



Opencast Coal Act 1958

1958 CHAPTER 69 6 and 7 Eliz 2

PART I

AUTHORISATION OF, AND FACILITIES FOR, OPENCAST WORKING OF COAL

5 Effect of opencast site orders.

- (1) Subject to the following provisions of this Part of this Act, the effect of [^{F1}a compulsory rights order] shall be in accordance with the provisions of this section.
- (2) [^{F2}The person on whose application the order has been made] shall publish, serve and affix notices specifying the date on which the rights conferred by the order are to become exercisable (in this Act referred to as “the date of entry”) being a date—
 - (a) not less than fifty-six days after the first publication (in accordance with the provisions mentioned in the next following subsection) of a notice specifying that date, and
 - (b) not more than six months after the operative date.
- (3) The provisions of Part II of the Second Schedule to this Act shall have effect as to the publication, service and affixing of notices under the last preceding subsection.
- (4) As from the date of entry and during the period for which, on and after that date, the order has effect (in this Act referred to as “the period of occupation”), the order shall confer upon [^{F3}the person entitled to the rights conferred by the order], and upon persons authorised by [^{F4}that person], the like rights to occupy the land comprised in the order, and to exclude other persons therefrom, as if [^{F4}that person] had acquired a freehold interest in the entirety of that land with vacant possession and free from incumbrances of any description.
- (5) In addition to the rights mentioned in the last preceding subsection [^{F1}a compulsory rights order] shall confer upon [^{F3}the person entitled to the rights conferred by the order], and upon persons authorised by [^{F4}that person], the right during the period of occupation, as against all persons directly concerned, to carry out, on or in relation to any of the land comprised in the order, all such operations as may appear to [^{F4}that

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person], in relation to the [^{F5}opencast planning permission]referred to in the order, to be requisite for, or incidental to, the [^{F6}permitted activities].

[^{F7}(5A) Subject to subsection (5B) of this section, the rights conferred by a compulsory rights order—

- (a) shall be exercisable by a successor of the original applicant for the order only where the Coal Authority has transferred to that successor the entitlement to exercise the rights conferred by the order; but
- (b) where the Coal Authority has so transferred them, shall not, at any time after the transfer, be exercisable by any person in his capacity as the original applicant or as a previous successor of that applicant;

and references in this Act to the person entitled to the rights conferred by a compulsory rights order are references to the person who is for the time being the person by whom those rights are exercisable in accordance with section 4(1B) of this Act and this section.

(5B) Where at any time after an application for a compulsory rights order has been made and before any order made on that application is confirmed—

- (a) any person becomes the successor of the original applicant for the order and notifies that fact—
 - (i) if no order has been made on the application, to the Coal Authority, or
 - (ii) if such an order has been made, to the Secretary of State,

and

- (b) the Authority or, as the case may be, the Secretary of State decides to proceed in relation to the application or order in accordance with this subsection,

the provisions of this Act and of any enactment applied by this Act shall have effect as if the application had been made by that person, as if he had the same right to make it as the original applicant and as if anything done for the purposes of the application by or in relation to the original applicant or a previous successor had been done by or in relation to that person.

(5C) The Coal Authority or, as the case may be, the Secretary of State—

- (a) shall make a transfer under subsection (5A) of this section by giving written notice of the transfer to each of the persons who, in consequence of the transfer, is to cease to be, or is to become, entitled to the rights conferred by the order;
- (b) may by notice to the successor make any modifications of a compulsory rights order which are necessary in consequence only of the making of a transfer under subsection (5A) of this section; and
- (c) may make a decision to proceed in accordance with subsection (5B) of this section subject to compliance by the successor giving the notification with such conditions as that Authority or the Secretary of State thinks fit.]

- (6) Subject to the following provisions of this Act, in this Act “persons directly concerned”, in relation to [^{F1}a compulsory rights order], means persons who for the time being have any interest in any of the land comprised in the order, or have (apart from the order) a right to occupy any of that land, or are entitled to any right restrictive of the use of any of that land.

Textual Amendments

F1 Words substituted by [Coal Industry Act 1975 \(c. 56\)](#), [Sch. 3 para. 2](#)

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- F2** Words in s. 5(2) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 3(1)**; S.I. 1994/2553. art. 2
- F3** Words in s. 5(4)(5) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 3(2)(a)**; S.I. 1994/2553. art. 2
- F4** Words in s. 5(4)(5) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 3(2)(b)**; S.I. 1994/2553. art. 2
- F5** Words substituted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 3(a)**
- F6** Words substituted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 3(b)**
- F7** S. 5(5A)-(5C) inserted (31.10.1994) by 1994 c. 21, s. 52(2), **Sch 8 para. 3(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

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