



Opencast Coal Act 1958

1958 CHAPTER 69

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 by the Board 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) the Board shall make such quarterly payments as may be reasonable in the circumstances;
 - (b) subject to the preceding paragraph, the Board shall not be required to make payments until after the end of the year for which the compensation is payable;
 - (c) if the amount of the compensation payable to any person for any year 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 to a person for any year in respect of any such compensation (excluding any amount paid on account of interest) exceeds the principal amount of the compensation payable to him for

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that year, the Board (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 to that 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.
- (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.
- (7) Any compensation payable by the Board as mentioned in any of subsections (4) to (6) 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.

36 Record of condition of land

- (1) For the purpose of facilitating the assessment of compensation under this Part of this Act, the Board shall cause records to be made in accordance with the following provisions of this section.
- (2) In the case of an opencast site order, where the Board have published, served and affixed notices under subsection (2) of section five of this Act, the Board 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:

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Provided that, in relation to an opencast site 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) the Board shall, at the end of the period of occupation, 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 the Board have caused a record to be made under this section they 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 the Board, 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), the Board 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 the Board, 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 the Board 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 the Board, 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.

- (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.