



Opencast Coal Act 1958

1958 CHAPTER 69 6 and 7 Eliz 2

PART II

COMPENSATION FOR COMPULSORY RIGHTS ORDERS

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 [^{F1}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,—
 - (a) [^{F1}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, [^{F1}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 [^{F2}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;

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- (d) if the aggregate amount of the compensation paid [^{F3}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 [^{F1}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 [^{F3}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.
- [^{F4}(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.
- [^{F5}(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 ^{F6}. . . as mentioned in any of [^{F7}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.
- (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 [^{F8}; 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

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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

- F1** 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**)
- F2** 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**
- F3** 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**
- F4** S. 35(4A) inserted by **Coal Industry Act 1975 (c. 56), s. 6(2)**
- F5** 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**
- F6** 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**)
- F7** 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**
- F8** 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, [^{F9}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 [^{F10}any compulsory rights order], where [^{F9}any person has] published, served and affixed notices under subsection (2) of section five of this Act, [^{F9}that person shall] cause a record to be made of the condition, as on the date of entry,—
- (a) of all the land comprised in the order, and
- (b) 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 . . . ^{F11} order made in accordance with section eight of this Act, this subsection shall apply as if paragraph (b) thereof were omitted.
- (3) In the case of any compulsory rights order (other than any order made in accordance with section eight of this Act) [^{F9}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 [^{F9}any person has caused a record to be made under this section, he] shall—

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- (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 [^{F9}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), [^{F9}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 [^{F9}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 [^{F9}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 [^{F9}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:
- 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.
- [^{F12}(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

- F9** 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**
- F10** Words substituted by **Coal Industry Act 1975 (c. 56), Sch. 3 para. 7**
- F11** Words repealed by **Coal Industry Act 1975 (c. 56), s. 5(3), Sch. 5**
- F12** 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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