

Status: Point in time view as at 31/10/1994.

Changes to legislation: There are currently no known outstanding effects for the Housing and Planning Act 1986, SCHEDULE 8. (See end of Document for details)

SCHEDULES

SCHEDULE 8

Section 39(3).

OPENCAST COAL — MISCELLANEOUS AMENDMENTS

PART I

THE 1958 ACT

^{F1}

Textual Amendments

F1 Sch. 8 para. 1 repealed (31.10.1994) by 1994 c. 21, ss. 67, 68(2), Sch. 11 Pt. II (with s. 40(7)); S.I. 1994/2553, art. 2

2 (1) In section 4(1), for the words “the land comprised in an authorisation under section 1 of this Act” there shall be substituted the words “any land on which they desire to work coal by such operations or to carry out operations incidental to such working”.

(2) The following subsections shall be substituted for section 4(6)—

“(6) A compulsory rights order may only be made if opencast planning permission has been applied for or granted in respect of the land comprised in the order or is deemed to have been granted in respect of it.

(6A) Where a compulsory rights order is made before opencast planning permission has been granted in respect of the land comprised in the order, the Secretary of State shall not confirm it unless such permission in respect of that land has first been granted.

(6B) Where a compulsory rights order is made in a case where opencast planning permission has been granted or is deemed to have been granted, the order, as from the time when it is made, shall include a reference to the permission.

(6C) If opencast planning permission is granted in respect of land comprised in a compulsory rights order and the Secretary of State subsequently confirms the order, the order as confirmed shall include a reference to the permission.

(6D) No compulsory rights order, as confirmed, shall extend to any land which is not comprised in the permission or deemed permission referred to in the order.”

3 In section 5(5)—

(a) for the word “authorisation” there shall be substituted the words “opencast planning permission”; and

(b) for the words “fulfilment of the authorised purposes” there shall be substituted the words “permitted activities.”

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F24

Textual Amendments

F2 Sch. 8 para. 4 repealed (31.10.1994) by 1994 c. 21, ss. 67, 68(2), **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**

5 The following sections shall be substituted for section 14—

“14 Provisions as to agricultural tenancies in England and Wales.

- (1) Without prejudice to the provisions of Part III of this Act as to matters arising between landlords and tenants in consequence of compulsory rights orders, the provisions of this section shall have effect where—
 - (a) opencast planning permission has been granted subject to a restoration condition and to an aftercare condition in which the use specified is use for agriculture or use for forestry, and
 - (b) immediately before that permission is granted, any of the land comprised therein consists of an agricultural holding or part of an agricultural holding,
 whether any of that land is comprised in a compulsory rights order or not.
- (2) For the purposes of the Agricultural Holdings Act 1986 (in this Act referred to as “the Act of 1986”)—
 - (a) the holding shall not be taken to have ceased to be an agricultural holding; and
 - (b) where only part of the holding is comprised in opencast planning permission, that part shall not be taken to have ceased to form part of an agricultural holding,
 by reason only that, while occupied or used for the permitted activities, the land is not being used for agriculture within the meaning of that Act.
- (3) For the purposes of the Act of 1986, the tenant of the holding shall not be taken to have failed to fulfill his responsibilities to farm in accordance with the rules of good husbandry—
 - (a) by reason of his having permitted any of the land comprised in the opencast planning permission to be occupied for the purpose of carrying on any of the permitted activities, or by reason of any other thing done or omitted by him for facilitating the use of any of that land for that purpose;
 - (b) where any of that land is comprised in a compulsory rights order, by reason of the occupation or use of any of that land in the exercise of rights conferred by the order, in so far as that occupation or use was not permitted or facilitated by the tenant as mentioned in the preceding paragraph.
- (4) For the purposes of the Act of 1986 nothing done or omitted by the tenant or by the landlord of the holding by way of permitting any of the land in respect of which opencast planning permission has been granted to be occupied for the purpose of carrying on any of the permitted activities, or by way of facilitating the use of any of that land for that purpose, shall be taken to be

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a breach of any term or condition of the tenancy, either on the part of the tenant or on the part of the landlord.

- (5) For the purposes of subsections (1) to (3) of section 27 of the Act of 1986 (Agricultural Land Tribunal's consent to operation of notice to quit) the condition specified in paragraph (f) of subsection (3) of that section shall not be treated as satisfied if the use for the purpose for which the landlord proposes to terminate the tenancy is the use of the land for carrying on any of the permitted activities.
- (6) On a reference to arbitration under section 12 of the Act of 1986 with respect to the rent which should be properly payable for the holding, in respect of any period for which the Board are in occupation of the holding, or of any part thereof, for the purpose of carrying on any of the permitted activities, the arbitrator shall not take into account any increase or diminution in the rental value of the holding in so far as that increase or diminution is attributable to the occupation of the holding, or of that part of the holding, by the Board for the purpose of carrying on any of the permitted activities.
- (7) For the purpose of the operation of section 13 of the Act of 1986 (increases of rent for landlord's improvements) in relation to improvements carried out on the holding, in a case where the improvements have been affected by anything done for the purpose of carrying on any of the permitted activities, the increase (if any) of the rental value of the holding attributable to the carrying out of the improvements shall be assessed as if it had not been done.
- (8) This section does not extend to Scotland.

14A Provisions as to agricultural tenancies in Scotland.

- (1) Without prejudice to the provisions of Part III of this Act as to matters arising between landlords and tenants in consequence of compulsory rights orders, the provisions of this section shall have effect in Scotland where—
 - (a) opencast planning permission has been granted subject to a restoration condition and to an aftercare condition in which the use specified is use for agriculture, and
 - (b) immediately before that permission is granted, any of the land comprised therein consists of an agricultural holding or part of an agricultural holding,whether any of that land is comprised in a compulsory rights order or not.
- (2) In this section—

“aftercare condition” means a condition requiring that such steps shall be taken as may be necessary to bring land to the standard required for use for agriculture; and

“restoration condition” has the meaning given to it in section 27A(2) of the Town and Country Planning (Scotland) Act 1972.
- (3) For the purposes of the Agricultural Holdings (Scotland) Act 1949 (in this Act referred to as “the Scottish Act of 1949”)—
 - (a) the holding shall not be taken to have ceased to be an agricultural holding; and

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- (b) where only part of the holding is comprised in the opencast planning permission, that part shall not be taken to have ceased to form part of an agricultural holding,
- by reason only that, while occupied or used for the permitted activities, the land is not being used for agriculture within the meaning of that Act.
- (4) For the purposes of the Scottish Act of 1949, the tenant of the holding shall not be taken to have failed to fulfil his responsibilities to farm in accordance with the rules of good husbandry—
- (a) by reason of his having permitted any of the land comprised in the opencast planning permission to be occupied for the purpose of carrying on any of the permitted activities, or by reason of any other thing done or omitted by him for facilitating the use of any of that land for that purpose;
- (b) where any of that land is comprised in a compulsory rights order, by reason of the occupation or use of any of that land in the exercise of rights conferred by the order, in so far as that occupation or use was not permitted or facilitated by the tenant as mentioned in the preceding paragraph.
- (5) For the purposes of the Scottish Act of 1949 nothing done or omitted by the tenant or by the landlord of the holding by way of permitting any of the land in respect of which opencast planning permission has been granted to be occupied for the purpose of carrying on any of the permitted activities, or by way of facilitating the use of any of that land for that purpose, shall be taken to be a breach of any term or condition of the tenancy, either on the part of the tenant or on the part of the landlord.
- (6) For the purposes of section 25(2) of the Scottish Act of 1949, no account is to be taken of permission granted as mentioned in paragraph (c) of that subsection if the permission—
- (a) is granted on an application by the National Coal Board; and
- (b) relates to the working of coal by opencast operations; and
- (c) is granted subject to a restoration condition and an aftercare condition.
- (7) For the purposes of section 26 of the Scottish Act of 1949 (in which subsection (1) specifies conditions for the giving of consent under section 25 of that Act to the operation of a notice to quit) the condition specified in paragraph (e) of subsection (1) shall not be treated as satisfied if the use for the purpose of which the landlord proposes to terminate the tenancy is the use of the land for carrying on any of the permitted activities.
- (8) On a reference to arbitration under section 7 of the Scottish Act of 1949 with respect to the rent which should be properly payable for the holding, in respect of any period for which the Board are in occupation of the holding, or of any part thereof, for the purpose of carrying on any of the permitted activities, the arbiter shall not take into account any increase or diminution in the rental value of the holding in so far as that increase or diminution is attributable to the occupation of the holding, or of that part of the holding, by the Board for the purpose of carrying on any of the permitted activities.
- (9) For the purpose of the operation of section 8 of the Scottish Act of 1949 (which relates to increases of rent for improvements carried out by the

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landlord) in relation to an improvement carried out on the holding, in a case where the improvement has been affected by anything done for the purpose of carrying on any of the permitted activities, the increase (if any) of the rental value of the holding attributable to the carrying out of the improvement shall be assessed as if the improvement had not been so affected.

- (10) The use of land for the working of coal by opencast operations shall not be a use for the purposes of which a landlord shall be entitled to resume the land.”.

6 The following sections shall be substituted for section 15—

“15 Suspension of certain public rights of ways.

- (1) Where—
- (a) the Board apply for opencast planning permission; and
 - (b) over any part of the land to which the application relates there subsists a public right of way, not being a right enjoyed by vehicular traffic,
- the Board may also apply to the Secretary of State for an order suspending the public right of way.
- (2) The Secretary of State shall not make such an order unless—
- (a) opencast planning permission is granted; and
 - (b) he is satisfied—
 - (i) that a suitable alternative way will be made available by the Board (whether on land comprised in the opencast planning permission or on other land) for use by the public during the period for which the order remains in force; or
 - (ii) that the provision of such an alternative way is not required.
- (3) An order under this section shall specify the date, which shall not be earlier than the making of the order, with effect from which the right of way is suspended.
- (4) Where an order has been made under this section the Secretary of State shall revoke it—
- (a) if—
 - (i) no permitted activities have been carried on pursuant to the opencast planning permission on the land over which the right of way subsisted; and
 - (ii) he is satisfied that there is no early prospect of such activities being so carried on; or
 - (b) as soon after such permitted activities have been so carried on as he is satisfied that it is no longer necessary for the purpose of carrying on such permitted activities that the right of way should be suspended.
- (5) An order under this section shall include such provisions as may appear to the Secretary of State to be appropriate for securing the reconstruction of the way on the restoration of the land over which the right of way subsisted immediately before the order was made.

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- (6) Where an order is made under this section then, in connection with the provision of such a suitable alternative way as is referred to in subsection (2) above,—
- (a) the order under this section may provide that, in so far as the carrying out of any operations, or any change in the use of land, involved in making the alternative way available or in permitting it to be used by the public, constitutes development within the meaning of the Act of 1971, permission for that development shall be deemed to be granted under Part III of that Act subject to such conditions (if any) as may be specified in the order;
 - (b) where the order under this section includes provisions in accordance with paragraph (a) above, the Act of 1971 shall have effect as if they were conditions subject to which the opencast planning permission was granted;
 - (c) if a compulsory rights order referring to the opencast planning permission is made, then, in the application to that order of section 5(5) above, the permitted activities shall be taken to include making an alternative way available for use by the public, and the right exercisable in accordance with that subsection, as against all persons directly concerned, shall include the right to permit the public to use any way so made available; and
 - (d) if the land on which the alternative way is to be made available is specified in the order under this section and is land which does not form part of, but is contiguous with, the land to which the opencast planning permission relates, a compulsory rights order referring to the opencast planning permission may include that land as if it were part of the land comprised in the permission.
- (7) In the application of this section to Scotland, it shall be read as if for “the Act of 1971” there were substituted “the Town and Country Planning (Scotland) Act 1972”.

15A Suspension of public rights of way—supplementary.

- (1) Before submitting to the Secretary of State an application for an order under section 15 of this Act, the Board shall publish a notice in the prescribed form identifying the right of way and stating—
 - (a) that the Board are proposing to apply for an order suspending it in connection with the working of coal by opencast operations;
 - (b) that opencast planning permission has been applied for, or, as the case may be, has been granted; and
 - (c) that objections to the application for the order may be made in writing to the Secretary of State within such time, not being less than 28 days from the publication of the notice, as may be specified.
- (2) The duty to publish a notice imposed by subsection (1) above is a duty to publish it—
 - (a) in two successive weeks in one or more local newspapers circulating in the locality in which the land over which the right of way subsists is situated; and

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- (b) in the same or any other two successive weeks, in the appropriate Gazette.
- (3) The period within which objections may be made expires when the period specified in the last publication of the notice expires; and any period specified in earlier publications is to be treated as extended accordingly.
- (4) A notice under subsection (1) above shall name a place in the locality where a copy of the application and of a map showing the right of way can be inspected.
- (5) The Board shall also, before submitting such an application to the Secretary of State,—
 - (a) inform—
 - (i) in England and Wales, the district council and, except in the case of a metropolitan district, the county council, and any parish or community council or parish meeting; and
 - (ii) in Scotland, every local authority in whose area any part of the land over which the right of way subsists is situated of the right to object conferred by subsection (1) above;
 - (b) send them a map showing the right of way and a copy of their notice under subsection (1) above; and
 - (c) affix to some conspicuous object at either end of the right of way a notice giving in the prescribed form the prescribed particulars of their proposed application concerning it and of the right to object.
- (6) If no objection is made by any such authority, other than a parish or community council or parish meeting, as is mentioned in subsection (5) (a) above, or if all objections which are made by any such authority are withdrawn, the Secretary of State, upon being satisfied that the Board have complied with subsections (1) to (5) above, may if he thinks fit make the order.
- (7) The Secretary of State may, if he thinks fit, cause a public local inquiry to be held before determining whether to make an order, and shall cause such an inquiry to be held if an objection is made by any such authority and is not withdrawn.
- (8) If the Secretary of State causes such an inquiry to be held, he shall consider all objections to the application which are duly made by any person and not withdrawn and the report of the person who held the inquiry before determining whether to make the order.
- (9) An order under section 15 of this Act may be made either in accordance with the Board's application or subject to such modifications as the Secretary of State may determine.
- (10) If the Secretary of State makes an order, the Board, as soon as may be after the order is made, shall publish a notice in the prescribed form that the order has been made, describing the right of way which is suspended, stating the date on which the order comes into operation and naming a place in the locality where a copy of the order and of any map to which it refers can be inspected at all reasonable hours, and shall serve a like notice and a copy

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of the order on any body required under this section to be informed of the application for the order.

- (11) The duty to publish a notice imposed by subsection (10) above is a duty to publish it—
- (a) in one or more local newspapers such as are mentioned in subsection (1) above; and
 - (b) in the appropriate Gazette.
- (12) In this section “the appropriate Gazette” means—
- (a) the London Gazette in a case where the land over which the right of way subsists is situated in England or Wales; and
 - (b) the Edinburgh Gazette in a case where it is situated in Scotland.”.

7

In section 16—

- (a) in subsections (1) and (2), for the words from “which” to “Act” there shall be substituted the words “in respect of which opencast planning permission has been granted”;
- (b) in subsection (3), for the words from “comprised” to “Act” there shall be substituted the words “in respect of which the permission was granted”.

8

In sections 18(3)(a) and 19(4)(a)—

- (a) for the word “authorisation”, in the first place where it occurs, there shall be substituted the words “opencast planning permission”; and
- (b) for the words “an authorisation” there shall be substituted the word “permission”.

9

In section 38—

- (a) in paragraph (a)—
 - (i) for the words from “which” to “Act” there shall be substituted the words “in respect of which opencast planning permission has been granted”; and
 - (ii) for the words “authorised purposes” there shall be substituted the words “purpose of carrying on the permitted activities”;
- (b) in paragraph (b), for the words “comprised in the authorisation” there shall be substituted the words “in respect of which the permission was granted and”; and
- (c) for the words from “fulfilment” to the end of the subsection there shall be substituted the words “permitted activities”

10

In section 39(3)—

- (a) in paragraph (a), for the words “an authorisation under section one of this Act” there shall be substituted the words “opencast planning permission”;
- (b) in paragraph (b)—
 - (i) for the words from “an” to “Act”, in the first place where it occurs, there shall be substituted the words “opencast planning permission”; and
 - (ii) for the words “out of any authorised operations” there shall be substituted the words “on of any of the permitted activities”; and

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- (c) in paragraph (d), for the words “any of the provisions of the First” there shall be substituted the words “section 15A(4)(c) or any of the provisions of the”.
- 11 In the proviso to section 39(5), for the words “any of the provisions of the First” there shall be substituted the words “section 15A(4)(c) or any of the provisions of the”.
- 12 In section 45(2)—
 - (a) for the words from “an” to “Act” there shall be substituted the words “opencast planning permission has been granted”, ^{F3} . . .
 - (b)

Textual Amendments

F3 Sch. 8 para. 12(b) and the preceding “and” repealed (31.10.1994) by 1994 c. 21, ss. 67, 68(2), Sch. 11 Pt. II (with s. 40(7)); S.I. 1994/2553, art. 2

- 13 In section 51(1)—
 - (a) the following definition shall be inserted after the definition of “National Trust”—

““opencast planning permission” means planning permission which permits the Board to work coal by opencast operations or to carry out operations incidental to such working;”;
 - (b) the following definition shall be inserted after the definition of “period of occupation”—

““permitted activities” means—

 - (a) the working of coal by opencast operations pursuant to opencast planning permission and the carrying out of operations incidental to such working; and
 - (b) the carrying out of any conditions subject to which opencast planning permission has been granted;”;
 - (c) the following definition shall be inserted after the definition of “persons directly concerned”—

““planning permission” means planning permission under Part III of the Act of 1971;”.
- 14 In section 52(2), the following definition shall be inserted after the definition of “owner”—

““planning permission” means planning permission under Part III of the Act of 1972 ;”.
- 15 In paragraph 5(1) of Part I of Schedule 2 (compulsory rights orders)—
 - (a) for the words “an authorisation under section one of this Act” there shall be substituted the words “ opencast planning permission ” ; and
 - (b) for the words from “an authorisation”, in the second place where those words occur, to “operations” there shall be substituted the words “ opencast planning permission should be granted or should have been granted. ”.

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- 16 In Schedule 6, in paragraph 18(2)(c), for the words from “purposes”, in the first place where it occurs, to the end there shall be substituted the words “ activities which, in relation to the opencast planning permission referred to in the order, constitute the permitted activities ”.
- 17 In Schedule 7, in paragraph 24(3)(a)—
- (a) for the word “authorisation”, in the first place where it occurs, there shall be substituted the words “ opencast planning permission ” ; and
 - (b) for the words “had been made for such an authorisation” there shall be substituted the words “ for opencast planning permission had been made ”.

PART II

ACQUISITION OF LAND ACT 1981 (C. 67)

- 18 In section 29—
- (a) in subsection (6)—
 - (i) for the words “an authorisation under section 1 of the Opencast Coal Act 1958” there shall be substituted the words “opencast planning permission”; and
 - (ii) for the words from “an authorisation”, in the second place where they occur, to “operations” there shall be substituted the words “opencast planning permission should be granted or should have been granted”; and
 - (b) the following subsection shall be substituted for subsection (11)—

“(11) In this section “opencast planning permission” and “persons directly concerned” have the same meaning as in the Opencast Coal Act 1958.”.

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