

Status: Point in time view as at 31/10/1994.

Changes to legislation: There are currently no known outstanding effects for the Coal Industry Act 1994, Cross Heading: Orders conferring rights for drainage or water supply purposes. (See end of Document for details)

SCHEDULES

SCHEDULE 8

AMENDMENTS OF THE OPENCAST COAL ACT 1958

Orders conferring rights for drainage or water supply purposes

- 14 (1) In subsections (1) and (2) of section 16 (orders for drainage and water supply purposes), for the words from “granted” to “compulsorily”, in each subsection, there shall be substituted “ applied for or granted, the Coal Authority, on an application in accordance with subsection (2A) below, may, by means of an order made by that Authority and confirmed by the Secretary of State, confer on the person with the benefit of the permission ”.
- (2) After subsection (2) of that section there shall be inserted the following subsection—
- “(2A) The Coal Authority shall not make an order under this section except on the application of a person who—
- (a) is the person with the benefit of the opencast planning permission or, where the permission has been applied for but has not been granted, the person who will have the benefit of that permission;
 - (b) satisfies that Authority that he is either a licensed operator within the meaning of the Coal Industry Act 1994 or a person whose application to that Authority for a licence under Part II of that Act is pending; and
 - (c) also satisfies that Authority that he has served notice in the prescribed form of the application for the order on every owner, lessee and occupier of the other land (except tenants for a month or any period of less than a month);
- and an order made before the opencast planning permission has been granted shall not be confirmed until after it has been granted.”
- (3) In subsection (3) of that section—
- (a) for “authorising the compulsory purchase of” there shall be substituted “ conferring ”;
 - (b) after “was” there shall be inserted “ applied for or ”; and
 - (c) for “acquired” there shall be substituted “ conferred ”.
- (4) For subsection (4) of that section (effect of order), including that subsection as substituted for Scotland by subsection (9) of that section, there shall be substituted the following subsection—
- “(4) Any right conferred by an order under this section shall be exercisable by, or by any person authorised by—
- (a) a person who—
 - (i) is for the time being in occupation of the land specified in accordance with subsection (3) of this section in the order;

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- (ii) is the person on whom the right was conferred; and
- (iii) was in occupation of that land when it was conferred;

or

- (b) a person who is for the time being in occupation of the land by virtue of the transfer to him either—

- (i) by, or with the written approval of, the Coal Authority, or
 - (ii) in any other case described in the order,

of any interest or right which, at the time when the right was conferred under this section, was vested in a person who became entitled to exercise it by virtue of paragraph (a) above;

and a right conferred by an order under this section (whether or not conferred while the person on whom it was conferred was in occupation of the land) shall, in the case of land in England and Wales, be treated as an easement appurtenant in perpetuity to that land, and, in the case of land in Scotland, be recorded in the Register of Sasines or as the case may be registered in the Land Register of Scotland by the person on whom the right is conferred.”

- (5) In subsection (4A) of that section (which for England and Wales provides for the application of compulsory purchase legislation), for the words from the beginning to “as if” there shall be substituted—

“(4A) For the purposes of any order conferring rights exercisable under this section on any land in England and Wales—

- (a) Parts II to IV of the Acquisition of Land Act 1981 shall apply as they would apply in relation to a compulsory rights order in which that land is comprised, and section 29 of that Act shall apply accordingly but with the omission of subsections (4) and (5); and
- (b) the Compulsory Purchase Act 1965 shall have effect as if—
 - (i) the conferring of those rights were the compulsory acquisition of those rights by the person on whom they are conferred; and
 - (ii)”.

- (6) After subsection (4A) of that section there shall be inserted the following subsections—

“(4B) Where at any time after an application for an order under this section 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 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

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in relation to the original applicant or a previous successor had been done by or in relation to that person.

(4C) The Coal Authority or, as the case may be, the Secretary of State may make a decision to proceed in accordance with subsection (4B) 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.”

(7) For subsection (5) of that section there shall be substituted the following subsection—

“(5) In relation to any order conferring rights exercisable under this section as regards any land in Scotland Parts I, III and IV of Schedule 1 to the Scottish Acquisition of Land Act (and the enactments incorporated with that Act) shall apply as they would apply in relation to a compulsory rights order in which that land is comprised, and section 4(5) of this Act shall apply accordingly but as if the section did not relate to paragraphs 3 and 4 of Schedule 2 to this Act.”

(8) In subsection (6) of that section, for “a compulsory purchase order made by virtue of” there shall be substituted “an order made and confirmed under”.

(9) After subsection (7) of that section there shall be inserted the following subsection—

“(7A) Subsections (2) and (3) of section 12 of the Acquisition of Land Act 1981 (statutory tenants etc. and ecclesiastical property) shall have effect in relation to the service of a notice under this section as respects any land in England and Wales as they have effect in relation to the service of a notice under that section.”

(10) Subsection (9) of that section shall cease to have effect.

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