

*Status: Point in time view as at 31/10/1994.*

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

## SCHEDULES

### SECOND SCHEDULE

Sections 4, 5, 39.

#### PROCEDURE RELATING TO COMPULSORY RIGHTS ORDERS

#### PART I

*F1 Making, confirmation, validity and date of operation of orders*

##### Textual Amendments

**F1** Sch. 2 Pt. 1 repealed (E.W.) by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34(3), Sch. 6 Pt. I

- 1 (1) Subject to the following provisions of this Part of this Schedule, the provisions of Parts I, III and IV of the First Schedule to the [<sup>F2</sup>Scottish] Acquisition of Land Act shall apply in relation to compulsory rights orders as if, in that Schedule,—
- (a) any reference to a compulsory purchase order were a reference to a compulsory rights order;
  - (b) any reference to the acquiring authority were a reference to the [<sup>F3</sup>Coal Authority], and any reference to the confirming authority were a reference to the Minister; and
  - (c) any reference to authorising the compulsory purchase of land were a reference to operating so as to confer <sup>F4</sup>. . . temporary rights of occupation and use of land.
- (2) Any modifications of particular provisions of the said First Schedule which are specified in the following paragraphs of this Part of this Schedule shall have effect, in relation to those provisions, in addition to the general modifications mentioned in the preceding sub-paragraph.

##### Textual Amendments

- F2** Word in Sch. 2 Pt. I para. 1(1) inserted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 38(1)(a) (with s. 40(7)); S.I. 1994/2553, art. 2
- F3** Words in Sch. 2 para. 1(1)(b) substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 38(1)(b) (with s. 40(7)); S.I. 1994/2553, art. 2
- F4** Words in Sch. 2 para. 1(1)(c) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 38(1)(c), Sch. 11 Pt. II (with s. 40(7)); S.I. 1994/2553, art. 2

- 2 Paragraph 1 of that Schedule (which relates to the general effect of the Schedule in relation to the [<sup>F5</sup>Scottish] Acquisition of Land Act) shall not apply.

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### Textual Amendments

**F5** Word in **Sch. 2 Pt. 1 para. 2** inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 38(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

3 <sup>F6</sup>(1) Paragraph 3 of that Schedule shall apply with the substitution , for sub-paragraph (b) of that paragraph, of the following paragraphs—]

“(b) serve on the appropriate persons a notice in the prescribed form stating the effect of the order and that it is about to be submitted for confirmation, and specifying the time (not being less than twenty-one days from the service of the notice) within which and the manner in which objections thereto can be made; and

(c) affix conspicuously to some conspicuous object or objects on the land comprised in the order a notice or notices containing the particulars specified in <sup>F7</sup>sub-paragraph (b) of this paragraph”].

(2) For the purposes of the provisions of sub-paragraph (1) of the said paragraph 3, as modified by the preceding sub-paragraph, the appropriate persons, in relation to a compulsory rights order, shall be taken to be all persons who, at the time when notice of the order is first published in accordance with those provisions, are known to the <sup>F8</sup>Coal Authority]to be persons directly concerned.

### Textual Amendments

**F6** **Sch. 2 Pt. 1 para. 3(1)** substituted (31.10.1994) for words in Sch. 2 Pt. 1 para. 3(1) by 1994 c. 21, s. 52, **Sch. 8 para. 38(3)(a)(i)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F7** Words in the substituted provision (c) in Sch. 2 Pt. 1 para. 3(1) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 38(3)(a)(ii)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F8** Words in Sch. 2 Pt. 1 para. 3(2) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 38(3)(b)**(with s. 40(7)); S.I. 1994//2553, art. 2

4 Paragraph 4 of the said First Schedule shall apply as if, for any reference to any such owner, lessee or occupier as is therein mentioned, there were substituted a reference to any person who, in relation to the order, is a person directly concerned.

5 (1) Except where the Minister is proceeding concurrently with respect to an application for <sup>F9</sup>an authorisation under section one of this Act][<sup>F9</sup>opencast planning permission] and <sup>F10</sup>a compulsory rights order], the Minister may disregard an objection to such an order if he is satisfied that it relates to the question whether <sup>F11</sup>an authorisation under section one of this Act should have been, or should be, granted to work the coal in question by opencastoperations][<sup>F11</sup>opencast planning permission should be granted or should have been granted]and either—

(a) it relates exclusively to that question, or

(b) in so far as it relates to other matters, they consist entirely of matters which can be dealt with in the assessment of compensation.

(2) The preceding sub-paragraph shall have effect without prejudice to the operation of sub-paragraph (4) of paragraph 4 of the said First Schedule (whereby objectors can be required to give reasons, and objections relating exclusively to matters of compensation can be disregarded).

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**Textual Amendments**

**F9** Words substituted (S.) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 15\(a\)](#)

**F10** Words substituted by [Coal Industry Act 1975 \(c. 56\)](#), [Sch. 3 para. 10](#)

**F11** Words substituted (S.) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 15\(b\)](#)

6 Paragraph 10 of the said First Schedule shall apply as if the references to the preparation of an order, and to the making of an order, were omitted.

7 In paragraph 11 of the said First Schedule (which relates to land forming part of a common, open space or fuel or field garden allotment)—

- (a) any reference to giving other land in exchange shall be construed as a reference to making other land available during the period for which the compulsory rights order is to have effect;
- (b) the provisions of that paragraph as to the vesting of land, and to its being made subject to the like rights, trusts and incidents as the land purchased, shall apply with the necessary modifications; and
- (c) the provision contained in the said paragraph 11 for discharging land from rights, trusts and incidents to which it was previously subject shall not apply.

8 Paragraph 13 of the said First Schedule shall apply with the substitution, for the reference to the local authority or Minister by whom the order was submitted or prepared, of a reference to the <sup>F12</sup>Coal Authority].

**Textual Amendments**

**F12** Words in [Sch. 2 para. 8](#) substituted (31.10.1994) by [1994 c. 21, s. 52](#), [Sch. 8 para. 38\(4\)](#), (with s. 40(7)); [S.I. 1994/2553, art. 2](#)

9 In Paragraph 15 of the said First Schedule, the first reference to the <sup>F13</sup>Scottish Acquisition of Land Act shall be construed as a reference to this Act, and the second reference to that Act shall be construed as including a reference to this Act.

**Textual Amendments**

**F13** Word in [Sch. 2 Pt. 1 para. 9](#) inserted (31.10.1994) by [1994 c. 21, s. 52](#), [Sch. 8 para. 38\(5\)](#) (with s.40(7)); [S. I. 1994/2553, art. 2](#)

10 Paragraph 16 of the said First Schedule shall apply subject to the modification that the date on which the order becomes operative shall be the date mentioned in that paragraph or such later date (not being later than one year after the confirmation of the order) as may be determined by the Minister and specified in the order as confirmed.

11 In the application of the said First Schedule to compulsory rights orders “prescribed” means prescribed by regulations under this Act.

<sup>F14</sup>12 .....

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#### Textual Amendments

**F14** Sch. 2 Pt. I para. 12 repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 38(6), **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**

## PART II

### *Notification of date of entry*

- 13 (1) The provisions of this paragraph shall have effect as to the publication, service and affixing of notices as mentioned in subsection (2) of section five of this Act.
- (2) [<sup>F15</sup>The person on whose application a compulsory rights order has been made] shall in two successive weeks publish in one or more local newspapers circulating in the locality in which the land comprised in the compulsory rights order is situated a notice referring to the order and specifying a date as being the date on which the rights conferred by the order are to become exercisable.
- (3) [<sup>F15</sup>That person] shall serve a like notice on [<sup>F16</sup>the Coal Authority and on] every person who, at the time of the first publication of the notice under the last preceding sub-paragraph, is known [<sup>F15</sup>to the person serving the notice] to be, in relation to the order, a person directly concerned.
- (4) [<sup>F15</sup>The person on whose application a compulsory rights order has been made] shall also affix conspicuously to some conspicuous object or objects on the land comprised in the order a notice or notices containing the particulars required to be contained in a notice served under the last preceding sub-paragraph.
- (5) The notices referred to in sub-paragraphs (3) and (4) of this paragraph shall be served or affixed, as the case may be, either before or after the first publication of the notice required by sub-paragraph (2) of this paragraph, but not later than the end of the period of seven days beginning with the date of the first publication of that notice.

#### Textual Amendments

**F15** Words in Sch. 2 Pt. II para. 13(2)-(4) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 39(1)-(3)** (with s. 40(7)); S.I. 1994/2553, art. 2

**F16** Words in Sch. 2 Pt. II para. 13(3) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 39(2)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

- 14 (1) If, after the first publication of a notice in accordance with sub-paragraph (2) of the last preceding paragraph, any person who, in relation to the order referred to in the notice, is a person directly concerned claims that any of the relevant requirements have not been complied with, he may, at any time not later than the end of the period of six weeks beginning with the date of the first publication of that notice, make an application to the High Court.
- (2) On any such application, the court may by interim order direct, either generally or in relation to any part of the land comprised in the compulsory rights order, that such rights (if any) as may be conferred by the order shall not be exercised until the final determination of the proceedings.

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- (3) Where, on determining such an application, the court is satisfied that any of the relevant requirements have not been complied with, and that the interests of the applicant have been substantially prejudiced by the failure to comply with them, the court may, by an order made either generally or with respect to so much of the land comprised in the compulsory rights order as may be specified in the order under this sub-paragraph,—
- (a) declare that the rights which (if all the relevant requirements had been complied with) would have been conferred by the compulsory rights order have not become exercisable, and
  - (b) direct that the compulsory rights order shall cease to have effect as from such date as may be specified in the order under this sub-paragraph.
- 15 Subject to the last preceding paragraph, and without prejudice to any application thereunder or to any proceedings on or in consequence of such an application, where the first publication of a notice has been effected in accordance with sub-paragraph (2) of paragraph 13 of this Schedule—
- (a) all the requisite notices of the order referred to in that notice shall be deemed to have been published, served and affixed in accordance with the requirements of the said paragraph 13, and to have specified the date specified in that notice;
  - (b) that date shall be deemed for all purposes to be a date satisfying the requirements of subsection (2) of section five of this Act; and
  - (c) the exercise of any rights by virtue of the compulsory rights order shall not be questioned in any legal proceedings whatsoever on the ground that any of the relevant requirements have not been complied with.
- 16 In this Part of this Schedule “the relevant requirements” means the requirements of subsection (2) of section five of this Act and of paragraph 13 of this Schedule.
- 17 In the application of this Part of this Schedule to Scotland, for any reference to the High Court there shall be substituted a reference to the Court of Session.

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