup>any person has] published, served and affixed notices under subsection (2) of section five of this Act, [<sup>F86</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>F88</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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- (3) In the case of any compulsory rights order (other than any order made in accordance with section eight of this Act) [<sup>F86</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>F86</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>F86</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>F86</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>F86</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>F86</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>F86</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>F89</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.

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#### Textual Amendments

- F86** 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**
- F87** Words substituted by [Coal Industry Act 1975 \(c. 56\)](#), **Sch. 3 para. 7**
- F88** Words repealed by [Coal Industry Act 1975 \(c. 56\)](#), s. 5(3), **Sch. 5**
- F89** 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**

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