



# Opencast Coal Act 1958

1958 CHAPTER 69 6 and 7 Eliz 2

E+W+S

An Act to make provision with respect to the working of coal by opencast operations, including provision for the compulsory acquisition by the National Coal Board of rights over land and provision for the payment of compensation in connection therewith; to provide for adjustments between landlords and tenants, and in respect of mortgages, mining leases and orders conferring working rights, in consequence of the authorisation of such operations or of the acquisition by the Board of such rights over land; and for purposes connected with the matters aforesaid. [1st August 1958]

## Modifications etc. (not altering text)

- C1** Act: Transfer of certain functions (1.7.1999) by [S.I. 1999/672](#), arts. 1(2), 2, [Sch. 1](#); [S.I. 1998/3178](#), [art. 3](#)
- C2** In this Act for the word “Board” wherever occurring (elsewhere than in s. 3(1) where occurring for the first time and elsewhere than in s. 14A(6)(a) ) and for the word “Board’s” whenever occurring there are substituted respectively the words “Corporation” and “Corporation’s” by [Coal Industry Act 1987](#) (c. 3, [SIF 86](#)), s. 1(2), [Sch. 1 para. 7\(c\)](#) (which para. 7 was repealed (31.10.1994) by [1994 c. 21](#), s. 67, [Sch. 11 Pt. II](#); [S.I. 1994/2553](#), [art. 2](#))
- C3** Act extended by [Gas Act 1986](#) (c. 44, [SIF 44:2](#)), s. 67(1)(3), [Sch. 7 para. 2\(1\)\(x\)](#), Sch. 8 para. 33
- C4** Act extended (E.W.) by [Water Act 1989](#) (c. 15, [SIF 130](#)), s. 190(1), [Sch. 25 para. 1\(2\)\(11\)](#), (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 16, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1), 17, 40(4), 57(6), 58)
- C5** Act modified (E.W.) by [Water Act 1989](#) (c. 15, [SIF 130](#)), s. 190(1), [Sch. 25 para. 1\(9\)\(10\)](#), (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 16, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1), 17, 40(4), 57(6), 58)
- C6** Act extended by [Electricity Act 1989](#) (c. 29, [SIF 44:1](#)), s. 112(1)(3), Sch. 16 para. 1(1)(x), [Sch. 17 para. 33](#)  
Act extended (1.3.1996) by [1995 c. 45](#), s. 16(1), [Sch. 4 para. 2\(1\)\(viii\)](#); [S.I. 1996/218](#), [art. 2](#)  
Act restricted (31.10.1994) by [1994 c. 21](#), [s. 52\(1\)\(3\)](#) (with ss. 40(7), 66); [S.I. 1994/2553](#), [art. 2](#)  
Act modified (31.10.1994) by [1994 c. 21](#), s. 67, [Sch. 10 para. 9\(1\)\(5\)](#) (with ss. 40(7), 66); [S.I. 1994/2552](#), [art. 2](#), [Sch. 1](#)

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**Commencement Information**

**II** Act wholly in force at 30.9.1958 by s. 53(2) (now repealed)

**PART I E+W+S**

AUTHORISATION OF, AND FACILITIES FOR, OPENCAST WORKING OF COAL

**1 Authorisation of opencast working of coal. E+W+S**

F1

**Textual Amendments**

**F1** S. 1 repealed by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(1)(4), [Sch. 12 Pt. II](#)

**2 Planning permission for authorised operations. E+W+S**

F2

**Textual Amendments**

**F2** S. 2 repealed by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(1)(4), [Sch. 12 Pt. II](#)

**F3** ..... **E+W+S**

**Textual Amendments**

**F3** S. 3 repealed (31.10.1994) by [1994 c. 21, s. 67, Sch. 11 Pt. II](#) (with s. 4(7)); [S.I. 1994/2553, art. 2](#)

**4 Compulsory rights orders. E+W+S**

[<sup>F4</sup>(1) For the purpose of facilitating the working of coal by opencast operations, [<sup>F5</sup>the Coal Authority], by means of an order (in this Act referred to as a “compulsory rights order”) made by [<sup>F5</sup>the Coal Authority] and confirmed by the Secretary of State, [<sup>F6</sup>confer], in accordance with the following provisions of this Part of this Act, temporary rights of occupation and use of [<sup>F7</sup>the whole, or such part as (subject to the confirmation of the Secretary of State) the Coal Authority thinks fit, of any land on which the applicant for the order desires][<sup>F8</sup> to work coal by such operations or to carry out operations incidental to such working.]

[ The Coal Authority shall not make a compulsory rights order except on the application <sup>F9</sup>(1A) of a person who satisfies that Authority—

- (a) 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

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- (b) that he has served notice in the prescribed form of the application for the order on every person who is known to him to be a person who would, in relation to the order applied for, be directly concerned.
- (1B) Subject to the provisions of section 5 of this Act, the rights conferred by an order made on such an application as is mentioned in subsection (1A) of this section shall be conferred on the applicant and his successors so as to be exercisable for the purposes only of—
- (a) operations which the applicant or, as the case may be, any such successor is authorised to carry out by virtue of being a licensed operator within the meaning of the Coal Industry Act 1994; and
  - (b) operations which are incidental to operations falling within paragraph (a) above (including operations carried out at times when the authorisation for the operations falling within that paragraph is not in force).]
- (2) Subject to the provisions of Part III of this Act as to the variation of orders, the period for which a compulsory rights order has effect shall be a period—
- (a) beginning with the date on which the order becomes operative (in this Act referred to as “the operative date”), and
  - (b) of such duration, not exceeding twenty years, as may be specified in the order.]
- [<sup>F10</sup>(4A) Parts II, III and IV of the Acquisition of Land Act 1981 shall apply to compulsory rights orders, subject to section 29 of that Act]
- [<sup>F11</sup>(5) The provisions of Parts I, III and IV of the First Schedule to the [<sup>F12</sup>Scottish]Acquisition of Land Act (which relate to the procedure for authorising compulsory purchases by local authorities) shall apply to compulsory rights orders, subject to the adaptations, modifications and exceptions set out in Part I of the Second Schedule to this Act.]
- [<sup>F13</sup>(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.]
- (7) The Lands Clauses Acts [<sup>F14</sup>and the Compulsory Purchase Act 1965]shall not apply to the compulsory acquisition of rights by virtue of a compulsory rights order, or to the taking or retention of possession of land in the exercise of such rights.
- <sup>F15</sup>(8) .....

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### Textual Amendments

- F4** S. 4(1)(2) substituted for s. 4(1)-(4) by Coal Industry Act 1975 (c. 56), s. 4(1)
- F5** Words in s. 4(1) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 2(1)**; S.I. 1994/2553, **art. 2**
- F6** Word in s. 4(1) substituted (31.10.1994) by 1994 c. 21, s. 52(2), **Sch. 8 para. 2(1)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F7** Words in s. 4(1) substituted (31.10.1994) by 1994 c. 21, s. 52(2), **Sch. 8 para. 2(1)(c)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F8** Words substituted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 2(1)**
- F9** S. 4(1A)(1B) inserted (31.10.1994) by 1994 c. 21, s. 52(2), **Sch. 8 para. 2(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F10** S. 4(4A) inserted by Acquisition of Land Act 1981 (c. 67 SIF 28:1), Sch. 4 para. 11(2)
- F11** S. 4(5) repealed (E.W.) by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34(3), **Sch. 6 Pt. I**
- F12** Word in s. 4(5) inserted (31.10.1994) by 1994 c. 21, s. 52(2), **Sch. 8 para. 2(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F13** S. 4(6) substituted by s. 4(6)(6A)–(6D) by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 2(2)**
- F14** Words inserted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34(1), **Sch. 4 para. 11(3)**
- F15** S. 4(8) repealed (31.10.1994) by 1994 c. 21, ss. 52(2), 67, Sch. 8 para. 2(3), **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, art. 2

## 5 Effect of opencast site orders. **E+W+S**

- (1) Subject to the following provisions of this Part of this Act, the effect of [<sup>F16</sup>a compulsory rights order] shall be in accordance with the provisions of this section.
- (2) [<sup>F17</sup>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 [<sup>F18</sup>the person entitled to the rights conferred by the order], and upon persons authorised by [<sup>F19</sup>that person], the like rights to occupy the land comprised in the order, and to exclude other persons therefrom, as if [<sup>F19</sup>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 [<sup>F16</sup>a compulsory rights order] shall confer upon [<sup>F18</sup>the person entitled to the rights conferred by the order], and upon persons authorised by [<sup>F19</sup>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 [<sup>F19</sup>that person], in relation to the [<sup>F20</sup>opencast planning permission] referred to in the order, to be requisite for, or incidental to, the [<sup>F21</sup>permitted activities].

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[<sup>F22</sup>(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 [<sup>F16</sup>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

**F16** Words substituted by [Coal Industry Act 1975 \(c. 56\)](#), [Sch. 3 para. 2](#)

**F17** 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

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- F18** 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
- F19** 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
- F20** Words substituted by **Housing and Planning Act 1986 (c. 63, SIF 86)**, s. 39(3), **Sch. 8 para. 3(a)**
- F21** Words substituted by **Housing and Planning Act 1986 (c. 63, SIF 86)**, s. 39(3), **Sch. 8 para. 3(b)**
- F22** 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**

6 ..... <sup>F23</sup> **E+W+S**

.....

**Textual Amendments**

**F23** S. 6 repealed by **Coal Industry Act 1975 (c. 56)**, s. 5(3), **Sch. 5**

7 **General limitations on effect of compulsory rights orders.** **E+W+S**

- (1) The rights conferred by a compulsory rights order in accordance with subsection (5) of section five of this Act . . . <sup>F24</sup> shall not affect any of the rights mentioned in subsection (2) or subsection (3) of this section.
- (2) Subject to the next following subsection, the said rights are:—
  - (a) any right of support for any land not comprised in the order, or for any building or structure on any such land, or any right of action of any person in so far as it arises from the withdrawal of support to which he is entitled for any such land, building or structure;
  - (b) any rights of any statutory water undertakers under any public general Act [<sup>F25</sup>relating to the supply of water], or under any byelaw made by virtue of such an Act, or under any local enactment, in so far as (apart from this Act) the Act, byelaw or enactment restricts, or enables the undertakers to restrict, the working of coal or other minerals, or the doing of any other act, on land comprised in the order;
  - (c) any rights of any statutory undertakers, [<sup>F26</sup>or of the body carrying on a sewerage undertaking or sewage disposal undertaking, or of any [<sup>F27</sup>water authority] or other drainage authority][<sup>F26</sup>or of any internal drainage board], in respect of any apparatus on, under or over land comprised in the order, being apparatus in respect of which, at any time since the granting of the [<sup>F28</sup>opencast planning permission] referred to in the order, [<sup>F29</sup>the person entitled to the rights conferred by the compulsory rights order has] been entitled to serve a notice [<sup>F30</sup>under the provisions of the Act of 1990, applied] by section thirteen of this Act.
- (3) . . . <sup>F24</sup> the said rights also include the following:—
  - (a) the rights conferred by any agreement [<sup>F31</sup>to which the person entitled to the rights conferred by the compulsory rights order is or is deemed to be a party and which is] for the time being in force whereby (apart from this Act) [<sup>F31</sup>that person is] required to leave any coal unworked;
  - (b) any rights of the body carrying on a railway, canal, inland navigation, harbour or dock undertaking (not being rights falling within the last preceding subsection) under any enactment (whether contained in a public general Act

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- or in any other Act) in so far as (apart from this Act) the enactment would operate so as—
- (i) to restrict, or enable that body to restrict, the working of coal or other minerals on land comprised in the order which is adjacent to a railway, waterway, harbour, dock or other works situated on land not comprised in the order, being works vested in that body or works which they have any right or duty to maintain, or
  - (ii) to require, or enable that body to require, coal or other minerals on land comprised in the order to be left unworked for the protection or support of such a railway, waterway, harbour, dock or other works.
- (4) Without prejudice to the preceding provisions of this section, the rights conferred by a compulsory rights order as mentioned in subsection (1) of this section—
- (a) shall not affect any right of action of a person who is not a person directly concerned, and
  - (b) in the case of a person directly concerned, shall not affect any right of action of his in so far as it arises otherwise than by virtue of his being entitled to an interest in or right over land, or in so far as it arises by virtue of his being entitled to an interest in, or right over, land not comprised in the order.
- (5) Nothing in the preceding provisions of this section shall affect the operation of subsection (4) of section five of this Act, . . . <sup>F24</sup>
- (6) Without prejudice to the preceding provisions of this section, nothing in section five . . . <sup>F24</sup> shall be construed as authorising any interference with the exercise of a public right of way.
- (7) Notwithstanding anything in subsection (6) of section five of this Act, . . . <sup>F24</sup> a person shall not be taken to be a person directly concerned in relation to a compulsory rights order by reason only that he is entitled to any such right as is mentioned in subsection (2) or subsection (3) of this section.

<sup>F32</sup>(8) In this section—

“ statutory water undertakers ” means—

- (i) in England <sup>F33</sup> . . . , the [<sup>F34</sup>Environment Agency], a water undertaker or a sewerage undertaker; <sup>F35</sup> . . .
- (ii) in Scotland, a [<sup>F36</sup>Scottish Water][<sup>F37</sup>and]
- (iii) [<sup>F38</sup>in Wales, the Natural Resources Body for Wales, a water undertaker or a sewerage undertaker.]

“ local enactment ”—

- (i) in England and Wales, means any local statutory provision within the meaning of the Water Industry Act 1991; and
- (ii) in Scotland, has the same meaning as in the Water (Scotland) Act 1980; and, in the application of this section to Scotland, for any reference to the Act of 1990 there shall be substituted a reference to [<sup>F39</sup>the Town and Country Planning (Scotland) Act 1997].]

#### Textual Amendments

**F24** Words repealed by [Coal Industry Act 1975 \(c. 56\)](#), s. 5(3), [Sch. 5](#)

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- F25** Words repealed (E.W.) by [Water Act 1989](#) (c. 15, SIF 130), s. 190(3), **Sch. 27 Part I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)
- F26** Words substituted (E.W.) by [Water Act 1989](#) (c. 15, SIF 130), s. 190(1), **Sch. 25 para. 26(1)(a)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F27** Words substituted by virtue of [Water Act 1973](#) (c. 37), **s. 9**
- F28** Words in s. 7(2)(c) substituted (31.10.1994) by 1994 c. 21, s. 52(2), **Sch. 8 para. 4(a)(i)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F29** Words in s. 7(2)(c) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 4(a)(ii)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F30** Words in s. 7(2)(c) substituted (31.10.1994) by 1994 c. 21, **s. 52(2)**, Sch. 8 para. 4(a)(iii) (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F31** Words in s. 7(3)(a) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 4(b)(i)(ii)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F32** S. 7(8) substituted (31.10.1994) for s. 7(8)(9) by 1994 c. 21, s. 52(2), **Sch. 8 para. 4(c)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F33** Words in s. 7(8) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013](#) (No. 755), art. 1(2), **Sch. 2 para. 26(2)** (with Sch. 7)
- F34** Words in para. (i) of the definition of "statutory water undertakers" substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 5(1)** (with ss. 115, 117); S.I. 1996/186, **art. 2**
- F35** Word in s. 7(8) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013](#) (No. 755), art. 1(2), **Sch. 2 para. 26(3)** (with Sch. 7)
- F36** Words in s. 7(8) substituted (14.7.2004) by [Water Industry \(Scotland\) Act 2002](#) (Consequential Modifications) Order 2004 (S.I. 2004/1822), art. 1(1), **Sch. para. 1**
- F37** Word in s. 7(8) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013](#) (No. 755), art. 1(2), **Sch. 2 para. 26(4)** (with Sch. 7)
- F38** Words in s. 7(8) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013](#) (No. 755), art. 1(2), **Sch. 2 para. 26(5)** (with Sch. 7)
- F39** Words in s. 7(8) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 5(1)**

## 8 Limited compulsory rights orders. **U.K.**

- (1) A compulsory rights order . . . <sup>F40</sup> may provide that its operation shall be limited so as to extend only to such one or more interests or rights (being interests or rights of a description mentioned in the next following subsection) as may be specified in the order.
- (2) Any interest or right specified in an order made in accordance with the preceding subsection shall be of one of the following descriptions, that is to say,—
- (a) an easement or similar right in respect of the whole or part of the land comprised in the order;
  - (b) a right restrictive of the use of the whole or part of that land;
  - (c) the interest or rights created or conferred by a mining lease or order conferring working rights in respect of minerals in or under that land or part thereof.
- (3) In relation to a compulsory rights order which provides that its operation shall be limited as mentioned in subsection (1) of this section,—
- (a) “persons directly concerned” in this Act means persons who for the time being are entitled to any interest or right specified in the order, and does not include any other person;



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- (b) subsection (4) of section five of this Act, . . . <sup>F40</sup> shall have effect as if for the words from “confer upon [<sup>F41</sup>the person entitled to the rights conferred by the order]” to the words “exclude other persons therefrom” there were substituted the words “as against all persons directly concerned, confer upon [<sup>F41</sup>the person entitled to the rights conferred by the order], and upon persons authorised by [<sup>F41</sup>that person], the like right to exclude persons from the land comprised in the order”;
- (c) paragraph (b) of subsection (4) of the last preceding section shall have effect as if for the words “interest in, or right over, land not comprised in the order” there were substituted the words “interest or right not specified in the order”.

#### Textual Amendments

**F40** Words repealed by [Coal Industry Act 1975 \(c. 56\)](#), s. 5(3), [Sch. 5](#)

**F41** Words in s. 8(3)(b) substituted (31.10.1994) by [1994 c. 21](#), s. 52, [Sch. 8 para. 5\(a\)](#) (with s. 40(7)); [S.I. 1994/2553](#), [art. 2](#)

## 9 Property exempt from inclusion in compulsory rights orders. **E+W+S**

- (1) A compulsory rights order shall not comprise any part of a building which, at the time when the order is made, is a building whereof the whole or any part is occupied as a dwelling-house, or any part of the land adjacent to such a building which, at that time, is occupied together with the whole or part of that building and either—
  - (a) is within fifty yards from a part of that building, or
  - (b) not being land falling within the preceding paragraph, and not being agricultural land, forms part of a garden, yard, court or forecourt belonging to that building.
- (2) . . . . . <sup>F42</sup>
- (3) No compulsory rights order shall be made so as to comprise any land which is or has been comprised in a previous compulsory rights order as confirmed by the Minister, other than a previous order which, as so confirmed, provided that its operation should be limited as mentioned in subsection (1) of the last preceding section.
- (4) [<sup>F43</sup>A compulsory rights order], as confirmed by the Minister, shall not comprise any land of which possession—
  - (a) has previously been taken in the exercise of emergency powers, and
  - (b) has at any time (whether before or after the commencement of this Act) been retained in the exercise of those powers for the purpose of working coal on that land, or on land contiguous therewith, by opencast operations, and
  - (c) has before the confirmation of the order ceased to be retained in the exercise of those powers,

unless, at the time of confirming the order, the Minister is satisfied that there are special circumstances existing at that time, or special circumstances relating to the land in question, which justify its inclusion in [<sup>F43</sup>a compulsory rights order] notwithstanding that possession thereof has previously been so taken and retained.

*Status: Point in time view as at 01/04/2017.*

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

#### Textual Amendments

- F42** S. 9(2) repealed (with saving) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(1)(4), [Sch. 12 Pt. II](#)
- F43** Words substituted by [Coal Industry Act 1975 \(c. 56\)](#), [Sch. 3 para. 6](#)

### 10 Provisions as to minerals other than coal, and as to timber, crops etc. E+W+S

- (1) A compulsory rights order shall confer upon [<sup>F44</sup>the person entitled to the rights conferred by the order], and upon persons authorised by [<sup>F44</sup>that person], the right to get and carry away any minerals worked in the exercise of rights conferred by the order, in so far as any such minerals are not already the property of [<sup>F44</sup>that person]; and any minerals got and carried away by virtue of this subsection, and removed from the land comprised in the order, shall become the property of [<sup>F44</sup>the person entitled to the rights conferred by the order].
- (2) Where, in the exercise of rights conferred by a compulsory rights order, any trees are felled, or any buildings, fences, sheds or other fixtures or structures are dismantled, the order shall confer upon [<sup>F44</sup>the person entitled to the rights conferred by the order], and upon persons authorised by [<sup>F44</sup>that person], the right to carry away and dispose of the timber, or, as the case may be, of any resulting materials; and any timber or materials carried away by virtue of this subsection, and removed from the land comprised in the order, shall become the property of [<sup>F44</sup>the person entitled to the rights conferred by the order].
- (3) Where on the date of entry any crops are growing on any of the land comprised in a compulsory rights order, or any crops are grown on any of that land during the period of occupation, the order shall confer upon the [<sup>F44</sup>the person entitled to the rights conferred by the order], and upon persons authorised by [<sup>F44</sup>that person], the right during the period of occupation to harvest or lift those crops and to remove or otherwise dispose of them; and any crops harvested or lifted by virtue of this subsection shall become the property of the [<sup>F44</sup>the person entitled to the rights conferred by the order].

#### Textual Amendments

- F44** Words in s. 10(1)-(3) substituted (31.10.1994) by [1994 c. 21, s. 52](#), [Sch. 8 para. 6](#)

### 11 Registration of compulsory rights orders. E+W+S

- [<sup>F45</sup>(1) A compulsory rights order shall be a local land charge.]
- (2) .....<sup>F46</sup>
- (3) Any rules made [<sup>F47</sup>under section 14 of the <sup>M1</sup>Local Land Charges Act 1975 for the purposes of this section] shall include provision—
- (a) for cancelling the registration of a compulsory rights order if the Minister decides not to confirm the order, or if the order is revoked, or at the end of the period for which it has effect, and
  - (b) for varying the registration of such an order if the order as confirmed by the Minister differs from the order as made, or if the order is subsequently varied.

*Status: Point in time view as at 01/04/2017.*

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

(4) In the application of this section to Scotland, the following subsection shall be substituted for subsections (1) to (3) of this section:—

“(1) As soon as may be after a compulsory rights order has been confirmed it shall be recorded by [<sup>F48</sup>the person on whose application it was made] in the appropriate register of sasines; and any order revoking or varying such an order shall be so recorded; and at the end of the period for which such an order has effect [<sup>F49</sup>the person entitled immediately before it ceases to have effect to the rights conferred by the order] shall so record notice that the order has ceased to have effect.”

#### Textual Amendments

- F45** S. 11(1) substituted by [Local Land Charges Act 1975 \(c. 76\), Sch. 1](#)
- F46** S. 11(2) repealed by [Local Land Charges Act 1975 \(c. 76\), Schs. 1, 2](#)
- F47** Words substituted by [Local Land Charges Act 1975 \(c. 76\), Sch. 1](#)
- F48** Words in s. 11(4) substituted (31.10.1994) by [1994 c. 21, s. 52, Sch. 8 para. 7\(a\)](#) (with s. 40(7)); [S.I. 1994/2553, art. 2](#)
- F49** Words in s. 11(4) substituted (31.10.1994) by [1994 c. 21, s. 52, Sch. 8 para. 7\(b\)](#) (with s. 40(7)); [S.I. 1994/2553, art. 2](#)

#### Marginal Citations

- M1** [1975 c. 76.](#)

## 12 Removal and disposal of chattels from land comprised in compulsory rights order. **E+W+S**

(1) At any time on or after the operative date of a compulsory rights order, [<sup>F50</sup>the person entitled to the rights conferred by the order] may serve notice on the person who is for the time being entitled to possession of any chattel which is on, under or over any of the land comprised in the order, requiring him to remove it from that land within such period, not being less than fifty-six days from the date of service of the notice, as may be specified in the notice:

Provided that this subsection shall not apply to any apparatus belonging to statutory undertakers, [<sup>F51</sup>or to the body carrying on a sewerage undertaking or sewage disposal undertaking, and used by those undertakers or that body for the purposes of their undertaking, or belonging to a [<sup>F52</sup>water authority] or other drainage authority and used by that authority][<sup>F51</sup>and used by those undertakers for the purposes of their undertaking or belonging to an internal drainage board and used by that board]for the purposes of their functions.

(2) If the person on whom a notice is served under the preceding subsection fails to comply with the notice within the period specified therein, [<sup>F53</sup>the person who served the notice] may cause the chattel to which the notice relates to be removed from the land comprised in the order, or to be removed from one part of that land to another part thereof, and shall not be liable for any loss or damage attributable to the removal except any such loss or damage which is shown to be due to failure to exercise reasonable care.

[<sup>F54</sup>(2A) Where the person who has served a notice under subsection (1) of this section ceases, without exercising any power under subsection (2) of this section, to be the person

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entitled to the rights under the compulsory rights order, that notice shall cease to have effect for the purposes of this section.]

- (3) Where [<sup>F55</sup>any person causes] a chattel to be removed under [<sup>F56</sup>subsection (2) of this section], [<sup>F55</sup>that person] may dispose of the chattel, by sale, destruction or otherwise, as [<sup>F55</sup>that person] may think fit, unless before the end of the period of three months beginning with the date of the removal the person for the time being entitled to possession of the chattel claims it from [<sup>F55</sup>the person who caused the chattel to be removed] and takes all reasonable steps for accepting custody of it.
- (4) Where a chattel is sold in the exercise of the powers conferred by the last preceding subsection, [<sup>F57</sup>the person who makes the sale] shall pay the proceeds of sale to the person who was entitled to possession of the chattel immediately before the sale, and the receipt of that person shall be a sufficient discharge to [<sup>F57</sup>the person who makes the sale] for those proceeds.
- (5) In this section “chattel” includes apparatus of any description, whether above or below the surface of the land.

**Textual Amendments**

**F50** Words in s. 12(1) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 8(1)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F51** Words substituted (E.W.) by **Water Act 1989** (c. 15, SIF 130), s. 190(1), **Sch. 25 para. 26(2)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)

**F52** Words substituted by virtue of **Water Act 1973** (c. 37), **s. 9**

**F53** Words in s. 12(2) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 8(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F54** S. 12(2A) inserted (31.10.1994) by 1994 c. 21, s. 52(2), **Sch. 8 para. 8(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F55** Words in s. 12(3) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 8(1)(2)(4)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F56** Words in s. 12(3) substituted (31.10.1994) by 1994 c. 21, s. 52(2), **Sch. 8 para. 8(4)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F57** Words in s. 12(4) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 8(5)** (with s. 40(7)); S.I. 1994/1553, **art. 2**

<sup>F58</sup>13 ..... **E+W+S**

**Textual Amendments**

**F58** S. 13 repealed (31.10.1994) by 1994 c. 21, s. 52(2), 67, Sch. 8 para. 9, **Sch. 11 Pt. II** (with s. 40(7))

<sup>F59</sup>14 **Provisions as to agricultural tenancies in England and Wales.** **E+W**

- (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—

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- (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 [F60 held under a tenancy in relation to which the Agricultural Holdings Act 1986 (in this Act referred to as “ the Act of 1986 ”) applies or part of such an agricultural holding ]

whether any of that land is comprised in a compulsory rights order or not.

- (2) For the purposes of M2 the [F61 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 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 purpose of subsections (1) to (3) of section 27 of the Act of 1986 ([F62Tribunal’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 [F63the person with the benefit of the opencast planning permission is] 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 [F63that person]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

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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.]

#### Textual Amendments

- F59** For s. 14 there is substituted ss. 14, 14A by [Housing and Planning Act 1986 \(c. 63, SIF 86\), s. 39\(3\), Sch. 8 para. 5](#)
- F60** Words in s. 14(1)(b) substituted (1.9.1995) by [1995 c. 8, ss. 40, 41\(2\), Sch. para. 13\(2\)](#) (with s. 37)
- F61** Words in s. 14(2) substituted (1.9.1995) by [1995 c. 8, ss. 40, 41\(2\), Sch. para. 13\(3\)](#) (with s. 37)
- F62** Words in s. 14(5) substituted (1.7.2013) by [The Transfer of Tribunal Functions Order 2013 \(S.I. 2013/1036\), art. 1, Sch. 1 para. 198](#) (with Sch. 3)
- F63** Words in s. 14(6) substituted (31.10.1994) by [1994 c. 21, s. 52, Sch. 8 para. 10\(a\)\(b\)](#) (with s. 40(7)); [S.I. 1994/2553, art. 2](#)

#### Marginal Citations

- M2** [1986 c. 5 \(2:3\)](#)

### [<sup>F64</sup>14A Provisions as to agricultural tenancies in Scotland. **E+W+S**

- (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 [<sup>F65</sup> paragraph 2(2) of Schedule 3 to the Act of 1997 ] .
- (3) For the purposes of the [<sup>F66</sup>[<sup>F67</sup>the Scottish Act of 1991]] [<sup>F67</sup>the Scottish Acts of 1991 and 2003]—
- (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 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 [<sup>F68</sup>[<sup>F69</sup>the Scottish Act of 1991]] [<sup>F69</sup>the Scottish Acts of 1991 and 2003], 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—

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- (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, is 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 [F68[F70the Scottish Act of 1991]] [F70the Scottish Acts of 1991 and 2003] nothing done or omitted by the tenant or by the landlord of the holding by way of permitting any 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 [F68 section 22(2) of the Scottish Act of 1991 ], no account is to be taken of permission granted as mentioned in paragraph [F68 ( b ) ] of that subsection [F71 or (as the case may be) section 17(1)(a) of the Scottish Act of 2003 ] if the permission
  - (a) is granted on an application by [F72a person who is a licensed operator within the meaning of the Coal Industry Act 1994 or whose application for a licence under Part II of that Act is pending]; 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) [F73 The condition specified in section 24(1)(e) of the Scottish Act of 1991 (consent of Land Court to notice to quit where land to be used for purposes other than agriculture)] shall not be treated as satisfied [F74, or (as the case may be) the resumption shall not be considered to be for a non-agricultural purpose under section 17(1)(a) of the Scottish Act of 2003,] 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) [F75On a reference to arbitration under [F73 section 13 of the Scottish Act of 1991]] [F75On a determination under section 13 of the Scottish Act of 1991 or (as the case may be) under section 9 of the Scottish Act of 2003,] with respect to the rent which should be properly payable for the holding, in respect of any period for which [F76the person with the benefit of the opencast planning permission is] in occupation of the holding, or of any part thereof, for the purpose of carrying on any of the permitted activities, the [F77arbiter] [F77Scottish Land Court or arbiter (as the case may be)] 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 [F76that person] for the purpose of carrying on any of the permitted activities.
- (9) For the purpose of the operation of [F73 section 15 of the Scottish Act of 1991] (which relates to increases of rent for improvements carried out by the landlord) [F78, or (as the case may be) section 10 of the Scottish Act of 2003 (increase in rent: landlord’s improvements),] 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.

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- (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.]

#### Textual Amendments

- F64** For S. 14 there is substituted ss. 14, 14A by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 5](#)
- F65** Words in s. 14A(2) substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 5\(2\)](#)
- F66** Words in s. 14A(3) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88, 89(2), [Sch. 11 para. 12\(a\)](#)(with s. 45(3), Sch. 12 para. 3)
- F67** Words in s. 14A(3) substituted (S.) (27.11.2003) by [Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, [Sch. para. 2\(a\)](#)
- F68** Words in s. 14A(4)(5)(6) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88, 89(2), [Sch. 11, para. 12\(b\)\(c\)\(d\)](#)(with s. 45(3), Sch. 12 para. 3)
- F69** Words in s. 14A(4) substituted (S.) (27.11.2003) by [Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, [Sch. para. 2\(a\)](#)
- F70** Words in s. 14A(5) substituted (S.) (27.11.2003) by [Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, [Sch. para. 2\(a\)](#)
- F71** Words in s. 14A(6) inserted (S.) (27.11.2003) by [Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, [Sch. para. 2\(b\)](#)
- F72** Words in s. 14A(6)(a) substituted (31.10.1994) by [1994 c. 21, s. 52\(2\)](#), [Sch. 8 para. 11\(1\)](#) (with s. 40(7)); [S.I. 1994/2553](#), [art. 2](#)
- F73** Words in s. 14A(7)(8)(9) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88, 89(2), [Sch. 11 para. 12\(e\)\(f\)\(g\)](#)(with s. 45(3), Sch. 12 para. 3)
- F74** Words in s. 14A(7) inserted (S.) (27.11.2003) by [Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, [Sch. para. 2\(c\)](#)
- F75** Words in s. 14A(8) substituted (S.) (27.11.2003) by [Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, [Sch. para. 2\(d\)\(i\)](#)
- F76** Words in s. 14A(8) substituted (31.10.1994) by [1994 c. 21, s. 52\(2\)](#), [Sch. 8 para. 11\(2\)\(a\)\(b\)](#) (with s. 40(7)); [S.I. 1994/2553](#), [art. 2](#)
- F77** Words in s. 14A(8) substituted (S.) (27.11.2003) by [Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, [Sch. para. 2\(d\)\(ii\)](#)
- F78** Words in s. 14A(9) inserted (S.) (27.11.2003) by [Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, [Sch. para. 2\(e\)](#)

#### [<sup>F79</sup>14B Provisions as to farm business tenancies. **E+W**

- (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
  - (b) immediately before that permission is granted, any of the land comprised therein consists of the holding or part of the holding held under a farm business tenancy,
- whether any of that land is comprised in a compulsory rights order or not.
- (2) For the purposes of section 1 of the Agricultural Tenancies Act 1995 (in this Act referred to as “the Act of 1995”), the land shall be taken, while it is occupied or used for the permitted activities, to be used for the purposes for which it was used immediately before it was occupied or used for the permitted activities.



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- (3) For the purposes of the Act of 1995, nothing done or omitted by the tenant or by the landlord under the tenancy 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.
- (4) In determining under subsections (1) and (2) of section 13 of the Act of 1995 the rent which should be properly payable for the holding, in respect of any period for which the person with the benefit of the opencast planning permission is in occupation of the holding, or of any part thereof, for the purpose of carrying on any of the permitted activities, the arbitrator shall disregard 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 that person for the purpose of carrying on any of the permitted activities.
- (5) In this section “holding”, in relation to a farm business tenancy, has the same meaning as in the Act of 1995.
- (6) This section does not extend to Scotland.]

#### Textual Amendments

**F79** S. 14B inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), Sch. para. 14 (with s. 37)

#### [<sup>F80</sup>15 Suspension of certain public rights of way. **E+W+S**

- (1) Where—
  - (a) [<sup>F81</sup>any person applies] 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,  
[<sup>F81</sup>that person may also apply to the Coal Authority]for an order suspending the public right of way.
- (2) The [<sup>F82</sup>Coal Authority shall not make an order under this section] unless—
  - (a) opencast planning permission [<sup>F83</sup>has been applied for or granted]; and  
[ it is satisfied that the applicant—
    - <sup>F84</sup>(aa) (i) is a licensed operator within the meaning of the Coal Industry Act 1994 or a person whose application to the Coal Authority for a licence under Part II of that Act is pending; and
    - (ii) has complied with the requirements of section 15A of this Act before submitting the application;
  - and
  - (b) it is also satisfied—
    - (i) that a suitable alternative way will be made available by the applicant] (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.

[ An order under this section—

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- <sup>F85</sup>(3) (a) shall not have effect unless confirmed by the Secretary of State; and  
 (b) where it has been confirmed, shall have effect (with such modifications as the Secretary of State may in confirming it determine) so as to suspend the right of way to which it relates with effect (subject to section 15A(10) and (11) of this Act) from such date as may be determined by the Secretary of State and specified in the order as confirmed.

(3A) 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 in relation to the original applicant or a previous successor had been done by or in relation to that person.

(3B) The Coal Authority or, as the case may be, the Secretary of State may make a decision to proceed in accordance with subsection (3A) 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.]

(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 [<sup>F86</sup>or]

<sup>F86</sup>(c) [ he is satisfied that it is appropriate to do so on account of any failure on the part of the person on whose application the order was made to comply with any of the requirements of section 15A(10) of this Act.]

(5) An order under this section shall [<sup>F87</sup>not be made except where such conditions for the making of the order are imposed or such other provision is included in the order as may] 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.

<sup>F88</sup>(5A) [ For the purposes of subsection (5) above a local planning authority may enter into an agreement with any applicant for an order under this section as to the steps to be taken by that person or any of his successors for securing the reconstruction of the way in question; and such an agreement shall have effect, so far as it relates to steps to be taken by any successor of the applicant, as if that successor had been a party to it and was bound by it to the same extent as the applicant.]

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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 operation, 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 [<sup>F89</sup>the Act of 1990], 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, [<sup>F89</sup>the Act of 1990] 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 it 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 [<sup>F89</sup>the Act of 1990] there were substituted [<sup>F90</sup>the Act of 1997]

#### Textual Amendments

- F80** For S. 15 there is substituted ss. 15, 15A by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), ss. 39(3), [Sch. 8 para. 6](#)
- F81** Words in s. 15(1) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 12\(1\)\(a\)\(b\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F82** Words in s. 15(2) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 12\(2\)\(a\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F83** Words in s. 15(2)(a) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 12\(2\)\(b\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F84** S. 15(2)(aa)(b) substituted (31.10.1994) for words in s. 15(2)(b) by 1994 c. 21, s. 52, [Sch. 8 para. 12\(2\)\(c\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F85** S. 15(3)(3A)(3B) substituted (31.10.1994) for s. 15(3) by 1994 c. 21, s. 52, [Sch. 8 para. 12\(3\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F86** S. 15: word and para. (4)(c) inserted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 12\(4\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F87** Words in s. 15(5) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 12\(5\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F88** S. 15(5A) inserted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 12\(6\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F89** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, [Sch. 2 para. 5\(b\)](#)
- F90** Words in s. 15(7) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), [Sch. 2 para. 5\(3\)](#)

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

**Modifications etc. (not altering text)**

C7 S. 15 restricted (31.10.1994) by 1994 c. 21, s. 52(1)(b)(3) (with s. 40(7)); S.I. 1994/2553, art. 2

**[<sup>F91</sup>15A. Suspension of public rights of way—supplementary. E+W+S**

[<sup>F92</sup>(1) Before any person submits an application to the Coal Authority for an order under section 15 of this Act, that person] shall publish a notice in the prescribed form identifying the right of way and stating—

- (a) that [<sup>F93</sup>that person is] proposing to apply for an order suspending it in connection with the working of coal by open-cast operations;
- (aa) [<sup>F94</sup>whether the applicant is proposing to make available any alternative way and, if he is, what the alternative is; and]
- (b) that opencast planning permission has been applied for, or, as the case may be, has been granted; <sup>F95</sup> . . .
- (c) <sup>F95</sup> . . . . .

[ As soon as reasonably practicable after making an order under section 15 of this Act <sup>F96</sup>(1A) the Coal Authority shall submit the order to the Secretary of State for confirmation and publish a notice in the prescribed form identifying the right of way in question and stating—

- (a) that the Coal Authority has made an order that will suspend the right of way in connection with the working of coal by opencast operations and has submitted the order for confirmation to the Secretary of State;
- (b) whether the applicant for the order is to make any alternative way available and, if he is, what the alternative is;
- (c) that opencast planning permission has been applied for or, as the case may be, granted; and
- (d) that objections to the confirmation of 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) [<sup>F97</sup>or (1A)] 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
- (b) in the same or any other two successive weeks, in the appropriate Gazette.

[ The Secretary of State shall not confirm an order under section 15 of this Act unless <sup>F98</sup>(2A) he thinks fit and—

- (a) he is satisfied that the notice required by subsection (1A) above has been published in relation to that order and that the requirements of subsection (5) below have been satisfied in relation to that notice;
- (b) the period within which objections may be made in accordance with that notice has expired; and
- (c) the opencast planning permission has been granted.]

(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.

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- (4) A notice under subsection (1) [<sup>F99</sup>or (1A)]above shall name a place in the locality where a copy of the application [<sup>F99</sup>or, as the case may be, the order]and of a map showing the right of way can be inspected.
- [ Where any person is required under subsection (1) or (1A) above to publish any notice,  
<sup>F100</sup>(5) he shall also -] ,—
- (a) inform—
- (i) in England <sup>F101</sup>. . . , the district council and, except in the case of a metropolitan district, the county council, and any parish <sup>F101</sup>. . . council or parish meeting;
- [ in Wales, the county council or county borough council, and any  
<sup>F102</sup>(ia) community council] and
- (ii) in Scotland, every local authority in whose area any part of the land over which the right of way subsists is situated  
[<sup>F103</sup>of the submission of the application or, as the case may be, of the making of the order;]
- (b) send them a map showing the right of way and a copy of [<sup>F104</sup>the notice under subsection (1) or (1A) 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 [<sup>F105</sup>the matters contained in the notice under subsection (1) or (1A) above.].
- <sup>F106</sup>(6) .....
- (7) The Secretary of State may, if he thinks fit, cause a public local inquiry to be held before determining whether to [<sup>F107</sup>confirm] an order, and shall cause such an inquiry to be held if an objection is made by any such authority [<sup>F108</sup>other than a parish or community council or parish meeting as is mentioned in subsection (5)(a) above] 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 [<sup>F109</sup>confirm] the order.
- (9) An order under section 15 of this Act may be made either in accordance with the [<sup>F110</sup>. . .] application or subject to such modifications as [<sup>F111</sup>the Coal Authority] may determine [<sup>F112</sup>; and this subsection shall be without prejudice to the power of the Secretary of State, by virtue of subsection (3) of that section, to make further modifications when confirming the order.]
- [ A confirmed order under section 15A of this Act shall not have effect at any time  
<sup>F113</sup>(10) before the person on whose application the confirmed order was made has published] a notice in the prescribed form that the order [<sup>F114</sup>has been confirmed], describing the right of way which is suspended, stating the date on which the order [<sup>F114</sup>is to come] 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 [<sup>F114</sup>has served a like notice and a copy of the order and of such a map] 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—  
[<sup>F115</sup>in the manner specified in subsection (2) in relation to notices for the purposes of subsection (1) above; and an order that fails, by virtue of subsection (10) above, to

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come into operation on the date specified in the order shall come into operation on the date of the last publication required by virtue of this subsection.]

- (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.]

### Textual Amendments

- F91** For S. 15 there is substituted ss. 15, 15A by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), ss. 39(3), [Sch. 8 para. 6](#)
- F92** S. 15A(1) substituted (31.10.1994) for the words in s. 15A(1) by 1994 c. 21, s. 52, [Sch. 8 para. 13\(1\)\(a\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F93** Words in s. 15A(1)(a) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 13\(1\)\(b\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F94** S. 15A(1)(aa) inserted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 13\(1\)\(c\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F95** S. 15A(1)(c) and word immediately preceding it repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, [Sch. 8 para. 13\(1\)\(d\)](#), [Sch. 11 Pt. II](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F96** S. 15A(1A) inserted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 13\(2\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F97** Words in s. 15A(2) inserted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 13\(3\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F98** S. 15A(2A) inserted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 13\(4\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F99** Words in s. 15A(4) inserted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 13\(5\)\(a\)\(b\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F100** S. 15A(5) substituted (31.10.1994) for words in s. 15A(5) by 1994 c. 21, s. 52, [Sch. 8 para. 13\(6\)\(a\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F101** Words in s. 15A(5)(a)(i) repealed (1.4.1996) by 1994 c. 19, s. 66(6)(8), [Sch. 16 para. 14](#), [Sch. 18](#) (with [Sch. 17 para. 22\(1\)](#)); S.I. 1996/396, [art. 3](#), [Sch. 1](#)
- F102** S. 15A(5)(a)(ia) inserted (1.4.1996) by 1994 c. 19, s. 66(6), [Sch. 16 para. 14](#) (with [Sch. 17 para. 22\(1\)](#)); S.I. 1996/396, [art. 3](#), [Sch. 1](#)
- F103** Words in s. 15A(5)(a) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 13\(6\)\(b\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F104** Words in s. 15A(5)(b) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 13\(6\)\(c\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F105** Words in s. 15A(5)(c) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 13\(6\)\(d\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F106** S. 15A(6) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, [Sch. 8 para. 13\(7\)](#), [Sch. 11 Pt. II](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F107** Word in s. 15A(7) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 13\(8\)\(a\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F108** Words in s. 15A(7) inserted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 13\(8\)\(b\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F109** Word in s. 15A(8) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 13\(9\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F110** Word in s. 15A(9) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, [Sch. 8 para. 13\(10\)\(a\)](#), [Sch. 11 Pt. II](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F111** Words in s. 15A(9) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 13\(10\)\(b\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)

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- F112** Words in s. 15A(9) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 13(10)(c)**(with s. 40(7)); S.I. 1994/2553, **art. 2**
- F113** S. 15A(10) substituted (31.10.1994) for words in s. 15A(10) by 1994 c. 21, s. 52, **Sch. 8 para. 13(11)(a)**(with s. 40(7)); S.I. 1994/2553, **art. 2**
- F114** Words in s. 15A(10) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 13(11)(b)(c)(d)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F115** Words in s. 15A(11) substituted (31.10.1994) for s. 15A(11)(a)(b) by 1994 c. 21, s. 52, **Sch. 8 para. 13(12)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**Modifications etc. (not altering text)**

- C8** S. 15A(1)(aa) excluded (31.10.1994) by 1994 c. 21, s. 67, **Sch. 10 para. 9(3)** (with s. 40(7)); S.I. 1994/2552, **art. 2, Sch. 1**

**16 Acquisition of rights for purposes of drainage or water supply. E+W+S**

- (1) For the purpose of draining land [<sup>F116</sup>in respect of which opencast planning permission has been][<sup>F117</sup>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] a right to place drainage works on any other land, whether above or below ground, and to use, repair and maintain those works, without purchasing any other interest in that land.
- (2) For the purpose of bringing a supply of water to land [<sup>F116</sup>in respect of which opencast planning permission has been][<sup>F117</sup>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]a right to place water pipes on any other land, whether above or below ground, and to use, repair and maintain those pipes, without purchasing any other interest in that land.

[<sup>F118</sup>(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) An order [<sup>F119</sup>conferring] a right by virtue of this section shall specify the land (being the whole or part of the land [<sup>F120</sup>in respect of which the permission was [<sup>F121</sup>applied for or] granted]) for the benefit of which the right is to be [<sup>F119</sup>conferred].

[<sup>F122</sup>(4) Any right conferred by an order under this section shall be exercisable by, or by any person authorised by—

- (a) a person who—

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- (i) is for the time being in occupation of the land specified in accordance with subsection (3) of this section in the order;
- (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.]

[<sup>F123</sup> For the purposes of any order conferring rights exercisable under this section on any <sup>F124</sup>(4A) 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)] references (whatever the terms used) to the land comprised in the compulsory purchase order were construed, where the context so requires, as references to the land on which the works or pipes are to be placed , and references to the obtaining or taking possession of the first mentioned land were construed as references to the exercise of the right]

[<sup>F125</sup>(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 in relation to the original applicant or a previous successor had been done by or in relation to that person.



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- (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.]
- [<sup>F126</sup>(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.]
- (6) The provisions of section eleven of this Act shall apply in relation to [<sup>F127</sup>an order made and confirmed under] this section as they apply in relation to a compulsory rights order.
- (7) In this section “drainage works” includes any pipes or other works for draining land and any works accessory to such works; and—
- (a) any right to maintain drainage works or water pipes in pursuance of an order made by virtue of this section shall include the right to remove those works or pipes, whether for the purpose of replacing them by other drainage works or water pipes or otherwise, and
  - (b) any right to maintain drainage works on any land in pursuance of such an order shall, if the order so provides, include a right to discharge water from those works on to that land.
- [<sup>F128</sup>(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.]
- (8) Nothing in this section shall be construed as authorising any interference with the exercise of a public right of way, or any contravention of a prohibition or restriction imposed by or under any enactment (whether contained in a public general Act or in any other Act).
- <sup>F129</sup>(9) .....

#### Textual Amendments

- F116** Words substituted by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 7(a)**
- F117** Words in s. 16(1) and (2) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(1)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**
- F118** S. 16(2A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(2)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**
- F119** Word in s. 16(3) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(3)(a)(c)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**
- F120** Words substituted by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 7(b)**
- F121** Words in s. 16(3) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(3)(b)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**
- F122** S. 16(4) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(4)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**
- F123** S. 16(4A) inserted by [Acquisition of Land Act 1981](#) (c. 67, SIF 28:1), s. 34(1), **Sch. 4 para. 11(4)**
- F124** S. 16(4A) substituted (31.10.1994) for words in s. 16(4A) by 1994 c. 21, s. 52, **Sch. 8 para. 14(5)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**

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- F125** S. 16(4B)(4C) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(6)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**
- F126** S. 16(5) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(7)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**
- F127** Words in s. 16(6) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(8)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**
- F128** S. 16(7A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(9)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**
- F129** S. 16(9) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 14(10), **Sch. 11 Pt. II** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**

**Modifications etc. (not altering text)**

- C9** S. 16 restricted (31.10.1994) by 1994 c. 21, **s. 52(1)(c)(3)** (with ss. 40(7)); S.I. 1994/2553, **art. 2**
- C10** S. 16(9) amended by Land Registration (Scotland) Act 1979 (c. 33, SIF 31:3), **s. 29(2)(3)**

**PART II E+W+S**

COMPENSATION FOR COMPULSORY RIGHTS ORDERS

*Compensation in respect of agricultural land*

**17 General provisions as to annual compensation. E+W+S**

- (1) Where a compulsory rights order comprises the whole or part of a holding to which this section applies, compensation shall be payable<sup>F130</sup> . . . in respect of that holding—
- for the year beginning with the operative date, and
  - for each subsequent year which begins with an anniversary of that date and falls [F131wholly or partly]within the period of occupation.
- [F132(1A) Subject (where different persons have been entitled to the rights for different parts of the year) to any apportionment under section 35(3) of this Act, the liability to pay compensation under this section shall fall on the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order.]
- (2) For the purposes of this Part of this Act, where land, immediately before the operative date of a compulsory rights order,—
- was occupied as a unit, and
  - was so occupied wholly or mainly for the purposes of agriculture carried on by way of a trade or business,
- the entirety of that land (excluding the coal and any other minerals vested [F133in the Coal Authority or the person entitled to rights conferred by the order]) shall be taken, in relation to that compulsory rights order, to constitute a holding to which this section applies.
- (3) [F134Subject to subsection (3A) of this section,]the person entitled to any compensation payable<sup>F130</sup> . . . for any year by virtue of this section in respect of a holding shall be the person who—
- in respect of so much (if any) of the holding as is not comprised in the compulsory rights order, is for the time being entitled to occupy that part of the holding, and

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- (b) in respect of so much of the holding as is comprised in the order, would be entitled for the time being to occupy it if the order had not been made.

[<sup>F135</sup>(3A) Where—

- (a) any compensation is payable for any year by virtue of this section in respect of any holding, and
- (b) the amount of that compensation falls to be calculated in accordance with section 18 of this Act by reference to the market value of rights which, if the compulsory rights order were not in force, could not be conferred for that year or any part of it except by or with the consent of one or more persons who are included in the persons directly concerned but do not fall within subsection (3) of this section,

the entitlement to that compensation shall be apportioned, according to the extent to which those rights could not be conferred for that year or part of a year without their participation or consent, between those persons and any person falling within that subsection.

- (3B) Subject to subsection (3C) of this section, the persons entitled under subsection (3A) of this section to a share of any compensation shall include persons whose participation in or consent to the conferring of any right would be required if the right were conferred at some time after the beginning of the year or part of a year in question; and any apportionment under subsection (3A) of this section shall take account of the length of the period for which any person is, during that year or part of a year, a person without whose participation or consent any right could not be conferred.

- (3C) No person shall be entitled under subsection (3A) of this section to any share of any compensation in respect of any such easement or right as might give rise to an entitlement to compensation under section 31 of this Act.]

- (4) .....

#### Textual Amendments

**F130** Words in s. 17(1)(3) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 15(1)(a), **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F131** Words in s. 17(1)(b) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 15(1)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F132** S. 17(1A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 15(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F133** Words in s. 17(2) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 15(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F134** Words in s. 17(3) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 15(4)(a)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F135** S. 17(3A)-(3C) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 15(5)(7)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

#### [<sup>F136</sup>18 Calculation of compensation under section 17. **E+W+S**

- (1) The compensation payable for any year in respect of a holding to which section 17 of this Act applies shall be a sum equal to the annual borrowing cost for that year of the market value of the rights conferred by the compulsory rights order in relation to the holding.

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- (2) For the purposes of this section the market value of any rights conferred by a compulsory rights order shall be equal to the amount which, as at the date of entry, would (apart from the order) represent the fair market price, as between willing and independent parties, for the grant of those rights by a person entitled to grant them and for the period for which the order is to have effect.
- (3) In calculating for the purposes of this section the fair market price for the grant of any rights, due allowance shall be made for any entitlement to compensation which may arise, otherwise than by virtue of section 17, under any of the provisions of this Act.
- (4) For the purposes of this section the annual borrowing cost for any year of any amount (“the market price”) is the aggregate sum which would fall to be paid in that year by way of payments of interest and re-payments of capital if the market price had been borrowed on the date of entry on terms which—
  - (a) required interest to be paid and capital to be repaid by way of the relevant number of equal annual instalments; and
  - (b) provided for interest on outstanding capital to become due immediately before the time for the payment of each instalment, at an annual rate equal, as at the entry date, to the rate prescribed under section 35(8) of this Act;
 and in this subsection “ the relevant number ” means the number of years for which, when it was confirmed, the compulsory rights order was to have effect.
- (5) Nothing in section 17 of this Act or this section shall confer any entitlement to compensation in respect of the annual borrowing cost of—
  - (a) any amount representing the value of any person’s interest in coal, or
  - (b) any amount representing the value of any opportunity arising by virtue of an interest or right in or in relation to any land to obtain or make use of any rights to win, work or get any coal.
- (6) Where the period for which a compulsory rights order is to have effect is extended under this Act, section 17 of this Act and this section shall have effect in relation to the additional period as if the rights conferred for that period had been conferred by a new compulsory rights order.]

**Textual Amendments**

**F136** S. 18 substituted (31.10.1994) (in relation to any compulsory rights order confirmed on or after that date) by 1994 c. 21, s. 52, **Sch. 8 para. 16** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F137** **19** ..... **E+W**

**Textual Amendments**

**F137** S. 19 repealed (31.10.1994) by 1994 c. 21, s. 52, **Sch. 11 Pt. III** (with s. 40(7)); S.I. 1994/2552, **art. 2**, **Sch. 1**, Appendix

**F138** **20** ..... **E+W+S**

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#### Textual Amendments

**F138** S. 20 repealed (31.10.1994) by 1994 c. 21, s. 67, **Sch. 11 Pt. III**, Appendix (with s. 40(7)); S.I. 1994/2552, art. 2, **Sch. 1**, Appendix

### 21 Terminal compensation. **E+W+S**

- (1) Where a compulsory rights order comprises the whole or part of a holding to which this section applies, the provisions of this and the two next following sections shall have effect as to compensation payable [<sup>F139</sup>in respect of that holding by the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order.].
- (2) Subsection (2) of section seventeen of this Act shall have effect in relation to this section as it has effect in relation to that section, and references to a holding to which this section applies shall be construed accordingly.
- (3) Compensation payable in respect of a holding under the provisions referred to in subsection (1) of this section shall consist of either or both of the following, that is to say—
  - (a) compensation by way of payment of cost of works, and
  - (b) compensation by reference to the diminution in value of the holding.

#### Textual Amendments

**F139** Words in s. 21(1) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 18** (with s. 40(7)); S.I. 1994/2553, art. 2

### 22 Compensation by way of payment of cost of works. **E+W+S**

- (1) Subject to the following provisions of this section, compensation by way of payment of cost of works shall, in the case of a compulsory rights order, be payable in respect of a holding to which the last preceding section applies if—
  - (a) at the end of the period of occupation, any land forming part of the holding and comprised in the order has not been restored to the condition in which it was immediately before the date of entry, and
  - (b) after the end of the period of occupation, expenses are reasonably incurred by any person in respect of work carried out (over and above the ordinary maintenance and use of the land) for the purpose of further restoring that land to or towards that condition or a condition substantially similar thereto.
- (2) Where in accordance with the preceding subsection compensation by way of payment of cost of works is payable—
  - (a) the person entitled thereto shall be the person by whom the expenses in question are incurred, and
  - (b) the compensation shall be payable from time to time as the expenses are incurred and shall be of an amount equal to the amount of the expenses.
- (3) The provisions of the Third Schedule to this Act shall have effect with respect to compensation by way of payment of cost of works under this section.

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## **23 Compensation by reference to the diminution in value of the holding. E+W+S**

- (1) Compensation by reference to the diminution in value of a holding to which section twenty-one of this Act applies shall be payable if the value of a freehold interest in the holding, computed in accordance with paragraph (a) of the next following subsection, or in accordance with paragraph (b) of that subsection, as the case may be, but (in either case) with the benefit of any prospective right to compensation by way of payment of cost of works in respect of the holding, is less than the value of such an interest computed in accordance with paragraph (c) of that subsection.
- (2) For the purposes of the preceding subsection there shall be computed the following values, that is to say,—
  - (a) where the entirety of the holding is comprised in the order, the value at the end of the period of occupation of a freehold interest in the holding;
  - (b) where part of the holding is not comprised in the order, the value which a freehold interest in the holding would have at the end of the period of occupation if that part of the holding were in the state in which it was immediately before the date of entry, the remainder of the holding being taken to be in the state in which it is at the end of the period of occupation;
  - (c) in either case, the value which a freehold interest in the holding would have at the end of the period of occupation if the entirety of the holding were in the state in which it was immediately before the date of entry.
- (3) Where in accordance with subsection (1) of this section compensation by reference to the diminution in value of a holding is payable, the amount of the compensation shall be the amount of the difference between the values mentioned in that subsection, and the person entitled to that compensation shall be the person who at the end of the period of occupation is the owner of the holding.
- (4) In computing value as mentioned in any of paragraphs (a), (b) and (c) of subsection (2) of this section, it shall be assumed that a freehold interest in the holding is, in the circumstances mentioned in the paragraph in question, being offered for sale in the open market by a willing seller immediately after the end of the period of occupation, with vacant possession of the holding and free from incumbrances, other than any easement or similar right, any right restrictive of the use of land, and any mining lease or order conferring working rights, affecting the holding or any part thereof at that time.

### **[<sup>F140</sup>23A Additional compensation on re-occupation. E+W+S**

- (1) Subject to the following provisions of this section, with a view to furthering the resumption of agriculture on land formerly comprised in a compulsory rights order, a person shall be entitled to compensation by virtue of this section in respect of a holding to which section 21 of this Act applies if he is in occupation of the holding at the end of the period of occupation or if he enters into occupation of the holding at or after the end of that period, provided that he is occupying the holding or (as the case may be) he enters into occupation of the holding wholly or mainly for the purposes of agriculture carried on by way of a trade or business.
- (2) No compensation shall be payable to a person by virtue of this section unless he is either the person who, immediately before the operative date of the compulsory rights order, was entitled to occupy the holding (in this subsection referred to as “the original occupier”) or a person who, before the end of the period of occupation, became entitled to the relevant interest in the holding in accordance with the disposition of the

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original occupier's estate effected by his will, or the law relating to intestacy, or the combination of his will and that law.

- (3) In subsection (2) above—
- “ the relevant interest ”, in relation to any person, means the interest by virtue of which he became entitled to occupy the holding (or would have become so entitled if the compulsory rights order had not been made); and
- “ will ” includes a codicil.
- (4) The compensation payable in respect of a holding by virtue of this section shall be payable [<sup>F141</sup>by the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order] and, subject to the following provisions of this section, shall be an amount equal to the compensation payable in respect of that holding under [<sup>F142</sup>section 17] of this Act for the last twelve months of the period of occupation.
- (5) Subject to the following provisions of this section, in any case where the compensation last payable in respect of a holding under [<sup>F142</sup>section 17] was in fact payable by reference to a period of less than twelve months, the compensation payable in respect of that holding by virtue of this section shall be an amount equal to the compensation which was so payable under [<sup>F142</sup>section 17], multiplied by the fraction of which the numerator is 365 and the denominator is the number of days in the period by reference to which the compensation was so payable under those sections.
- (6) Where the person entitled, immediately after the end of the period of occupation, to occupy the holding concerned ceases, before he enters into occupation, to be entitled to occupy some part of it then, subject to subsection (7) below,—
- (a) his entry into occupation of the part which he remains entitled to occupy shall be treated for the purposes of subsection (1) above as entry into occupation of the holding; but
- (b) the compensation payable to him by virtue of this section shall be such proportion of the compensation which would have been so payable had he remained entitled to enter into occupation of the whole of the holding as is properly attributable to the part of the holding which he remains entitled to occupy.
- (7) If, immediately before the end of the period of occupation, only part of the holding concerned (in this subsection referred to as “ the compensatable portion ”) was comprised in the compulsory rights order and (after the end of the period of occupation) subsection (6) above applies, then—
- (a) if the part of the holding which the person concerned ceased to be entitled to occupy comprises the whole of the compensatable portion, no compensation shall be payable to him by virtue of this section;
- (b) if the person concerned remains entitled to occupy the whole of the compensatable portion, the compensation so payable to him shall not be reduced under paragraph ( b ) of subsection (6) above; and
- (c) in any other case, for the purpose of determining the proportion of the compensation properly attributable to any part of the holding under paragraph ( b ) of subsection (6) above, the holding shall be treated as consisting of the compensatable portion only. ]

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### Textual Amendments

**F140** S. 23A inserted by [Coal Industry Act 1975 \(c. 56\), s. 6\(1\)](#)

**F141** Words in s. 23A(4) substituted (31.10.1994) by [1994 c. 21, s. 52](#), Sch. 8 para. 19(1)(b) (with s. 40(7)); [S.I. 1994/2553, art. 2](#)

**F142** Words in s. 23A substituted (31.10.1994) by [1994 c. 21, s. 52](#), [Sch. 8 para. 19\(1\)\(a\)\(2\)](#) (with s. 40(7)); [S.I. 1994/2553, art. 2](#)

## 24 Tenant's right to compensation for improvements and other matters. E+W

(1) The provisions of this section shall have effect where the land comprised in a compulsory rights order consists of or includes land which—

- (a) immediately before the date of entry, constitutes or forms part of an agricultural holding [<sup>F143</sup>held under a tenancy in relation to which the Act of 1986 applies], and
- (b) is land on which, before that date, there have been carried out long-term improvements qualifying for compensation under the [<sup>F144</sup>Act of 1986], or there has been adopted a special system of farming qualifying for compensation under that Act.

In the following provisions of this section land comprised in a compulsory rights order which falls within paragraphs (a) and (b) of this subsection is referred to as “the tenant's land”.

(2) If at the end of the period of occupation—

- (a) the tenant's land has lost the benefit of any of the improvements, or of the special system of farming, as the case may be, and
- (b) that land is subject to the same tenancy as immediately before the date of entry, or is subject to a subsequent tenancy under which the tenant has retained or succeeded to the relevant right to compensation,

and the tenancy under which that land is then held continues after the end of the period of occupation, the provisions of the [<sup>F145</sup>Act of 1986] as to compensation for long-term improvements, and as to compensation for a special system of farming, shall apply as mentioned in the next following subsection.

(3) The said provisions of the [<sup>F146</sup>Act of 1986] shall apply as if—

- (a) the tenant's land were in the state in which it was immediately before the date of entry, and
- (b) the tenancy under which that land is held at the end of the period of occupation had terminated immediately after the end of that period and the tenant thereunder had then quitted the holding:

Provided that (in a case where long-term improvements qualifying for compensation under the [<sup>F146</sup>Act of 1986] had been carried out on the tenant's land) if the tenant's land has lost the benefit of some of those improvements, but has not lost the benefit of all of them, those provisions of the [<sup>F146</sup>Act of 1986] shall apply as mentioned in paragraphs (a) and (b) of this subsection, but as if the improvements of which the tenant's land has not lost the benefit had not been long-term improvements qualifying for compensation under that Act.

(4) For the purposes of subsections (2) and (3) of this section—



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- (a) the tenant's land shall be taken to have lost the benefit of a long-term improvement if the benefit of that improvement has been lost (wholly or in part) without being replaced by another long-term improvement of comparable benefit to the land;
  - (b) the tenant's land shall be taken to have lost the benefit of a special system of farming if the increased value attributable to that system of farming has been lost (wholly or in part) without being regained by the continuous adoption of a system of farming of comparable benefit to the land.
- (5) For the purposes of paragraph (b) of subsection (2) of this section, the tenant's land shall be taken to be subject to such a subsequent tenancy as is therein mentioned if either—
- (a) by virtue of [F147]section 69(1) of the Act of 1986 or paragraph 5(1) of Part I of Schedule 9 to that Act[(which relate respectively to improvements made during one of a series of tenancies) the same tenant would have the like right to compensation in right of the subsequent tenancy as he would have had in right of the previous tenancy, or
  - (b) by virtue of [F148]section 69(2) or (3) of the Act of 1986 or paragraph 5(2) of Part I of Schedule 9 to that Act[(which relate respectively to improvements paid for by an incoming tenant) the tenant under the subsequent tenancy would have the like right to compensation as the tenant would have had under the previous tenancy.
- (6) The provisions of the [F149]Act of 1986] referred to in subsection (2) of this section shall be taken to include any provisions of that Act as to the making of claims for any such compensation as is mentioned in that subsection, as to the calculation of any such compensation and the settlement or determination of such claims, as to the recovery of any such compensation, and as to any other matters incidental thereto:

Provided that—

- (a) any provisions of the [F149]Act of 1986] as to the giving of notice of intention to make a claim shall apply with the modification that the time for giving such a notice shall be any time not later than three months after the end of the period of occupation;
  - (b) [F150]section 83(4)] of that Act (which relates to the time for settling such claims) shall apply with the substitution, for the reference to [F151]eight] months from the termination of the tenancy, of a reference to [F151]eight] months from the end of the period of occupation.
- (7) In this section—
- (a) any reference to long-term improvements qualifying for compensation under the [F152]Act of 1986] is a reference to long-term improvements in respect of which, immediately before the date of entry, a tenant of the agricultural holding in question had a prospective right to compensation under that Act on quitting the holding on the termination of his tenancy;
  - (b) any reference to a special system of farming qualifying for compensation under the [F152]Act of 1986] is a reference to a system of farming in respect of which, immediately before the date of entry, a tenant of the agricultural holding in question had a prospective right to compensation under [F153]section 70] of that Act on quitting the holding on the termination of his tenancy.

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- (8) In determining whether the conditions specified in paragraph (a) or paragraph (b) of the last preceding subsection are fulfilled, no account shall be taken of any provision of the [<sup>F154</sup>Act of 1986] whereby a right to compensation is conditional upon the making of a claim, or the giving of notice of intention to make a claim, or is liable to be affected by the service of a notice by the landlord.
- (9) In this Act “long-term improvement” means any improvement (whether begun before or after the first day of March, nineteen hundred and forty-eight) of a description specified in Part I or Part II of [<sup>F155</sup>Schedule 7 to the Act of 1986].
- [<sup>F156</sup>(9A) In this section the references to the Act of 1986 in subsections (1)( b ), (7) and (8) and the second and fourth references to that Act in subsection (3) include references to the Agricultural Holdings Act 1948 (in this Act called the Act of 1948) and the reference to section 70 of the Act of 1986 in subsection (7)( b ) includes a reference to section 56 of the Act of 1948. ]
- [<sup>F157</sup>(10) In the application of this section to Scotland [<sup>F158</sup>the words “held under a tenancy in relation to which the Act of 1986 applies” in subsection (1)(a) of this section shall be omitted and]], for references—
- (a) to the Act of 1986 and to sections 70 and 83(4) of that Act there shall be substituted respectively references to the Scottish Act of 1991 and to sections 44 and 62(3) of that Act;
  - (b) to subsections (1), (2) and (3) of section 69 of the Act of 1986 there shall be substituted respectively references to sections 34(5) and 35(4) and (5) of the Scottish Act of 1991 (as they apply to new improvements);
  - (c) to Parts I and II of Schedule 7 to the Act of 1986 and to the first day of March 1948 there shall be substituted respectively references to Parts I and II of Schedule 5 to the Scottish Act of 1991 and to the first day of November 1948; and
  - (d) to sub-paragraphs (1) and (2) of paragraph 5 of Part I of Schedule 9 to the 1986 Act there shall be substituted respectively references to sections 34(5) and 35(4) of the Scottish Act of 1991 (as they apply to old improvements).

#### Extent Information

- E1** This version of this provision extends to England and Wales only; a separate version has been created for Scotland only.

#### Textual Amendments

- F143** Words in s. 24(1)(a) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 15(2)** (with s. 37)
- F144** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(2)**
- F145** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(3)**
- F146** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(4)**
- F147** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(5)(a)**
- F148** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(5)(b)**
- F149** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(6)(a)**

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- F150** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(6)(b)**
- F151** Words in s. 24(6) substituted (E.W.) by virtue of Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(6)**
- F152** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(7)(a)**
- F153** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(7)(b)**
- F154** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(8)**
- F155** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(9)**
- F156** S. 24(9A) inserted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(10)**
- F157** S. 24(10) substituted (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88, 89(2), **Sch. 11 para. 13** (with s. 45(3), Sch. 12 para.3)
- F158** Words in s. 24(10) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 15(3)** (with s. 37)

## 24 Tenant's right to compensation for improvements and other matters. **S**

- (1) The provisions of this section shall have effect where the land comprised in a compulsory rights order consists of or includes land which—
- immediately before the date of entry, constitutes or forms part of an agricultural holding [<sup>F532</sup>held under a tenancy in relation to which the Act of 1986 applies], and
  - is land on which, before that date, there have been carried out long-term improvements qualifying for compensation under the [<sup>F533</sup>Act of 1986], or there has been adopted a special system of farming qualifying for compensation under that Act.

In the following provisions of this section land comprised in a compulsory rights order which falls within paragraphs (a) and (b) of this subsection is referred to as “the tenant's land”.

- (2) If at the end of the period of occupation—
- the tenant's land has lost the benefit of any of the improvements, or of the special system of farming, as the case may be, and
  - that land is subject to the same tenancy as immediately before the date of entry, or is subject to a subsequent tenancy under which the tenant has retained or succeeded to the relevant right to compensation,
- and the tenancy under which that land is then held continues after the end of the period of occupation, the provisions of the [<sup>F534</sup>Act of 1986] as to compensation for long-term improvements, and as to compensation for a special system of farming, shall apply as mentioned in the next following subsection.
- (3) The said provisions of the [<sup>F535</sup>Act of 1986] shall apply as if—
- the tenant's land were in the state in which it was immediately before the date of entry, and
  - the tenancy under which that land is held at the end of the period of occupation had terminated immediately after the end of that period and the tenant thereunder had then quitted the holding:

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Provided that (in a case where long-term improvements qualifying for compensation under the [F535 Act of 1986] had been carried out on the tenant's land) if the tenant's land has lost the benefit of some of those improvements, but has not lost the benefit of all of them, those provisions of the [F535 Act of 1986] shall apply as mentioned in paragraphs (a) and (b) of this subsection, but as if the improvements of which the tenant's land has not lost the benefit had not been long-term improvements qualifying for compensation under that Act.

- (4) For the purposes of subsections (2) and (3) of this section—
- (a) the tenant's land shall be taken to have lost the benefit of a long-term improvement if the benefit of that improvement has been lost (wholly or in part) without being replaced by another long-term improvement of comparable benefit to the land;
  - (b) the tenant's land shall be taken to have lost the benefit of a special system of farming if the increased value attributable to that system of farming has been lost (wholly or in part) without being regained by the continuous adoption of a system of farming of comparable benefit to the land.
- (5) For the purposes of paragraph (b) of subsection (2) of this section, the tenant's land shall be taken to be subject to such a subsequent tenancy as is therein mentioned if either—
- (a) by virtue of [F536 section 69(1) of the Act of 1986 or paragraph 5(1) of Part I of Schedule 9 to that Act](which relate respectively to improvements made during one of a series of tenancies) the same tenant would have the like right to compensation in right of the subsequent tenancy as he would have had in right of the previous tenancy, or
  - (b) by virtue of [F537 section 69(2) or (3) of the Act of 1986 or paragraph 5(2) of Part I of Schedule 9 to that Act](which relate respectively to improvements paid for by an incoming tenant) the tenant under the subsequent tenancy would have the like right to compensation as the tenant would have had under the previous tenancy.
- (6) The provisions of the [F538 Act of 1986] referred to in subsection (2) of this section shall be taken to include any provisions of that Act as to the making of claims for any such compensation as is mentioned in that subsection, as to the calculation of any such compensation and the settlement or determination of such claims, as to the recovery of any such compensation, and as to any other matters incidental thereto:

Provided that—

- (a) any provisions of the [F538 Act of 1986] as to the giving of notice of intention to make a claim shall apply with the modification that the time for giving such a notice shall be any time not later than three months after the end of the period of occupation;
  - (b) [F539 section 83(4)] of that Act (which relates to the time for settling such claims) shall apply with the substitution, for the reference to four months from the termination of the tenancy, of a reference to five months from the end of the period of occupation.
- (7) In this section—
- (a) any reference to long-term improvements qualifying for compensation under the [F540 Act of 1986] is a reference to long-term improvements in respect of which, immediately before the date of entry, a tenant of the agricultural

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holding in question had a prospective right to compensation under that Act on quitting the holding on the termination of his tenancy;

- (b) any reference to a special system of farming qualifying for compensation under the [F540 Act of 1986] is a reference to a system of farming in respect of which, immediately before the date of entry, a tenant of the agricultural holding in question had a prospective right to compensation under [F541 section 70] of that Act on quitting the holding on the termination of his tenancy.

- (8) In determining whether the conditions specified in paragraph (a) or paragraph (b) of the last preceding subsection are fulfilled, no account shall be taken of any provision of the [F542 Act of 1986] whereby a right to compensation is conditional upon the making of a claim, or the giving of notice of intention to make a claim, or is liable to be affected by the service of a notice by the landlord.

- (9) In this Act “long-term improvement” means any improvement (whether begun before or after the first day of March, nineteen hundred and forty-eight) of a description specified in Part I or Part II of [F543 Schedule 7 to the Act of 1986].

- [F544(9A) In this section the references to the Act of 1986 in subsections (1)( b ), (7) and (8) and the second and fourth references to that Act in subsection (3) include references to the Agricultural Holdings Act 1948 (in this Act called the Act of 1948) and the reference to section 70 of the Act of 1986 in subsection (7)( b ) includes a reference to section 56 of the Act of 1948. ]

- [F545(10) In the application of this section to Scotland [F546 the words “held under a tenancy in relation to which the Act of 1986 applies” in subsection (1)(a) of this section shall be omitted and]], for references—

- [F547(a) to the Act of 1986 and to sections 70 and 83(4) of that Act there shall be substituted respectively references—

(i) in the case of a 1991 Act tenancy within the meaning of the Scottish Act of 2003, to the Scottish Act of 1991 and to sections 44 and 62(3) of that Act; or

(ii) in the case of a short limited duration tenancy or a limited duration tenancy, (within the meaning of the Scottish Act of 2003) to the Scottish Act of 2003 and to section 53(1) of that Act;]

- [F547(b) to subsections (1), (2) and (3) of section 69 of the Act of 1986 there shall be substituted respectively references—

(i) in the case of a 1991 Act tenancy within the meaning of the Scottish Act of 2003, to sections 34(5) and 35(4) and (5) of the Scottish Act of 1991 (as they apply to new improvements); or

(ii) in the case of a short limited duration tenancy or a limited duration tenancy (within the meaning of the Scottish Act of 2003), to sections 45(4) and 46 of the Scottish Act of 2003;]

- (c) to Parts I and II of Schedule 7 to the Act of 1986 and to the first day of March 1948 there shall be substituted respectively references to Parts I and II of Schedule 5 to the Scottish Act of 1991 and to the first day of November 1948; and

- (d) to sub-paragraphs (1) and (2) of paragraph 5 of Part I of Schedule 9 to the 1986 Act there shall be substituted respectively references to sections 34(5) and 35(4) of the Scottish Act of 1991 (as they apply to old improvements).

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### Extent Information

- E2** This version of this provision extends to Scotland only; a separate version has been created for England and Wales only.

### Textual Amendments

- F532** Words in s. 24(1)(a) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 15(2)** (with s. 37)
- F533** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(2)**
- F534** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(3)**
- F535** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(4)**
- F536** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(5)(a)**
- F537** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(5)(b)**
- F538** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(6)(a)**
- F539** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(6)(b)**
- F540** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(7)(a)**
- F541** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(7)(b)**
- F542** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(8)**
- F543** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(9)**
- F544** S. 24(9A) inserted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(10)**
- F545** S. 24(10) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88, 89(2), **Sch. 11 para. 13** (with s. 45(3), Sch. 12 para.3)
- F546** Words in s. 24(10) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 15(3)** (with s. 37)
- F547** S. 24(10)(a)(b) substituted (27.11.2003) by [Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, **Sch. para. 3**

## 25 Deductions from tenant's compensation. **E+W+S**

- (1) Where a tenant of an agricultural holding is entitled to compensation under section twenty-four of this Act in respect of land constituting or forming part of that holding, there shall be deducted from the amount of that compensation, calculated apart from this subsection, the amount of any compensation which would have been recoverable from the tenant by the landlord—
- (a) under [<sup>F159</sup>section 71 of the Act of 1986] (which relates to compensation for dilapidation, deterioration or damage for which the tenant is responsible), or
  - (b) under [<sup>F160</sup>section 72] of that Act (which relates to compensation for general reduction in the value of the holding due to the tenant's failure to fulfil his responsibilities),

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if the tenancy under which that land was held immediately before the date of entry had terminated immediately before that date and the tenant thereunder had then quitted the holding on the termination of his tenancy:

Provided, that for the purposes of this subsection, no account shall be taken of any dilapidation or deterioration of, or damage to, any part of the holding which was not comprised in the compulsory rights order, or of any reduction in the value of any such part of the holding.

- (2) For the purposes of the last preceding subsection, any provision of the [<sup>F161</sup>Act of 1986], whereby any right to compensation is conditional upon the making of a claim, or the giving of notice of intention to make a claim, shall be disregarded.
- [<sup>F162</sup>(2A) In this section references to the Act of 1986 and to sections 71 and 72 of that Act include respectively references to the Act of 1948 and to sections 57 and 58 of that Act]
- <sup>F163</sup>[(3) In the application of this section to Scotland, for paragraphs (a) and (b) of subsection (1) above there shall be substituted the words “under section 45 of the Scottish Act of 1991 (which relates to compensation for deterioration of a holding or part thereof for which a tenant is responsible).”]

#### Textual Amendments

- F159** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 27\(2\)\(a\)](#)
- F160** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 27\(2\)\(b\)](#)
- F161** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 27\(3\)](#)
- F162** S. 25(2A) inserted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 27\(4\)](#)
- F163** S. 25(3) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88, 89(2), [Sch. 11 para.14](#) (with s. 45(3), Sch. 12 para. 3)

#### <sup>F164</sup>[25A Tenant’s right to compensation for improvements etc.: farm business tenancies. **E+W**

- (1) The provisions of this section shall have effect where—
- (a) any part of the land comprised in a compulsory rights order is held, immediately before the date of entry, under a farm business tenancy;
  - (b) there have been provided in relation to the land which is both so comprised and so held ( “the tenant’s land”) tenant’s improvements in respect of which, immediately before that date, the tenant had a prospective right to compensation under section 16 of the Act of 1995 on quitting the holding on the termination of the tenancy;
  - (c) at the end of the period of occupation, the tenant’s land has lost the benefit of any such improvement; and
  - (d) immediately after the end of that period, the tenant’s land is comprised in the same tenancy as immediately before the date of entry, or is comprised in a subsequent farm business tenancy at the end of which the tenant is not deprived, by virtue of section 23(3) of that Act, of his right to compensation

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under section 16 of that Act in respect of any tenant's improvement provided during the earlier tenancy in relation to the tenant's land.

- (2) For the purposes of subsection (1) of this section, subsection (2) of section 22 of the Act of 1995 (which requires notice to be given of the intention to make a claim) shall be disregarded.
- (3) Subject to subsection (4) of this section, Part III of the Act of 1995 shall apply as if—
  - (a) the tenant's land were in the state in which it was immediately before the date of entry, and
  - (b) the tenancy under which that land is held at the end of the period of occupation had terminated immediately after the end of that period and the tenant had then quitted the holding.
- (4) Where the tenant's land has lost the benefit of some tenant's improvements but has not lost the benefit of all of them, Part III of the Act of 1995 shall apply as mentioned in subsection (3) above, but as if the improvements of which the tenant's land has not lost the benefit had not been tenant's improvements.
- (5) For the purposes of subsections (1) and (4) of this section, the tenant's land shall be taken to have lost the benefit of a tenant's improvement if the benefit of that improvement has been lost (wholly or in part) without being replaced by another improvement of comparable benefit to the land.
- (6) In this section “ holding ”, in relation to a farm business tenancy, “ tenant's improvement ”, “ termination ”, in relation to a tenancy, and references to the provision of a tenant's improvement have the same meaning as in the Act of 1995.
- (7) This section does not extend to Scotland.]

#### Textual Amendments

**F164** S. 25A inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 16** (with s. 37)

## 26 Compensation for short-term improvements and related matters. **E+W+S**

- (1) Where, in the exercise of rights conferred by a compulsory rights order, [<sup>F165</sup>any person occupies] any land which, immediately before the date of entry, was agricultural land [<sup>F166</sup>and was not comprised in a farm business tenancy], compensation shall be payable [<sup>F165</sup>by that person] in respect of any improvements or other matters to which this section applies in relation to that land.
- [<sup>F167</sup>(1A) Compensation shall not be payable by virtue of this section where a person's occupation of any land, in exercise of rights conferred by a compulsory rights order, is confined to replacing in occupation a person previously entitled to exercise the rights conferred by that order.]
- (2) This section applies, in relation to any land,—
  - (a) to any improvements, of a description specified in Part I of the Fourth Schedule to this Act, which had been carried out on that land before the date of entry, and
  - (b) to any matters, of a description specified in Part II of the Fourth Schedule to this Act, which applied to that land immediately before that date:



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Provided that, in relation to land which, immediately before the date of entry, was not occupied by a tenant, Part II of the Fourth Schedule to this Act shall apply subject to the modifications specified in Part III of that Schedule.

- (3) Where compensation is payable <sup>F168</sup> . . . under this section in respect of any improvements or other matters, the compensation shall be of an amount equal to the amount of the compensation which would have been payable in respect of those improvements or matters under the [<sup>F169</sup>Act of 1986] if—
- (a) where the land in question did not form part of an agricultural holding immediately before the date of entry, it had formed part of such a holding immediately before that date, and
  - (b) in any case, the tenancy of the agricultural holding comprising that land had terminated on the date of entry and the tenant thereunder had then quitted the holding.
- (4) The person entitled to any compensation payable by virtue of this section—
- (a) in the case of land which, immediately before the date of entry, was occupied by a tenant, shall be that tenant, and
  - (b) in any other case, shall be the person who was the owner of the land immediately before the date of entry.
- (5) If, by virtue of the power conferred by [<sup>F170</sup>section 91 of the Act of 1986, the provisions of Schedule 8] to that Act are varied, the Minister may by order make such corresponding variations in the provisions of Parts I, II and III of the Fourth Schedule to this Act as he may consider appropriate.
- [<sup>F171</sup>(5A) the reference in subsection (3) of this section to the 1986 Act includes a reference to the 1948 Act]
- (6) In the application of this section to Scotland
- [<sup>F172</sup>(za) in subsection (1) of this section, the words “and was not comprised in a farm business tenancy” shall be omitted;]
  - , [<sup>F173</sup>(a)] the following subsection shall be substituted for subsection (2) of this section:  
—  
“(2) This section applies, in relation to any land, to any improvements of a description specified in Part IV of the Fourth Schedule to this Act, which had been carried out on that land before the date of entry:  
  
Provided that, in relation to land which, immediately before the date of entry, is not occupied by a tenant, Part IV of that Schedule shall apply subject to the modifications set out in Part V of that Schedule”
- [<sup>F174</sup>(b) in subsection (3) of this section for the reference to the Act of 1986 there shall be substituted a reference to the Scottish Act of 1991 or, as the case may be, to the Scottish Act of 2003; and]
- <sup>F175</sup>[(c) in subsection (5) of this section there shall be substituted—
- (i) for the reference to section 91 of the Act of 1986 a reference to section 73 of the Scottish Act of 1991;
  - (ii) for the reference to Schedule 8 to the Act of 1986 a reference to Part III of Schedule 5 to the Scottish Act of 1991;
  - (iii) for the reference to Parts I, II and III of the Fourth Schedule to this Act a reference to Parts IV and V of that Schedule. ]

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### Textual Amendments

- F165** Words in s. 26(1) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 20(1)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F166** Words in s. 26(1) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 17(1)(2)** (with s. 37)
- F167** S. 26(1A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 20(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F168** Words in s. 26(3) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 20(3), **Sch. 11 Pt. II**
- F169** Words substituted by **Agricultural Holdings Act 1986** (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 28(2)**
- F170** Words substituted by **Agricultural Holdings Act 1986** (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 28(3)**
- F171** S. 26(5A) inserted by **Agricultural Holdings Act 1986** (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 28(4)**
- F172** S. 26(6)(za) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 17(1)(3)** (with s. 37)
- F173** Word in s. 26(6) inserted (25.9.1991) by **Agricultural Holdings (Scotland) Act 1991** (c. 55, SIF 2:3), ss. 88, 89(2), **Sch. 11 para. 15** (with s. 45(3), Sch. 12 para. 3)
- F174** S. 26(6)(b) substituted (27.11.2003) by **Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003** (S.S.I. 2003/583), art. 1, **Sch. para. 4**
- F175** Words in s. 26(6) substituted (25.9.1991) by **Agricultural Holdings (Scotland) Act 1991** (c. 55, SIF 2:3), ss. 88, 89(2), **Sch. 11 para. 15** (with s. 45(3), Sch. 11 para. 3)

## 27 Compensation in respect of forced sales. **E+W+S**

- (1) Where, in consequence of the confirmation of a compulsory rights order, a person incurs a loss in respect of a forced sale of any property consisting of—
- livestock, vehicles, plant, equipment or other chattels which are kept on a holding to which (when the order becomes operative) section seventeen of this Act applies, or which are used for the purposes of such a holding, or
  - a fixture or building (not falling within the preceding paragraph) which he has removed from such a holding in pursuance of <sup>[F176]</sup>section 10 of the Act of 1986],

he shall, subject to the following provisions of this section, be entitled to compensation from <sup>[F177]</sup>the person on whose application the compulsory rights order was made] of an amount equal to that loss.

- (2) The preceding subsection shall not apply except where the person incurring the loss is the person who is for the time being entitled to occupy so much of the holding as is comprised in the order, or would be entitled for the time being to occupy it if the order had not been made.

<sup>[F178]</sup>(2A) Where, in the case of any sale in respect of which compensation is payable under this section, a person other than the person who applied for the order is entitled, on the effective date of the sale, to the rights conferred by the compulsory rights order, that compensation shall be payable by the person entitled to those rights, instead of by the person who applied for the order.]

- (3) A person shall not be entitled to compensation under this section in respect of a forced sale unless he has given to <sup>[F179]</sup>the person potentially liable] not less than ten days' notice of the intended sale, and has, before the sale, afforded to <sup>[F179]</sup>the person to whom the notice was given, or any person designated for the purpose by him,] reasonable

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facilities to inspect the property intended to be sold, in so far as he was in a position to afford such facilities.

- (4) In the application of this section to Scotland, for the reference to [F180]section 10 of the Act of 1986] there shall be substituted a reference to [F181]section 18 of the Scottish Act of 1991].

F182(5) In this section—

“effective date”, in relation to a sale, means the date on which the property sold becomes the property of the purchaser; and

“the person potentially liable”, in relation to a notice relating to a sale, means the person on whom the liability to pay the compensation will fall on the effective date of the sale if the person entitled to the rights conferred by the compulsory rights order in question does not change before that date.

#### Textual Amendments

F176 Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, Sch. 14 para. 29(2)

F177 Words in s. 27(1) substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 21(1) (with s. 40(7)); S.I. 1994/2553, art. 2

F178 S. 27(2A) inserted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 21(2) (with s. 40(7)); S.I. 1994/2553, art. 2

F179 Words in s. 27(3) substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 21(3) (with s. 40(7)); S.I. 1994/2553, art. 2

F180 Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, Sch. 14 para. 29(3)

F181 Words in s. 27(4) substituted (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88, 89(2), Sch. 11 para. 16 (with s. 45(3), Sch. 12 para. 3)

F182 S. 27(5) inserted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 21(4) (with s. 40(7)); S.I. 1994/2553, art. 2

## 28 Special provisions as to market gardens. E+W+S

- (1) The provisions of this section shall have effect where the land comprised in a compulsory rights order consists of or includes land which, immediately before the date of entry, was agricultural land used as a market garden [F183]and was not comprised in a farm business tenancy].
- (2) Subject to the next following subsection, section twenty-six of this Act shall have effect in relation to that land as if the descriptions of improvements specified in Part VI of the Fourth Schedule to this Act were included among the descriptions of improvements specified in Part I of that Schedule.
- (3) Where the land in question, immediately before the date of entry, was occupied by a tenant, the last preceding subsection shall not apply to any improvements of a description specified in Part VI of the Fourth Schedule to this Act unless they are improvements in respect of which [F184]subsections (2) to (5) of section 79 of the Act of 1986] (which relates to market gardens) has effect, whether by virtue of an agreement or of a direction given under [F185]subsections (2) of section 80] of that Act.
- (4) In relation to land falling within subsection (1) of this section, any reference in the preceding provisions of this Part of this Act to rights under [F186]sections 10 of the

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Act of 1986] shall include a reference to rights under that section as extended by [F187 subsection (3) of section 79 of the Act of 1986.]

- (5) If, by virtue of the power conferred by [F188 section 91 of the Act of 1986 the provisions of Schedule 10] to that Act are varied, the Minister may by order make such corresponding variations in the provisions of Part VI of the Fourth Schedule to this Act as he may consider appropriate.
- (6) In the application of this section to Scotland [F189: in subsection (1) of this section, the words “and was not comprised in a farm business tenancy” shall be omitted; and], for the references to [F190 subsections (2) to (5) of section 79 of the Act of 1986 and subsection (3) of that section] of that section, there shall be substituted respectively references [F191 section 40 of the Scottish Act of 1991 and to subsection (4)(a) of that section]; for the references to [F192 subsection (2) of section 80 of the Act of 1986 and to section 10] of that Act there shall be substituted respectively references [F191 to section 41(1) and to section 18 of the Scottish Act of 1991]; for the references to [F193 section 91 of the Act of 1986 and to Schedule 10] to that Act there shall be substituted respectively references [F191 to section 73 of the Scottish Act of 1991 and to Schedule 6 thereto]; and for the reference to Part I of the Fourth Schedule to this Act there shall be substituted a reference to Part IV of that Schedule.

#### Textual Amendments

- F183** Words in s. 28(1) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 18(1)(2)** (with s. 37)
- F184** Words substituted by **Agricultural Holdings Act 1986 (c. 5, SIF 2:3)**, ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(2)(a)**
- F185** Words substituted by **Agricultural Holdings Act 1986 (c. 5, SIF 2:3)**, ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(2)(b)**
- F186** Words substituted by **Agricultural Holdings Act 1986 (c. 5, SIF 2:3)**, ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(3)(a)**
- F187** Words substituted by **Agricultural Holdings Act 1986 (c. 5, SIF 2:3)**, ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(3)(b)**
- F188** Words substituted by **Agricultural Holdings Act 1986 (c. 5, SIF 2:3)**, ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(4)**
- F189** Words in s. 28(6) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 18(1)(3)** (with s. 37)
- F190** Words substituted by **Agricultural Holdings Act 1986 (c. 5, SIF 2:3)**, ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(5)(a)**
- F191** Words in s. 28(6) substituted (25.9.1991) by **Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3)**, ss. 88, 89(2), **Sch. 11 para. 17(a)(b)(c)** (with s. 45(3), Sch. 12 para. 3)
- F192** Words substituted by **Agricultural Holdings Act 1986 (c. 5, SIF 2:3)**, ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(5)(b)**
- F193** Words substituted by **Agricultural Holdings Act 1986 (c. 5, SIF 2:3)**, ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(5)(c)**

#### *Compensation in respect of non-agricultural land*

### 29 Annual and terminal compensation, and compensation in respect of forced sales. **E+W+S**

- (1) Where land, immediately before the operative date of a compulsory rights order,—
- (a) was occupied as a unit, but

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- (b) was not so occupied wholly or mainly for the purposes of agriculture carried on by way of a trade or business,  
the entirety of that land (excluding the coal and any other minerals vested in [<sup>F194</sup>the Coal Authority or any licensed operator (within the meaning of the Coal Industry Act 1994)]) shall be taken, in relation to that compulsory rights order, to constitute a holding to which this section applies.
- (2) The provisions of subsections (1), [<sup>F195</sup>(1A) and (3) to (3B) of section 17 of this Act and the provisions of section 18 of this Act], and the provisions of section twenty-seven of this Act, shall have effect in relation to a holding to which this section applies as they have effect in relation to a holding to which section seventeen of this Act applies:
- Provided that the provisions of section twenty-seven of this Act shall have effect, in relation to a holding to which this section applies, as if, in paragraph (b) of subsection (1) of that section, for the reference to such a fixture or building as is therein mentioned, there were substituted a reference to any trade or other fixture (not falling within paragraph (a) of that subsection) which the person in question has lawfully removed from the holding.
- (3) The provisions of section twenty-one of this Act (except subsection (2) of that section) and the provisions of sections twenty-two and twenty-three of this Act shall have effect in relation to a holding to which this section applies as they have effect in relation to a holding to which section twenty-one of this Act applies.

#### Textual Amendments

**F194** Words in s. 29(1) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 22(1)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F195** Words in s. 29(2) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 22(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

### 30 Non-agricultural tenant's improvements. **E+W+S**

- (1) The provisions of this section shall have effect where the land comprised in a compulsory rights order consists of or includes land which—
- (a) immediately before the date of entry, constitutes or forms part of a holding to which Part I of the Act of 1927 applies, and
- (b) is land on which, before that date, there have been carried out improvements qualifying for compensation under that Act.
- In the following provisions of this section land comprised in a compulsory rights order which falls within paragraphs (a) and (b) of this subsection is referred to as “the tenant's land”.
- (2) If at the end of the period of occupation—
- (a) the tenant's land has lost the benefit of any of the improvements, and
- (b) that land is subject to the same tenancy as immediately before the date of entry, and that tenancy continues until after the end of the period of occupation, the provisions of the Act of 1927 as to compensation for improvements shall apply as mentioned in the next following subsection.
- (3) The said provisions of the Act of 1927 shall apply as if—

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- (a) the tenant's land were in the state in which it was immediately before the date of entry;
- (b) the tenancy under which that land is held at the end of the period of occupation had terminated immediately after the end of that period and the tenant thereunder had then quitted the holding; and
- (c) it were established that, after the termination of that tenancy, there was no intention to demolish or make structural alterations in any premises on the tenant's land or any part of such premises or to change the use of that land or any premises thereon:

Provided that, if the tenant's land has lost the benefit of some of the improvements in question, but has not lost the benefit of all of them, those provisions of the Act of 1927 shall apply as mentioned in paragraphs (a) to (c) of this subsection, but as if the improvements of which the tenant's land has not lost the benefit had not been improvements qualifying for compensation under that Act.

- (4) For the purposes of the last preceding subsection the tenant's land shall be taken to have lost the benefit of an improvement if the benefit of that improvement has been lost (wholly or in part) without being replaced by another improvement of comparable benefit to the land.
- (5) The provisions of the Act of 1927 referred to in subsection (2) of this section shall be taken to include any provisions of that Act as to the making of claims for any such compensation as is mentioned in that subsection, as to the calculation of any such compensation and the determination of such claims, as to the recovery of any such compensation, and as to any other matters incidental thereto:

Provided that the provisions of the Act of 1927 as to the making of such claims shall apply with the modification that the time for making a claim shall be any time not later than three months after the end of the period of occupation.

- (6) In this section any reference to an improvement qualifying for compensation under the Act of 1927 is a reference to an improvement in respect of which, immediately before the date of entry, the tenant of the holding in question had a prospective right to compensation under that Act on quitting the holding on the termination of his tenancy.
- (7) In determining whether the conditions specified in the last preceding subsection are fulfilled, no account shall be taken of any provisions of the Act of 1927 whereby a right to compensation is conditional upon the making of a claim, or is liable to be affected by the service of a notice by the landlord.
- (8) In this section "the Act of 1927" means the <sup>M3</sup>Landlord and Tenant Act 1927, and "improvement" includes the erection of a building.
- (9) In the application of this section to Scotland, for any reference to the Act of 1927, or to any provision thereof, there shall be substituted a reference to any term of the tenant's lease entitling him to compensation for improvements; and paragraph (c) of subsection (3) shall be omitted.

#### Marginal Citations

M3 1927 c. 36.

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### *Compensation in respect of other matters*

## **31 Compensation in respect of easements and other rights. E+W+S**

- (1) The provisions of this section shall have effect where, by reason of a compulsory rights order or of anything done in the exercise of rights conferred by such an order, the exercise of an easement or similar right over any land comprised in the order, or of any right restrictive of the use of any such land, is prevented or injuriously affected:

Provided that this section shall not apply to any easement or other right which consists of any such right as is mentioned in subsection (2) or subsection (3) of section seven of this Act.

- (2) For the year beginning with the operative date of the order, and for each subsequent year which begins with an anniversary of that date and falls [<sup>F196</sup>wholly or partly] within the period of occupation, the person for the time being entitled to the easement or right in question shall be entitled to compensation <sup>F197</sup> . . .

[<sup>F198</sup>(2A) Subject (where different persons have been entitled to the rights for different parts of the year) to any apportionment under section 35(3) of this Act, the liability to pay compensation under subsection (2) of this section shall fall on the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order.]

- (3) Where, after the end of the period of occupation, the exercise of the easement or right continues to be prevented or injuriously affected by reason of anything done during that period in the exercise of rights conferred by the compulsory rights order,—

(a) if that easement or right is appurtenant to, or the benefit thereof is in any other way annexed to, any land, the person who, at the end of the period of occupation, is the owner of that land shall be entitled to compensation from [<sup>F199</sup>the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order] of an amount equal to the diminution (if any) in the value of that land, in so far as any such diminution is attributable to the fact that the exercise of the easement or right is so prevented or injuriously affected;

(b) in any other case, the person who at the end of the period of occupation is entitled to the right in question shall be entitled to compensation from [<sup>F199</sup>the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order] of an amount equal to the market value which the right would then have if its exercise were not so prevented or affected, reduced by the amount of any market value which the right actually has at the end of that period.

- (4) For the purposes of paragraph (a) of the last preceding subsection the value of the land in question shall be taken to have been diminished if (and to the extent to which) the value of a freehold interest in that land at the end of the period of occupation is less than the value which such an interest would then have if the land comprised in the order, over which the easement or right is exercisable, were in the state in which it was immediately before the date of entry; and for the purpose of computing those values the provisions of subsection (4) of section twenty-three of this Act shall apply as they apply for the purposes of subsection (2) of that section, but with the substitution, for references to the holding, of references to the land to which the benefit of the easement or right is annexed.

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- (5) In relation to common or waste lands (within the meaning of the <sup>M4</sup>Lands Clauses Consolidation Act 1845) the Minister may make regulations modifying the operation of the preceding provisions of this section so as to secure that compensation under this section in respect of commonable or other rights (being rights which, if the land were being compulsorily purchased in accordance with that Act, would be subject to compensation assessed globally, and apportioned among the persons entitled to the rights) shall be assessed globally, and apportioned among the persons entitled thereto, in such manner as the Minister may consider appropriate.
- (6) In the application of this section to Scotland, for the reference to common or waste lands within the meaning of the <sup>M5</sup>Lands Clauses Consolidation Act 1845, there shall be substituted a reference to lands of the nature of commonity within the meaning of the Lands Clauses Consolidation (Scotland) Act 1845.

#### Textual Amendments

- F196** Words in s. 31(2) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 23(1)(a)** (with s. 40(7); S.I. 1994/2553, **art. 2**)
- F197** Words in s. 31(2) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, **Sch. 8 para. 23(1)(b)**, **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F198** S. 31(2A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 23(2)** (with s. 40(7); S.I. 1994/2553, **art. 2**)
- F199** Words in s. 31(3)(a)(b) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 23(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

#### Marginal Citations

- M4** 1845 c. 18.  
**M5** 1845 c. 19.

### [31A] <sup>F200</sup> **Compensation in respect of disposable minerals.** **E+W+S**

- (1) The provisions of this section shall have effect where—
- (a) any person ( “the operator”) exercises any right of his by virtue of a compulsory rights order and section 10(1) to this Act to get any minerals other than coal; and
  - (b) the land where the right is exercised was not comprised in that order in the circumstances specified in section 33(1) of this Act.
- (2) The person who, apart from the compulsory rights order and section 10(1) of this Act, would have been entitled to the minerals shall be entitled (subject to the following provisions of this section) to compensation from the operator of an amount equal to 12.5 per cent. of the market value of the minerals at the time when the right is exercised.
- (3) Where, in the case of any minerals, it would be reasonable for steps for making them saleable or for enhancing their value to be taken on the land between—
- (a) the time when those minerals are got, and
  - (b) any sale of the minerals by the operator from the land,
- it shall be assumed, for the purpose of determining the market value of those minerals as at the time mentioned in subsection (2) above, that the minerals were in the same condition at the time so mentioned as they would have been had those steps already been taken.



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- (4) Any question for the purposes of subsection (3) above as to the extent to which it would be reasonable for any steps to be taken in relation to any minerals shall be determined as at the time mentioned in paragraph (a) of that subsection and on the assumption that it is not reasonable for steps to be taken where the total cost to the operator of taking those steps is equal to or more than the difference between—
  - (a) what would be the market value of the minerals for the purposes of subsection (2) above if it were reasonable for those steps to be taken; and
  - (b) what would be their market value for those purposes if it were not;and for this purpose, where the minerals would not be saleable without the taking of those steps, the market value referred to in paragraph (b) above shall be taken to be nil.
- (5) Where more than one person is entitled to compensation under this section, the amount of compensation mentioned in subsection (2) above shall be apportioned between them according to the values of the interests or rights in respect of which each of them would have been entitled to, or to a share of, the minerals.
- (6) As soon as reasonably practicable, after the end of every period of twelve months during which any person has exercised such a right as is mentioned in subsection (1) above, that person shall give written notice under this subsection to every person appearing to him to be a person entitled to compensation under this section in respect of any exercise by him during that period of that right.
- (7) A notice under subsection (6) above shall—
  - (a) describe the minerals in respect of which the entitlement to compensation of the person given the notice arises; and
  - (b) state the amount appearing to the person giving the notice to be the amount which for the purposes of subsection (2) above is to be taken to be the market value of those minerals as at the time when the right in question was exercised in relation to those minerals.]

#### Textual Amendments

**F200** S. 31A inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 24(1)** (with s. 40(7) and subject to saving in **Sch. 8 para. 24(2)**); S.I. 1994/2553, **art. 2**

## 32 Compensation for depreciation of other land in same ownership. **E+W+S**

- (1) This section applies, in relation to a compulsory rights order, to any land which—
  - (a) does not form part of the land comprised in the order, or of any holding to which section seventeen or section twenty-nine of this Act applies, but
  - (b) immediately before the operative date of the order, is land wherein the interest of the owner is held by a person who is also the owner of the whole or part of the land comprised in the order.
- (2) Where a compulsory rights order has become operative, and in the case of any land which, in relation to that order, is land to which this section applies (in this and the next following subsection referred to as “the relevant land”) it is shown that for any year (being either the year beginning with the operative date of the order, or a year beginning with an anniversary of that date and falling [<sup>F201</sup>wholly or partly] within the period of occupation) the annual value of the relevant land is less than the annual value of that land would have been if—

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- (a) the land comprised in the order had not included any of the owner's land comprised therein, and
- (b) all the owner's land comprised in the order had remained in the state in which it was immediately before the operative date,

the person who is for the time being the owner of the relevant land shall be entitled to compensation <sup>F202</sup> . . . .

[<sup>F203</sup>(2A) Subject (where different persons have been entitled to the rights for different parts of the year) to any apportionment under section 35(3) of this Act, the liability to pay compensation under subsection (2) of this section shall fall on the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order.

(2B) For the purposes of subsection (2) of this section the annual value of any land for any year shall be taken to be an amount equal to the annual rent at which, immediately before the beginning of that year, that land, in the appropriate circumstances, might reasonably have been expected to be let from year to year under a contract of tenancy whereby the tenant undertook—

- (a) to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the land in a state to command that rent, and
- (b) not to carry out any operations on the land, or to make any change in the use thereof, for which permission would be required under Part III of the Act of 1990 or [<sup>F204</sup>Part III of the Town and Country Planning (Scotland) Act 1997], except any operations for which such permission has been granted and is in force immediately before the beginning of that year.]

[<sup>F205</sup>(3) For the purposes of subsection (2B) of this section, the appropriate circumstances—]

- (a) in determining the annual value of the relevant land for any year, shall be taken to be the actual circumstances existing immediately before the beginning of that year, and
- (b) in determining what would have been the annual value of the relevant land in the circumstances specified in paragraphs (a) and (b) of the last preceding subsection, shall be taken to be the circumstances specified in those paragraphs:

Provided that in either case the relevant land shall be assumed to have been available for letting with vacant possession immediately before the beginning of the year in question.

- (4) Where a compulsory rights order has become operative, and in the case of any land which, in relation to that order, is land to which this section applies it is shown that the value at the end of the period of occupation of the interest in that land which then constitutes the interest of the owner thereof (in this and the two next following subsections referred to as “the owner's interest in the relevant land”), computed in accordance with paragraph (a) of the next following subsection, is less than the value of that interest computed in accordance with paragraph (b) of that subsection, the person who at the end of that period is entitled to the owner's interest in the relevant land shall be entitled to compensation from [<sup>F206</sup>the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order, and that compensation shall be] of an amount equal to the difference.
- (5) For the purposes of the last preceding subsection there shall be computed the following values, that is to say,—

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- (a) the value at the end of the period of occupation of the owner's interest in the relevant land, assessed on the assumption that, in so far as any of the owner's land comprised in the order has not then been restored to the condition in which it was immediately before the date of entry, there will be carried out on that land in due course all such work as would qualify for compensation under section twenty-two of this Act;
  - (b) the value which, at the end of the period of occupation, the owner's interest in the relevant land would have if the entirety of the owner's land comprised in the order were in the state in which it was immediately before the date of entry.
- (6) In computing value as mentioned in paragraph (a) or paragraph (b) of the last preceding subsection, it shall be assumed that the owner's interest in the relevant land is, in the circumstances mentioned in the paragraph in question, being offered for sale subject to any incumbrances to which that interest is subject at the end of the period of occupation.
- (7) For the purposes of the operation of this section in relation to a compulsory rights order—
- (a) any reference to the owner's land comprised in the order is a reference to so much of the land comprised in the order as, immediately before the operative date, was land wherein the interest of the owner was held by the following person, that is to say,—
    - (i) where the reference in question is in subsection (2) of this section, the person who was then the owner of the relevant land within the meaning of that subsection;
    - (ii) where the reference is in subsection (5) of this section, the person who was then entitled to the owner's interest in the relevant land within the meaning of that subsection;
  - (b) any reference to work which would qualify for compensation under section twenty-two of this Act, in relation to any land, is a reference to work for the purpose of further restoring that land to or towards the condition in which it was immediately before the date of entry, or a condition substantially similar thereto, being work in respect of which (in so far as the nature of the work is concerned) expenses would be treated as reasonably incurred for the purposes of subsection (1) of that section; and
  - (c) any reference to the carrying out of any such work in due course is a reference to its being carried out at the first reasonable opportunity after the end of the period of occupation, or within a reasonable time after that opportunity arises.

#### Textual Amendments

- F201** Words in s. 32(2) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 25(1)(a)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F202** Words in s. 32(2) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, **Sch. 8 para. 25(1)(b)**, **Sch. 11 Pt. II**; S.I. 1994/2553, **art. 2**
- F203** S. 32(2A)(2B) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 25(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F204** Words in s. 32(2B)(b) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 5(4)**
- F205** S. 32(3) substituted (31.10.1994) for the words in s. 32(3) by 1994 c. 21, s. 52, **Sch. 8 para. 25(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

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**F206** Words in s. 32(4) substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 25(4) (with s. 40(7)); S.I. 1994/2553, art. 2

### 33 Compensation in respect of minerals. **E+W+S**

- (1) The provisions of the Fifth Schedule to this Act shall have effect where the land comprised in a compulsory rights order consists of or includes land which, immediately before the operative date of the order,—
- (a) is subject to a mining lease or order conferring working rights the benefit of which is held for the purposes of a mineral undertaking, or
  - (b) is land wherein the interest of the owner of the land or of any stratum thereof (whether on or below the surface) is held for the purposes of a mineral undertaking.
- (2) The provisions of this Part of this Act, other than this section, shall have effect subject to the provisions of that Schedule in cases falling within that Schedule.

*Supplementary provisions as to compensation*

### 34 Provisions as to compensation in special cases. **E+W+S**

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. **E+W+S**

- (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 [<sup>F207</sup>any person] 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) [<sup>F207</sup>every person potentially liable for the compensation shall, on account of any compensation that may become payable by him at the end of the year,] make such quarterly payments as may be reasonable in the circumstances;
  - (b) subject to the preceding paragraph, [<sup>F207</sup>the requirement to make payments shall not arise] until after the end of the year for which the compensation is payable;
  - (c) if the amount of the compensation payable [<sup>F208</sup>for any year by any person to another] 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 [<sup>F209</sup>for any year by any person to another] in respect of any such compensation (excluding any amount paid on account of interest) exceeds the principal amount of the compensation payable [<sup>F207</sup>for that year by that person to that other person, the person who paid it] (without prejudice to any right of recovery apart from this subsection) shall be entitled to deduct the amount of the overpayment from

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any compensation payable [<sup>F209</sup>by him to that other 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.
- [<sup>F210</sup>(4A) Any compensation payable under section 23A of this Act shall accrue due on the date when the person entitled to compensation enters into occupation, if after the end of the period of occupation, and at the end of the period of occupation in any other case.]
- (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.
- [<sup>F211</sup>(6A) Any compensation payable under section 31A of this Act shall accrue due at the end of the year in which the right in question is exercised.]
- (7) Any compensation payable <sup>F212</sup> . . . as mentioned in any of [<sup>F213</sup>subsections (4) to (6A)] 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 [<sup>F214</sup>; and references in this section to a person potentially liable to compensation, in relation to any time during a year at the end of which compensation may become payable under this Act, are references to the person on whom the liability to pay the compensation will fall at the end of the year if the person entitled to the rights conferred by the compulsory rights order in question does not change before the end of the year.]

*Status: Point in time view as at 01/04/2017.*

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

### Textual Amendments

- F207** Words in s. 35(1)(2) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 26(1)(2)**(with s. 40(7); S.I. 1994/2553, **art. 2**)
- F208** Words in s. 35(2)(c) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 26(2)(c)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F209** Words in s. 35(2)(d) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 26(2)(d)(i)(iii)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F210** S. 35(4A) inserted by **Coal Industry Act 1975 (c. 56), s. 6(2)**
- F211** S. 35(6A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 26(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F212** Words in s. 35(7) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 26(4), **Sch. 11 Pt. II** (with s. 40(7); S.I. 1994/2553, **art. 2**)
- F213** Words in s. 35(7) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 26(4)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F214** Words in s. 35(9) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 26(5)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

### Modifications etc. (not altering text)

- C11** S. 35 amended (11.2.1992) by S.I. 1992/46, **art. 2**

## 36 Record of condition of land. **E+W+S**

- (1) For the purpose of facilitating the assessment of compensation under this Part of this Act, [<sup>F215</sup>a person entitled to the rights conferred by a compulsory rights order] shall cause records to be made in accordance with the following provisions of this section.
- (2) In the case of [<sup>F216</sup>any compulsory rights order], where [<sup>F215</sup>any person has] published, served and affixed notices under subsection (2) of section five of this Act, [<sup>F215</sup>that person 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:

Provided that, in relation to an . . . <sup>F217</sup> 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) [<sup>F215</sup>the person entitled immediately before the end of the period of occupation to the rights conferred by the order shall, at the end of that period], 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 [<sup>F215</sup>any person has caused a record to be made under this section, he] 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

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- (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 [<sup>F215</sup>the person who served the record], 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), [<sup>F215</sup>the person who served the record] 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 [<sup>F215</sup>the person who served the record] 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 [<sup>F215</sup>the person who served the record] 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 [<sup>F215</sup>persons required to make records under this section], 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:
- 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.
- [<sup>F218</sup>(9A) If any person fails to cause any record to be made or served in accordance with any requirement imposed on him by this section—
- (a) his obligation to comply with that requirement shall be enforceable by the Coal Authority as if it were a duty owed by that person to that Authority; and
- (b) without prejudice to its rights by virtue of paragraph (a) above, that Authority may itself cause the record to be made and served in accordance with that requirement and may recover any expenses reasonably incurred in doing so from the person in contravention of that requirement.]
- (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.

*Status: Point in time view as at 01/04/2017.*

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#### Textual Amendments

- F215** Words in s. 36 substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 27(1)-(6)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F216** Words substituted by **Coal Industry Act 1975 (c. 56), Sch. 3 para. 7**
- F217** Words repealed by **Coal Industry Act 1975 (c. 56), s. 5(3), Sch. 5**
- F218** S. 36(9A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 27(7)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

### PART III **E+W+S**

#### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### 37 **Consequential adjustments between landlords and tenants and in respect of mortgages and mining leases and orders.** **E+W+S**

The provisions of the Seventh Schedule to this Act shall have effect as to matters arising between landlords and tenants, or (in England and Wales) between mortgagees and mortgagors, or in respect of mining leases or orders conferring working rights, as mentioned in that Schedule, in consequence of the coming into operation of a compulsory rights order or the occupation or use of land in the exercise of rights conferred by such an order.

#### 38 **Protection from compulsory purchase of land occupied for authorised purposes.** **E+W+S**

Where a compulsory purchase order (within the meaning of the Acquisition of Land Act or, in Scotland, the Scottish Acquisition of Land Act) has been submitted or prepared, and—

- (a) the land comprised in the order includes land [<sup>F219</sup>in respect of which opencast planning permission has been granted]and is for the time being occupied by [<sup>F220</sup>a relevant person] for the [<sup>F221</sup>purpose of carrying on the permitted activities], and
- (b) within the time limited for making objections to the order, [<sup>F220</sup>that relevant person gives] notice of that fact to the Minister to whom the order has been submitted, or by whom it has been prepared, as the case may be, specifying the land [<sup>F222</sup>in respect of which the permission was granted and] which is occupied as mentioned in the preceding paragraph,

the compulsory purchase order shall not be confirmed or made so as to authorise the compulsory purchase of any of the land specified in that notice, unless [<sup>F223</sup>the Secretary of State] is satisfied that it can be purchased without serious detriment to the [<sup>F224</sup>permitted activities]

[<sup>F225</sup>In this section “relevant person” means any licensed operator within the meaning of the Coal Industry Act 1994 or any person who is certified by the Coal Authority as a person whose application to that Authority for a licence under Part II of that Act is pending.]



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#### Textual Amendments

- F219** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 9\(a\)\(i\)](#)
- F220** Words in s. 38(a)(b) substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 28\(a\)\(b\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F221** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 9\(a\)\(ii\)](#)
- F222** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 9\(b\)](#)
- F223** Words substituted by virtue of S.I. 1969/1498, [arts. 2\(1\)](#), 5(6) and 1970/1537, arts. 2(2), 7(4)
- F224** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 9\(c\)](#)
- F225** Words in s. 38 inserted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 28\(c\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)

### 39 Entry on land. **E+W+S**

- (1) Where it appears to the Minister to be expedient that any land should be prospected—
- for the purpose of ascertaining whether the land contains coal suitable for working by opencast operations, and, if so, what quantity of such coal it contains, and how the coal in question could best be so worked, or
  - for the purpose of ascertaining whether the land would be suitable for use for any purposes connected with the working of coal on any adjacent land by opencast operations, including purposes of access and of restoring land affected by the working of coal by such operations,

the Minister may give a direction designating that land as land in relation to which, during such period as may [<sup>F226</sup>on the application of the Coal Authority] be specified in the direction, the powers conferred by the next following subsection are to be exercisable, subject to such conditions (if any) as may be specified in the direction.

- (2) Subject to the following provisions of this section, during any period for which, by virtue of such a direction, the powers conferred by this subsection are exercisable in relation to land designated in the direction, and subject to compliance with any conditions specified in the direction, any person authorised in writing by [<sup>F227</sup>the Coal Authority] may, at any reasonable time, for either of the purposes mentioned in the preceding subsection,—
- enter upon that land, or upon any other land to which entry is required for obtaining access to that land;
  - carry out on the land designated in the direction such operations as may be requisite, in relation to that land, for either of the purposes mentioned in the preceding subsection; and
  - remove from the land designated in the direction any samples of minerals or of other substances obtained by carrying out any such operations thereon, and dispose of any such samples as [<sup>F227</sup>the Coal Authority may think fit to authorise him to dispose of]:

Provided that nothing in this subsection shall be construed as authorising any interference with the exercise of a public right of way, or any contravention of a prohibition or restriction imposed by or under an enactment (whether contained in a public general Act or in any other Act).

- (3) Subject to the following provisions of this section, any person authorised in writing by [<sup>F227</sup>the Coal Authority] may, at any reasonable time, enter upon and survey any land (whether comprised in a direction under subsection (1) of this section or not),—

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- (a) for any purpose in connection with, or preparatory to, an application for [<sup>F228</sup>opencast planning permission] or the making or confirmation of any order under Part I of this Act; or
  - (b) (where [<sup>F229</sup>opencast planning permission] has been granted) for any purpose in connection with, or preparatory to, the carrying [<sup>F230</sup>on of any of the permitted activities] or the performance of any functions under Part I of this Act, not being a purpose for which a right of entry is exercisable apart from this paragraph; or
  - (c) for the purpose of estimating value, or assessing loss, in connection with any claim for compensation under this Act; or
  - (d) for the purpose of affixing on land any notice in accordance with [<sup>F231</sup>section 15A(4)(c) or any of the provisions of the], Second or Ninth Schedule to this Act.
- (4) Nothing in this section shall authorise any person to enter upon any land which is covered by buildings.
- (5) A person authorised under this section to enter upon any land shall, if so required, produce evidence of his authority before entering thereon, or while remaining thereon, and (subject to the following provisions of this section) shall not demand admission as of right to any land which is occupied unless forty-two days' notice of the intended entry has been given to the occupier and to the owner of the land:
- Provided that this subsection, in so far as it relates to the giving of notice, shall not apply where entry is required only for the purpose of affixing on land any notice in accordance with [<sup>F232</sup>section 15A(4)(c) or any of the provisions of the], Second or Ninth Schedule to this Act.
- (6) Where, in the exercise of the powers conferred by subsection (2) of this section, it is proposed to enter upon any land and carry out thereon any operations involving the excavation of the land, or the making of borings therein,—
- (a) the power to carry out those operations shall not be exercisable unless the notice under the last preceding subsection included notice of the intention to carry out those operations; and
  - (b) if the land in question is held by the persons carrying on a statutory undertaking, or [<sup>F233</sup>a sewerage undertaking or sewage disposal undertaking, or is held by a [<sup>F234</sup>water authority] or other drainage authority, and those persons or that authority object to the proposed operations on the ground that the carrying out thereof would be seriously detrimental to the carrying on of their undertaking, or, in the case of a [<sup>F234</sup>water authority] or other drainage authority, to] [<sup>F233</sup>by an internal drainage board, and those persons or that board object to the proposed operations on the ground that the carrying out of the operations would be seriously detrimental to the carrying on of their undertaking, or, in the case of an internal drainage board, to] the performance of their functions, the operations shall not be carried out except with the consent of the appropriate Minister.
- (7) Where in the exercise of any power conferred by this section any damage is caused to land or to chattels, any person interested in the land or chattels shall be entitled to compensation in respect of that damage from [<sup>F227</sup>the Coal Authority]; and where in consequence of the exercise of any such power any person is disturbed in his enjoyment of any land or chattels, he shall be entitled to compensation from [<sup>F227</sup>the Coal Authority] in respect of the disturbance.

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- [<sup>F235</sup>(7A) The persons who may be authorised by the Coal Authority to exercise the powers conferred by this section shall include any person who proposes to exercise those powers for the purposes and on behalf of any person who is or has applied to become a licensed operator within the meaning of the Coal Industry Act 1994; but where—
- (a) any person does exercise powers under this section for the purposes of such a person, and
  - (b) his written authority specifies that person and states that he is authorised to exercise those powers for the purposes and on behalf of that person,
- subsection (7) of this section shall have effect as if the references to the Coal Authority were references to the specified person.
- (7B) Any authorisation by the Coal Authority of any person for the purposes of the exercise of the powers conferred by this section, and any conditions of such an authorisation, may be revoked or varied by that Authority at any time.]
- (8) Any person who wilfully obstructs a person acting in the exercise of his powers under this section shall be liable on summary conviction to a fine not exceeding [<sup>F236</sup>level 1 on the standard scale].
- (9) Any power conferred on a person by virtue of this section shall be exercisable by him either alone or with other persons, and shall be exercisable together with any vehicles, apparatus, materials or animals required for the purpose for which the power is exercised.
- (10) Any reference in this section to Part I of this Act, or to the . . . <sup>F237</sup>Second Schedule thereto, includes a reference to the provisions of any enactment as applied by the said Part I, or by that Schedule, as the case may be.

#### Textual Amendments

- F226** Words in s. 39(1) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 29(1)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F227** Words in s. 39(2)(3)(7) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 29(2)(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F228** Words substituted by **Housing and Planning Act 1986** (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 10(a)**
- F229** Words substituted by **Housing and Planning Act 1986** (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 10(b)(i)**
- F230** Words substituted by **Housing and Planning Act 1986** (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 10(b)(ii)**
- F231** Words substituted by **Housing and Planning Act 1986** (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 10(c)**
- F232** Words substituted by **Housing and Planning Act 1986** (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 11**
- F233** Words substituted (E.W.) by **Water Act 1989** (c. 15, SIF 130), s. 190(1), **Sch. 25 para. 26(4)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 16(2), 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1), 17, 40(4), 57(6), 58)
- F234** Words substituted by virtue of **Water Act 1973** (c. 37), **s. 9**
- F235** S. 39(7A)(7B) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 29(5)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F236** S. 39(8) for “twenty pounds” there is substituted “level 1 on the standard scale” by virtue of (E.W.) **Criminal Justice Act 1982** (c. 48, SIF 39:1), **ss. 38, 46** and (S.) **Criminal Procedure (Scotland) Act 1975** (c. 21, SIF 39:1), **ss. 289F, 289G**
- F237** Words repealed by **Housing and Planning Act 1986** (c. 63, (SIF 86), s. 39(4), **Sch. 12 Pt. II**

#### Modifications etc. (not altering text)

- C12** Functions of Minister of Agriculture, Fisheries and Food under s. 39 now exercisable (W.) by Secretary of State for Wales: S.I. 1978/272, **Sch. 3 para. 1**

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- C13** S. 39 modified by Gas Act 1986 (c. 44, SIF 44:2), s. 67(1), **Sch. 7 para. 2(9)(b)**
- C14** S. 39 modified (E.W.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1), **Sch. 16 para. 3(1)(b)**
- C15** S. 39 modified (S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1), **Sch. 16 para. 3(2)(9)**
- C16** S. 39(2) restricted (31.10.1994) by 1994 c. 21, s. 52(2)(3); S.I. 1994/2553, **art. 2**
- C17** S. 39: references in subsections (3)(d) and (5) to section 15A(4)(c) to be construed (*retrospective to 11.12.1987*) as references to 15A(5)(c) by 1994 c. 21, s. 52, **Sch. 8 para. 29(4)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- S. 39 modified (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. para. 10(a)**; S.I. 1996/218, **art. 2**
- C18** S. 39(6)(b) modified (1.4.2001) by 2000 c.38, s. 37, **Sch. 5 para. 1** (with s. 106); S.I. 2001/869, **art. 2**
- C19** S. 39(6)(b) extended by Post Office Act 1969 (c. 48), **Sch. 4**, para. 93(1)(xiv)(2)(f)
- C20** S. 39(6)(b) extended by Civil Aviation Act 1982 (c. 16, SIF 9), **Sch. 2 para. 4**

#### 40 **Claims for compensation payable by [F238 Corporation] E+W+S**

- (1) Compensation under this Act shall not be payable by [F239 any person] unless a claim for it is duly made to [F239 that person].
- (2) Regulations made under this section by the Minister may—
- require claims for compensation under this Act to be made in such form, and within such time, as may be prescribed by the regulations;
  - require a claimant to provide such evidence in support of the claim, and such information as to the interest of the claimant in land to which the claim relates, and as to the interests of other persons therein which are known to the claimant, as may be so prescribed;
  - include provisions as to professional and other fees incurred by claimants in preparing and supporting claims for compensation under this Act, requiring [F239 any person], 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:

Provided that no such regulations, in so far as they are made under paragraph (c) of this subsection, shall apply to the costs of any proceedings before a court or tribunal, or shall affect any power of a court or tribunal with respect to any such costs.

- (3) Any dispute—
- as to a right to compensation from [F239 any person] under this Act, or as to the amount of any such compensation, or
  - as to a right to the payment of any fees by virtue of regulations made under this section, or under section thirty-six of this Act, or as to the amount of the fees payable in any case by virtue of any such regulations, or
  - as to the amount of the quarterly payments payable in accordance with subsection (2) of section thirty-five of this Act in respect of any such compensation as is mentioned in that subsection,

shall be determined by [F240], in the application of this Act to England and Wales, the Upper Tribunal or, in the application of this Act to Scotland, the Lands Tribunal for Scotland].

- (4) References in this section to compensation under this Act do not include any compensation payable in accordance with any enactment applied by section thirteen or section sixteen of this Act, or any sum payable in accordance with any enactment applied by section forty-five of this Act.

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- (5) In the application of this section to Scotland, any reference to costs shall be construed as a reference to expenses.

#### Textual Amendments

- F238** Word substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**
- F239** Words in s. 40(1)(2)(c)(3) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 30(1)(2)** (with s. 40(7); S.I. 1994/2553, **art. 2**)
- F240** Words in s. 40(3) substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307), art. 1, **Sch. 1 para. 32** (with Sch. 5)

#### 41 Provisions as to allotment gardens and other allotments. **E+W+S**

- (1) The provisions of the Eighth Schedule to this Act shall have effect with respect to tenancies of allotments (including tenancies of allotment gardens).
- (2) In this Act “allotment” has the meaning assigned to it by section three of the <sup>M6</sup>Allotments Act 1922, and “allotment garden” has the meaning assigned to it by section twenty-two of that Act.
- (3) In the application of this Act to Scotland, “allotment” has the like meaning as in the Allotments (Scotland) Acts 1892 to 1950, and “allotment garden” has the meaning assigned to it by section nineteen of the <sup>M7</sup>Allotments (Scotland) Act 1922.

#### Marginal Citations

- M6** 1922 c. 51.  
**M7** 1922 c. 52.

#### 42 Special provisions as to property held for religious purposes. **E+W+S**

- (1) The provisions of this section shall have effect where any compensation is payable by [<sup>F241</sup>any person (“the person liable”)] under this Act, and apart from this section would be payable to a person in right of an interest in land held by him for religious purposes:
- Provided that this section shall not apply to any compensation payable by virtue of section twenty-two of this Act.
- (2) If the land [<sup>F242</sup>, not being land in Scotland, Wales or Monmouthshire,] is ecclesiastical property, the compensation shall be paid to the [<sup>F243</sup>Church Commissioners][<sup>F243</sup>Diocesan Board of Finance for the diocese in which the land is situated].
- (3) If the land, being land in Scotland, is property belonging to the Church of Scotland, the compensation shall be paid to the general treasurer of that Church.
- (4) If, in the case of land not falling within subsection (2) or subsection (3) of this section, [<sup>F241</sup>the person liable is] so requested by or on behalf of a body of persons notified to [<sup>F241</sup>the person liable] by the Minister, after consultation with such persons or organisations as he may think appropriate, as the appropriate representative body, [<sup>F241</sup>the person liable] shall pay the compensation to that representative body.

*Status: Point in time view as at 01/04/2017.*

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- (5) Where apart from this section compensation would be payable to a person as the owner of land, and—
- (a) by virtue of subsection (2) or subsection (4) of this section the compensation is payable to the [<sup>F244</sup>Church Commissioners][<sup>F244</sup>Diocesan Board of Finance for the diocese in which the land is situated] or a representative body, and
  - (b) by virtue of the operation in relation to that land of section twenty-four or section thirty of this Act, compensation is recoverable from him by another person,
- the [<sup>F244</sup>Church Commissioners][<sup>F244</sup>Diocesan Board of Finance for the diocese in which the land is situated] or representative body, as the case may be, shall indemnify him against any liability in respect of the compensation referred to in paragraph (b) of this subsection, and for that purpose may apply any money or securities held by them.
- (6) [<sup>F245</sup>Where any ecclesiastical property is vested in the incumbent of a benefice which is vacant, it shall be treated for the purposes of this Act as being vested in the Diocesan Board of Finance for the diocese in which the land is situated.]
- (7) In this section “ecclesiastical property” means property belonging to an ecclesiastical benefice [<sup>F246</sup>of the Church of England], or being or forming part of a church subject to the jurisdiction of a bishop of a diocese [<sup>F246</sup>of the Church of England] or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction.

#### Textual Amendments

- F241** Words in s. 42(1)(4) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 31(1)(2)** (with s. 40(7); S.I. 1994/2553, **art. 2**)
- F242** Words in s. 42(2) omitted (E.) (1.10.2006) by virtue of [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), **Sch. 5 para. 6(b)**; 2006 No. 2, Instrument made by Archbishops
- F243** Words in s. 42(2) substituted (E.) (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), **Sch. 5 para. 6(a)**; 2006 No. 2, Instrument made by Archbishops
- F244** Words in s. 42(5) substituted (E.) (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), **Sch. 5 para. 6(a)**; 2006 No. 2, Instrument made by Archbishops
- F245** S. 42(6) substituted (E.) (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), **Sch. 5 para. 6(c)**; 2006 No. 2, Instrument made by Archbishops
- F246** Words in s. 42(7) inserted (E.) (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\)](#), s. 16(2), **Sch. 5 para. 6(d)**; 2006 No. 2, Instrument made by Archbishops

#### 43 Provisions as to mortgaged land and other special cases. **E+W+S**

- (1) For the purposes of Part II of this Act in its application to land in which there is an interest which is subject to a mortgage, a mortgagee shall not be taken to be entitled to occupy that land, or to be the person, who, but for a compulsory rights order, would be entitled to occupy it, unless—
- (a) the interest which is subject to the mortgage is the interest of the person who (apart from the mortgage) is entitled to occupy that land, or who would, but for the compulsory rights order, be entitled to occupy it, and
  - (b) the mortgagee is, to the extent of the interest comprised in the mortgage, and subject to the rights conferred by the compulsory rights order, in possession of the land or of the rents and profits thereof.

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- (2) If, in the circumstances specified in paragraphs (a) and (b) of the last preceding subsection, a mortgagee is the person entitled to any annual compensation under Part II of this Act, any such compensation paid to him shall be applied by him in or towards the satisfaction of interest arising under the mortgage, and, in so far as not so applied, shall be applied towards the reduction of the principal debt secured by the mortgage.
- (3) Where under subsection (2) of section thirty-two of this Act a person is entitled to compensation as the owner of any land, and his interest in that land is subject to a mortgage and the mortgagee is, to the extent of that interest, in possession of the land or of the rents and profits thereof, the compensation shall be paid<sup>F247</sup> . . . to the mortgagee, and shall be paid or applied by him as mentioned in the last preceding subsection.
- (4) Where any compensation payable<sup>F247</sup> . . . under this Act, not being annual compensation or compensation under section twenty-two of this Act, is payable in right of an interest in land which is subject to a mortgage,—
- (a) a claim for the compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest; and
  - (b) the compensation payable in respect of the interest shall be paid<sup>F247</sup> . . . to the mortgagee, or, where there is more than one mortgage, shall be payable to the first mortgagee, and, subject to the next following subsection, shall in either case be applied by him as if it were proceeds of sale.
- (5) Where apart from the last preceding subsection any compensation falling within that subsection would be payable to a person as the owner of land which is subject to a mortgage, and—
- (a) by virtue of the last preceding subsection that compensation is payable to a mortgagee, and
  - (b) by virtue of the operation in relation to that land of section twenty-four or section thirty of this Act, compensation is recoverable from him by another person,
- the compensation paid to the mortgagee shall be applied by him in the first place in or towards the payment of the compensation referred to in paragraph (b) of this subsection, and any balance shall be applied as if it were proceeds of sale.
- (6) Where any compensation falling within subsection (4) of this section is payable in right of an interest in land which is subject to a settlement, or is otherwise held in such a manner that the person entitled to that interest would not be competent to give an effective discharge for the proceeds of a sale thereof, that compensation shall be paid<sup>F247</sup> . . . to the person who would be competent to give such a discharge.
- (7) In this section “annual compensation” means any such compensation as is mentioned in subsection (2) of section thirty-five of this Act.
- (8) In the application of this section to Scotland—
- (a) for references to a mortgage, to a mortgagor and to a mortgagee there shall be substituted respectively references to a heritable security, to a debtor in a heritable security and to a heritable creditor;
  - (b) for references to the first mortgagee there shall be substituted references to that heritable creditor whose security has priority over any other heritable securities secured on the same interest; and
  - (c) for any reference to the application of a sum as if it were proceeds of sale there shall be substituted a reference to the application of a sum as if it were the

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price realised on the sale by a heritable creditor of land subject to a heritable security.

#### Textual Amendments

**F247** Words in s. 43 repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 32, Sch. 11 Pt. II (with s. 40(7); S.I. 1994/2553, art. 2

#### 44 Crown land. **E+W+S**

- (1) Subject to the provisions of this section, the provisions of this Act shall apply in relation to land in which there is a Crown or Duchy interest as they apply in relation to land in which there is no such interest:

Provided that (subject to any express provision in this Act to the contrary) the provisions of this Act shall not apply to any land in which there is a Crown or Duchy interest, but no private interest other than any interest belonging to [<sup>F248</sup>the Coal Authority].

- (2) Except with the consent of the appropriate authority—
- (a) no compulsory rights order shall be made in respect of any land in which for the time being there is a Crown or Duchy interest;
  - (b) no order shall be made under section sixteen of this Act in respect of any such land;
  - (c) the powers conferred by section thirty-nine of this Act shall not be exercisable in relation to any such land:

Provided that nothing in this section shall affect the validity or operation of an order, or the exercise of any power, as against any person having, in or over the land in question, any interest or right other than a Crown or Duchy interest.

- (3) Where a compulsory rights order is, with the consent of the appropriate authority, made in respect of land in which there is a Crown or Duchy interest, that interest (in so far as the order confers rights exercisable as against all persons directly concerned) shall be treated as not being the interest of a person directly concerned, and no compensation shall be payable <sup>F249</sup> . . . under Part II of this Act in respect of that interest.

- (4) In this section “Crown or Duchy interest” means an interest belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department; “private interest” means an interest which is not a Crown or Duchy interest; and “the appropriate authority”—

- (a) in relation to land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners, and, in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land [<sup>F250</sup>or the relevant person] ;
- (b) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy;
- (c) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; and



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- (d) in relation to land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department;

and if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

[<sup>F251</sup>(4A) In subsection (4), “relevant person”, in relation to any land to which section 90B(5) of the Scotland Act 1998 applies, means the person who manages that land.]

- (5) The preceding provisions of this section shall apply in relation to land which is subject to a right restrictive of the use thereof, being a right the benefit of which is annexed to land in which there is a Crown or Duchy interest, or (not being so annexed) belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belongs to the Duchy of Cornwall, or belongs to a government department, or is held in trust for Her Majesty for the purposes of a government department, as those provisions apply in relation to land in which there is a Crown or Duchy interest:

Provided that those provisions shall so apply with the necessary modifications, and, in particular, as if the proviso to subsection (1) of this section were omitted, and, in paragraphs (a) to (d) of the last preceding subsection, any reference to land belonging as therein mentioned were a reference to a right the benefit of which belongs, or is annexed to land belonging, as therein mentioned.

#### Textual Amendments

**F248** Words in s. s. 44(1) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 33(a)** (with s. 40(7); S.I. 1994/2553, **art. 2**)

**F249** Words in s. 44(3) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, **Sch. 8 para. 33(b)**, **Sch. 11 Pt. II**

**F250** Words in s. 44(4)(a) inserted (1.4.2017) by The Crown Estate Transfer Scheme 2017 (S.I. 2017/524), **art. 1(2)**, **Sch. 5 para. 8(a)**

**F251** S. 44(4A) inserted (1.4.2017) by The Crown Estate Transfer Scheme 2017 (S.I. 2017/524), **art. 1(2)**, **Sch. 5 para. 8(b)**

#### 45 Provisions as to telegraphic lines. **E+W+S**

- (1) Notwithstanding anything in Part I of this Act, none of the rights or powers conferred thereby or by any order made thereunder shall authorise any interference with any [<sup>F252</sup>[<sup>F253</sup>electronic communications apparatus] kept installed for purposes of [<sup>F254</sup>an electronic communications code network] or include any right or power to require any such apparatus to be altered.]
- [<sup>F255</sup>(2) Where [<sup>F256</sup>opencast planning permission has been granted], paragraph 23 of [<sup>F257</sup>the electronic communications code] (which provides a procedure for certain cases where works involve the alteration of [<sup>F253</sup>electronic communications apparatus]) shall apply [<sup>F258</sup>for the purposes of any permitted activities to the person with the benefit of that permission].]
- <sup>F259</sup>(3) Where in pursuance of an order made under . . . <sup>F260</sup> section fifteen of this Act, a public right of way is suspended, and, immediately before the date on which that order became operative, there was under, in, upon, over, along or across the way to which the order relates a [<sup>F261</sup>[<sup>F253</sup>electronic communications apparatus] kept installed for the purposes of [<sup>F254</sup>an electronic communications code network], the operator of [<sup>F262</sup>that

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network] shall have the same rights in respect of that apparatus]as if the order had not become operative:

Provided that this subsection shall have effect without prejudice to the provisions of the last preceding subsection.

[<sup>F263</sup>(4) Paragraph 1(2) of [<sup>F257</sup>the electronic communications code] (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of subsection (1) above as it applies for the purposes of that code.]

(5) ..... <sup>F264</sup>

**Textual Amendments**

- F252** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 38(2), **Sch. 5 para. 45**
- F253** Words in s. 45 substituted (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 17 para. 27(1)(a)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))
- F254** Words in s. 45 substituted (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 17 para. 27(1)(b)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))
- F255** S. 45(2), substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 38(3), **Sch. 5 para. 45**
- F256** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), **Sch. 8 para. 12(a)**
- F257** Words in s. 45 substituted (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 17 para. 27(1)(c)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))
- F258** Words in s. 45(2) substituted (31.10.1994) by [1994 c. 21, s. 52](#), **Sch. 8 para. 34** (with s. 40(7); S.I. 1994/2553, **art. 2**)
- F259** Word in s. 45(3) repealed (25.7.2003 for specified purposes and for further purposes 29.12.2003) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 19(1)** Note 1 (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 3(3))
- F260** Words repealed by [Coal Industry Act 1975 \(c. 56\)](#), s. 5(3), **Sch. 5**
- F261** Words substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 38(4), **Sch. 5 para. 45**
- F262** Words in s. 45 substituted (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 17 para. 27(1)(d)** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))
- F263** S. 45(4) substituted by [Telecommunications Act 1984 \(c. 12, SIF 96\)](#), s. 109, Sch. 4 para. 38(5), **Sch. 5 para. 45**
- F264** S. 45(5) repealed by [Coal Industry Act 1975 \(c. 56\)](#), s. 5(3), **Sch. 5**

<sup>F265</sup>(1) .....

(2) ..... <sup>F266</sup>

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#### Textual Amendments

**F265** S. 46(1) repealed (31.10.1994) by 1994 c. 21, s. 67, **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F266** S. 46(2) repealed by **Housing and Planning Act 1986** (c. 63, SIF 86), s. 39(4), **Sch. 12 Pt. II**

#### 47 Provisions as to notices and public inquiries. **E+W+S**

- (1) The provisions of the Ninth Schedule to this Act shall have effect as to the service of notices under this Act.
- (2) Subsections (2) to (5) of [<sup>F267</sup>section 250 of the <sup>M8</sup>Local Government Act 1972] (which relate to local inquiries) shall have effect in relation to any inquiry held under this Act in relation to land in England or Wales . . . <sup>F268</sup> . . . <sup>F269</sup>
- (3) [<sup>F270</sup>Subsections (2) to (8) of section 210 of the <sup>M9</sup>Local Government (Scotland) Act 1973], shall have effect in relation to any inquiry held under this Act in relation to land in Scotland, including any inquiry so held under any provisions of the Scottish Acquisition of Land Act as applied by this Act.

#### Textual Amendments

**F267** Words substituted by virtue of **Local Government Act 1972** (c. 70), s. 272(2)

**F268** Words repealed by **Acquisition of Land Act 1981** (c. 67, SIF 28:1), s. 34(3), **Sch. 6 Pt. I**

**F269** Words spent

**F270** Words substituted by virtue of **Local Government (Scotland) Act 1973** (c. 65), s. 237(2)

#### Marginal Citations

**M8** 1972 c. 70.

**M9** 1973 c. 65.

#### 48 Transitional provisions. **E+W+S**

F271

#### Textual Amendments

**F271** S. 48 repealed by **Housing and Planning Act 1986** (c. 63, SIF 86), s. 39(4), **Sch. 12 Pt. II**

#### 49 Provisions as to regulations and orders. **E+W+S**

- (1) The Minister may make regulations prescribing anything authorised or required to be prescribed for the purposes of any provision of this Act, or for the purposes of any enactment applied by or incorporated with this Act, except any provision whereby anything is expressly authorised or required to be prescribed by some other Minister of the Crown or government department.
- (2) Any power to make regulations under this Act shall be exercisable by statutory instrument; and any instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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- (3) The power to make orders under subsection (5) of section twenty-six of this Act, under subsection (5) of section twenty-eight of this Act, and under subsection (8) of section thirty-five of this Act, shall be exercisable by statutory instrument; and any instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subject to the following provisions of this section, any power conferred by this Act to make an order or give any directions shall include power, subject to the like provisions and conditions, to vary or revoke the order or directions by a subsequent order or subsequent directions, as the case may be.
- [<sup>F272</sup>(4A) A compulsory rights order may, by notice to the person entitled to the rights conferred by the order, be revoked at any time—
- (a) by the Coal Authority, if it is satisfied that that person has consented to the revocation; or
  - (b) by the Secretary of State, if he is satisfied that that person has contravened, or is contravening, any of the provisions of the order or any requirement otherwise imposed on that person by or under this Act.
- (4B) Where in the case of any compulsory rights order made or confirmed at any time on or after the restructuring date (within the meaning of the Coal Industry Act 1994), it appears to the Coal Authority—
- (a) that the order would not have been made or confirmed, or would not have extended to certain interests or rights, if a person to whom a relevant offer was made had accepted it,
  - (b) that that person has, since the making of the order, made a written offer to the person entitled to the rights conferred by it (“the operator”) to enter into an agreement on the terms of the relevant offer,
  - (c) that the written offer was made either at a time before the specification of a date in relation to the order as the date of entry or at a time more than twenty-eight days before any date so specified,
  - (d) that the person making the offer will enter into an agreement with the operator on those terms if the order is revoked or varied under this subsection, and
  - (e) that the circumstances (apart from the expiration or rejection of the relevant offer and the making and confirmation of the order) are not such as to make it unreasonable for the operator to be required to treat the terms of the relevant offer as still available for acceptance,
- that Authority may, by notice to the operator and subject to such conditions as it thinks fit, either revoke the order or vary it by limiting it so that it does not extend to the interests and rights of the person who is offering to be bound by an agreement on the terms he previously failed to accept.
- (4C) In subsection (4B) above “relevant offer”, in relation to a compulsory rights order, means any offer which—
- (a) was made by the applicant for the order to a person who is one of the persons directly concerned; and
  - (b) was an offer as to the terms on which the applicant was willing (instead of requiring rights as against that person to be conferred by a compulsory rights order) to enter into an agreement with that person.]
- (5) A compulsory rights order shall not be varied by extending the period for which it is to have effect:

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[<sup>F273</sup>Provided that where the period specified in the order is less than twenty years, this subsection shall not prevent the variation of the order by the extension of that period, if the period as extended does not exceed twenty years].

- (6) Subsection (4) of this section shall not affect the revocation of an order made by virtue of section fifteen of this Act where, in accordance with subsection (4) of that section, the Minister is required to revoke the order.

#### Textual Amendments

**F272** S. 49(4A)-(4C) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 35** (with s. 40(7)); S.I. 1994/2553, **art. 2**

**F273** S. 49(5) proviso substituted by Coal Industry Act 1975 (c. 56), **Sch. 3 para. 8**

#### 50 Expenses. **E+W+S**

Any expenses incurred for the purposes of this Act by the Minister shall be payable out of moneys provided by Parliament.

#### 51 Interpretation. **E+W+S**

- (1) In this Act, except in so far as the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

<sup>F274</sup> . . .

[<sup>F275</sup>“the Act of 1986” means the <sup>M10</sup>Agricultural Holdings Act 1986;]

[<sup>F276</sup> “ the Act of 1995 ” means the Agricultural Tenancies Act 1995; ]

[<sup>F277</sup>“the Act of 1971” ] means the [<sup>F277</sup>Town and Country Planning Act 1971];

“The Act of 1948” means the Agricultural Holdings Act 1948;

[<sup>F278</sup>“The Act of 1990” means the Town and Country Planning Act 1990;]

“agriculture” has the same meaning as in the Agriculture Act 1947, and “agricultural” (except in the expressions “agricultural holding” and “agricultural land”) shall be construed accordingly;

“agricultural holding” has the meaning assigned to it by section one of the [<sup>F279</sup>Act of 1986]; “agricultural land” means land used for agriculture which is so used for the purposes of a trade or business;

<sup>F280</sup> . . . . .

[<sup>F281</sup> “ appropriate Minister ” means—

(a) in relation to statutory undertakers carrying on any railway, light railway, tramway, road transport, dock, harbour or pier undertaking, [<sup>F282</sup> the Minister of Transport];

(b) in relation to statutory undertakers carrying on an undertaking for the supply of <sup>F283</sup> . . . hydraulic power, the [<sup>F284</sup>Secretary of State for Trade and Industry];

(c) in relation to the Civil Aviation Authority or statutory undertakers carrying on any lighthouse undertaking, the Secretary of State for Trade;

(d) <sup>F285</sup> . . . . .

(e) in relation to any [<sup>F286</sup> internal drainage board], the Minister of Agriculture, Fisheries and Food;

(f) <sup>F287</sup> . . . . . and

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(g) in all other cases, the Secretary of State for the Environment.]

F288

F289

“coal” means bituminous coal, cannel coal and anthracite;

“compulsory rights order” has the meaning assigned to it by section four of this Act;

F290

“date of entry” has the meaning assigned to it by section five of this Act;

F291

“emergency powers” means any powers exercisable by virtue of the Defence (General) Regulations, 1939, or by virtue of the Requisitioned Land and War Works Act 1945, or by virtue of the prerogative of the Crown;

[<sup>F292</sup> “ farm business tenancy ” has the same meaning as in the Act of 1995; ]

“functions” includes powers and duties, and references to the performance of functions shall be construed accordingly;

“incumbrance”, in relation to any land, includes any interest in or right over that land (including any such right inuring for the benefit of the public or of a section thereof);

“land” includes land covered by water;

“local planning authority” and “local authority” have the meanings assigned to them by [<sup>F293</sup> the Act of 1971];

“minerals” includes stone, slate, clay, gravel, sand and similar deposits;

“mineral undertaking” means an undertaking for the working and getting of minerals, whether by underground or by surface working;

“mining lease” means a lease for the purpose of working and getting minerals, whether by underground or by surface working; and in this definition “lease” includes an underlease and an agreement for a lease or underlease and a tenancy agreement, and also includes a licence, but does not include an option to take a lease, underlease or tenancy agreement, and does not include a mortgage;

“the Minister” means [<sup>F294</sup> the Secretary of State];

“mortgage” includes any charge or lien on property for securing money or money’s worth, and “mortgagee” and “mortgagor” shall be construed accordingly;

“National Trust” has the same meaning as in the Act of 1947;

F295

[<sup>F296</sup> “ opencast planning permission ” means planning permission which permits [<sup>F297</sup> the working of coal by opencast operations or the carrying out of ] operations incidental to such working; ]

“operative date” has the meaning assigned to it by section four of this Act;

“order conferring working rights” means an order made under [<sup>F298</sup> the Mines (Working Facilities and Support) Act 1966];

“owner” in relation to land, subject to the next following subsection, means the estate owner in respect of the fee simple thereof;

“period of occupation” has the meaning assigned to it [<sup>F299</sup> by section 5 of this Act];

[<sup>F300</sup> “ permitted activites ” means—

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- (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;];

“persons directly concerned” has (subject to the provisions of sections seven and eight of this Act) the meaning assigned to it [F299]by section 5 of this Act];

[F301]“planning permission” means planning permission under Part III of [F302]the Act of 1990]]

“prescribed” means prescribed by regulations made under this Act;

“restoration”, in relation to land, includes rehabilitation, and “restore” shall be construed accordingly;

F303 .....

F304 . . .

F304 . . .

“statutory undertakers” and “statutory undertaking” have the same meanings as in [F293]the Act of 1971]] [F305](but excluding a universal service provider within the meaning of [F306]Part 3 of the Postal Services Act 2011] and his undertaking)];

[F307]“successor”, in relation to an applicant for an order under any provision of this Act, means any person (whether or not the immediate successor of the applicant) who—

- (a) in accordance with the provisions of any licence granted to the applicant under Part II of the Coal Industry Act 1994, succeeds to any entitlement of that applicant under that licence to work any coal by opencast operations; or
- (b) becomes entitled by virtue of the grant of a new licence under that Part of that Act to work by such operations any coal which the applicant was previously entitled so to work as a licensed operator within the meaning of that Act;]

.....

“tenancy” has the meaning assigned to it by the Landlord and Tenant Act 1954;

“termination”, in relation to a tenancy, means the cesser of the tenancy, whether by effluxion of time or for any other reason;

“year” means any period of twelve months.

[F308](1A) References in this Act, in relation to any opencast planning permission, to the person with the benefit of that permission shall be construed as a reference to any person who—

- (a) is able, on account of his having all such interests or rights as (apart from that permission) he requires for the purpose, to carry out any of the permitted activities; or
- (b) would be so able if the rights which he had and was entitled to exercise included any such right as he has applied for, or is entitled to apply for, under this Act or any right which has been conferred on him under this Act but has not yet become exercisable.]

(2) In relation to any land which is subject to a long tenancy, “owner” in this Act means the person entitled to that tenancy, so however that for the purposes of this subsection a long tenancy, which is in reversion expectant (whether immediately or not) upon the termination of another long tenancy, shall be disregarded.

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

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In this subsection “long tenancy” means a tenancy granted for a term of years certain, being a term of ninety-nine years or more, whether subsequently extended (by act of the parties or by virtue of any enactment) or not.

- (3) In this Act “similar right”, where the reference is to an easement or similar right in relation to any land, means any of the following rights, that is to say, any right to take game or fish or other sporting right exercisable in respect of that land, any right to fell and remove trees standing thereon, any right to take timber or other wood, water, turf or other materials therefrom, any right to work minerals thereon (otherwise than by virtue of a mining lease or of an order conferring working rights), and any right to depasture cattle or other animals thereon, except any such sporting or other right which—

- (a) subsists only as a right incidental to the ownership of the land in question, or to some other interest therein, or to a right to occupy that land, or
- (b) is exercisable by virtue of a licence granted otherwise than for valuable consideration;

and any right over land which constitutes an easement or similar right in relation thereto, if apart from this subsection it would not constitute an interest in that land, shall be treated for the purposes of this Act as constituting an interest therein.

- (4) For the purposes of any provision of this Act, in so far as it refers to the state or condition in which land was at a time specified in that provision, regard shall be had to all matters relevant to the state or condition of the land at that time, including (but without prejudice to the generality of this subsection) the characteristics of the soil (whether on or below the surface), the presence of any minerals in or under the land, the growth of trees, hedges or other vegetation thereon, and any buildings, structures, apparatus or other works which were on, in, under or over the land at that time; and any reference in any provision of this Act to the state or condition in which land would have been, or might reasonably have been expected to be, in circumstances specified in that provision, shall be construed accordingly.
- (5) Any reference in this Act to the working of coal by opencast operations includes a reference to the getting and winning of coal worked by such operations, and to the carrying away of any such coal from the land on which it has been worked.
- (6) Any reference in this Act to the working of coal or other minerals on any land, or to the carrying out of any other operations on any land, shall be construed as including a reference to the working of the coal or other minerals, or the carrying out of those operations, as the case may be, in or under that land.
- (7) For the purposes of this Act waste heaps and other deposits resulting from the working of minerals shall be taken to form part of the land on which they are situated, if apart from this subsection they would not be taken to form part thereof, and any reference in this Act to the working of minerals on, in or under land, or to underground or surface working, shall be construed accordingly.
- (8) In relation to land comprised in a compulsory rights order, any reference in this Act to the person who would be entitled to occupy that land if the order had not been made shall be construed, in relation to any time before the date of entry thereunder, as a reference to the person who is for the time being entitled to occupy that land.
- (9) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment.



*Status: Point in time view as at 01/04/2017.*

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

- (10) In the application of this section to Scotland, for references to an underlease there shall be substituted references to a sublease, references to the Public Health Act 1936, shall be omitted, and in subsection (2) the words from “so however that” to “disregarded” shall be omitted.

### Textual Amendments

- F274** Definition “the Acquisition of Land Act” repealed (E.W.) by [Acquisition of Land Act 1981 \(c. 67, SIF 28:1\)](#), s. 34(3), **Sch 6 Pt. I**
- F275** Definition inserted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 4 para. 31(a)**
- F276** Definition in s. 51(1) inserted (1.9.1995) by [1995 c. 8, ss. 40, 41\(2\)](#), **Sch. para. 19(a)** (with s. 37)
- F277** Words substituted by virtue of [Town and Country Planning Act 1971 \(c. 78\)](#), **Sch. 24 para. 2**
- F278** Definition inserted by [1990 c. 11, s. 4](#), **Sch. 2, para. 5(c)(i)**
- F279** Words substituted by [Agricultural Holdings Act 1986 c. 5, ss. 99, 100, Sch. 13 para. 3](#), **Sch. 14 para. 31(b)**
- F280** Definition repealed by [S.I. 1970/1681](#), **Sch. 4**
- F281** Definition inserted by [S.I. 1976/1775](#), **Sch. 3 para. 2(1)**
- F282** Words substituted by virtue of [S.I. 1979/571](#), **arts. 2(1)**, 3(5)
- F283** Words repealed by virtue of [Gas Act 1986 c. 44, s. 67\(4\)](#), **Sch. 9 Pt. I** and [Electricity Act 1989 c. 29, s. 112\(4\)](#), **Sch. 18**
- F284** Words in s. 51(1) in the definition of “appropriate Minister” substituted (5.7.1992) by [S.I. 1992/1314, art. 3\(3\)\(4\)](#), **Sch. para. 1(a)**
- F285** S. 51(1): para. (d) in the definition of “appropriate Minister” repealed (26.3.2001) by [S.I. 2001/1149, art. 3\(2\)](#), **Sch. 2** (with [art. 4\(11\)](#))
- F286** In the definition of “appropriate Minister” in para. (e) for “drainage authority” there is substituted (E.W.) “internal drainage board” by [Water Act 1989 c. 15, ss. 190\(1\)](#), **Sch. 25 para. 26(5)** (with ss. [58\(7\)](#), [101\(1\)](#), [141\(6\)](#), [160\(1\)\(2\)\(4\)](#), [189\(4\)-\(10\)](#), [190](#), [193\(1\)](#), [Sch. 26 paras. 3\(1\)](#), [17](#), [40\(4\)](#), [57\(6\)](#), [58](#))
- F287** Para. (f) in the definition of “appropriate Minister” repealed (E.W.) by [1989 c. 15, s. 190\(3\)](#), **Sch. 27 Pt. I** (with ss. [58\(7\)](#), [101\(1\)](#), [141\(6\)](#), [160\(1\)\(2\)\(4\)](#), [163](#), [189\(4\)-\(10\)](#), [190](#), [193\(1\)](#), [Sch. 26 paras. 3\(1\)\(2\)](#), [17](#), [40\(4\)](#), [41\(1\)](#), [57\(6\)](#), [58](#)) by
- F288** Definition repealed by [Housing and Planning Act 1986 c. 63, s. 39\(4\)](#), **Sch. 12 Pt. II**
- F289** Definition repealed by [Coal Industry Act 1987 c. 3, s. 10\(3\)](#), Pt. II
- F290** Definition in s. 51(1) repealed (31.10.1994) by [1994 c. 21, s. 67](#), **Sch. 11 Pt. II** (with s. 40(7)); [S.I. 1994/2553, art. 2](#)
- F291** Definition in s. 51(1) repealed (E.W.) (1.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 2(2), 3(1), **Sch. 3 Pt. I** (with [Sch. 2 paras. 10](#), [14\(1\)](#), [15](#))
- F292** Definition in s. 51(1) inserted (1.9.1995) by [1995 c. 8, ss. 41\(2\)](#), [52](#), **Sch. para. 19(b)** (with s. 37)
- F293** Words in the definition of “statutory undertakers” and “statutory undertaking” in s. 51(1) substituted by virtue of [Town and Country Planning Act 1971, c. 78, Sch. 24, para. 2](#) and by virtue of [1990 c. 11, ss. 2\(3\)](#), [5](#), **Sch. 3 para. 3** the reference to “the Act of 1971” has effect as if it included a reference to [1990 c. 8](#)
- F294** Words substituted by virtue of [S.I. 1969/1498, arts. 2\(1\)](#), [5\(6\)](#) and [S.I. 1970/1537, arts. 2\(2\)](#), [7\(4\)](#)
- F295** Definition repealed by [Coal Industry Act 1975 c. 56, s. 5\(3\)](#), **Sch. 5**
- F296** Definition inserted by [Housing and Planning Act 1986 c. 63, s. 39\(3\)](#), **Sch. 8 para. 13(a)**
- F297** Words in definition in s. 51(1) substituted (31.10.1994) by [1994 c. 21, s. 52](#), **Sch. 8 para. 36(1)(a)** (with s. 40(7)); [S.I. 1994/2553, art. 2](#)
- F298** Words substituted by virtue of [Mines \(Working Facilities and Support\) Act 1966 c. 4, s. 15\(4\)](#)
- F299** Words substituted by [Coal Industry Act 1975 c. 56, s. 4\(2\)](#), **Sch. 3 para. 9**
- F300** Definition inserted by [Housing and Planning Act 1986 c. 63, s. 39\(3\)](#), **Sch. 8 para. 13(b)**
- F301** Definition inserted by [Housing and Planning Act 1986 c. 63, s. 39\(3\)](#), **Sch. 8 para. 13(c)**
- F302** Words substituted by [Planning \(consequential Provisions\) Act 1990 \(c. 11\)](#), s. 4, **Sch. 2 para. 5(c)(ii)**

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- F303** Definition repealed by Water Resources Act 1963 c. 38, **Sch. 14 Pt. I**
- F304** Definitions of "sewage disposal undertaking" and "sewerage undertaking" repealed (E.W.) by Water Act 1989 c. 15, s. 190(3), **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)
- F305** Words in the definition of "statutory undertakers" and "statutory undertaking" in s. 51(1) inserted by virtue of S.I. 2001/1149, art. 3(1), **Sch. 1 para. 16(2)**
- F306** Words in s. 51(1) substituted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 80**; S.I. 2011/2329, art. 3
- F307** Definition in s. 51(1) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 36(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F308** S. 51(1A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 36(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

#### Modifications etc. (not altering text)

- C21** S. 51(1) transfer of functions (7.5.2008) by Transfer of Functions (Miscellaneous) Order 2008 (S.I. 2008/1034), arts. 1(2), **5**
- C22** S. 51(1) transfer of functions (5.3.2009) by Secretary of State for Energy and Climate Change Order 2009 (S.I. 2009/229), arts. 1(2), 4, **Sch. 1(a)**

#### Marginal Citations

- M10** 1986 c. 5.

## 52 General application to Scotland. **E+W+S**

(1) The provisions of this section shall, in addition to any express provision for the application to Scotland of any provision of this Act, have effect for the general application of this Act to Scotland.

(2) In this Act, except in so far as the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

<sup>F309</sup> [ " the Act of 1997 " means the Town and Country Planning (Scotland) Act 1997 ]

"agriculture" has the same meaning as in the <sup>M11</sup> Agriculture (Scotland) Act 1948, and "agricultural" (except in the expressions "agricultural holding" and "agricultural land") shall be construed accordingly;

[<sup>F310</sup> " agricultural holding " has the meaning assigned to it by section one of the Scottish Act of [<sup>F311</sup> 1991 ] ; ]

[<sup>F310</sup> " agricultural holding " means the land comprised in a lease constituting a 1991 Act tenancy within the meaning of the Scottish Act of 2003 or the land comprised in a lease constituting a short limited duration tenancy or a limited duration tenancy (within the meaning of that Act);]

<sup>F312</sup>

[<sup>F313</sup> " appropriate Minister " means—

- in relation to statutory undertakers carrying on any railway, light railway, tramway, road transport, dock, harbour or pier undertaking, [<sup>F314</sup> the Minister of Transport];
- in relation to statutory undertakers carrying on an undertaking for the supply of gas or hydraulic power, the Secretary of State for Energy;
- in relation to the Civil Aviation Authority or statutory undertakers carrying on any lighthouse undertaking, the Secretary of State for Trade;

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- (d) <sup>F315</sup> .....
- (e) in relation to statutory undertakers carrying on an undertaking for the supply of . . . <sup>F316</sup> water, the Secretary of State for Scotland; and
- (f) in all other cases, the Secretary of State for the Environment.]

“chattels” means corporeal moveables;

“easement” means servitude;

“freehold interest” means the interest of the owner <sup>F317</sup> ...;

“land” includes salmon fishings;

<sup>F318</sup>“local authority” has the meaning assigned to it by section 235 of the <sup>M12</sup>Local Government (Scotland) Act 1973];

..... <sup>F319</sup>“local planning authority”, “statutory undertakers”, “statutory undertaking”, “heritable security”, “heritable creditor”, and “National Trust for Scotland” have the same meanings as in the Scottish Act of 1947 [<sup>F320</sup>(but “statutory undertakers” and “statutory undertaking” do not include a universal service provider within the meaning of [<sup>F321</sup>Part 3 of the Postal Services Act 2011 ] and his undertaking).];

“owner” in relation to land, subject to subsection (2) of the last preceding section, means the owner <sup>F317</sup> ...;

<sup>F322</sup>“planning permission” means planning permission under Part III of [<sup>F323</sup>Act of 1997]]

“the Landholders Acts” means the Small Landholders (Scotland) Acts 1886 to 1931;

“the Scottish Acquisition of Land Act” means the <sup>M13</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947;

<sup>F324</sup>“the Act of 1972” ] means [<sup>F324</sup>the <sup>M14</sup>Town and Country Planning (Scotland) Act 1972];

<sup>F311</sup>“the Scottish Act of 1991” means the Agricultural Holdings (Scotland) Act 1991;].

- (3) For any reference to a [<sup>F325</sup>water authority]there shall [<sup>F326</sup>, except in so far as the context otherwise requires,]be substituted a reference to [<sup>F327</sup>the Scottish Environment Protection Agency].

<sup>F328</sup>(4) .....

- (5) Where, immediately before the coming into operation of an authorisation under section one of this Act, any of the land comprised in the authorisation consists of or includes a holding to which any of the provisions of the Landholders Acts apply or a croft within the meaning of the <sup>M15</sup>Crofters (Scotland) Act 1955, or part of such a holding or croft, the provisions of this Act shall, in relation to that land, have effect subject to the following modifications, that is to say—

- (a) references to an agricultural holding, to the tenant of an agricultural holding and to [<sup>F329</sup>the Scottish Act of 1991] shall include respectively references to such a holding or croft as aforesaid, to a landholder or crofter, and to the Landholders Acts or the <sup>M16</sup>Crofters (Scotland) Act 1955, as the case may be and for references to [<sup>F329</sup>section 45 of the Scottish Act of 1991] there shall be substituted references to section ten of the <sup>M17</sup>Crofters Holding (Scotland) Act 1886, or section fourteen of the <sup>M18</sup>Crofters (Scotland) Act 1955, as the case may require:

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Provided that for the purposes of section twenty-three of this Act any improvement on the holding for which the landholder or the crofter would on the termination of his tenancy be entitled to compensation under the Landholders Acts or the <sup>M19</sup>Crofters (Scotland) Act 1955, as the case may be, shall be treated as a separate holding, and any compensation payable under the said section in respect of the improvement shall be payable to the landholder or crofter as if he were the owner thereof; and sections twenty-four and twenty-five shall not apply to any improvement in respect of which compensation is so payable;

- (b) any dispute as to a right to compensation under this Act of a landholder or crofter or of the owner of a holding or croft in respect thereof or as to the amount of any such compensation, and any matter arising in relation to a holding or croft which is referred to arbitration under this Act, shall be determined by the Scottish Land Court, and the provisions of the Landholders Acts shall, with any necessary modifications, apply for the purpose as they apply for the determination of matters referred to that Court under those Acts.

F330(6) .....

F330(7) .....

F330(8) .....

#### Textual Amendments

- F309** Definition in s. 52(2) inserted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 5(5)(a)**
- F310** Words in s. 52(2) substituted (S.) (27.11.2003) by Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (S.S.I. 2003/583), art. 1, **Sch. para. 5(a)**
- F311** Words in s. 52(2) substituted (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88, 89(2), **Sch. 11 para. 18** (a)(b) (with s. 45(3), Sch. 12 para. 3)
- F312** Definition repealed by S.I. 1970/1681, **Sch. 4**
- F313** Definition inserted by S.I. 1976/1775, **Sch. 3 para. 2(2)**
- F314** Words substituted by virtue of S.I. 1979/571, **arts. 2(1), 3(5)**
- F315** S. 52(2):para. (d) in the definition of “appropriate Minister” repealed (26.3.2001) by S.I. 2001/1149, art. 3(2), **Sch. 2** (with art. 4(11))
- F316** Words repealed by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(4), **Sch. 18**
- F317** Words in s. 52(2) repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), Sch. 12 para. 22(a), **13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F318** Definition inserted by Local Government (Scotland) Act 1973 (c. 65), **Sch. 27 Pt. II para. 141**
- F319** Words repealed by Local Government (Scotland) Act 1973 (c. 65), **Sch. 29**
- F320** Words in s. 52(2) inserted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 16(3)**
- F321** Words in s. 52(2) substituted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 81**; S.I. 2011/2329, art. 3
- F322** Definition inserted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 14**
- F323** Words in definition in s. 52(2) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 5(5)(b)**
- F324** Words substituted by virtue of Town and Country Planning (Scotland) Act 1972 (c. 52), **Sch. 22 para. 2**
- F325** Words substituted by virtue of Water Act 1973 (c. 37), **s. 9**
- F326** Words in s. 52(3) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 37** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F327** Words in s. 52(3) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 5(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F328** S. 52(4) omitted (1.6.2009) by virtue of The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307), art. 1, **Sch. 1 para. 33** (with Sch. 5)

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

**F329** Words in s. 52(5)(a) substituted (25.9.1991) by Agricultural Holdings (Scotland) Act 1991 (c. 55, SIF 2:3), ss. 88, 89(2), Sch. 11 para. 19(a)(b)(with s. 45(3), Sch. 12 para. 3)

**F330** S. 52(6)-(8) repealed (28.11.2004) by Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), ss. 71, 77(2), Sch. 12 para. 22(b), **13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

**Modifications etc. (not altering text)**

**C23** “The Scottish Act of 1947” means [Town and Country Planning \(Scotland\) Act 1947 \(c. 53\)](#)

**C24** S. 52(2) transfer of functions (5.3.2009) by [Secretary of State for Energy and Climate Change Order 2009 \(S.I. 2009/229\)](#), arts. 1(2), 4, **Sch. 1(a)**

**Marginal Citations**

**M11** 1948 c. 45.

**M12** 1973 c. 65.

**M13** 1947 c. 42.

**M14** 1972 c. 52.

**M15** 1955 c. 21.

**M16** 1955 c. 21.

**M17** 1886 c. 29.

**M18** 1955 c. 21.

**M19** 1955 c. 21.

**53 Short title, commencement and extent. E+W+S**

(1) This Act may be cited as the Opencast Coal Act 1958.

(2) ..... <sup>F331</sup>

(3) This Act shall not extend to Northern Ireland.

**Textual Amendments**

**F331** S. 53(2) repealed by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), **Sch. 12 Pt. II**

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

## SCHEDULES

### <sup>F332</sup>FIRST SCHEDULE **E+W+S**

#### Textual Amendments

**F332** Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**

<sup>F333</sup><sub>1</sub> The Minister shall not grant an authorisation under section one of this Act except in pursuance of an application made by the [<sup>F334</sup>Corporation] in accordance with the following provisions of this Schedule.

#### Textual Amendments

**F333** Sch. 1 repealed by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**

**F334** Word substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**

<sup>F335</sup><sub>2</sub> Every such application—

- (a) shall be in the prescribed form, and shall describe by reference to a map the land which the [<sup>F336</sup>Corporation] will require to occupy for the purpose of enabling operations which (if the authorisation is granted) will be authorised operations to be carried out (in this Schedule referred to as “the relevant land”), and
- (b) shall indicate by reference to the map which are the parts of the relevant land on which it is proposed to work coal by opencast operations, [<sup>F337</sup>and
- (c) in the case of an application which includes an application for an order under section 15 of this Act, shall indicate, by reference to the map, the right of way to which the application relates and the alternative way (if any) which the [<sup>F336</sup>Corporation] propose to make available].

#### Textual Amendments

**F335** Sch. 1 repealed by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**

**F336** Word substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**

**F337** Para. 2(c) added by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 1**

<sup>F338</sup><sub>3</sub> (1) Every such application shall also include the prescribed information as to the operations proposed to be carried out—

- (a) for the purpose of working the coal;
- (b) for the purpose of restoring land affected by the working of the coal or by operations connected therewith;
- (c) for any purpose incidental to either of those purposes.

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- (2) The information prescribed for the purposes of the preceding sub-paragraph shall be information of such descriptions, and containing such particulars as to the operations proposed to be carried out for the several purposes mentioned in that sub-paragraph, as in the opinion of the Minister would be requisite for enabling him to perform his functions under this Act with due regard to the nature, extent and duration of the proposed operations.

#### Textual Amendments

**F338** Sch. 1 repealed by [Housing and Planning 1986 \(c. 63, SIF 86\)](#), s. 39(4), [Sch. 12 Pt II](#); S.I. 1987/1939, arts. 1, 2

- <sup>F339</sup>~~F340~~(1) Before submitting to the Minister an application for the Minister's authorisation under section one of this Act, the [<sup>F341</sup>Corporation] shall—
- (a) in two successive weeks publish in one or more local newspapers circulating in the locality in which the relevant land is situated and in the London Gazette a notice in the prescribed form stating the intention of the [<sup>F341</sup>Corporation] to submit the application to the Minister, describing the relevant land, naming a place in the locality where a copy of the application and of the map referred to therein can be inspected, and specifying the time (not being less than twenty-eight days from the first publication of the notice) within which, and the manner in which, objections to the application can be made;
  - (b) serve on every local planning authority in whose area any part of the relevant land is situated, and on every other local authority, being the council of a county, county borough or [<sup>F342</sup>district] in whose area any part of that land is situated, a notice in the prescribed form stating that the application is intended to be submitted to the Minister, and specifying the time (not being less than twenty-eight days from the service of the notice) within which, and the manner in which, objections to the application can be made;
  - (c) except in so far as the Minister directs that this provision shall not have effect in any particular case, serve a like notice on every owner, lessee and occupier (except tenants for a month or any period less than a month) of any part of the relevant land;
  - (d) in the case of any land with respect to which a direction is given under the last preceding sub-paragraph, affix to some conspicuous object or objects on the land a notice or notices in the prescribed form addressed to “the owners and any occupiers” of the land (describing it) containing the particulars required to be contained in a notice served under the last preceding sub-paragraph:

Provided that no direction under sub-paragraph (c) of this paragraph shall have effect in relation to an owner, lessee or occupier being a local authority or statutory undertakers or the National Trust.

- <sup>F343</sup>(2) If the [<sup>F341</sup>Corporation] propose to include in an application for an authorisation under section 1 of this Act an application for an order under section 15 thereof, sub-paragraph (1) above shall have effect as if—
- (a) any reference therein to the application for the authorisation included a reference to the application for the order under section 15;
  - (b) the local authorities specified in paragraph (b) thereof included the council of a parish or community and the parish meeting of a parish which does not have a separate parish council; and

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

(c) at the end of paragraph (d) thereof there were inserted the following paragraph:—

“(e) in any case where the application is to include an application for an order under section 15 of this Act suspending a public right of way, cause a copy of the notice referred to in paragraph (b) of this paragraph to be displayed in a prominent position at the ends of the public right of way to which the application relates.”]

#### Textual Amendments

- F339** Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, arts. 1, 2
- F340** Word “(1)” inserted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 2**
- F341** Word substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**
- F342** Word substituted by virtue of Local Government Act 1972 (c. 70), s. 179(3)
- F343** Para. 4(2) added by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 2**

- <sup>F344</sup>5 (1) Where under the last preceding paragraph a notice is required to be served on an owner of land, and the land is ecclesiastical property, a like notice shall be served on the Church Commissioners.
- (2) In this paragraph “ecclesiastical property” means land belonging to an ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of the bishop of a diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction.

#### Textual Amendments

- F344** Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, arts. 1, 2

- <sup>F345</sup>6 (1) In the case of any application under this Schedule where the Minister, after consultation with the [<sup>F346</sup>Corporation], is satisfied that a compulsory rights order will be required in respect of the relevant land or part thereof, the Minister, if he thinks fit, may give notice to the [<sup>F346</sup>Corporation] that he does not propose to proceed with the application until the [<sup>F346</sup>Corporation] have made such an order, and have applied to the Minister for confirmation thereof, and that he will then proceed concurrently with respect to the application for authorisation under section one of this Act and with respect to the application for confirmation of the compulsory rights order.
- (2) Where the Minister gives notice to the [<sup>F346</sup>Corporation] under the preceding subparagraph, he shall give a like notice to every local planning authority or other local authority, and to every owner, lessee or occupier, on whom notice was required to be served under paragraph 4 of this Schedule and who has made objection to the application.
- (3) Where the Minister has given notice to the [<sup>F346</sup>Corporation] under this paragraph he shall not (unless he otherwise determines) be required to proceed with the application for authorisation except in accordance with the notice.

#### Textual Amendments

- F345** Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, arts. 1, 2



*Status: Point in time view as at 01/04/2017.*

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

**F346** Word substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

- <sup>F347</sup> (1) Subject to the last preceding paragraph, if no objection is made by any such local planning authority or other local authority as is mentioned in sub-paragraph (b) of paragraph 4 of this Schedule, or by any such owner, lessee or occupier as is mentioned in sub-paragraph (c) of that paragraph, or if all objections so made are withdrawn, the Minister, upon being satisfied that the proper notices have been published and served, may if he thinks fit [<sup>F348</sup>after considering any other objections which are duly made and not withdrawn—
- (a) grant the authorisation, and
  - (b) where the application includes an application for an order under section 15 of this Act, make such an order,
- either in accordance with the [<sup>F349</sup>Corporation's] application or subject to such modifications as he may determine].
- (2) If any objection [<sup>F350</sup>to the grant of the authorisation is] duly made by any such local planning authority or other local authority, or by any such owner, lessee or occupier [<sup>F350</sup>and] is not withdrawn, the Minister shall cause a public local inquiry to be held, and shall consider [<sup>F351</sup>all objections to the grant of the authorisation which are duly made and not withdrawn] and the report of the person who held the inquiry before determining whether to grant the authorisation; and if he determines to grant it, he may do so either in accordance with the [<sup>F349</sup>Corporation's] application or subject to such modifications as he may determine.
- <sup>F352</sup>(2A) If, in the case of an application which includes an application for an order under section 15 of this Act, any objection to the making of the order is duly made by the council of any such county or district or, in Scotland, by any such local authority as is mentioned in paragraph 4(1)(b) of this Schedule and is not withdrawn, the Secretary of State shall cause a public local inquiry to be held and shall consider all objections to the making of the order which are duly made and not withdrawn and the report of the person who held the inquiry before determining whether to make the order; and if he determines to make the order, he may do so either in accordance with the [<sup>F349</sup>Corporation's] application or subject to such modification as he may determine.
- (2B) If, in a case where a public local inquiry is required to be held by virtue of sub-paragraph (2) above, such an inquiry is also required to be held by virtue of sub-paragraph (2A) above the Secretary of State may direct that those inquiries, including, in a case falling within paragraph 6 of this Schedule, any inquiry relating to a compulsory rights order on which proceedings are to be taken concurrently with the proceedings relating to the application for an authorisation, shall be held concurrently.]
- (3) Without prejudice to [<sup>F353</sup>sub-paragraph (2) and (2A) above], the Minister may, if he thinks fit, cause a public local inquiry to be held before determining whether to grant the authorisation, [<sup>F354</sup>or, as the case may be, make an order] notwithstanding that no objection has been made as mentioned in [<sup>F353</sup>either or both of those sub-paragraphs] or that every objection so made has been withdrawn.
- (4) In a case where the Minister determines to accede to the application subject to modifications, the authorisation shall not extend to land not comprised in the relevant land as described in the application, and shall not authorise the working of coal by

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open-cast operations on a part of the relevant land which was not indicated in the application as a part of the land on which coal was proposed to be so worked.

#### Textual Amendments

- F347** Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**
- F348** Words substituted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 3(1)(2)**
- F349** Word substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**
- F350** Words inserted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 3(1)(3)**
- F351** Words substituted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 3(1)(3)**
- F352** Para. 7(2A), (2B) inserted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 3(1)(4)**
- F353** Words substituted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 3(1)(5)**
- F354** Words inserted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 3(1)(5)**

<sup>F355</sup>~~F356~~(1) As soon as may be after the authorisation has been granted, the [<sup>F357</sup>Corporation] shall publish in one or more local newspapers circulating in the locality in which the relevant land is situated and in the London Gazette a notice in the prescribed form describing the relevant land, stating that the authorisation has been granted, and naming a place in the locality where a copy of the authorisation and of the map referred to therein can be inspected at all reasonable hours, and shall serve a like notice and a copy of the authorisation on any persons on whom notices of the application were required to be served under paragraph 4 of this Schedule.

- [<sup>F358</sup>(2) Where an order is made under section 15 of this Act, sub-paragraph (1) above shall have effect in relation to the order as if—
- (a) any reference therein to the authorisation were a reference to the order;
  - (b) any reference therein to the grant of the authorisation were a reference to the making of the order; and
  - (c) any reference to the relevant land were a reference both to the right of way which is suspended by the order and the alternative way which is to be made available as mentioned in section 15(2)(c) of this Act.]

#### Textual Amendments

- F355** Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**
- F356** Word (1) inserted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 4**
- F357** Word substituted by 1987 c. 3, s. 1(20), Sch. 1 para. 7(c)
- F358** Para. 8(2) added by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 4**

<sup>F359</sup> [<sup>F360</sup>Part IV of the Acquisition of Land Act 1981 and paragraphs 15 and 16 of Schedule 1 to the Scottish Acquisition of Land Act](which relate to the validity and date of operation of compulsory purchase orders) shall with the necessary modifications (and, in particular, with the substitution of references to this Act for references to that Act) apply in relation to authorisations under section one of this Act as they apply in relation to compulsory purchase orders.

#### Textual Amendments

- F359** Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**
- F360** Words substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34(1), **Sch. 4 para. 11(5)(a)**

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

<sup>F361</sup>10 For the purposes of the provisions of paragraph 4 of this Schedule, and of the provisions of [<sup>F362</sup>section 23(4)(b) of the Acquisition of Land Act 1981 and paragraph 15 of Schedule 1 to the Scottish Acquisition of Land Act]as applied by the last preceding paragraph, the first publication of a notice shall be treated as taking place on the date on which the notice is first published in accordance with those provisions in a local newspaper, or of the date on which it is first published in the London Gazette, whichever is the later date.

#### Textual Amendments

**F361** Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

**F362** Words substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34(1), Sch. 4 para. 11(5)(b)

<sup>F363</sup>11 In the application of this Schedule to Scotland, for references . . . <sup>F364</sup> to the London Gazette, to the National Trust . . . <sup>F365</sup> there shall be substituted respectively references . . . <sup>F364</sup> to the Edinburgh Gazette, to the National Trust for Scotland . . . <sup>F365</sup>; and [<sup>F366</sup>paragraphs 4(2)(b) and 5] shall be omitted . . . <sup>F365</sup>

#### Textual Amendments

**F363** Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

**F364** Words repealed by Local Government (Scotland) Act 1973 (c. 65), Sch. 29

**F365** Words repealed by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34(1), Sch. 4 para. 11(5)(c)

**F366** Words substituted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), Sch. 4 para. 5

## SECOND SCHEDULE **E+W+S**

Sections 4, 5, 39.

### PROCEDURE RELATING TO COMPULSORY RIGHTS ORDERS

#### PART I **E+W+S**

<sup>F367</sup> *Making, confirmation, validity and date of operation of orders*

#### Textual Amendments

**F367** 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>F368</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>F369</sup>Coal Authority], and any reference to the confirming authority were a reference to the Minister; and

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

- (c) any reference to authorising the compulsory purchase of land were a reference to operating so as to confer<sup>F370</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**

- F368** 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
- F369** 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
- F370** 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>F371</sup>Scottish] Acquisition of Land Act) shall not apply.

**Textual Amendments**

- F371** Word in Sch. 2 Pt. I 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>F372</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>F373</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>F374</sup>Coal Authority]to be persons directly concerned.

**Textual Amendments**

- F372** Sch. 2 Pt. I para. 3(1) substituted (31.10.1994) for words in Sch. 2 Pt. I 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
- F373** Words in the substituted provision (c) in Sch. 2 Pt. I 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
- F374** Words in Sch. 2 Pt. I 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

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- 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>F375</sup>an authorisation under section one of this Act][<sup>F375</sup>opencast planning permission] and [<sup>F376</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>F377</sup>an authorisation under section one of this Act should have been, or should be, granted to work the coal in question by opencast operations][<sup>F377</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).

#### Textual Amendments

**F375** Words substituted (S.) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 15\(a\)](#)

**F376** Words substituted by [Coal Industry Act 1975 \(c. 56\)](#), [Sch. 3 para. 10](#)

**F377** 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>F378</sup>Coal Authority].

#### Textual Amendments

**F378** 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](#)

*Status: Point in time view as at 01/04/2017.*

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

9 In Paragraph 15 of the said First Schedule, the first reference to the [<sup>F379</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**  
**F379** Word in Sch. 2 Pt. I 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>F380</sup>12 .....

**Textual Amendments**  
**F380** 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 E+W+S**

*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>F381</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>F381</sup>That person] shall serve a like notice on [<sup>F382</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>F381</sup>to the person serving the notice] to be, in relation to the order, a person directly concerned.
- (4) [<sup>F381</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.

*Status: Point in time view as at 01/04/2017.*

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

### Textual Amendments

**F381** 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

**F382** 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.
- (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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## THIRD SCHEDULE E +W+S

### PROVISIONS AS TO COMPENSATION BY WAY OF PAYMENT OF COST OF WORKS

1 In this Schedule—

“compensation” means compensation under section twenty-two of this Act;

[<sup>F383</sup> “ final operator ” means the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order; ]

“former use”, in relation to any land, means the use for which it was used immediately before the operative date of the order in question;

“proper cost”, in relation to any work, means such cost as is reasonable, having regard to the prices of materials and rates of remuneration for services current at the time when the work is carried out;

“the Tribunal” means the [<sup>F384</sup>Upper Tribunal or, in the application of this Act to Scotland, the Lands Tribunal for Scotland].

#### Textual Amendments

**F383** Definition in Sch. 3 para. 1 inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 40(1)(a)**

**F384** Words in Sch. THIRD para. 1 substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307), art. 1, **Sch. 1 para. 34** (with Sch. 5)

2 (1) [<sup>F385</sup>The final operator] shall not be required to pay compensation in respect of expenses incurred in carrying out any work unless—

(a) not less than the prescribed length of time before the work was begun, the person incurring the expenses gave to [<sup>F385</sup>the final operator], in the prescribed manner, notice in writing containing adequate particulars of the work, together with a statement of the time when it was proposed to carry out the work and an estimate of the cost of the work, and

(b) at all reasonable times after the service of that notice, that person afforded to [<sup>F385</sup>the final operator] reasonable facilities to inspect the land to which the notice related, in so far as he was in a position to afford such facilities.

(2) In the following provisions of this Schedule “the applicant”, in relation to a notice under this paragraph, means the person who gave that notice.

#### Textual Amendments

**F385** Words in Sch. 3 substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 40(1)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

3 Where a notice has been given under the last preceding paragraph, [<sup>F386</sup>the final operator], within the prescribed time after the giving of that notice, may serve on the applicant a counter-notice, stating—

(a) that [<sup>F386</sup>the final operator][<sup>F387</sup>objects] to the work specified in the applicant’s notice, or to such one or more items thereof as may be specified in the counter-notice, and



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- (b) that [<sup>F388</sup>the final operator objects] thereto on such one or more grounds as may be specified in the counter-notice, being one or more of the grounds mentioned in the next following paragraph.

#### Textual Amendments

**F386** Words in Sch. 3 substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 40(1)(b)

**F387** Word in Sch. 3 para. 3(a) substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 40(2)(a) (with s. 40(7)); S.I. 1994/2553, art. 2

**F388** Words in Sch. 3 para. 3(b) substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 40(2)(b) (with s. 40(7)); S.I. 1994/2553, art. 2

- 4 Subject to the next following paragraph, the said grounds, in relation to any work specified in a notice under paragraph 2 of this Schedule, are the following, that is to say,—
- (a) that the work could not reasonably be regarded as work falling within paragraph (b) of subsection (1) of section twenty-two of this Act;
  - (b) that the work is likely to be ineffective, or is by its nature unsuitable to the land in question, or is proposed to be carried out in an unsuitable way;
  - (c) that the estimated cost of the work is grossly disproportionate to any prospective increase attributable to the work in the value of the land;
  - (d) that the work, in a case where the former use of the land in question was agricultural, would not be appropriate to the use of that land for agriculture, or, in any other case, would not be appropriate to the use of that land for its former use;
  - (e) that the work would not be required but for dilapidation, deterioration or damage which has occurred since the end of the period of occupation and is attributable to default on the part of the owner or of an occupier of the land;
  - (f) that the work, if carried out at the time specified in the applicant's notice, would be premature;
  - (g) that the work, if carried out at the time specified in the applicant's notice, would not have been carried out at the first reasonable opportunity after the end of the period of occupation, or within a reasonable time after that opportunity arose.
- 5 (1) In so far as a notice given under paragraph 2 of this Schedule (in this paragraph referred to as “the current notice”) specifies any work (in this paragraph referred to as “the new work”) in a case where the applicant has previously given one or more notices under that paragraph specifying similar work which he proposed to carry out in respect of the same land, the last preceding paragraph shall apply in relation to the new work with the substitution, for sub-paragraph (c) of that paragraph, of the following sub-paragraph (in this paragraph referred to as “the substituted sub-paragraph (c)”)—
- “(c) that the aggregate cost of that work and of all relevant work specified in previous notices relating to the same land is grossly disproportionate to the aggregate increase attributable to all such work in the value of the land.”
- (2) In the substituted sub-paragraph (c) the reference to the aggregate cost of the new work and of all other relevant work specified in previous notices relating to the same land is a reference to the aggregate of—

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- (a) the estimated cost of the new work, and
  - (b) the estimated cost of any similar work specified in any previous notice given by the applicant which is still outstanding on the relevant date, and
  - (c) the proper cost of any similar work specified in any previous notice given by the applicant in respect of which a claim for compensation has been allowed before the relevant date or is still outstanding on that date.
- (3) In the substituted sub-paragraph (c) the reference to the aggregate increase attributable to all such work as is therein mentioned in the value of the land is a reference to the aggregate of—
- (a) the prospective increase in that value attributable to the new work, and
  - (b) the prospective increase in that value attributable to any similar work specified in any previous notice given by the applicant which is still outstanding on the relevant date, and
  - (c) the increase in that value attributable to any similar work specified in any previous notice given by the applicant in respect of which a claim for compensation has been allowed before the relevant date or is still outstanding on that date.
- (4) For the purposes of sub-paragraphs (2) and (3) of this paragraph—
- (a) a previous notice specifying similar work shall be taken to be outstanding on the relevant date if—
    - (i) such a notice has been given before the relevant date and has not been withdrawn, and
    - (ii) either [the final operator]<sup>F389</sup>has not]before that date served a counter-notice objecting to that work, or, if [<sup>F389</sup>the final operator has] served such a counter-notice, that objection has before that date been withdrawn or determined by the Tribunal not to be well-founded, and
    - (iii) no claim for compensation has before the relevant date been made in respect of expenses incurred in carrying out that work;
  - (b) a claim for compensation in respect of any work shall be taken to have been allowed before the relevant date if before that date—
    - (i) a claim for compensation has been made in respect of expenses incurred in carrying out that work, and
    - (ii) it has been agreed by [<sup>F390</sup>the final operator], or determined by the Tribunal, that compensation is payable in respect of those expenses, whether the amount of compensation so agreed or determined to be payable was the amount claimed or a different amount;
  - (c) a claim for compensation in respect of any work shall be taken to be still outstanding on the relevant date if at that date—
    - (i) a claim for compensation has been made in respect of expenses incurred in carrying out that work, and
    - (ii) that claim has not been withdrawn, and it has not been determined by the Tribunal that no compensation is payable in respect of those expenses, but
    - (iii) it has not been agreed by [<sup>F390</sup>the final operator], or determined by the Tribunal, that compensation is payable in respect of those expenses.

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- (5) In this paragraph “similar work”, in relation to the new work, means work directed to the same aspect of restoration as the new work; “previous notice”, in relation to the current notice, means a notice given under paragraph 2 of this Schedule before the date on which the current notice was given; and “the relevant date”, in relation to the current notice, means the date on which [F390 the final operator][F391 serves] a counter-notice objecting to the new work, or the date on which the time for serving such a counter-notice expires, whichever is the earlier.
- (6) In the following provisions of this Schedule (except where the contrary is expressly provided) any reference to sub-paragraph (c) of the last preceding paragraph, in relation to work to which that paragraph applies in accordance with sub-paragraph (1) of this paragraph, shall be construed as a reference to the substituted sub-paragraph (c), and any reference in this Schedule to the grounds mentioned in the last preceding paragraph shall be construed accordingly.

#### Textual Amendments

**F389** Words in Sch. 3 para. 5(4)(a)(ii) substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 40(3)(a) (with s. 40(7)); S.I. 1994/2553, art. 2

**F390** Words in Sch. 3 para. 5 substituted (31.10.1994) by 1994 c. 21, Sch. 8 para. 40(1)(b) (with s.40(7)); S.I. 1994/2553, art. 2

**F391** Word in Sch. 3 para. 5(5) substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 40(3)(b) (with s. 40(7)); S.I. 1994/2553, art. 2

- 6 For the purpose of determining whether an objection on the grounds mentioned in sub-paragraph (c) of paragraph 4 of this Schedule is well-founded, the estimated cost of any work shall be taken to be such amount as may be agreed, or determined by the Tribunal, to be a fair estimate of the cost of the work, whether that amount is equal to, or greater or less than, the estimated cost of the work as stated in the applicant’s notice specifying that work.
- 7 (1) In sub-paragraph (e) of paragraph 4 of this Schedule, the reference to default on the part of the owner or of an occupier of the land shall be construed in accordance with the following provisions of this paragraph.
- (2) In relation to agricultural land, the reference to default on the part of the owner shall be construed as a reference to failure on his part to manage the land in accordance with the rules of good estate management, and the reference to default on the part of an occupier of the land shall be construed as a reference to failure on the part of such an occupier to fulfil his responsibilities to farm the land in accordance with the rules of good husbandry.
- (3) In relation to any other land, the reference to default on the part of the owner shall be construed as a reference to failure on his part to deal with the land in a proper and due course of management, and the reference to default on the part of an occupier of the land shall be construed as a reference to failure on the part of such an occupier to maintain and use the land in a reasonable manner.
- (4) Sections ten and eleven of the <sup>M20</sup>Agriculture Act 1947 (which prescribe tests for determining good estate management and good husbandry) shall apply for the purposes of sub-paragraph (2) of this paragraph.

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- (5) In the application of this paragraph to Scotland, for the reference to sections ten and eleven of the <sup>M21</sup>Agriculture Act 1947, there shall be substituted a reference to the Fifth and Sixth Schedules to the <sup>M22</sup>Agriculture (Scotland) Act 1948.

#### Marginal Citations

- M20** 1947 c. 48.  
**M21** 1947 c. 48.  
**M22** 1948 c. 45.

- 8 Where a notice has been given under paragraph 2 of this Schedule, and the applicant has incurred expenses in carrying out any of the work specified in that notice, and claims compensation in respect of those expenses—
- (a) if [<sup>F392</sup>the final operator][<sup>F393</sup>has not served]a counter-notice under paragraph 3 of this Schedule in respect of that notice, they shall not be entitled to object to that claim on any of the grounds mentioned in paragraph 4 of this Schedule;
  - (b) if [<sup>F392</sup>the final operator][<sup>F393</sup>has served]such a counter-notice, they shall not be entitled to object to that claim on any of the grounds mentioned in paragraph 4 of this Schedule, except in so far as the claim relates to items which were specified in the counter-notice and the objection is on grounds which were so specified in relation to those items.

#### Textual Amendments

- F392** Words in Sch. 3 para. 8 substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 40(1)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F393** Words in Sch. 3 para. 8(a)(b) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 40(4)(a)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

- 9 (1) Where a notice has been given under paragraph 2 of this Schedule, and [<sup>F394</sup>the final operator][<sup>F395</sup>has served] a counter-notice objecting to the work specified in the notice, or to one or more items thereof, the applicant, before beginning to carry out any item to which such an objection relates, may require the question whether the objection is well-founded to be referred to the Tribunal.
- (2) If on such a reference the Tribunal determines that the objection is not well-founded, and the applicant incurs expenses in carrying out any of the work to which the objection relates and claims compensation in respect of those expenses, then (in addition to any grounds on which [<sup>F394</sup>the final operator][<sup>F395</sup>is precluded] by the last preceding paragraph from objecting to that claim) [<sup>F394</sup>the final operator] shall not be entitled to object to that claim on any of the grounds which were the grounds of that objection.
- (3) If on such a reference the Tribunal determines that the objection is well-founded, and the applicant incurs expenses in carrying out any of the work to which the objection relates, and claims compensation in respect of those expenses,—
- (a) if the objection was on the grounds mentioned in any of sub-paragraphs (a), (b), (c), (d) and (e) of paragraph 4 of this Schedule, no compensation shall be payable in respect of those expenses;

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- (b) if the objection was on the grounds mentioned in sub-paragraph (f) of the said paragraph 4, no compensation shall be payable in respect of those expenses by virtue of the notice referred to in sub-paragraph (1) of this paragraph, but without prejudice to the service of a further notice under paragraph 2 of this Schedule in respect of the work in question;
- (c) if the objection was on the grounds mentioned in sub-paragraph (g) of the said paragraph 4, the expenses shall be disallowed by virtue of this sub-paragraph in so far as (but no further than) they were greater than they would have been if the work to which the objection related had been carried out at the first reasonable opportunity after the end of the period of occupation.

#### Textual Amendments

**F394** Words in Sch. 3 para. 9 substituted (31.10.1994) by 1994 c. 21, Sch. 8 para. 40(1)(b) (with s.40(7)); S.I. 1994/2553, art. 2

**F395** Words in Sch. 3 para. 9(1) and (2) substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 40(5)(a) (b) (with s. 40(7)); S.I. 1994/2553, art. 2

- 10 (1) If, in a case where a notice has been given under paragraph 2 of this Schedule, and [<sup>F396</sup>the final operator][<sup>F397</sup>has served] a counter-notice objecting to the work specified in the notice, or to one or more items thereof,—
- (a) the applicant incurs expenses in carrying out work to which the objection relates, without having required the question whether the objection is well-founded to be referred to the Tribunal, and claims compensation in respect of those expenses.
  - (b) on a reference to the Tribunal with respect to that claim [<sup>F396</sup>the final operator][<sup>F398</sup>maintains]the objection, and
  - (c) on that reference the Tribunal determines that the objection is well-founded, the provisions of heads (a) to (c) of sub-paragraph (3) of the last preceding paragraph shall apply (subject to the following provisions of this paragraph) as they apply in the circumstances mentioned in that sub-paragraph.
- (2) Where the objection was on the grounds mentioned in sub-paragraph (c) of paragraph 4 of this Schedule (otherwise than in a case falling within paragraph 5 of this Schedule) so much of the preceding sub-paragraph as relates to the maintenance of the objection, and to a determination that the objection is well-founded, shall apply as if, in the said sub-paragraph (c), the reference to the estimated cost of the work were a reference to the proper cost of the work.
- (3) Where the objection was on the grounds mentioned in the substituted sub-paragraph (c), within the meaning of paragraph 5 of this Schedule, so much of sub-paragraph (1) of this paragraph as relates to the maintenance of the objection, and to a determination that the objection is well-founded, shall apply as if, in the said paragraph 5, any reference to the relevant date were a reference to the date on which the question whether compensation is payable in respect of expenses incurred in carrying out the new work (within the meaning of that paragraph) falls to be determined by the Tribunal, and the objection had been formulated accordingly.

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#### Textual Amendments

- F396** Words in **Sch. 3 para. 10** substituted (31.10.1994) by 1994 c. 21, **Sch. 8 para. 40(1)(b)** (with s.40(7)); S.I. 1994/2553, **art. 2**
- F397** Words in **Sch. 3 para. 10(1)** substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 40(6)(a)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F398** Word in **Sch. 3 para. 10(1)(b)** substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 40(6)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

- 11 (1) Subject to the next following sub-paragraph, expenses incurred in carrying out any work shall not be treated as having been reasonably incurred as mentioned in paragraph (b) of subsection (1) of section twenty-two of this Act, if the work was begun more than fifteen years after the end of the period of occupation.
- (2) The preceding sub-paragraph shall not apply to any work required for making good damage caused by the settlement of soil replaced in the course of restoring the land or any other damage to the land caused by subsidence which is attributable to anything done in the exercise of rights conferred by the compulsory rights order in question.
- 12 Where it is shown that the expenses incurred in carrying out any work exceeded the proper cost of the work, any claim for compensation in respect of those expenses shall (without prejudice to any other grounds on which the claim may be liable to be disallowed, wholly or in part) be disallowed to the extent of the excess.
- 13 (1) Except in so far as objection is made to any work on the grounds mentioned in sub-paragraph (c) of paragraph 4 of this Schedule, and subject to the provisions of this Schedule relating to any such objection, expenses incurred in carrying out any work shall not be disallowed (wholly or in part) on the grounds that the proper cost of that work (or of that work together with any other work) is greater than any increase attributable thereto in the value of the land.
- (2) Subject to the preceding sub-paragraph, nothing in the preceding provisions of this Schedule shall be construed as precluding [<sup>F399</sup>the final operator] from maintaining any objection to a claim for compensation, in so far as the objection is on any grounds other than those mentioned in paragraph 4 of this Schedule.

#### Textual Amendments

- F399** Words in **Sch. 3 para. 13** substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 40(1)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

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## FOURTH SCHEDULE **E+W+S**

Sections 26, 28.

### SHORT-TERM IMPROVEMENTS AND RELATED MATTERS FOR WHICH COMPENSATION IS PAYABLE

#### PART I **E+W+S**

##### *IMPROVEMENTS*

- 1 Mole drainage and works carried out to secure the efficient functioning thereof.
- 2 Protection of fruit trees against animals.
- 3 Chalking of land.
- 4 Clay-burning.
- 5 Liming of land.
- 6 Application to land of purchased manure (including artificial manure).
- 7 Consumption on the land of corn (whether produced on the land or not) or of cake or other feeding stuff not produced on the land, by—
  - (a) horses, cattle, sheep or pigs;
  - (b) poultry folded on the land as part of a system of farming practised on the land.

#### PART II **E+W+S**

##### *OTHER MATTERS*

- 8 Growing crops and severed or harvested crops and produce, being in either case crops or produce grown on the land in the year ending with the date of entry.
- 9 Seeds sown and cultivations, fallows and acts of husbandry performed on the land at the expense of the tenant.
- 10 Pasture laid down with clover, grass, lucerne, sainfoin or other seeds, being either—
  - (a) pasture laid down at the expense of the tenant otherwise than in compliance with an obligation imposed on him by an agreement in writing to lay it down to replace temporary pasture comprised in the land when the tenant entered thereon which was not paid for by him; or
  - (b) pasture paid for by the tenant on entering on the land.
- 11 Acclimatisation, hefting or settlement of hill sheep on hill land.

#### PART III **E+W+S**

##### *MODIFICATIONS OF PART II OF THIS SCHEDULE IN RELATION TO LAND NOT OCCUPIED BY A TENANT*

In paragraph 9, the words “at the expense of the tenant” shall be omitted.

In paragraph 10, the words from “being either” to the end of the paragraph shall be omitted.

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## PART IV **E+W+S**

### IMPROVEMENTS (SCOTLAND)

- 12 Protecting fruit trees against animals.
- 13 Chalking of land.
- 14 Clay-burning.
- 15 Claying of land.
- 16 Liming of land.
- 17 Marling of land.
- 18 Eradication or bracken, whins, or broom growing on the land at the commencement of a tenancy, and in the case of arable land the removal of tree roots, boulders, stones or other like obstacles to cultivation.
- 19 Application to land of purchased manure (including artificial manure).
- 20 Consumption on the land of corn (whether produced on the land or not), or of cake or other feeding stuff not produced on the land, by—
- (a) horses, cattle, sheep or pigs; or
  - (b) poultry folded on the land as part of a system of farming practised on the land.
- 21 Laying down temporary pasture with clover, grass, lucerne, sainfoin, or other seeds, sown more than two years prior to the date of entry, in so far as the value of the temporary pasture on the land at the date of entry exceeds the value of the temporary pasture on the land at the commencement of the tenancy for which the tenant did not pay compensation.

## PART V **E+W+S**

### MODIFICATIONS OF PART IV OF THIS SCHEDULE IN RELATION TO LAND NOT OCCUPIED BY A TENANT

In paragraph 18 the words “growing on the land at the commencement of a tenancy” shall be omitted.

For paragraph 21, there shall be substituted the following paragraph:— “21. Pasture laid down with clover, grass, lucerne, sainfoin or other seeds.”

## PART VI **E+W+S**

### MARKET GARDEN IMPROVEMENTS

- 22 Planting of standard or other fruit trees permanently set out.
- 23 Planting of fruit bushes permanently set out.
- 24 Planting of strawberry plants.
- 25 Planting of asparagus, rhubarb and other vegetable crops which continue productive for two or more years.



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- 26      Erection, alteration or enlargement of buildings for the purposes of the trade or business of a market gardener.

## FIFTH SCHEDULE **E** **+W+S**

### COMPENSATION IN RESPECT OF MINERALS

#### *General provisions*

- 1      (1) The provisions of this Schedule shall have effect in relation to land comprised in a compulsory rights order in the circumstances specified in subsection (1) of section thirty-three of this Act; and any reference in this Schedule to land to which this Schedule applies is a reference to land which, immediately before the operative date of such an order, falls within paragraph (a) or paragraph (b) of that subsection.
- (2) In this Schedule “the mineral operator”—
- (a) in relation to land which, immediately before the operative date of the order in question, is subject to a mining lease or order conferring working rights as mentioned in paragraph (a) of the said subsection (1), means the person for the time being entitled to the benefit of that mining lease or order, and
  - (b) in relation to land which, immediately before that date, is land falling within paragraph (b) of the said subsection (1), means the person for the time being entitled to the interest referred to in that paragraph;
- and, in relation to any land which this Schedule applies, “the relevant undertaking” means the mineral undertaking of the mineral operator.
- (3) In this Schedule “the relevant rights and facilities”, in relation to a mineral undertaking, means all rights and facilities for the time being available to the person carrying on that undertaking for the purposes of working, getting, carrying away, using, treating, converting and disposing of minerals, whether on land comprised in the compulsory rights order in question or elsewhere.
- (4) Any reference in any provision of this Schedule to the exercise of the relevant rights and facilities in the manner in which they might reasonably have been expected to be exercised in circumstances mentioned in that provision shall be construed as including a reference to the exercise of those rights and facilities to the extent to which they might reasonably have been expected to be exercised in those circumstances.
- [<sup>F400</sup>2] (1) Any entitlement to compensation under this Schedule shall be an entitlement to compensation from—
- (a) in the case of compensation under paragraph 4 or 12 of this Schedule, the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order;
  - (b) in the case of compensation under paragraph 5 of this Schedule, the person on whose application that order is made;
  - (c) in the case of compensation under paragraph 6 of this Schedule, the person by whom the compensation would be payable if it were compensation under section 27 of this Act;

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

- (d) in the case of compensation under paragraph 7, 8, 9, 10 or 13 of this Schedule, the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order.
- (2) Sub-paragraph (1)(a) of this paragraph shall have effect subject, where different persons have been entitled to the rights conferred by an order for different parts of the year, to any apportionment under section 35(3) of this Act.]

#### Textual Amendments

**F400** Sch. 5 para. 2 substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 41 (with s. 40(7)); S.I. 1994/2553, art. 2

#### *Annual and initial compensation payable to mineral operator*

- 3 For the year beginning with the operative date of the compulsory rights order, and for each subsequent year which begins with an anniversary of that date and falls within the period of occupation, there shall be assessed—
- (a) the profit or loss which a person carrying on the relevant undertaking might reasonably have been expected to make for that year by the exercise of the relevant rights and facilities if the compulsory rights order had not been made, and
  - (b) the profit or loss which such a person might reasonably have been expected to make for that year by the exercise of those rights and facilities in the circumstances existing in that year.
- 4 (1) Where the assessment for any year under sub-paragraph (a) of the last preceding paragraph shows a profit, and the assessment under sub-paragraph (b) of that paragraph also shows a profit, but a smaller profit than the assessment under sub-paragraph (a), the mineral operator shall be entitled to compensation for that year of an amount equal to the difference.
- (2) Where the assessment for any year under sub-paragraph (a) of the last preceding paragraph shows a profit, and the assessment under paragraph (b) of that paragraph shows a loss, the amount of that loss shall be added to the amount of that profit, and the mineral operator shall be entitled to compensation for that year of an amount equal to the sum of those amounts.
- (3) Where the assessment for any year under sub-paragraph (a) of the last preceding paragraph shows a loss, and the assessment under sub-paragraph (b) of that paragraph also shows a loss, but a greater loss than the assessment under sub-paragraph (a), the mineral operator shall be entitled to compensation for that year of an amount equal to the difference.
- 5 (1) For the year beginning with the operative date of the order, the mineral operator (in addition to any compensation payable by virtue of the last preceding paragraph) shall be entitled to compensation of an amount equal to the amount of any expenses reasonably incurred by him which are directly attributable to his being required to vacate land comprised in the order.
- (2) Without prejudice to the generality of the preceding sub-paragraph, the expenses referred to in that sub-paragraph shall be taken to include any expenses reasonably incurred by the mineral operator in procuring the cancellation or modification of a contract in force immediately before the operative date, in so far as it is—

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- (a) a contract for the supply of goods or the rendering of services which would have been required by him for the purposes of the relevant undertaking if the order had not been made, but in consequence of the order are not required for those purposes, or
  - (b) a contract for the supply by him of minerals or other goods which but for the order would have been supplied by him, directly or indirectly, by means of operations on land comprised in the order and, in consequence of the order, cannot be so supplied.
- 6 (1) If, in consequence of the confirmation of the compulsory rights order, the mineral operator incurs a loss in respect of a forced sale of any livestock, vehicles, plant, equipment or other chattels which are kept on land comprised in the order, or which are used on any such land for the purposes of the relevant undertaking, the mineral operator shall (subject to the next following sub-paragraph) be entitled to compensation of an amount equal to that loss.
- (2) Subsection (3) of section twenty-seven of this Act shall apply for the purposes of this paragraph.

*Terminal compensation payable to mineral operator*

- 7 (1) The provisions of this and the next following paragraph shall have effect in relation to land to which this Schedule applies where, after the end of the period of occupation, it continues to be land falling within paragraph (a) or paragraph (b) of subsection (1) of section thirty-three of this Act.
- (2) For the purposes of this paragraph there shall be assessed the profit which, for each year after the period of occupation, a person carrying on the relevant undertaking might reasonably have been expected to make by the exercise of the relevant rights and facilities, as those rights and facilities might reasonably have been expected to subsist at the end of the period of occupation, and in the circumstances which might reasonably have been expected to exist at the end of that period, if—
- (a) the compulsory rights order had not been made, and
  - (b) during the period of occupation, the person carrying on the relevant undertaking had exercised the relevant rights and facilities in the manner in which (had that order not been made) he might reasonably have been expected to exercise them.
- (3) There shall also be assessed the profit which, for each year after the period of occupation, a person carrying on the relevant undertaking might reasonably be expected to make by the exercise of the relevant rights and facilities, as those rights and facilities subsist at the end of the period of occupation, and in the circumstances existing at the end of that period, on the assumption that, during that period, he had exercised the relevant rights and facilities (so far as was reasonably practicable, having regard to the effect of the compulsory rights order) in such manner as in the circumstances he might reasonably have been expected to exercise them.
- (4) In this paragraph, and in paragraphs 8 to 10 of this Schedule, “year after the period of occupation” means a year which is either the year beginning with the end of the period of occupation or a year beginning with an anniversary of the end of that period.
- 8 (1) For each year after the period of occupation there shall be assessed the following values, that is to say,—

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

- (a) the current value, as at the end of the period of occupation, of the expectation of making a profit for that year assessed in accordance with sub-paragraph (3) of the last preceding paragraph, and
    - (b) the current value, as at the end of the period of occupation, of the expectation of making a profit for that year assessed in accordance with sub-paragraph (2) of that paragraph.
  - (2) If the aggregate of the values assessed in accordance with head (a) of the preceding sub-paragraph is less than the aggregate of the values assessed in accordance with head (b) thereof, the mineral operator shall be entitled to compensation of an amount equal to the difference.
- 9
- (1) The provisions of this and the next following paragraph shall have effect in relation to land to which this Schedule applies where, after the end of the period of occupation, it continues to be subject to a mining lease the benefit of which is held for the purposes of a mineral undertaking, and that mining lease contains a provision as to minimum rent.
  - (2) For each year after the period of occupation there shall be assessed the minimum rent liability (if any) which the mineral operator might reasonably have been expected to incur under that mining lease if—
    - (a) the compulsory rights order had not been made, and
    - (b) during the period of occupation, he had exercised the relevant rights and facilities in the manner in which (had that order not been made) he might reasonably have been expected to exercise them.
  - (3) For each such year there shall also be assessed, in the circumstances existing at the end of the period of occupation, the minimum rent liability (if any) which the mineral operator might reasonably be expected to incur under that mining lease, on the assumption that, during that period, he had exercised the relevant rights and facilities (so far as was reasonably practicable, having regard to the effect of the compulsory rights order) in such manner as in the circumstances he might have reasonably been expected to exercise them.
  - (4) In this and the next following paragraph any reference to a minimum rent liability for any year, in relation to a mining lease, is a reference to the difference between—
    - (a) the rent payable for that year under that mining lease, and
    - (b) the rent which would have been payable for that year under that mining lease if the lease had not contained any provision as to minimum rent.
  - (5) The preceding provisions of this paragraph shall have effect in relation to an order conferring working rights as they have effect in relation to a mining lease.
  - (6) In this paragraph “rent” includes yearly or other rent, and any toll, duty, royalty or other annual or periodical payment in the nature of rent, whether payable in money or in money’s worth or otherwise.
- 10
- (1) The following capital equivalents shall be assessed, that is to say—
    - (a) the capital equivalent, as at the end of the period of occupation, of the aggregate minimum rent liabilities assessed in accordance with sub-paragraph (3) of the last preceding paragraph, and
    - (b) the capital equivalent, as at the end of the period of occupation of the aggregate minimum rent liabilities assessed in accordance with sub-paragraph (2) of that paragraph.

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- (2) If the capital equivalent assessed in accordance with head (a) of the preceding sub-paragraph is greater than the capital equivalent assessed in accordance with head (b) thereof, the mineral operator shall be entitled to compensation of an amount equal to the difference.
- (3) For the purposes of this paragraph the capital equivalent of the aggregate minimum rent liabilities for any years (whether assessed in accordance with sub-paragraph (2) or sub-paragraph (3) of the last preceding paragraph) shall be taken to be the amount of a fund which, if set aside for the purpose at the end of the period of occupation, would afford a sufficient (but not more than sufficient) indemnity against those liabilities as so assessed.

*Compensation payable to owner other than mineral operator*

- 11 (1) The provisions of paragraphs 12 and 13 of this Schedule shall have effect in relation to land to which this Schedule applies where, immediately before the operative date of the order, the interest of the owner of the land, or a stratum thereof, is held by a person other than the mineral operator.
- (2) In those provisions “the separate interest” means the interest which is held as mentioned in the preceding sub-paragraph, and any reference to the owner of the separate interest is a reference to the person who is for the time being entitled to that interest.
- 12 (1) For the year beginning with the operative date of the order, and for each subsequent year which begins with an anniversary of that date and falls within the period of occupation, there shall be assessed the aggregate amount of the rent, royalties and other sums to which the owner of the separate interest might reasonably have been expected to be entitled for that year in respect of that interest, and in respect of any interest of his in any other relevant land, if—
  - (a) the compulsory rights order had not been made, and
  - (b) the person carrying on the relevant undertaking had exercised the relevant rights and facilities in the manner in which, in those circumstances, he might reasonably have been expected to exercise them.
- (2) For any such year there shall also be assessed the aggregate amount of the rent, royalties and other sums to which the owner of the separate interest might reasonably have been expected to be entitled for that year in respect of that interest, and in respect of any interest of his in any other relevant land, on the assumption that the person carrying on the relevant undertaking exercised the relevant rights and facilities during that year (so far as was reasonably practicable, having regard to the effect of the compulsory rights order) in such manner as in those circumstances he might reasonably have been expected to exercise them.
- (3) For any year for which the amount assessed under the last preceding sub-paragraph is less than the amount assessed under sub-paragraph (1) of this paragraph, the owner of the separate interest shall be entitled to compensation of an amount equal to the difference.
- (4) In this paragraph “other relevant land” means land, other than the land in which the separate interest subsists, being land in which the mineral operator has an interest held for the purposes of the relevant undertaking.

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

- 13 (1) For the purposes of this paragraph there shall be assessed the market value which, at the end of the period of occupation, the separate interest might reasonably have been expected to have if—
- (a) the compulsory rights order had not been made, and
  - (b) the person carrying on the relevant undertaking had exercised the relevant rights and facilities in the manner in which in those circumstances he might reasonably have been expected to exercise them.
- (2) There shall also be assessed the market value which, in the circumstances existing at the end of the period of occupation, the separate interest might reasonably be expected to have, on the assumption that, during that period, the person carrying on the relevant undertaking exercised the relevant rights and facilities (so far as was reasonably practicable, having regard to the effect of the compulsory rights order) in the manner in which in those circumstances he might reasonably have been expected to exercise them.
- (3) If the value assessed under the last preceding sub-paragraph is less than the value assessed under sub-paragraph (1) of this paragraph, the owner of the separate interest shall be entitled to compensation of an amount equal to the difference.

*Provisions as to compensation under other provisions of Part II*

- 14 (1) Where any land to which this Schedule applies consists or forms part of land which constitutes a holding to which section seventeen, section twenty-one or section twenty-nine of this Act applies, the following provisions of this paragraph shall have effect.
- (2) Where for any year—
- (a) compensation would (apart from this sub-paragraph) be payable in respect of that holding by virtue of section seventeen of this Act, but
  - (b) it may reasonably be assumed that part of the holding would have been prevented from being used as mentioned in paragraph (c) of subsection (1) of section nineteen of this Act if the compulsory rights order had not been made, and the person carrying on the relevant undertaking had exercised the relevant rights and facilities in the manner in which, in those circumstances, he might reasonably have been expected to exercise them.
- the provisions of sections eighteen and nineteen of this Act shall apply in relation to that year as if that part of the holding were not comprised in the holding, and any reference in those sections to the entirety of the holding shall be construed accordingly.
- (3) Compensation under section twenty-two of this Act shall not be payable in respect of work carried out on land which forms part of the holding and is land to which this Schedule applies.
- (4) If the entirety of the holding consists of land to which this Schedule applies, no compensation under section twenty-three of this Act shall be payable in respect of the holding.
- (5) If only part of the holding consists of land to which this Schedule applies—
- (a) section twenty-three of this Act shall have effect in relation to the holding, but
  - (b) subsections (2) and (4) of that section shall apply as if that land did not form part of the holding, and any reference in that section to values computed in

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accordance with any of paragraphs (a), (b) and (c) of subsection (2) thereof shall be construed accordingly.

- (6) In this paragraph any reference to section seventeen, section eighteen, section nineteen, section twenty-two or section twenty-three of this Act includes a reference to the provisions of that section as applied by section twenty-nine of this Act.
- 15 (1) Where the land comprised in a compulsory rights order consists of or includes land of which, immediately before the operative date of the order, the surface is occupied by one person and any of the subjacent strata are occupied by another person, those subjacent strata shall not be treated as constituting a holding to which section seventeen, section twenty-one or section twenty-nine of this Act applies.
- (2) Where the land comprised in a compulsory rights order consists of or includes land of which, at the end of the period of occupation, the surface is owned by one person and any of the subjacent strata are owned by another person, the subjacent strata shall not be treated as constituting or forming part of a holding to which section twenty-one of this Act applies, or a holding in respect of which the provisions of that section have effect as applied by section twenty-nine of this Act.

SIXTH SCHEDULE **E**  
**+W+S**

Section 34.

APPLICATION OF COMPENSATION PROVISIONS TO SPECIAL CASES

*Changes in right of occupation, or division of ownership of holding*

- 1 (1) Subject to the next following paragraph, where a compulsory rights order comprises the whole or part of a holding to which section seventeen of this Act applies, and at any time on or after the operative date and before the end of the period of occupation an act or event occurs whereby—
- (a) one person becomes the person who is for the time being entitled to occupy part of that holding or who would be so entitled if the order had not been made, and
- (b) another person becomes the person who is for the time being entitled to occupy another part of that holding or who would be so entitled if the order had not been made,

the following provisions of this paragraph shall have effect.

- (2) As from the occurrence of that act or event, each of those parts of the holding shall be treated, for the purposes of sections [F401 17 and 18] of this Act, as if it were a separate holding, and were a holding to which section seventeen of this Act applied:

Provided that no compensation shall be payable by virtue of section seventeen of this Act in respect of land which (in accordance with the preceding provisions of this sub-paragraph) is to be treated as a separate holding, but does not include any of the land comprised in the compulsory rights order.

*Status: Point in time view as at 01/04/2017.*

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#### Textual Amendments

**F401** Words in Sch. 6 para. 1(2) substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 42(1)(6) (with s. 40(7)); S.I. 1994/2553, art. 2

- 2 Where a compulsory rights order comprises the whole or part of a holding to which section seventeen of this Act applies, and at any time on or after the operative date and before the end of the period of occupation a new tenancy is created which comprises the holding or any part thereof, that tenancy shall be disregarded for the purposes of sections [F402 17 and 18] of this Act, and for the purposes of the preceding paragraph, and the provisions of those sections and of that paragraph shall apply as if that tenancy had not been created.

#### Textual Amendments

**F402** Words in Sch. 6 para. 2 substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 42(2)(6) (with s. 40(7)); S.I. 1994/2553, art. 2

F403<sup>3</sup> .....

#### Textual Amendments

**F403** Sch. 6 para. 3 repealed (31.10.1994) by 1994 c. 21, s. 67, Sch. 11 Pt. III (with s. 40(7)); S.I. 1994/2552, art. 2, Sch. 1 Appendix

- 4 (1) The provisions of this paragraph shall have effect where a compulsory rights order comprises the whole or part of a holding to which section twenty-one of this Act applies, and at the end of the period of occupation one person is the owner of part of that holding and another person is the owner of another part thereof.
- (2) For the purposes of sections twenty-one to twenty-three of this Act, each of those parts of the holding shall be treated as if it were a separate holding, and were a holding to which section twenty-one of this Act applied:

Provided that no compensation shall be payable by virtue of any of those sections in respect of land which (in accordance with the preceding provisions of this subparagraph) is to be treated as a separate holding, but does not include any of the land comprised in the compulsory rights order.

- [F404 4A Where a compulsory rights order comprises the whole or part of a holding to which section 21 of this Act applies, and at the end of the period of occupation one person is entitled to occupy part of that holding and another person is entitled to occupy another part of that holding, each of those parts of the holding shall be treated for the purposes of section 23A of this Act as if it were a separate holding, and were a holding to which section 21 of this Act applied.]

#### Textual Amendments

**F404** Sch. 6 para. 4A inserted by Coal Industry Act 1975 (c. 56), s. 6(3)

- 5 The provisions of paragraphs 1 to 4 of this Schedule shall (with the necessary modifications) have effect in relation to a holding to which section twenty-nine



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of this Act applies as they have effect in relation to a holding to which sections seventeen and twenty-one of this Act apply.

- 6 In the following paragraphs of this Schedule, any reference to a holding, in relation to any provisions of Part II of this Act, includes a reference to land which, in accordance with any of the preceding paragraphs of this Schedule, is to be treated as if it were a separate holding for the purposes of those provisions.

*Provisions as to assessment of profit or loss under s. 19*

F4057 .....

**Textual Amendments**

**F405** Sch. 6 para. 7 repealed (31.10.1994) by 1994 c. 21, s. 67, Sch. 11 Pt. III (with s. 40(7)); S.I. 1994/2552, art. 2, Sch. 1 Appendix

[<sup>F406</sup>8 (1) Where a person is entitled to compensation for any year in respect of a holding by virtue of section seventeen of this Act, then in so far as it is shown that—

- (a) reasonable opportunities were open to him (apart from the occupation and use of any part of the holding not comprised in the order) to mitigate any loss of profit from the holding by augmenting his income for that year in other ways, and
- (b) those opportunities would not have been open to him if he had continued to be in occupation of the entirety of the holding,

the amount of any profit assessed for that year under subsection (1) of section nineteen of this Act shall be reduced by the amount by which he has augmented his income for that year by availing himself of those opportunities, or by which he might reasonably have been expected to augment his income for that year if he had availed himself of those opportunities, as the case may be.

(2) For the purposes of this paragraph no account shall be taken of any opportunities of which the person in question has not availed himself (notwithstanding that they were opportunities of the kind described in the preceding sub-paragraph) in so far as they would have involved his engaging (whether as an employed person or otherwise) in a substantially different occupation from that in which he was engaged during the period preceding the operative date of the order.

(3) Paragraph (a) of subsection (8) of section nineteen of this Act, and the last preceding paragraph, shall apply for the purposes of this paragraph as they apply for the purposes of that section.]

**Textual Amendments**

**F406** Sch. 6 para. 8 ceased to have effect except so far as applied by para. 10 of Sch. 6 (S.)(31.10.1994) by virtue of 1994 c. 21, s. 52, Sch. 8 para. 42(3)(6) (with s. 40(7)); S.I. 1994/2553, art. 2

[<sup>F407</sup>9 (1) Where a person is entitled to compensation for any year in respect of a holding by virtue of section seventeen of this Act, and he has received any compensation—

- (a) by virtue of section twenty-six of this Act, in respect of any improvements carried out on land comprised in that holding, being improvements of a description specified in Part I or Part VI of the Fourth Schedule to this Act, or

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- (b) by virtue of section twenty-seven of this Act, in respect of a forced sale of any property kept on or used for the purposes of that holding, or removed from that holding, as the case may be,  
 the amount of any profit assessed for that year under subsection (1) of section nineteen of this Act shall be reduced by the amount of the income from that compensation which is attributable to that year.
- (2) For the purposes of the preceding sub-paragraph, the income from any compensation which is attributable to any year—
  - (a) in a case where the compensation is shown to have been invested by the recipient thereof, shall be taken to be the amount of income accruing in respect of that year from the property representing the compensation, and
  - (b) in any other case, shall be taken to be an amount equal to the income which would have accrued for that year from property representing the compensation if it had been invested in securities bearing interest at the rate for the time being in force for the purposes of section thirty-five of this Act.
- (3) In this paragraph any reference to Part I or Part VI of the Fourth Schedule to this Act includes a reference to that Part as varied by any order made under section twenty-six or section twenty-eight of this Act.]

**Textual Amendments**  
**F407** Sch. 6 para. 9 ceased to have effect except so far as applied by para. 10 of Sch. 6 (S.)(31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 42(3)(6)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

- 10 The provisions of paragraphs 8 and 9 of this Schedule shall have effect (with the necessary modifications) in relation to any compensation payable under paragraph 4 of the Fifth Schedule to this Act, and to any compensation received by virtue of paragraph 5 or paragraph 6 of that Schedule, as those provisions have effect in relation to compensation to which a person is entitled by virtue of section seventeen of this Act, and to compensation received by virtue of section twenty-six or twenty-seven of this Act.
- 11 In paragraphs 7 to 9 of this Schedule, references to sections seventeen, nineteen and twenty-seven of this Act shall include references to the provisions of those sections as applied by section twenty-nine of this Act.

*Assessment of annual compensation otherwise than by reference to letting from year to year*  
**F408** 12 .....

**Textual Amendments**  
**F408** Sch. 6 para. 12 repealed (31.10.1994) by 1994 c. 21, s. 67, **Sch. 11 Pt. III** (with s. 40(7)); S.I. 1994/2552, **art. 2, Sch. 1 Appendix**

- 13 (1) Where any land to which section thirty-two of this Act applies in relation to a compulsory rights order is—
  - (a) land which, immediately before the operative date of the order, was used for a purpose for which land would not normally be let from year to year, or

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(b) land in respect of which, immediately before the operative date, there was in force permission granted under Part III of [<sup>F409</sup>the Act of 1971] for the land to be used for such a purpose,

subsection (3) of that section shall not apply, and for the purposes of subsection (2) of that section annual value shall be determined in accordance with regulations made by the Minister under this paragraph.

(2) Sub-paragraph (2) of the last preceding paragraph shall apply for the purposes of this paragraph as it applies for the purposes of that paragraph.

#### **Textual Amendments**

**F409** Words substituted by virtue of [Town and Country Planning Act 1971 \(c. 78\)](#), [Sch. 24 para. 2](#)

#### *Valuation of property otherwise than by reference to sale in open market*

- 14 (1) This paragraph applies to any provision of this Act under which compensation is to be assessed by reference to the value which any property would have if it were offered for sale.
- (2) For the purposes of the application of any such provision to property of a kind not normally the subject of sales in the open market, the Minister may make regulations providing for value to be ascertained by reference to such matters as may be specified in the regulations.

#### *Woodlands*

- 15 The Minister may by regulations make provision for modifying or adapting any of the provisions of this Act relating to compensation in respect of compulsory rights orders in their application to land which, immediately before the operative date of such an order, or the date of entry thereunder, was used as woodlands, or as woodlands of a particular description specified in the regulations.

#### *Terminal compensation in respect of agricultural land qualifying for compensation under s. 26*

- 16 (1) The provisions of this paragraph shall have effect where compensation under section twenty-six of this Act is payable in respect of any improvements or other matters, and the land in relation to which that compensation is payable constitutes or forms part of a holding to which section twenty-one of this Act applies.
- (2) Section twenty-two of this Act shall apply in relation to that holding as if any reference in that section to the condition in which the land was immediately before the date of entry (in so far as any such reference is applicable to the land referred to in the preceding sub-paragraph) were a reference to the condition in which that land would have been, immediately before the date of entry, if those improvements or other matters had not been carried out, or had not applied to that land, as the case may be.
- (3) Section twenty-three of this Act shall apply in relation to the holding as if, for the value mentioned in paragraph (c) of subsection (2) of that section, there were substituted the value which, at the end of the period of occupation, a freehold interest in the holding would have if—

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

- (a) those improvements or other matters had not been carried out, or had not applied to the land in question, as the case may be, but
  - (b) in all other respects the entirety of the holding were in the state in which it was immediately before the date of entry.
- (4) Subsection (4) of section twenty-three of this Act shall apply for the purpose of computing value as mentioned in the last preceding sub-paragraph as it applies for the purpose of computing the values referred to in that subsection.

*Provisions as to compensation under s. 32*

- 17 (1) No compensation shall be payable under subsection (2) of section thirty-two of this Act for any year for which the interest of the owner of the relevant land is held subject to, and with the benefit of, a tenancy which was subsisting immediately before the operative date of the compulsory rights order in question, unless the rent payable under that tenancy for that year is a rent which is subject to a liability to be reduced in consequence of that order or of anything done in the exercise of rights conferred by that order, or is a rent which has been so reduced in pursuance of such a liability.
- (2) For the purposes of the preceding sub-paragraph the rent payable under a tenancy shall be taken to be subject to a liability to be reduced as therein mentioned if, under the terms and conditions of the tenancy or under any enactment applicable thereto, the tenant is entitled to require that rent to be so reduced, or is entitled to require the question whether the rent should be so reduced, or generally what rent should be payable under the tenancy, to be referred to arbitration or to any court or tribunal; and the reference in that sub-paragraph to a rent which has been so reduced in pursuance of such a liability shall be construed accordingly.
- 18 (1) No compensation shall be payable under subsection (2) of the said section thirty-two for any year for which the owner of the relevant land is entitled to compensation under subsection (2) of section thirty-one of this Act in respect of a right to which this paragraph applies.
- (2) This paragraph applies to any right which fulfils the following conditions, that is to say,—
- (a) that it is a right restrictive of the use of the whole or part of the land comprised in the compulsory rights order in question;
  - (b) that the benefit of the right is annexed to the relevant land, or to that land together with other land, or (if the benefit of the right is not so annexed) that the right is exercisable by a person who is the owner of the relevant land; and
  - (c) that the exercise of the right, in relation to any land comprised in the order, could (apart from the order) have prevented that land from being used for the <sup>F410</sup>activities which, in relation to the opencast planning permission referred to in the order, constitute the permitted activities.]

**Textual Amendments**

**F410** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 16](#)

- 19 In paragraphs 17 and 18 of this Schedule any reference to the relevant land shall be construed in accordance with subsection (2) of section thirty-two of this Act.

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*Restricted lettings, and easements and similar rights*

- 20 This paragraph applies to the following rights, that is to say,—
- (a) any right conferred by a letting of land, or a licence to occupy land, in pursuance of an agreement [<sup>F411</sup>falling within section 2(3)(a) of the 1986 Act];
  - (b) any easement or similar right over land.

**Textual Amendments**

**F411** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), s. 100, [Sch. 14 para. 32\(2\)](#)

- 21 For the purposes of the following provisions of this Act, that is to say, subsections (2) and (3) of section seventeen, subsection (2) of section twenty-one, subsection (1) of section twenty-nine, and the provisions of subsection (3) of section seventeen as applied by subsection (2) of section twenty-nine, any right to which the last preceding paragraph applies shall be disregarded; and, in relation to any land which is subject to any such right, those provisions shall apply as if that right had not been conferred, reserved or otherwise acquired, as the case may be.

<sup>F412</sup>22 . . . . .

**Textual Amendments**

**F412** [Sch. 6 para. 22](#) repealed (31.10.1994) by [1994 c. 21, s. 67, Sch. 11 Pt. III](#) (with s. 40(7)); [S.I. 1994/2552, art. 2, Sch. 1](#) Appendix

- 23 Where the whole or part of the land comprised in a compulsory rights order is subject to any such right as is mentioned in sub-paragraph (a) of paragraph 20 of this Schedule, and in any year in which that right subsists, being any such year as is mentioned in subsection (2) of section thirty-one of this Act, the exercise of that right is prevented or injuriously affected by reason of the order or of anything done in the exercise of rights conferred by the order, the said subsection (2) shall have effect in relation to that right as if it were an easement to which that section applies.

- 24 Any agreement for the letting of land or the grant of a licence in respect of land, where, before the agreement was entered into, the letting or grant was approved [<sup>F413</sup>under section 2 of the Act of 1986 or of the Act of 1948 (each of]which relates to the effect of certain lettings and licenses to occupy agricultural land, but excepts lettings and licenses approved [<sup>F414</sup>under that section from the operation of that section)]shall be treated for the purposes of section seventeen of this Act as conferring a right to occupy the land to which the agreement relates, if apart from this paragraph it would not be treated as conferring such a right.

**Textual Amendments**

**F413** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, [Sch. 13 para. 3, Sch. 14 para. 32\(3\)\(a\)](#)

**F414** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, [Sch. 13 para. 3, Sch. 14 para. 32\(3\)\(b\)](#)

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

- 25 Where the whole or part of a holding to which section seventeen of this Act applies consists of land occupied under a letting or licence approved <sup>F415</sup>under section 2 of the Act of 1986 or]of the Act of 1948, and—
- (a) by the agreement under which the land was let or the licence granted a right to use the land for specified purposes was reserved to the person letting the land or granting the licence, as the case may be;
  - (b) the exercise of that right is prevented or injuriously affected by reason of the compulsory rights order or of anything done in the exercise of rights conferred by the order; and
  - (c) that right does not constitute an easement or similar right,
- subsection (2) of section thirty-one of this Act shall have effect in relation to that right as if it were an easement to which that section applies.

#### **Textual Amendments**

**F415** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 32(4)**

#### *Apportionment of annual compensation in respect of parts of a year*

- 26 (1) Where, in consequence of any such act or event as is mentioned in paragraph 1 of this Schedule, a part of a holding is to be treated as a separate holding as mentioned in that paragraph (or in that paragraph as applied by paragraph 5 of this Schedule), and that act or event occurs during the course of the year beginning with the operative date of the compulsory rights order in question, or in the course of a year beginning with an anniversary of that date, the provisions of Part II of this Act, and the provisions of this Schedule other than this sub-paragraph, shall apply—
- (a) in relation to the entirety of the holding, with respect to the part of that year ending with that act or event, and
  - (b) in relation to each of those separate holdings, with respect to the part of that year after that act or event,
- as if any reference in those provisions to a year included a reference both to the part of that year ending with that act or event and to the part of that year after that act or event.
- (2) Where in consequence of any act or event occurring on or after the operative date of a compulsory rights order and before the end of the period of occupation, other than any such act or event as is mentioned in the preceding sub-paragraph,—
- (a) one person would (apart from this sub-paragraph) be entitled to compensation for any year in respect of a holding if that act or event had occurred before the beginning of that year, and
  - (b) another person would (apart from this sub-paragraph) be entitled to compensation for that year in respect of the holding if that act or event had occurred after the end of that year,
- the provisions of Part II of this Act, and the provisions of this Schedule other than this sub-paragraph, shall apply as if any reference to a year included a reference both to the part of that year ending with that act or event and to the part of that year after that act or event.
- (3) For the purposes of the application of the provisions of Part II of this Act, or of the provisions of this Schedule other than this sub-paragraph, to a compulsory rights

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order which has effect only for part of a year, or for one or more complete years followed by part of another year, any reference in those provisions to a year shall be construed as including a reference to that part of a year.

- (4) In the application of any of the said provisions to a part of a year, in accordance with the preceding provisions of this paragraph, any reference to annual value, or to any other amount which is required to be assessed by reference to a year, shall be construed as a reference to so much of the annual value for that year, or of the amount in question assessed by reference to that year, as (on a rateable apportionment of that value or amount as between different parts of that year) is properly attributable to that part of that year.
- <sup>F416</sup>(5) This paragraph shall not apply in relation to any compensation the entitlement to which is apportioned in accordance with section 17(3A) of this Act.

#### Textual Amendments

**F416** Sch. 6 para. 26(5) inserted (S.) (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 42(4)(6) (with s. 40(7)); S.I. 1994/2553, art. 2

- 27 Sub-paragraphs (2) to (4) of the last preceding paragraph shall have effect (with the necessary modifications) in relation to compensation under paragraph 4, paragraph 5 or paragraph 12 of the Fifth Schedule to this Act as they have effect in relation to annual compensation in respect of a holding to which section seventeen of this Act applies.
- 28 (1) Where, in the case of land to which section thirty-two of this Act applies in relation to a compulsory rights order, a person is the owner of that land for part, but not the whole, of a year, subsection (2) of that section shall apply as if any reference to a year included a reference to that part of a year.
- (2) The preceding sub-paragraph shall have effect without prejudice to the operation of sub-paragraph (3) of paragraph 26 of this Schedule, where the said sub-paragraph (3) is applicable; and sub-paragraph (4) of that paragraph shall have effect in relation to the preceding sub-paragraph as it has effect in relation to sub-paragraphs (1) to (3) of that paragraph.

#### *Concurrent compulsory rights orders*

- 29 The Minister may by regulations make provision for modifying or adapting any of the provisions of this Act relating to compensation in respect of compulsory rights orders in their application to land which—
- (a) constitutes or forms part of the land comprised in a compulsory rights order, or, in relation to a compulsory rights order, forms part of a holding to which section seventeen or section twenty-nine of this Act applies, or is land to which section thirty-two of this Act applies, and
- (b) at any time after the operative date of that order, and before the end of the period of occupation thereunder, constitutes or forms part of the land comprised in another compulsory rights order, or, in relation to another such order, forms part of a holding to which section seventeen or section twenty-nine of this Act applies, or is land to which section thirty-two of this Act applies.

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*Compensation in respect of limited compulsory rights orders*

- 30 (1) In respect of a compulsory rights order which provides that its operation shall be limited as mentioned in subsection (1) of section eight of this Act, the provisions of Part II of this Act shall apply subject to the following provisions of this paragraph.
- (2) In so far as the operation of the order extends to an easement or similar right in respect of the whole or part of the land comprised in the order, or to a right restrictive of the use of the whole or part of that land, the provisions of section thirty-one of this Act shall have effect with respect to that easement or right, but not with respect to any easement or right to which the operation of the order does not extend.
- (3) In so far as the operation of the order extends to the interest or rights created or conferred by a mining lease or order conferring working rights in respect of minerals in or under the land comprised in the compulsory rights order or part thereof, the provisions of section thirty-three of this Act and of the Fifth Schedule thereto shall have effect with respect to that interest or those rights, but not with respect to any interest or rights created or conferred by a mining lease or order conferring working rights to which the compulsory rights order does not extend.
- (4) Subject to sub-paragraphs (2) and (3) of this paragraph, none of the provisions of Part II of this Act (except subsection (4) of section twenty-three in so far as it applies for the purposes of section thirty-one of this Act) shall have effect in relation to the order.

*Application to Scotland*

- 31 In the application of this Schedule to Scotland, for references to Part I of the Fourth Schedule to this Act there shall be substituted references to Part IV of that Schedule, excluding paragraph 21 thereof, and for references to Part III of [F417the Act of 1971] there shall be substituted references to [F418Part III of the Act of 1972], and for references to an agreement [F419falling within section 2(3)(a) of the 1986 Act, to an agreement for the letting of land [F420and to section 2 of the Act of 1986 there shall be substituted respectively references to a lease [F421falling within section 2(2)(a) of the Scottish Act of 1991, to a lease and to section 2 of the Scottish Act of 1991.]] [F420and to approval under section 2 of the Act of 1986 there shall be substituted respectively references to a lease falling within section 2(2)(a) of the Scottish Act of 1991 or (as the case may be) to section 3 of the Scottish Act of 2003, to a lease and to any short limited duration tenancy (within the meaning of the Scottish Act of 2003) of less than a year.]

**Textual Amendments**

- F417** Words substituted by virtue of [Town and Country Planning Act 1971 \(c. 78\)](#), [Sch. 24 para. 2](#)
- F418** Words substituted by virtue of [Town and Country Planning \(Scotland\) Act 1972 \(c. 52\)](#), [Sch. 22 para. 2](#)
- F419** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), s. 100, [Sch. 14 para. 32\(5\)](#)
- F420** Words in Sch. SIXTH para. 31 substituted (S.) (27.11.2003) by [Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, [Sch. para. 6](#)
- F421** Words in Sch. 6 para. 31 substituted (31.10.1994) by 1994 c. 21, s. 52, [Sch. 8 para. 42\(5\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)



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SEVENTH  
SCHEDULE **E+W+S**

Section 37.

ADJUSTMENTS BETWEEN LANDLORDS AND TENANTS AND IN  
RESPECT OF MORTGAGES AND MINING LEASES AND ORDERS

PART I **E+W+S**

*AGRICULTURAL HOLDINGS*

- 1 (1) The provisions of this paragraph shall have effect where—
- (a) the land comprised in a compulsory rights order consists of or includes land falling within paragraphs (a) and (b) of subsection (1) of section twenty-four of this Act, and
  - (b) the tenancy under which the tenant could have claimed compensation for the improvements or special system of farming in question, or a subsequent tenancy under which the tenant has retained or succeeded to the relevant right to compensation, terminates on or after the date of entry, but before the end of the period of occupation, without being succeeded by another such subsequent tenancy.
- (2) In the circumstances specified in the preceding sub-paragraph, the provisions of the [<sup>F422</sup>Act of 1986] as to compensation for long-term improvements, and as to compensation for a special system of farming,—
- (a) shall apply, in relation to the tenancy terminating as mentioned in that sub-paragraph, as if, at the termination of that tenancy, the land in question were in the state in which it was immediately before the date of entry, and
  - (b) if the tenant under that tenancy quitted the holding before the termination of his tenancy, shall so apply as if he had quitted the holding on the termination of his tenancy.
- (3) Subsection (5) of section twenty-four of this Act shall apply for the purposes of sub-paragraph (1) of this paragraph as it applies for the purposes mentioned in that subsection; and subsection (6) of that section shall apply in relation to the last preceding sub-paragraph as it applies in relation to subsection (2) of that section.

**Textual Amendments**

**F422** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 33\(2\)](#)

- [<sup>F423</sup>1A(1) The provisions of this paragraph shall have effect where—
- (a) paragraphs (a) and (b) of subsection (1) of section 25A of this Act apply, and
  - (b) the farm business tenancy at the end of which the tenant could have claimed compensation for tenant's improvements terminates on or after the date of entry, but before the end of the period of occupation, without being succeeded by another such subsequent tenancy.
- (2) In the circumstances specified in sub-paragraph (1) of this paragraph, the provisions of Part III of the Act of 1995—

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- (a) shall apply, in relation to the tenancy mentioned in that sub-paragraph, as if, at the termination of that tenancy, the land in question were in the state in which it was immediately before the date of entry, and
  - (b) if the tenant under that tenancy quitted the holding before the termination of his tenancy, shall so apply as if he had quitted the holding on the termination of his tenancy.
- (3) In sub-paragraph (2) of this paragraph, “holding”, in relation to a farm business tenancy, and “termination”, in relation to a tenancy, have the same meaning as in the Act of 1995.]

#### Textual Amendments

**F423** Sch. 7 para. 1A inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), Sch. para. 20(1)(2) (with s. 37)

- 2 (1) The provisions of this paragraph shall have effect where land comprised in an agricultural holding [<sup>F424</sup>held under a tenancy in relation to which the Act of 1986 applies] is comprised in a compulsory rights order (whether any other land is comprised in the holding, or comprised in the order, or not), and—
- (a) before the date of entry long-term improvements qualifying for compensation under the [<sup>F425</sup>Act of 1986] (in this Act referred to as “the former improvements”) had been carried out on the land in question, or a special system of farming qualifying for compensation under that Act (in this paragraph referred to as “the former system”) had been adopted on that land, and
  - (b) at the end of the period of occupation the circumstances are such that the provisions of the [<sup>F425</sup>Act of 1986] referred to in subsection (2) of section twenty-four of this Act (as extended by subsection (6) of that section) would have applied as mentioned in subsection (3) of that section, but for the fact that the benefit of the former improvements, or the increased value attributable to the former system, as the case may be, has been replaced or regained, on the restoration of the land, by works (in this paragraph referred to as “the new improvements”) or the continuous adoption of a system of farming (in this paragraph referred to as “the new system”) of comparable benefit to the land.
- (2) In the circumstances specified in the preceding sub-paragraph, the said provisions of the [<sup>F425</sup>Act of 1986] shall have effect in relation to the new improvements or the new system, as the case may be, as if those improvements had been carried out, or that system had been adopted, by the person who carried out or adopted the former improvements or the former system.
- (3) Subsections (7) and (8) of section twenty-four of this Act shall apply for the purposes of this paragraph as they apply for the purposes of that section.
- [<sup>F426</sup>(3A) The references in sub-paragraph (1)(a) of this paragraph to the Act of 1986 include references to the Act of 1948.]

#### Textual Amendments

**F424** Words in Sch. 7 para. 2(1) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), Sch. para. 20(3) (with s. 37)

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**F425** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 33\(3\)\(a\)](#)

**F426** [Sch. 7 para. 2\(3A\)](#) inserted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 33\(3\)\(b\)](#)

- [<sup>F427</sup>2A(1) The provisions of this paragraph shall have effect where land comprised in a farm business tenancy is comprised in a compulsory rights order (whether any other land is comprised in the holding, or comprised in the order, or not), and—
- (a) before the date of entry there had been provided in relation to the land in question tenant’s improvements (in this paragraph referred to as “the former tenant’s improvements”) in respect of which, immediately before that date, the tenant had a prospective right to compensation under section 16 of the Act of 1995 on quitting the holding on the termination of the tenancy, and
  - (b) at the end of the period of occupation the circumstances are such that Part III of that Act would have applied as mentioned in subsections (3) and (4) of section 25A of this Act, but for the fact that the benefit of the former tenant’s improvements has been replaced, on the restoration of the land, by other improvements (in this paragraph referred to as “the new improvements”) of comparable benefit to the land.
- (2) In the circumstances specified in sub-paragraph (1) of this paragraph, Part III of the Act of 1995 shall have effect in relation to the new improvements as if those improvements were tenant’s improvements.
- (3) Subsections (2) and (6) of section 25A of this Act shall apply for the purposes of this paragraph as they apply for the purposes of that section.]

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#### Textual Amendments

**F427** [Sch. 7 para. 2A](#) inserted (1.9.1995) by [1995 c. 8, ss. 40, 41\(2\)](#), [Sch. para. 20\(4\)](#) (with s. 37)

- 3 (1) Where by virtue of section twenty-four of this Act a tenant is entitled to compensation for long-term improvements or for a special system of farming, as mentioned in that section, and—
- (a) after the end of the period of occupation expenses are incurred in replacing the benefit of the improvements by other long-term improvements of comparable benefit to the land, or in regaining the increased value attributable to that system of farming by the continuous adoption of a special system of farming of comparable benefit to the land, as the case may be, and
  - (b) the person incurring those expenses (whether he is the landlord or not) is entitled to compensation in respect of those expenses under section twenty-two of this Act,
- the provisions of the [<sup>F428</sup>Act of 1986] shall apply as if the works in respect of which those expenses are incurred were improvements carried out by the landlord at the request of the tenant, if apart from this paragraph they would not constitute such improvements.
- (2) Subsection (8) of section fourteen of this Act shall not affect the operation of [<sup>F429</sup>section 13 of the Act of 1986 in so far as the said section 13] applies in accordance with the preceding sub-paragraph.

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#### Textual Amendments

- F428** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 33(4)(a)**
- F429** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 33(4)(b)**

- [<sup>F430</sup>3A** Where by virtue of section 25A of this Act a tenant is entitled to compensation for tenant's improvements as mentioned in that section and—
- (a) after the end of the period of occupation expenses are incurred in replacing the benefit of the tenant's improvements by other improvements of comparable benefit to the land, and
  - (b) the person incurring those expenses (whether he is the landlord or not) is entitled to compensation in respect of those expenses under section 22 of this Act,
- section 13 of the Act of 1995 shall apply as if the works in respect of which those expenses are incurred were not tenant's improvements, if apart from this paragraph they would constitute such improvements.]

#### Textual Amendments

- F430** [Sch. 7 para. 3A](#) inserted (1.9.1995) by [1995 c. 8, ss. 40, 41\(2\)](#), **Sch. para. 20(5)** (with s. 37)

- 4 (1) The provisions of this paragraph shall apply where—
- (a) immediately before the operative date of a compulsory rights order, any of the land comprised in the order consisted of or included an agricultural holding or part of an agricultural holding, and
  - (b) the tenancy relating to that holding continues until after the end of the period of occupation.
- (2) The landlord or the tenant of the agricultural holding may, by notice in writing served on his tenant or landlord, demand a reference to arbitration under the [<sup>F431</sup>Act of 1986] of the question whether any of the terms and conditions of the contract of tenancy (including any term or condition relating to rent) should be varied in consequence of any change in the state of the land resulting from the occupation or use of the land in the exercise of rights conferred by the order.
- (3) On a reference under this paragraph the arbitrator shall determine what variations (if any) should be made in the terms and conditions of the contract of tenancy, as mentioned in the last preceding sub-paragraph, and the date (not being earlier than the end of the period of occupation) from which any such variations are to take effect or to be treated as having taken effect; and as from that date the contract of tenancy shall have effect, or, as the case may be, shall be treated as having had effect, subject to any variations determined by the arbitrator under this paragraph.
- (4) [<sup>F432</sup>section 84 of the Act of 1986] shall apply to references to arbitration by virtue of this paragraph as it applies to matters which by virtue of the [<sup>F432</sup>Act of 1986] are required to be determined by arbitration thereunder.
- (5) The provisions of this paragraph shall not affect any right of the landlord or the tenant, or the jurisdiction of the arbitrator, under [<sup>F433</sup>section 12 or section 13 of the Act of 1986]; but where there is a reference to arbitration under either of those sections and

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under this paragraph in respect of the same agricultural holding, and it appears to the arbitrator that the reference under that section relates wholly or mainly to the consequences of the occupation or use of the land in the exercise of rights conferred by the order, he may direct that proceedings on the two references shall be taken concurrently.

(6) In the last preceding sub-paragraph references to [F434 section 13 of the Act of 1986] include references to the provisions of that section as applied by paragraph 3 of this Schedule.

[F435 (7) In this paragraph “agricultural holding” does not include an agricultural holding held under a farm business tenancy.]

#### Textual Amendments

- F431** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 33(5)(a)**
- F432** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 33(5)(b)**
- F433** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 33(5)(c)**
- F434** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 33(5)(d)**
- F435** [Sch. 7 para. 4\(7\)](#) added (1.9.1995) by [1995 c. 8, ss. 40, 41\(2\)](#), **Sch. para. 20(6)** (with s. 37)

[F436 4A(1) The provisions of this paragraph shall apply where—

- (a) immediately before the operative date of a compulsory rights order, any of the land comprised in the order is subject to a farm business tenancy, and
  - (b) that tenancy continues until after the end of the period of occupation.
- (2) The landlord or tenant under the tenancy may, by notice in writing served on his tenant or landlord, demand a reference to arbitration of the question whether any of the terms and conditions of the tenancy (including any term or condition relating to rent) should be varied in consequence of any change in the state of the land resulting from the occupation or use of the land in the exercise of rights conferred by the order; and subsection (3) of section 28 of the Act of 1995 shall apply in relation to a notice under this sub-paragraph as it applies in relation to a notice under subsection (2) of that section.
- (3) On a reference by virtue of this paragraph, the arbitrator shall determine what variations (if any) should be made in the terms and conditions of the tenancy, and the date (not being earlier than the end of the period of occupation) from which any such variations are to take effect or to be treated as having taken effect; and as from that date the tenancy shall have effect, or, as the case may be, shall be treated as having had effect, subject to any variations determined by the arbitrator under this paragraph.
- (4) The provisions of this paragraph shall not affect any right of the landlord or the tenant, or the jurisdiction of the arbitrator, under Part II of the Act of 1995; but where—
- (a) there is a reference by virtue of this paragraph and a reference under Part II of that Act in respect of the same tenancy, and

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- (b) it appears to the arbitrator that the reference under Part II of that Act relates wholly or mainly to the consequences of the occupation or use of the land in the exercise of rights conferred by the order,  
 he may direct that proceedings on the two references shall be taken concurrently.]

#### Textual Amendments

**F436** Sch. 7 para. 4A inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), Sch. para. 20(7) (with s. 37)

- 5 (1) Where the land comprised in a compulsory rights order consists of or includes the whole or part of an agricultural holding [<sup>F437</sup>held under a tenancy in relation to which the Act of 1986 applies] , [<sup>F438</sup>section 10 of the Act of 1986] (which relates to the removal of fixtures and buildings) shall have effect in relation to the holding subject to the following provisions of this paragraph.
- (2) In relation to the service of a notice by the tenant on or after the operative date of the order, in respect of a fixture or building on a part of the holding which is within the land comprised in the order, paragraph (b) of [<sup>F439</sup>subsection (3)] of that section (under which the tenant is required to give at least one month’s notice of his intention to remove a fixture or building) shall apply with the substitution, for the words “one month”, of the words “fourteen days”.
- (3) Where the tenant has given to the landlord notice under the said [<sup>F440</sup>subsection (3)] (or under that subsection as modified by the last preceding sub-paragraph) of his intention to remove a fixture or building on a part of the holding which is within the land comprised in the order, and that notice is given on or after the operative date of the order, or, if given before that date, expires on or after that date, [<sup>F440</sup>subsection (4)] of that section (under which the landlord can elect to purchase a fixture or building which the tenant has signified his intention of removing) shall not apply to that fixture or building.
- (4) The last preceding sub-paragraph shall have effect in relation to a notice served before the operative date of the order notwithstanding that the landlord has given a counter-notice in respect of the fixture or building before the operative date.
- (5) In this paragraph any reference to [<sup>F441</sup>section 10 of the Act of 1986] includes a reference to the provisions of that section as extended by [<sup>F441</sup>sub-section (3) of section 79] of that Act (which relates to market gardens).

#### Textual Amendments

**F437** Words in Sch. 7 para. 5(1) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), Sch. para. 20(8) (with s. 37)

**F438** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, Sch. 14 para. 33(6)(a)

**F439** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, Sch. 14 para. 33(6)(b)

**F440** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, Sch. 14 para. 33(6)(c)

**F441** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, Sch. 14 para. 33(6)(d)

- 6 (1) Where [<sup>F442</sup>—

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- (a) an agricultural holding held under a tenancy in relation to which the Act of 1986 applies, or  
 (b) a holding under a farm business tenancy,]

consists of or includes land which was comprised in a compulsory rights order, and after the end of the period of occupation the landlord proposes to carry out any such work as is mentioned in paragraph (b) of subsection (1) of section twenty-two of this Act, the landlord or any person authorised by him may at all reasonable times enter upon the holding for the purpose of carrying out that work.

- (2) Nothing in the preceding sub-paragraph shall affect any right exercisable by virtue of [F443section 23 of the Act of 1986] (which confers rights of entry for the purposes therein mentioned).

[F444(2A) In sub-paragraph (1) of this paragraph, “holding”, in relation to a farm business tenancy, has the same meaning as in the Act of 1995.]

#### Textual Amendments

**F442** Sch. 7 para. 6(1)(a)(b) and the preceding hyphen substituted (1.9.1995) for words in Sch. 7 para. 6(1) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 20(9)(a)** (with s. 37)

**F443** Words substituted by **Agricultural Holdings Act 1986 (c. 5, SIF 2:3)**, ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 33(7)**

**F444** Sch. 7 para. 6(2A) added (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 20(9)(b)** (with s. 37)

- 7 The provisions of [F445sub-paragraphs (1) to (6) of]paragraph 4 of this Schedule shall apply in relation to mortgages as they apply in relation to contracts of tenancy, as if any reference in [F446those sub-paragraphs] to such a contract, or to a tenancy, were a reference to a mortgage, and any reference to land consisting of or including an agricultural holding or part of an agricultural holding were a reference to agricultural land subject to a mortgage [F447but not comprised in a farm business tenancy], and any reference to a landlord or to a tenant were a reference to a mortgagee or to a mortgagor, as the case may be.

#### Textual Amendments

**F445** Words in Sch. 7 para. 7 inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 20(10)(a)** (with s. 37)

**F446** Words in Sch. 7 para. 7 substituted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 20(10)(b)** (with s. 37)

**F447** Words in Sch. 7 para. 7 inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 20(10)(c)** (with s. 37)

- [F4487A The provisions of paragraph 4A of this Schedule shall apply in relation to mortgages of land comprised in farm business tenancies as they apply in relation to such tenancies, as if any reference in that paragraph to such a tenancy were a reference to such a mortgage, and any reference to a landlord or to a tenant were a reference to a mortgagee or to a mortgagor, as the case may be.]

#### Textual Amendments

**F448** Sch. 7 para. 7A inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 20(11)** (with s. 37)

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

## PART II E+W+S

### OTHER LAND

- 8 (1) The provisions of this paragraph shall have effect where—
- (a) the land comprised in a compulsory rights order consists of or includes land falling within paragraphs (a) and (b) of subsection (1) of section thirty of this Act, and
  - (b) the tenancy under which the tenant could have claimed compensation for the improvements terminates on or after the date of entry, but before the end of the period of occupation.
- (2) In the circumstances specified in the preceding sub-paragraph, the provisions of the Act of 1927 as to compensation for improvements—
- (a) shall apply, in relation to that tenancy, as if at the termination thereof the land in question were in the state in which it was immediately before the date of entry, and
  - (b) if the tenant under that tenancy quitted the holding before the termination of his tenancy, shall so apply as if he had quitted the holding on the termination of his tenancy.
- (3) Subsection (5) of section thirty of this Act shall apply for the purposes of this paragraph with the substitution, for references to subsection (2) of that section, of references to the last preceding sub-paragraph.
- (4) In this Part of this Schedule “the Act of 1927” means the <sup>M23</sup>Landlord and Tenant Act 1927, and “improvement” includes the erection of a building.

#### **Marginal Citations**

**M23** 1927 c. 36.

- 9 (1) The provisions of this paragraph shall have effect where land comprised in a holding to which Part I of the said Act of 1927 applies is comprised in a compulsory rights order (whether any other land is comprised in the holding, or comprised in the order, or not), and—
- (a) the tenancy under which that holding was held immediately before the operative date continues until after the end of the period of occupation, and
  - (b) before the operative date improvements (in this paragraph referred to as “the former improvements”) had been carried out on the land in question, and
  - (c) at the end of the period of occupation the circumstances are such that compensation would be payable in respect of the former improvements under section thirty of this Act, but for the fact that the benefit of those improvements has been replaced, on the restoration of the land, by works (in this paragraph referred to as “the new improvements”) of comparable benefit to the land.
- (2) In the circumstances specified in the preceding sub-paragraph, the provisions of Part I of the said Act of 1927 as to compensation for improvements shall apply to the new improvements as if they had been carried out by the person who carried out the former improvements.



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*Status: Point in time view as at 01/04/2017.*

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

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- 10 Where a compulsory rights order comprises the whole or part of a holding to which section twenty-nine of this Act applies, and after the end of the period of occupation the tenant carries out improvements thereon, and, in respect of expenses incurred in carrying out those improvements, is entitled to compensation under section twenty-two of this Act as applied by section twenty-nine of this Act, those improvements shall be treated for the purposes of the Act of 1927, and for the purposes of Part II of the <sup>M24</sup>Landlord and Tenant Act 1954, as if they had been carried out by the landlord.

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**Marginal Citations**

**M24** 1954 c. 56.

- 11 (1) Where a holding to which Part I of the Act of 1927 applies consists of or includes land which was comprised in a compulsory rights order, and after the end of the period of occupation the landlord proposes to carry out any such work as is mentioned in paragraph (b) of subsection (1) of section twenty-two of this Act, the landlord or any person authorised by him may at all reasonable times enter upon the holding for the purpose of carrying out that work.
- (2) Nothing in the preceding sub-paragraph shall affect any right exercisable by virtue of section ten of the Act of 1927 (which confers rights of entry for the purposes therein mentioned).
- 12 (1) The provisions of this paragraph shall apply where—
- (a) immediately before the operative date of a compulsory rights order, any of the land comprised in the order was subject to a tenancy, but [<sup>F449</sup>was not comprised in a tenancy in relation to which the Act of 1986 applies or in a farm business tenancy], and
  - (b) the tenancy continues until after the end of the period of occupation.
- (2) The landlord or the tenant of the holding may, by notice in writing served on his tenant or landlord, demand a reference to the court of the question whether any of the terms and conditions of the contract of tenancy (including any term or condition as to rent) should be varied in consequence of any change in the state of the holding resulting from the occupation or use of the land in the exercise of rights conferred by the compulsory rights order.
- (3) On a reference under this paragraph the court shall determine what variations (if any) should be made in the terms and conditions of the contract of tenancy, as mentioned in the last preceding sub-paragraph, and the date (not being earlier than the end of the period of occupation) from which any such variations are to take effect or to be treated as having taken effect; and as from that date the contract of tenancy shall have effect, or, as the case may be, shall be treated as having had effect, subject to any variations determined by the court under this paragraph.
- (4) In this paragraph “the court” means the court exercising, in accordance with the provisions of section sixty-three of the <sup>M25</sup>Landlord and Tenant Act 1954, the jurisdiction conferred on the tribunal by Part I of the <sup>M26</sup>Landlord and Tenant Act 1927; and the provisions of the said section sixty-three shall apply, in relation to references under this paragraph, as they apply in relation to matters which, by virtue of the said Part I, are required to be determined by the tribunal thereunder.

*Status: Point in time view as at 01/04/2017.*

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

#### Textual Amendments

**F449** Words in [Sch. 7 para. 12\(1\)\(a\)](#) substituted (1.9.1995) by [1995 c. 8, ss. 40, 41\(2\)](#), [Sch. para. 20\(12\)](#) (with [s. 37](#))

#### Marginal Citations

**M25** [1954 c. 56.](#)

**M26** [1927 c. 36.](#)

- 13 The provisions of the last preceding paragraph shall apply in relation to mortgages as they apply in relation to contracts of tenancy, as if any reference to such a contract, or to a tenancy [<sup>F450</sup>(other than a reference to a tenancy in relation to which the Act of 1986 applies or a farm business tenancy)], were a reference to a mortgage, and any reference to a landlord or to a tenant were a reference to a mortgagee or to a mortgagor, as the case may be.

#### Textual Amendments

**F450** Words in [Sch. 7 para. 13](#) inserted (1.9.1995) by [1995 c. 8, ss. 40, 41\(2\)](#), [Sch. para. 20\(13\)](#) (with [s. 37](#))

### PART III E+W+S

#### *GENERAL PROVISIONS FOR PROTECTION IN RESPECT OF TENANCIES AND MORTGAGES*

- 14 Where any land comprised in a compulsory rights order is subject to a tenancy or mortgage, and—
- (a) any obligation or restriction imposed by the terms and conditions of the tenancy or mortgage would (apart from this Act) fall to be performed or observed at a time within the period of occupation, whether by the landlord or the tenant, or by the mortgagee or the mortgagor, as the case may be, and
  - (b) in consequence of the rights conferred by the order, or of anything done in the exercise of those rights, that obligation or restriction cannot be so performed or observed at that time,
- the failure to perform or observe the obligation or restriction at that time shall be deemed not to be a breach of any of the terms and conditions of the tenancy or mortgage.
- 15 (1) Where at any time while any land was comprised in a compulsory rights order it was subject to a tenancy or mortgage which continues until after the end of the period of occupation, and at any time within twelve months after the end of that period proceedings are brought to enforce a right of re-entry, forfeiture or foreclosure, or a right to damages or any other remedy, in respect of any failure after the end of that period to comply with any of the terms and conditions of the tenancy or mortgage, the person against whom the proceedings are brought may apply in those proceedings for relief under this paragraph.
- (2) If, in a case where application is made for relief under this paragraph, the court to which the application is made is satisfied that the failure to comply with the term or condition in question was attributable to a change in the state of the land resulting from the occupation and use thereof in the exercise of rights conferred by the compulsory rights order, the court may grant such relief, in respect of the

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matters to which the proceedings relate, as the court may consider reasonable in the circumstances.

- 16 The provisions of paragraphs 14 and 15 of this Schedule shall be without prejudice to the provisions of paragraph 4 or paragraph 12 of this Schedule, or to any of those provisions as applied in relation to mortgages by paragraph 7 or paragraph 13 thereof.

#### **PART IV** **E+W+S**

##### *PROVISIONS AS TO MINING LEASES AND ORDERS*

- 17 (1) The provisions of this Part of this Schedule shall have effect where the land comprised in a compulsory rights order consists of or includes land which, immediately before the operative date of the order, is subject to a mining lease or order conferring working rights the benefit of which is held for the purposes of a mineral undertaking.
- (2) In this Part of this Schedule “the mineral operator” and “the relevant rights and facilities”, in relation to such a mining lease or order as is mentioned in the preceding sub-paragraph, have the same meanings as in the Fifth Schedule to this Act.
- 18 The provisions of the mining lease or order shall have effect subject to the provision that the aggregate amount of the rent, royalties and other sums payable by the mineral operator by virtue of the lease or order for any year which is either—
- (a) the year beginning with the operative date of the compulsory rights order, or
  - (b) a year beginning with an anniversary of that date and falling within the period of occupation,
- shall not exceed the aggregate amount of the rent, royalties and other sums which would have been payable by the mineral operator thereunder for that year if the compulsory rights order had not been made, and he had exercised the relevant rights and facilities in the manner in which, and to the extent to which, he might reasonably have been expected to exercise them in those circumstances.

#### **PART V** **E+W+S**

##### *SPECIAL PROVISIONS AS TO BUSINESS, PROFESSIONAL AND OTHER TENANTS*

- 19 (1) The provisions of this Part of this Schedule shall have effect where any of the land comprised in a compulsory rights order is land which, immediately before the operative date of the order, was subject to a tenancy to which Part II of the Act of 1954 applied; and any reference in this Part of this Schedule to a tenancy to which this Part of this Schedule applies is a reference to a tenancy which—
- (a) immediately before the operative date of such an order, was a tenancy to which Part II of that Act applied, and
  - (b) comprises the whole or part of the land comprised in that order.
- (2) In this Part of this Schedule “the Act of 1954” means the <sup>M27</sup>Landlord and Tenant Act 1954, and “business” has the same meaning as in Part II of that Act.
- (3) Sub-paragraph (4) of paragraph 12 of this Schedule shall apply for the purposes of this Part of this Schedule as it applies for the purposes of that paragraph.

*Status: Point in time view as at 01/04/2017.*

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

#### **Marginal Citations**

**M27** 1954 c. 56.

- 20 (1) As from the operative date of the order and so long thereafter as the tenancy continues and the order continues to have effect, so much of the land comprised in the order as—
- (a) is comprised in the tenancy, and
  - (b) immediately before the operative date was occupied by the tenant for the purposes of the relevant business (or for those and other purposes) or was occupied by a person employed by the tenant for the purposes of the relevant business, and
  - (c) is not for the time being so occupied by the tenant or by such a person,
- shall be treated for the purposes of Part II of the Act of 1954 as if it had continued to be so occupied.
- (2) In this paragraph “the relevant business” means the business by reason of which, immediately before the operative date, the tenancy was a tenancy to which Part II of the Act of 1954 applied.
- 21 (1) For the purposes mentioned in the next following sub-paragraph, in relation to a tenancy to which this Part of this Schedule applies, paragraphs (f) and (g) of subsection (1) of section thirty of the Act of 1954 (which specify certain grounds on which a landlord may oppose an application for a new tenancy) shall apply as if any reference to the termination of the current tenancy were a reference to the end of the period of occupation.
- (2) The said purposes are—
- (a) the purposes of the operation of subsection (6) of section twenty-five of the Act of 1954 (which requires a notice by the landlord terminating a tenancy to state whether the landlord would oppose an application for a new tenancy, and, if so, on which of the grounds mentioned in section thirty of the Act he would do so) in relation to the service of a notice under the said section twenty-five at any time on or after the operative date of the order in question and before the end of the period of occupation;
  - (b) the purposes of the operation of subsection (6) of section twenty-six of that Act (which enables a landlord, where the tenant has requested a new tenancy, to give notice that he will oppose an application for a new tenancy, and requires him to state on which of the grounds mentioned in section thirty of that Act he will do so) in relation to the service of a notice under that subsection at any such time;
  - (c) the purposes of the operation of the said section thirty and of section thirty-one of that Act (which relates to the dismissal of an application for a new tenancy where the landlord successfully opposes it) in relation to the determination by the court of an application for a new tenancy, where that application falls to be determined at any such time.
- 22 (1) Where an application made under subsection (1) of section twenty-four of the Act of 1954 (whether before or after the commencement of this Act) falls to be determined by the court at a time when the current tenancy is a tenancy to which this Part of this Schedule applies (being a time on or after the operative date of the order in question and before the end of the period of occupation) and on that application an order for the

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grant of a new tenancy is made under section twenty-nine of that Act, the following provisions of this paragraph shall have effect.

- (2) If it falls to the court to determine the rent payable under the new tenancy, the court shall determine that rent as if the compulsory rights order had not been made, and as if so much of the property comprised in the current tenancy as is comprised in the compulsory rights order were in the state in which it was immediately before the operative date.
- (3) If it falls to the court to determine any of the terms and conditions of the new tenancy (other than any term or condition as to the rent payable thereunder) the court shall determine those terms or conditions as if the compulsory rights order had not been made; but, in so far as any such terms or conditions of the new tenancy impose an obligation or restriction in respect of land comprised in the compulsory rights order, the court may suspend the operation of that obligation or restriction during the period of occupation.
- (4) If the new tenancy continues until after the end of the period of occupation, the landlord or the tenant may, by notice in writing served on his tenant or landlord, demand a reference to the court of the question whether any of the terms and conditions of the tenancy (including any term or condition as to rent) should be varied, having regard to the state of the land and other circumstances existing at the time when the reference is determined by the court:

Provided that the court shall not entertain such a reference unless the proceedings are begun within twelve months after the end of the period of occupation.

- (5) On a reference under the last preceding sub-paragraph, the court shall determine what variations (if any) should be made in the terms and conditions of the tenancy, as mentioned in that sub-paragraph, and the date (not being earlier than the end of the period of occupation) from which any such variations are to take effect or to be treated as having taken effect; and as from that date the tenancy shall have effect, or, as the case may be, shall be treated as having had effect, subject to any variations determined by the court under this paragraph.
- 23 (1) The provisions of this paragraph shall have effect, in the case of a tenancy to which this Part of this Schedule applies, where an application under subsection (1) of section twenty-four of the Act of 1954—
- (a) is made by the tenant before the end of the period of occupation, but falls to be determined by the court after the end of that period, or
  - (b) is made by the tenant within twelve months after the end of that period,
- and the landlord opposes the application on grounds consisting of or including any of the grounds specified in paragraphs (a) and (c) of subsection (1) of section thirty of that Act (which relate respectively to the state of repair of the holding and to the tenant's use or management of the holding during the current tenancy).
- (2) If the court is satisfied that the matters to which the objection in question relates are attributable to a change in the state of the land resulting from the occupation and use thereof in the exercise of rights conferred by the compulsory rights order, the court, in so far as it considers it reasonable to do so in the circumstances, may disregard those matters in determining whether to make an order for the grant of a new tenancy.
  - (3) The provisions of the last preceding sub-paragraph shall be without prejudice to the operation of paragraph 14 of this Schedule in relation to things done or omitted during the period of occupation.

*Status: Point in time view as at 01/04/2017.*

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

- 24 (1) In relation to an application made under subsection (1) of section twenty-four of the Act of 1954 (whether before or after the commencement of this Act) which falls to be determined by the court at a time when the current tenancy is a tenancy to which this Part of this Schedule applies (being a time on or after the operative date of the order in question and before the end of the period of occupation) section thirty-seven of that Act (under which a tenant is entitled to compensation from the landlord if an order for the grant of a new tenancy is precluded on certain grounds therein mentioned) shall apply subject to the following provisions of this paragraph.
- (2) In subsection (1) of that section—
- (a) the reference to paragraphs (f) and (g) of subsection (1) of section thirty of that Act shall be construed as a reference to those paragraphs as modified by sub-paragraph (1) of paragraph 21 of this Schedule;
  - (b) the reference to quitting the holding shall be construed as a reference to the termination of the current tenancy.
- (3) In subsection (2) of that section, for any reference to the rateable value of the holding there shall be substituted a reference to the amount which would have been the rateable value of the holding on the material date if—
- (a) the compulsory rights order in question had not been made, and the [<sup>F451</sup>opencast planning permission] referred to in that order had not been granted and no application [<sup>F452</sup>for opencast planning permission had been made], and
  - (b) so much of the land comprised in the order as is comprised in the current tenancy had remained in the state in which it was immediately before the operative date of the order.
- (4) Paragraphs (a) to (c) of subsection (5) of that section shall not apply; but—
- (a) the amount which, in the circumstances mentioned in the last preceding sub-paragraph, would have been the rateable value of the holding on the material date shall be taken to be the value which, in those circumstances, and apart from any exemption from assessment to rates, would on a proper assessment have been the value to be entered in the valuation list as the annual value of the holding; and
  - (b) the provisions of subsection (5) of that section as to the determination of disputes and as to appeals, and the provisions of subsection (6) of that section (which authorises the Commissioners of Inland Revenue to make rules as to procedure) shall apply in relation to any dispute or reference relating to that amount as they apply in relation to any such dispute or reference as is mentioned in those provisions.
- (5) The modifications of the said section thirty-seven specified in the preceding provisions of this paragraph shall apply without prejudice to the operation, in relation to that section, of paragraph 20 of this Schedule.
- (6) In this paragraph “the material date”, in relation to an application under subsection (1) of section twenty-four of the Act of 1954, means the date of the landlord’s notice under section twenty-five of that Act or under subsection (6) of section twenty-six of that Act, as the case may be, and “annual value” has the same meaning as in section thirty-seven of that Act.

*Status: Point in time view as at 01/04/2017.*

*Changes to legislation: There are currently no known outstanding effects  
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### Textual Amendments

**F451** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 17\(a\)](#)

**F452** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 17\(b\)](#)

## PART VI **E+W+S**

### APPLICATION TO SCOTLAND

- 25 In the application of this Schedule to Scotland—
- <sup>F453</sup>[( a) [<sup>F454</sup>subject to sub-paragraphs (ba), (bc), (bd)(i) and (be) of this paragraph,]]for references—
- (i) [<sup>F455</sup>to the Act of 1986 and to sections 12, 13 and 84 of that Act there shall be substituted respectively references to (as the case may be)—
- (A) the Scottish Act of 1991 and to sections 13, 15 and 61 of that Act; or
- (B) the Scottish Act of 2003 and to sections 9, 10 and 77 or 78 of that Act; and
- (ia) to section 23 of the Act of 1986 there shall be substituted a reference to section 10 of the Scottish Act of 1991; and]
- (ii) to section 10 of the Act of 1986 and to subsections (3) and (4) of that section there shall be substituted respectively references to section 18 of the Scottish Act of 1991 and to subsections (2) and (3) of that section; and
- (iii) to subsection (3) of section 79 of the Act of 1986 there shall be substituted references to section 40(4)(a) of the Scottish Act of 1991.
- (b) [<sup>F456</sup>for references to an arbitrator there shall be substituted references to an arbiter or, as the case may be, to the Scottish Land Court.]
- <sup>F457</sup>(ba) in sub-paragraph (1) of paragraph 2, the words “held under a tenancy in relation to which the Act of 1986 applies” shall be omitted;
- (bb) sub-paragraph (7) of paragraph 4 shall be omitted;
- (bc) in sub-paragraph (1) of paragraph 5, the words “held under a tenancy in relation to which the Act of 1986 applies” shall be omitted;
- (bd) in paragraph (6)—
- (i) for paragraphs (a) and (b) of sub-paragraph (1) there shall be substituted the words “an agricultural holding”; and
- (ii) sub-paragraph (2A) shall be omitted;
- (be) in sub-paragraph (1)(a) of paragraph 12, for the words “was not comprised in a tenancy in relation to which the Act of 1986 applies or in a farm business tenancy” there shall be substituted the words “did not constitute or form part of an agricultural holding”];
- (c) paragraphs [<sup>F458</sup>1A, 2A, 3A, 4A, 7, 7A] and 13 shall be omitted;
- (d) for any reference to a holding to which Part I of the <sup>M28</sup>Landlord and Tenant Act 1927, applies there shall be substituted a reference to a holding the tenant of which is entitled by the terms of his lease to claim compensation in respect of improvements, and any reference to the said Part I or to a tenant entitled to compensation thereunder shall be construed accordingly;

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

- (e) in paragraph 12 for sub-paragraph (4) there shall be substituted the following sub-paragraph:—

“(4) In this paragraph ”the court’ means the sheriff having jurisdiction in the place where the holding, or any part of it, is situated”

- (f) in Part III references to a mortgage shall be omitted;  
(g) Part V shall be omitted.

#### Textual Amendments

- F453** Sch. 7 para. 25(a) substituted (25.9.1991) by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55, SIF 2:3\)](#), ss. 88, 89(2), **Sch. 11 para.21** (with s. 45(3), Sch. 12 para. 3)
- F454** Words in Sch. 7 para. 25(a) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 20(14)(a)** (with s. 37)
- F455** Sch. SEVENTH para. 25(a)(i)(ia) substituted for Sch. SEVENTH para. 25(a)(i) (S.) (27.11.2003) by [Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, **Sch. para. 7(a)**
- F456** Sch. SEVENTH para. 25(b) substituted (S.) (27.11.2003) by [Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, **Sch. para. 7(b)**
- F457** Sch. 7 para. 25(ba)-(be) inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 20(14)(b)** (with s. 37)
- F458** Words in Sch. 7 para. 25(c) substituted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 20(14)(c)** (with s. 37)

#### Marginal Citations

**M28** 1927 c. 36.

## EIGHTH SCHEDULE E+W+S

### TENANCIES OF ALLOTMENT GARDENS AND OTHER ALLOTMENTS

- 1 (1) In this Schedule—
- “the Act of 1908” means the <sup>M29</sup>Small Holdings and Allotments Act 1908;  
“the Act of 1922” means the <sup>M30</sup>Allotments Act 1922;  
“allotment tenancy” means a tenancy under which land is occupied by the tenant and is either—
- (a) land let under that tenancy for use by the tenant as an allotment garden, or  
(b) an allotment, not being an allotment garden.
- (2) Subsection (4) of section twenty-two of the Act of 1922 (whereby land used by the tenant thereof as an allotment garden is to be presumed to have been let for use by him as an allotment garden) shall apply for the purposes of this Schedule as it applies for the purposes of that Act.

#### Marginal Citations

**M29** 1908 c. 36.  
**M30** 1922 c. 51.



*Status: Point in time view as at 01/04/2017.*

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

- 2 Where the land comprised in a compulsory rights order consists of or includes any land which, immediately before the operative date of the order, is occupied (with or without other land) under an allotment tenancy, that tenancy (if not previously terminated) shall terminate by virtue of this paragraph on the date of entry.
- 3 (1) On the termination of an allotment tenancy by virtue of the last preceding paragraph, the tenant under that tenancy shall not be entitled to any compensation from his landlord by virtue of the Act of 1908 or the Act of 1922 or the <sup>M31</sup>Allotments Act 1950, or by virtue of any other enactment relating to allotments, but the following provisions of this paragraph shall have effect as to compensation payable by [<sup>F459</sup>the person on whose application the order was made] to the tenant in respect of the termination of that tenancy.
- (2) Subject to sub-paragraph (4) of this paragraph, the amount of the compensation payable in respect of an allotment tenancy under this paragraph shall be the amount of the compensation (if any) to which, under any of the enactments mentioned in the next following sub-paragraph, the tenant under that tenancy would have been entitled from his landlord, on quitting the land on the termination of his tenancy, if—
- (a) the tenancy had been terminated by the landlord as from the date of entry, and
- (b) in the case of an allotment garden, the tenancy had been so terminated by such re-entry as is mentioned in subsection (2) of section two of the Act of 1922.
- (3) The said enactments are the following, that is to say,—
- (a) sections two, three and five of the Act of 1922; and
- (b) section forty-seven of the Act of 1908.
- (4) In addition to any amount payable in accordance with sub-paragraph (2) of this paragraph, compensation shall be payable under this paragraph in respect of an allotment tenancy of an amount equal to one year's rent under that tenancy, at the rate at which rent was payable thereunder immediately before the date on which the compulsory rights order was made:

Provided that, if the tenancy did not subsist at the time when the order was made, the amount payable by virtue of this sub-paragraph shall be equal to one year's rent at such rate as would have represented a reasonable rent in relation to that tenancy if the order had not been made.

#### Textual Amendments

**F459** Words in [Sch. 8 para. 3](#) substituted (31.10.1994) by [1994 c. 21, s. 52, Sch. 8 para. 43\(1\)](#) (with [s. 40\(7\)](#)); [S.I. 1994/2553, art. 2](#)

#### Marginal Citations

**M31** [1950 c. 31.](#)

- 4 In determining the amount of any compensation payable <sup>F460</sup>. . . under the last preceding paragraph, no account shall be taken of any sum due to the landlord from the tenant, or of any right which the landlord would have had (under the Allotments Act 1950, or otherwise) to deduct any sum so due.

*Status: Point in time view as at 01/04/2017.*

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

#### Textual Amendments

**F460** Words in [Sch. 8 para. 4](#) repealed (31.10.1994) by [1994 c. 21, ss. 52, 67, Sch. 8 para. 43\(2\), Sch. 11 Pt. II](#)

- 5 (1) Where in consequence of the confirmation of a compulsory rights order the tenant under an allotment tenancy incurs a loss in respect of a forced sale of any trees, bushes, structures, improvements or other property which, in pursuance of section four or section five of the Act of 1922, or of subsection (4) of section forty-seven of the Act of 1908, he has removed from the land which was comprised in the tenancy, he shall, subject to the following provisions of this paragraph, be entitled to compensation <sup>F461</sup> . . . of an amount equal to that loss.
- [<sup>F462</sup>(1A) Compensation under this paragraph shall be payable by the person by whom it would be payable if it were compensation under section 27 of this Act.]
- (2) Subsection (3) of section twenty-seven of this Act shall apply for the purposes of this paragraph as it applies for the purposes of that section.
- (3) The preceding provisions of this paragraph shall have effect without prejudice to any right to compensation under the said section twenty-seven as applied by section twenty-nine of this Act; but compensation shall not be payable under this paragraph in respect of a forced sale if compensation is payable in respect thereof under the said section twenty-seven as so applied.

#### Textual Amendments

**F461** Words in [Sch. 8 para. 5](#) repealed (31.10.1994) by [1994 c. 21, ss. 52, 67, Sch. 8 para. 43\(3\), Sch. 11 Pt. II](#) (with [s. 40\(7\)](#)); [S.I. 1994/2553, art. 2](#)

**F462** [Sch. 8 para. 5\(1A\)](#) inserted (31.10.1994) by [1994 c. 21, s. 52, Sch. 8 para. 43\(3\)](#) (with [s. 40\(7\)](#)); [S.I. 1994/2553, art. 2](#)

- 6 (1) Any compensation payable under paragraph 3 of this Schedule shall accrue due on the date of entry.
- (2) Any compensation payable under the last preceding paragraph 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.
- (3) Subsections (7) and (8) of section thirty-five of this Act shall apply in relation to any compensation payable <sup>F463</sup> . . . under this Schedule as they apply in relation to any such compensation as is referred to in subsection (7) of that section, and “effective date” in this paragraph has the same meaning as in that section.

#### Textual Amendments

**F463** Words in [Sch. 8 para. 6\(3\)](#) repealed (31.10.1994) by [1994 c. 21, ss. 52, 67, Sch. 8 para. 13\(4\), Sch. 11 Pt. II](#) (with [s. 40\(7\)](#)); [S.I. 1994/2553, art. 2](#)

- 7 Any dispute—
- (a) as to a right to compensation <sup>F464</sup> . . . under this Schedule, or as to the amount of any such compensation, or

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- (b) as to a right to compensation<sup>F464</sup> . . . under section seventeen of this Act, as applied by section twenty-nine thereof, in respect of a holding consisting exclusively of land occupied under an allotment tenancy, or as to the amount of any such compensation,

shall, notwithstanding anything in subsection (3) of section forty of this Act, be determined by a valuation made by a person appointed in default of agreement by<sup>F465</sup> . . . the county court<sup>F465</sup> . . . , on an application in writing made for the purpose by the person claiming the compensation or by [<sup>F466</sup>the person from whom it is claimed].

#### Textual Amendments

- F464** Words in Sch. 8 para. 7(a)(b) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 43(5)(a), **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F465** Words in Sch. EIGHTH para. 7 omitted (22.4.2014) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 22**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F466** Words in Sch. 8 para. 7 substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 43(5)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

#### Modifications etc. (not altering text)

- C25** Reference to judge of county court to be construed as reference to judge assigned to county court district or acting as judge so assigned: **Courts Act 1971 (c. 23), Sch. 8 Pt. 1 para. 2**

- 8 Subsection (2) of section six of the Act of 1922 (which relates to the charges of the valuer for a valuation under that section) shall apply in relation to a valuation under the last preceding paragraph as it applies in relation to a valuation under that section, with the substitution, for the reference to the landlord, of a reference to [<sup>F467</sup>the person from whom the compensation under this Schedule is claimed] .

#### Textual Amendments

- F467** Words in Sch. 8 para. 8 substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 43(6)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

- 9 (1) Where on the termination of an allotment tenancy any compensation is payable by virtue of sub-paragraph (2) of paragraph 3 of this Schedule, in respect of any matters referred to in the enactments mentioned in sub-paragraph (3) of that paragraph, and the land which, immediately before the operative date of the compulsory rights order in question, was occupied under that tenancy constitutes a holding to which section twenty-nine of this Act applies, sections twenty-two and twenty-three of this Act shall apply in relation to that holding subject to the following provisions of this paragraph.
- (2) The said section twenty-two shall apply in relation to the holding as if any reference in that section to the condition in which land was immediately before the date of entry were a reference to the condition in which the land in question would have been, immediately before the date of entry, if the matters qualifying for compensation had not existed.
- (3) In the application of subsection (2) of the said section twenty-three to that holding, for the value mentioned in paragraph (c) of that subsection there shall be substituted the value which, at the end of the period of occupation, a freehold interest in the

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holding would have if it were then in the state in which it might reasonably have been expected to be, immediately before the date of entry, if the matters qualifying for compensation had not existed.

- (4) In this paragraph “the matters qualifying for compensation” means the matters in respect of which compensation is payable by virtue of sub-paragraph (2) of paragraph 3 of this Schedule.

- 10 In the application of this Schedule to Scotland—
- (a) for the reference to subsection (4) of section twenty-two of the <sup>M32</sup>Act of 1922 there shall be substituted a reference to subsection (3) of section nineteen of the Allotments (Scotland) Act 1922;
  - (b) in sub-paragraph (1) of paragraph 3, for the words “the Act of 1908 or the Act of 1922 or the <sup>M33</sup>Allotments Act 1950” there shall be substituted the words “the Allotments (Scotland) Acts 1892 to 1950”;
  - (c) in sub-paragraph (2) of paragraph 3, for the words “under any of the enactments mentioned in the next following sub-paragraph” there shall be substituted the words “by virtue of the Allotments (Scotland) Acts 1892 to 1950 (but excluding any compensation for disturbance)”, and for the words “such re-entry as is mentioned in subsection (2) of section two of the Act of 1922” there shall be substituted the words “such resumption of possession as is mentioned in subsection (3) of section two of the <sup>M34</sup>Allotments (Scotland) Act 1922”;
  - (d) sub-paragraph (3) of paragraph 3 shall be omitted;
  - (e) subject to sub-paragraph (b) of this paragraph, for any reference to the <sup>M35</sup>Allotments Act 1950, there shall be substituted a reference to the Allotments (Scotland) Act 1950;
  - (f) in paragraph 5, for the references to section four or section five of the Act of 1922 and to subsection (4) of section forty-seven of the Act of 1908 there shall be substituted respectively references to subsection (8) of section two or section four of the Allotments (Scotland) Act, 1922, and to subsections (5) and (6) of section seven of the <sup>M36</sup>Allotments (Scotland) Act 1892;
  - (g) for references to a valuation and to the judge of the county court there shall be substituted respectively references to arbitration and to the sheriff; and
  - (h) paragraph 8 shall be omitted, but paragraph (c) of subsection (9) of section two of the <sup>M37</sup>Allotments (Scotland) Act 1922, shall apply in relation to the expenses of an arbitration under paragraph 7 of this Schedule as it applies in relation to the expenses of an arbitration under the said subsection (9).

**Modifications etc. (not altering text)**

- C26** Reference to judge of county court to be construed as reference to judge assigned to county court district or acting as judge so assigned: [Courts Act 1971 \(c. 23\)](#), [Sch. 8 Pt. 1 para. 2](#).

**Marginal Citations**

- M32** 1922 c. 52.  
**M33** 1950 c. 31.  
**M34** 1922 c. 52.  
**M35** 1950 c. 38.  
**M36** 1892 c. 54.  
**M37** 1922 c. 52.

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NINTH  
SCHEDULE **E+W+S**

Sections 39, 47.

PROVISIONS AS TO NOTICES

- 1 Subject to the following provisions of this Schedule, any notice or other document required or authorised to be served or given under this Act, or under any enactment applied by or incorporated with this Act, may be served or given either—
- (a) by delivering it to the person on whom it is to be served or to whom it is to be given; or
  - (b) by leaving it at the usual or last known place of abode of that person, or, in a case where an address for service has been given by that person, at that address; or
  - (c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode, or, in a case in which an address for service has been given by him, at that address; or
  - (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office, or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office.

**Modifications etc. (not altering text)**

**C27** References to registered letter to be construed as including references to letter sent by recorded delivery service: [Recorded Delivery Service Act 1962 \(c. 27\)](#), s. 1(1)(2), [Sch. para. 1](#).

- 2 Where the notice or document is required or authorised to be served on any person as having an interest in land, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or authorised to be served on any person as an occupier of land, the notice shall be deemed to be duly served if—
- (a) being addressed to him either by name or by the description of “the owner” or “the occupier”, as the case may be, of the land (describing it), it is delivered or sent in the manner prescribed by the preceding paragraph; or
  - (b) being so addressed, it is sent in a prepaid registered letter to the land in question and is not returned to the person by whom or on whose behalf it is sent, or is delivered to some person on that land or is affixed conspicuously to some object on that land.

**Modifications etc. (not altering text)**

**C28** Reference to registered letter to be construed as including reference to letter sent by recorded delivery service: [Recorded Delivery Service Act 1962 \(c. 27\)](#), s. 1(1)(2), [Sch. para. 1](#).

- 3 (1) Subject to the next following sub-paragraph, where the notice or other document is required to be served on or given to all persons having interests (or interests of a specified description) in any land, or being occupiers of any land, and it appears to the person required or authorised to serve or give the notice or other document that any part of that land is unoccupied, the notice or other document shall be deemed to be duly served on all persons having interests (or the relevant interests, as the case may be) in that part of the land and on any occupiers of that part of the land (other than a person who has given an address for the service of the notice on him) if it is

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addressed to “the owners and any occupiers” of that part of the land (describing it) and is affixed conspicuously to some object on the land.

- (2) This paragraph shall not apply to any notice required to be served or given <sup>F468</sup> . . . under the provisions of the [<sup>F469</sup> Acquisition of Land Act 1981 or of Schedule 1 to] the Scottish Acquisition of Land Act, as applied, in relation to compulsory rights orders, by section four of this Act.

#### Textual Amendments

**F468** Words repealed by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), **Sch. 12 Pt. II**.

**F469** Words substituted by [Acquisition of land Act 1981 \(c. 67, SIF 28:1\)](#), s. 34(1), Sch. 4 para. 11(6)

- 4 The preceding provisions of this Schedule shall not apply to any notice for which a method of service is prescribed by regulations under this Act, except in so far as any of those provisions are applied by those regulations.

## <sup>F470</sup>TENTH SCHEDULE **E+W+S**

### TRANSITIONAL PROVISIONS

#### Textual Amendments

**F470** [Sch. 10](#) repealed by [1986 c. 63, s. 39\(4\)](#), **Sch. 12 Pt. II**

#### Modifications etc. (not altering text)

**C29** “The Minister” means Minister of Power whose functions are now exercisable by Secretary of State: [S.I. 1969/1498, art. 2\(1\)](#) and [1970/1537, art. 2\(2\)](#)

## <sup>F471</sup>PART I **E+W+S**

### GENERAL

#### Textual Amendments

**F471** [Sch. 10](#) repealed (11.12.1987) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), **Sch. 12 Pt. II**

- <sup>F472</sup>1 (1) In this Schedule, except in so far as the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—
- “annual compensation under this Act” means compensation under any of the following provisions of this Act, that is to say, sections seventeen to twenty, the provisions of any of those sections as applied by section twenty-nine, and subsection (2) of section thirty-one;
- “the date of requisition”, in relation to any land, means the date on which possession of that land was or is taken in the exercise of emergency powers;
- “the existing arrangements”, in relation to any land which, at the commencement of this Act, is land already requisitioned for opencast

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operations, or land requisitioned as an opencast storage site, means the following provisions and arrangements in so far as they apply to that land, that is to say,—

- (a) the provisions of subsection (1) of section two of the <sup>M38</sup>Compensation (Defence) Act 1939, and
- (b) any arrangements in force at the commencement of this Act whereby compensation (either in substitution for, or in addition to, compensation under those provisions) is to be payable by or on behalf of the Minister in consequence of the taking or retention of possession of the land in the exercise of emergency powers;

“interest”, in relation to any land, includes any right by virtue of which a person is entitled, or would (apart from this Act or any exercise of emergency powers) be entitled, to occupy that land, and also includes any right restrictive of the use of that land;

“land already requisitioned for opencast operations” means land of which possession has before the commencement of this Act been taken in the exercise of emergency powers, and is for the time being retained in the exercise of those powers for the purpose of working coal on that land, or on land contiguous therewith, by opencast operations, or for the purpose of restoring that land after it has been affected by the working of coal by such operations;

“land hereafter requisitioned for opencast operations” means land of which possession is after the commencement of this Act taken in the exercise of emergency powers for the purpose of working coal on that land, or on land contiguous therewith, by opencast operation, and is for the time being retained in the exercise of those powers for that purpose, or for the purpose of restoring that land after it has been affected by the working of coal by such operations;

“land requisitioned for opencast operations” means land which is either land already requisitioned for opencast operations or land hereafter requisitioned for such operations;

“land requisitioned as an opencast storage site” means land which fulfils the following conditions, that is to say, that—

- (a) possession of that land was taken in the exercise of emergency powers before the eighteenth day of December, nineteen hundred and fifty-seven;
- (b) possession of that land was on that day retained in the exercise of those powers for the purpose of storing, cleaning or sorting coal or otherwise preparing it for disposal, and continues for the time being to be so retained for that purpose; and
- (c) during the period beginning with that day and ending with the commencement of this Act, the coal stored or otherwise dealt with on that land has been wholly or mainly coal got by opencast operations;

“terminal compensation under this Act” means compensation under any of the following provisions of this Act, that is to say, sections twenty-one, twenty-two and twenty-three, or under the provisions of any of those sections as applied by section twenty-nine, or under subsection (3) of section thirty-one;

“terminal compensation under the Act of 1939” means compensation under paragraph (b) of subsection (1) of section two of the <sup>M39</sup>Compensation (Defence) Act 1939;

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“terminal date”, in relation to any land of which (by virtue of the following provisions of this Schedule) possession ceases to be retained in the exercise of emergency powers by reason of its being comprised in a compulsory rights order, means the date on which that order ceases to have effect, and, in relation to any other land, means the date on which possession thereof ceases to be retained in the exercise of emergency powers.

- (2) Any reference in any provision of this Schedule to a sum paid on account of a prospective right to compensation of a description specified in that provision includes a reference to a sum paid in consideration of a waiver (whether total or partial) of a prospective claim to compensation of that description.

#### Textual Amendments

**F472** Sch. 10 repealed (11.12.1987) by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(4), **Sch. 12 Pt. II**

#### Marginal Citations

**M38** 1939 c. 75.

**M39** 1939 c. 75.

## PART II **E+W+S**

### OPENCAST SITES

#### *Authorisations*

- <sup>F473</sup>2 Subsection (1) of section one of this Act shall not have effect with respect to the working of coal on land requisitioned for opencast operations; but, for the purposes of the provisions of this Act, other than section one, any authorisation given by the Minister by virtue of the Defence (General) Regulations, 1939, whether before or after the commencement of this Act, with respect to the use of any such land by the [<sup>F474</sup>Corporation] shall be treated as if it were an authorisation granted under section one of this Act to work coal on that land by opencast operations, or to cause or permit coal to be so worked thereon.

#### Textual Amendments

**F473** Sch. 10 repealed (11.12.1987) by Housing and Panning Act 1986 (c. 63, SIF 86), s. 39(4), **sch. 12 Pt. II**

**F474** Word substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**

- <sup>F475</sup>3 (1) Where at the commencement of this Act—
- (a) any land is occupied by the [<sup>F476</sup>Corporation] for the purpose of working coal on that land, or on land contiguous therewith, by opencast operations, or for the purpose of restoring that land after it has been affected by the working of coal by such operations, and
  - (b) the land is either land owned by the [<sup>F476</sup>Corporation], or land in which there is a Crown or Duchy interest, but no private interest other than any interest belonging to the [<sup>F476</sup>Corporation], and accordingly possession of that land has not been taken, or is not for the time being retained, in the exercise of emergency powers,



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subsection (1) of section one of this Act shall not have effect in relation to that land; but the powers conferred on the Minister by section two of this Act shall be exercisable in relation to that land as those powers would be exercisable by the Minister in relation thereto on granting an authorisation under section one of this Act comprising that land.

(2) The preceding sub-paragraph shall have effect notwithstanding anything in subsection (1) of section forty-four of this Act.

(3) In this paragraph “Crown or Duchy interest” and “private interest” have the meanings assigned to them by section forty-four of this Act.

#### Textual Amendments

**F475** Sch. 10 repealed (11.12.1987) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), [Sch. 12 Pt. II](#)

**F476** Word substituted by [1987 c. 3, s. 1\(2\)](#), [Sch. 1 para. 7\(c\)](#)

<sup>F477</sup>4 The powers conferred on the Minister by section two of this Act shall be exercisable at any time in relation to any land requisitioned for opencast operations, notwithstanding that the Minister is not then granting an authorisation under section one of this Act in respect of that land, if the Minister has (whether before or after the commencement of this Act) given an authorisation which by virtue of paragraph 2 of this Schedule is to be treated as if it were an authorisation under that section.

#### Textual Amendments

**F477** Sch. 10 repealed (11.12.1987) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), [Sch. 12 Pt. II](#)

#### *Termination of emergency powers*

<sup>F478</sup>5 Where a compulsory rights order is made in respect of land requisitioned for opencast operations, any power to retain possession of land in the exercise of emergency powers shall cease to apply to that land as from the operative date of the order.

#### Textual Amendments

**F478** Sch. 10 repealed (11.12.1987) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), [Sch. 12 Pt. II](#)

#### *Compulsory rights orders in respect of requisitioned opencast sites*

<sup>F479</sup>6 Subject to the following provisions of this Part of this Schedule, where the land comprised in a compulsory rights order consists of or includes land requisitioned for opencast operations, the period specified in the order, as the period for which the order is to have effect, shall not extend beyond the tenth anniversary of the date of requisition of that land.

#### Textual Amendments

**F479** Sch. 10 repealed (11.12.1987) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), [Sch. 12 Pt. II](#)

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- <sup>F480F481</sup>7 Where the land comprised in a compulsory rights order consists exclusively of land requisitioned for opencast operation, then, notwithstanding anything in subsection (5) of section four of this Act,—
- (a) the provisions of Part I of the First Schedule to the Acquisition of Land Act, as modified by Part I of the Second Schedule to this Act, except the provisions of paragraphs 2, 5 and 6 of the said First Schedule, as so modified, and
  - (b) the provisions of Part III of the said First Schedule, as so modified,
- shall not apply to that order:

Provided that this paragraph shall have effect subject to the provisions of paragraph 9 of this Schedule in cases falling within that paragraph.]

#### Textual Amendments

**F480** Sch. 10 para.7 repealed (E.W.) by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34(3), **Sch. 6 Pt. I**

**F481** Sch. 10 repealed (11.12.1987) by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(4), **Sch. 12 Pt. II**

- <sup>F482</sup>8 A compulsory rights order falling within paragraph 6 or paragraph 7 of this Schedule shall not be varied by extending the period for which it has effect in such a way that, in respect of any of the land comprised in the order, that period extends beyond the tenth anniversary of the date of requisition of that land.

#### Textual Amendments

**F482** Sch. 10 repealed (11.12.1987) by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(4), **Sch. 12 Pt. II**

- <sup>F483</sup>9 (1) Where the land comprised in a compulsory rights order consists of or includes land requisitioned for opencast operations, and it appears to the <sup>F484</sup>[Corporation] that, for either or both of the reasons mentioned in the next following sub-paragraph, it is necessary that the period specified in the order, as the period for which the order is to have effect, should extend beyond the tenth anniversary of the date of requisition of that land,—
- (a) the period specified in the order may extend beyond that anniversary, and shall (subject to the following provisions of this paragraph) be such period as the <sup>F484</sup>[Corporation] consider necessary in the circumstances;
  - (b) the order shall state the reasons for which the <sup>F484</sup>[Corporation] consider it necessary that the period specified in the order should so extend; and
  - (c) paragraph 7 of this Schedule shall not apply to the order, and the provisions as to the making and confirmation of the order shall be in accordance with subsection (5) of section four of this Act.
- (2) The said reasons are—
- (a) that a longer period is required for completing the restoration of land comprised in the order so as to be reasonably fit for use as agricultural land;
  - (b) that there is in force an agreement relating to that land made between the <sup>F484</sup>[Corporation] and another person before the eighteenth day of December, nineteen hundred and fifty-seven, which provides for the working of coal by that person by opencast operations, and is not an agreement under which the coal is to become the property of that other person, and a longer period is required for completing the operations provided for by the agreement.

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- (3) Where an order is made in the circumstances mentioned in sub-paragraph (1) of this paragraph, the period for which the order has effect shall not extend beyond the tenth anniversary of the commencement of this Act.
- (4) The Minister shall not confirm an order as being an order falling within sub-paragraph (1) of this paragraph unless he is satisfied that the reasons stated in the order in accordance with that sub-paragraph are well-founded and that it is necessary for those reasons that the period for which the order has effect should extend as mentioned in that sub-paragraph.

**Textual Amendments**

**F483** Sch. 10 repealed (11.12.1987) by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(4), Sch. 12 Pt. II

**F484** Word substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

- <sup>F485</sup>10 Where the land comprised in a compulsory rights order consists exclusively of land which, immediately before the operative date of the order, is land requisitioned for opencast operations, section five of this Act, and the Second Schedule to this Act, shall have effect in relation to the order subject to the following modifications:—
- (a) subsections (2) and (3) of that section, and Part II of that Schedule, shall not apply;
  - (b) in subsection (4) of that section, for the words “date of entry” there shall be substituted the words “operative date”.

**Textual Amendments**

**F485** Sch. 10 repealed (11.12.1987) by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(4), Sch. 12 Pt. II

- <sup>F486</sup>11 Subsection (2) of section nine of this Act shall not apply to land which, at the time when the compulsory rights order in question is confirmed, is land requisitioned for opencast operations.

**Textual Amendments**

**F486** Sch. 10 repealed (11.12.1987) by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(4), Sch. 12 Pt. II

- 12 ..... <sup>F487</sup>

**Textual Amendments**

**F487** Sch. 10 para. 12 repealed by Coal Industry Act 1975 (c. 56), s. 5(3), Sch. 5

*Certification of payments under existing arrangements*

- <sup>F488</sup>13 In respect of any land which, at the commencement of this Act, is land already requisitioned for opencast operations, the Minister shall, as soon as may be after the commencement of this Act, issue certificates in accordance with paragraphs 14 and 15 of this Schedule.

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#### Textual Amendments

**F488** Sch. 10 para. 12 repealed by Coal Industry Act 1975 (c. 56), s. 5(3), Sch. 5

<sup>F489</sup>14 (1) In respect of any such land as is mentioned in the last preceding paragraph the Minister shall issue, and serve on each person who, at the commencement of this Act, is a person to whom in accordance with the existing arrangements any periodical payments are payable, a certificate stating—

- (a) the interest in land in respect of which those payments are payable to him;
- (b) the annual amount of the payments which are payable in respect of that interest; and
- (c) the times at which, in accordance with the existing arrangements, those payments become payable.

(2) For the purpose of this paragraph the Minister shall determine the annual amount of the periodical payments in respect of an interest in the land by reference to the sums paid or payable in respect of that interest in accordance with the existing arrangements for the year ending with the date of the commencement of this Act:

Provided that if, under the existing arrangements, periodical payments have been payable in respect of that interest for only part of that year, the Minister shall have regard to the amount of the sums paid or payable in respect of that interest for that part of that year, and shall adjust that amount proportionately to a full year and determine the annual amount of the periodical payments by reference to that amount as so adjusted.

#### Textual Amendments

**F489** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

15 In respect of any such land as is mentioned in paragraph 13 of this Schedule the Minister shall <sup>F490</sup>also issue a certificate and serve it on the person who, at the time of issue of the certificate, is the owner of that land, stating whether any sum has been paid in respect of that land on account of any prospective right to terminal compensation under the Act of 1939, and, if so, the amount of the sum so paid.

#### Textual Amendments

**F490** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

<sup>F491</sup>16 The Minister shall serve on the [<sup>F492</sup>Corporation] a copy of any certificate issued under paragraph 14 or paragraph 15 of this Schedule.

#### Textual Amendments

**F491** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

**F492** Word substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

*Status: Point in time view as at 01/04/2017.*

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

*Annual and initial compensation*

- <sup>F493</sup>17 In respect of any land hereafter requisitioned for opencast operations—
- (a) no compensation shall be payable under any of paragraphs (a), (c) and (d) of subsection (1) of section two of the <sup>M40</sup>Compensation (Defence) Act 1939;
  - (b) annual compensation under this Act shall be payable as if the land were comprised in a compulsory rights order which became operative on the date of requisition of the land;
  - (c) compensation under section twenty-six of this Act (or under that section as extended by section twenty-eight of this Act) shall, where applicable, be payable as if the land were comprised in a compulsory rights order and the date of requisition of the land were the date of entry under that order; and
  - (d) compensation under section twenty-seven of this Act (or under the provisions of that section as applied by section twenty-nine of this Act) shall, where applicable, be payable as if the land were comprised in a compulsory rights order which became operative on the date of requisition of the land, and as if anything done in consequence of the taking of possession of the land in the exercise of emergency powers had been done in consequence of the confirmation of that order.

**Textual Amendments**

**F493** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

**Marginal Citations**

**M40** 1939 c. 75.

- <sup>F494</sup>18 Subject to the following provisions of this Part of this Schedule, in respect of any land which, at the commencement of this Act, is land already requisitioned for opencast operations—
- (a) periodical payments shall continue to be payable in accordance with the existing arrangements, and
  - (b) if the land is subsequently comprised in a compulsory rights order, no annual compensation under this Act shall be payable, but periodical payments shall continue to be payable in accordance with the existing arrangements as if the order had not been made:

Provided that no such periodical payments shall accrue due in respect of any land after the terminal date.

**Textual Amendments**

**F494** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- <sup>F495</sup>19 Any periodical payments which continue to be payable as mentioned in the last preceding paragraph, in so far as they accrue due after the commencement of this Act, shall be payable by the [<sup>F496</sup>Corporation] and not by the Minister or by any other person.

*Status: Point in time view as at 01/04/2017.*

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

#### Textual Amendments

**F495** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**

**F496** Word substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**

- <sup>F497</sup>20 The annual amount of any such periodical payments which are payable in respect of an interest in land shall be taken to be the annual amount specified in the certificate issued in respect of that interest under paragraph 14 of this Schedule.

#### Textual Amendments

**F497** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**

- <sup>F498</sup>21 (1) In respect of any land which, at the commencement of this Act, is land already requisitioned for opencast operations, any person who claims that, if annual compensation under this Act were payable in respect of that land, he would be entitled to such compensation in respect of an interest in that land, may, at any time before the first anniversary of the commencement of this Act, serve notice on the [<sup>F499</sup>Corporation] requiring that annual compensation under this Act shall be payable in respect of that interest.
- (2) The right to serve a notice under this paragraph shall apply whether the land in question is for the time being comprised in a compulsory rights order or not.
- (3) Any notice served under this paragraph shall be in such form, and shall contain such information, as may be prescribed.

#### Textual Amendments

**F498** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**

**F499** Word substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**

- <sup>F500</sup>22 (1) The effect of a notice under the last preceding paragraph in respect of an interest in land shall be as follows:—
- (a) any annual compensation under this Act which, in the circumstances specified in the next following sub-paragraph, would have accrued due in respect of that interest for the period beginning with the commencement of this Act and ending with the terminal date, or for any part of that period, shall be payable, or shall be treated as having become payable, as the case may require, as if those circumstances had existed;
- (b) if apart from the notice periodical payments would have become payable in respect of that interest in accordance with the existing arrangements, and would have accrued due after the date of service of the notice, those payments shall not be payable;
- (c) any periodical payments already paid in respect of that interest in accordance with the existing arrangements, in so far as they accrued due after the commencement of this Act, shall be set off against annual compensation under this Act payable in respect of that interest.
- (2) The said circumstances are those which would have existed if—

*Status: Point in time view as at 01/04/2017.*

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

- (a) this Act had been in operation before the date of requisition of the land in question, and had contained no restriction as to the duration of the period for which a compulsory rights order could have effect;
  - (b) a compulsory rights order comprising that land had come into operation on the date of requisition, and the requirements of subsection (2) of section five of this Act in relation to that order had been duly complied with;
  - (c) the period of occupation under that order had been a period ending on the date which, in relation to that land, is the terminal date; and
  - (d) anything done in relation to that land in the exercise of emergency powers had been done in the exercise of rights conferred by that order.
- (3) In the preceding sub-paragraphs any reference to the commencement of this Act, or to the terminal date, in relation to any land, shall (notwithstanding anything in the last preceding sub-paragraph) be construed as a reference to the actual date on which this Act comes into operation, or to the actual terminal date in relation to that land, as the case may be.

#### Textual Amendments

**F500** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- <sup>F501</sup>23 (1) At any time after the first anniversary of the commencement of this Act, any person who is entitled to an interest in land in respect of which a notice could have been, but has not been, served under paragraph 21 of this Schedule, may serve notice on the [<sup>F502</sup>Corporation] requiring that annual compensation under this Act shall be payable in respect of that interest.
- (2) Sub-paragraphs (2) and (3) of paragraph 21 of this Schedule, and the provisions of the last preceding paragraph, shall apply to a notice under this paragraph as they apply to a notice under the said paragraph 21, so however that in the application of the provisions of the last preceding paragraph to a notice under this paragraph any reference to the commencement of this Act, or to the date of service of the notice, shall be construed as a reference to the anniversary of the commencement of this Act which next occurs after the service of the notice.

#### Textual Amendments

**F501** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

**F502** Word substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

#### *Terminal compensation*

- <sup>F503</sup>24 Where after the commencement of this Act possession of any land ceases to be retained in the exercise of emergency powers by reason of the coming into operation of a compulsory rights order comprising that land, no terminal compensation under the Act of 1939 shall be payable in respect of that land.

#### Textual Amendments

**F503** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

*Status: Point in time view as at 01/04/2017.*

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

- <sup>F504</sup>25 In respect of any land hereafter requisitioned for opencast operations of which possession ceases to be retained in the exercise of emergency powers, otherwise than by reason of the coming into operation of a compulsory rights order comprising that land,—
- (a) no terminal compensation under the Act of 1939 shall be payable, but
  - (b) terminal compensation under this Act shall be payable as if the land had been comprised in a compulsory rights order which became operative on the date of requisition of the land, and the period of occupation under that order came to an end on the terminal date, and as if anything done in relation to that land in the exercise of emergency powers had been done in the exercise of rights conferred by that order.

#### Textual Amendments

**F504** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- <sup>F505</sup>26 In respect of any land already requisitioned for opencast operations of which, after the commencement of this Act, possession ceases to be retained in the exercise of emergency powers, otherwise than by reason of the coming into operation of a compulsory rights order comprising that land,—
- (a) no terminal compensation under the Act of 1939 shall be payable, but
  - (b) there shall be payable all such terminal compensation under this Act as would have been payable in the circumstances specified in subparagraph (2) of paragraph 22 of this Schedule.

#### Textual Amendments

**F505** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- <sup>F506</sup>27 For the purposes of the application of any of the provisions of this Act, other than this Schedule, to any land falling within paragraph 24, paragraph 25 or paragraph 26 of this Schedule, any reference in those provisions to the date of entry shall be construed as a reference to the date of requisition of the land.

#### Textual Amendments

**F506** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- <sup>F507</sup>28 Where compensation under section twenty-three of this Act, or under the provisions of that section as applied by section twenty-nine of this Act, would, apart from this paragraph, be payable in respect of any land falling within paragraph 24 or paragraph 26 of this Schedule, and in a certificate issued in respect of that land under paragraph 15 of this Schedule it is stated that a sum was paid in respect of that land as therein mentioned, the amount of that sum (as stated in the certificate) shall be deducted from the amount of that compensation.

#### Textual Amendments

**F507** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2



*Status: Point in time view as at 01/04/2017.*

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

### *Tenant's improvements*

- <sup>F508</sup>29 In relation to any land falling within paragraph 24 of this Schedule, the provisions of section twenty-four or section thirty of this Act, where applicable, shall have effect subject to the modification specified in paragraph 27 of this Schedule.

#### **Textual Amendments**

**F508** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- <sup>F509</sup>30 In relation to any land falling within paragraph 25 of this Schedule, the provisions of section twenty-four or section thirty of this Act, where applicable, shall have effect (subject to the modification specified in paragraph 27 of this Schedule) as if the land had been comprised in a compulsory rights order which became operative on the date of requisition of the land, and the period of occupation under that order came to an end on the terminal date.

#### **Textual Amendments**

**F509** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- <sup>F510</sup>31 In relation to any land falling within paragraph 26 of this Schedule, the provisions of section twenty-four or section thirty of this Act, where applicable, shall have effect (subject to the modification specified in paragraph 27 of this Schedule) as those provisions would have had effect in the circumstances specified in subparagraph (2) of paragraph 22 of this Schedule.

#### **Textual Amendments**

**F510** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

### *Depreciation of other land in same ownership*

- <sup>F511</sup>32 (1) The Minister may by regulations make provision for the payment of compensation in respect of land which, at such time as may be prescribed by the regulations, is land wherein the interest of the owner is held by a person who is also the owner of land requisitioned for opencast operations.
- (2) Any such provision made by regulations under this paragraph shall be such as the Minister may consider appropriate for securing that compensation is payable thereunder, in respect of land to which the regulations apply, in cases, and according to principles, corresponding as nearly as may be with the cases in which, and the principles according to which, compensation is payable under section thirty-two of this Act in respect of land to which that section applies.

#### **Textual Amendments**

**F511** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

*Status: Point in time view as at 01/04/2017.*

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

*Provisions as to minerals*

- <sup>F512</sup>33 (1) The powers conferred by Regulation fifty-one A of the Defence (General) Regulations, 1939, shall not be exercisable for the purpose of the working of minerals on any land which is for the time being comprised in a compulsory rights order which has become operative.
- (2) The preceding sub-paragraph shall have effect without prejudice to the provisions of Part IV of this Schedule as to the temporary stopping up of highways.

**Textual Amendments**

**F512** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- <sup>F513</sup>34 In respect of any land requisitioned for opencast operations—
- (a) the provisions (where applicable) of the Fifth Schedule to this Act, other than paragraphs 7 to 10, paragraph 13 and sub-paragraphs (3) to (5) of paragraph 14 of that Schedule, and the provisions (where applicable) of Part IV of the Seventh Schedule to this Act, shall apply in relation to any time after the commencement of this Act and before the terminal date as if the land were comprised in a compulsory rights order which became operative on the date of requisition of the land, and
- (b) the provisions of paragraphs (3) to (5) of the said Regulation fifty-one A shall not apply in relation to any such time.

**Textual Amendments**

**F513** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- <sup>F514</sup>35 Where after the commencement of this Act possession of any land ceases to be retained in the exercise of emergency powers by reason of the coming into operation of a compulsory rights order comprising that land—
- (a) no sum shall be payable in respect of that land by virtue of paragraph (6) of the said Regulation fifty-one A, but
- (b) the provisions (where applicable) of the Fifth Schedule to this Act, other than paragraphs 3 to 6, paragraph 12 and sub-paragraph (2) of paragraph 14 of that Schedule, shall apply in relation to that land as if any reference in those provisions to the operative date or to the date of entry were a reference to the date of requisition of the land.

**Textual Amendments**

**F514** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- <sup>F515</sup>36 Where after the commencement of this Act—
- (a) possession of any land ceases to be retained in the exercise of emergency powers, otherwise than by reason of the coming into operation of a compulsory rights order comprising that land, and
- (b) immediately before the time when possession of that land ceases to be so retained, the land was land requisitioned for opencast operations,

*Status: Point in time view as at 01/04/2017.*

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

no sum shall be payable in respect of that land by virtue of paragraph (6) of the said Regulation fifty-one A, but the provisions (where applicable) of the Fifth Schedule to this Act (with the exceptions specified in the last preceding paragraph) shall apply as if the land had been comprised in a compulsory rights order under which the period of occupation came to an end on the terminal date.

#### Textual Amendments

**F515** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

<sup>F516</sup>37 (1) Where at the commencement of this Act—

- (a) any land already requisitioned for opencast operations is land which, if it were comprised in a compulsory rights order which became operative immediately after the commencement of this Act, would (within the meaning of the Fifth Schedule to this Act) be land to which that Schedule applies, and
- (b) in respect of that land any sum has been paid (whether by the Minister or by the [<sup>F517</sup>Corporation]) on account of any prospective right to compensation under the said Regulation fifty-one A,

the Minister shall, as soon as may be after the commencement of this Act, issue a certificate specifying the amount and date of payment of that sum and the person to whom it was paid.

- (2) Any certificate required to be issued in respect of any land in accordance with the preceding sub-paragraph shall be served on any person who, at the date of issue of the certificate, would (within the meaning of the Fifth Schedule to this Act) be the mineral operator in relation to that land if the land were comprised in such a compulsory rights order as is mentioned in the preceding sub-paragraph.
- (3) The Minister shall serve on the [<sup>F517</sup>Corporation] a copy of any certificate issued under this paragraph.

#### Textual Amendments

**F516** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

**F517** Word substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

<sup>F518</sup>38 (1) The provisions of this paragraph shall have effect with respect to any sum specified in a certificate issued under the last preceding paragraph.

- (2) So much (if any) of that sum as was paid in respect of compensation which (apart from paragraph 34 of this Schedule) would have accrued due after the commencement of this Act under paragraph (4) or paragraph (5) of the said Regulation fifty-one A shall be set off against any compensation becoming payable, in respect of any of the land to which the certificate relates, under paragraph 4 or paragraph 5 of the Fifth Schedule to this Act.
- (3) So much (if any) of that sum as was paid in respect of a prospective right to compensation under paragraph (6) or paragraph (7) of the said Regulation fifty-one A shall be set off against any compensation which may become payable by virtue of the operation, in relation to any of the land to which the certificate relates, of any provisions of the Fifth Schedule to this Act in accordance with paragraph 35 or paragraph 36 of this Schedule.

*Status: Point in time view as at 01/04/2017.*

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

- (4) For the avoidance of doubt it is hereby declared that subsection (3) of section forty of this Act applies to any dispute about what proportion of any sum specified in such a certificate was paid as mentioned in sub-paragraph (2) or sub-paragraph (3) of this paragraph.

#### Textual Amendments

**F518** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

#### *Provisions as to allotment gardens and other allotments*

- <sup>F519</sup>39 The provisions of the Eighth Schedule to this Act shall have effect in relation to any land hereafter requisitioned for opencast operations as if—
- (a) the land were comprised in a compulsory rights order which had become operative, and
  - (b) anything done in consequence of the taking of possession of the land in the exercise of emergency powers had been done in consequence of the confirmation of that order:

Provided that for the purposes of the application of those provisions in accordance with this paragraph any reference in those provisions to the operative date of the order or to the date of entry shall be construed as a reference to the date of requisition of the land.

#### Textual Amendments

**F519** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- <sup>F520</sup>40 The provisions of the Eighth Schedule to this Act shall not have effect in relation to any land which, at the commencement of this Act, is land already requisitioned for opencast operations, whether that land is subsequently comprised in a compulsory rights order or not.

#### Textual Amendments

**F520** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

#### *Concurrent requisitions*

- <sup>F521</sup>41 The Minister may by regulations make provision for modifying or adapting any of the provisions of this Act relating to compensation (including any such provisions contained in this Schedule) in their application to any land in circumstances corresponding (by reason that two or more parcels of land are at the same time land requisitioned for opencast operations) to the circumstances for which, in relation to compulsory rights orders, provision can be made by regulations under paragraph 29 of the Sixth Schedule to this Act.

*Status: Point in time view as at 01/04/2017.*

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

#### Textual Amendments

**F521** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

### PART III **E+W+S**

#### STORAGE SITES

##### *Termination of emergency powers*

- F522**<sup>42</sup> Where a compulsory rights order is made in respect of land requisitioned as an opencast storage site, any power to retain possession of land in the exercise of emergency powers shall cease to apply to that land as from the operative date of the order.

#### Textual Amendments

**F522** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

##### *Certification of payments under existing arrangements*

- F523**<sup>43</sup> Paragraphs 13 to 16 of this Schedule shall apply in relation to land which, at the commencement of this Act, is land requisitioned as an opencast storage site as they apply in relation to land which, at the commencement of this Act, is land already requisitioned for opencast operations.

#### Textual Amendments

**F523** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

##### *Annual compensation*

- F524**<sup>44</sup> Paragraphs 18 to 23 of this Schedule shall apply in relation to land which, at the commencement of this Act, is land requisitioned as an opencast storage site as they apply in relation to land which, at the commencement of this Act, is land already requisitioned for opencast operations.

#### Textual Amendments

**F524** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

##### *Terminal compensation and tenant's improvements*

- F525**<sup>45</sup> Paragraphs 24, 26, 27, 28 and 31 of this Schedule shall have effect in relation to any land which, at the commencement of this Act, is land requisitioned as an opencast storage site, as if any reference in those paragraphs to land already requisitioned for opencast operations were a reference to land requisitioned as an opencast storage site.

*Status: Point in time view as at 01/04/2017.*

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

#### Textual Amendments

**F525** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**

#### *Depreciation of other land in same ownership*

- F526**<sup>46</sup> In sub-paragraph (1) of paragraph 32 of this Schedule, the reference to land requisitioned for opencast operations shall include a reference to land requisitioned as an opencast storage site; and the power to make regulations under that paragraph shall be exercisable accordingly.

#### Textual Amendments

**F526** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**

#### *Concurrent requisitions*

- F527**<sup>47</sup> In paragraph 41 of this Schedule, the reference to two or more parcels of land which are at the same time land requisitioned for opencast operations shall include references—
- (a) to two or more parcels of land of which one or more are land requisitioned for opencast operations and the other or others are at the same time land requisitioned as opencast storage sites, and
  - (b) to two or more parcels of land both or all of which are at the same time land requisitioned as opencast storage sites;
- and the power to make regulations under that paragraph shall be exercisable accordingly.

#### Textual Amendments

**F527** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**

## PART IV **E+W+S**

### TEMPORARY STOPPING UP OF HIGHWAYS

- F528**<sup>48</sup> (1) This Part of this Schedule applies to any order made before the commencement of this Act under Regulation fifty-one A of the Defence (General) Regulations, 1939, in so far as it—
- (a) provided for the temporary stopping up of a highway (not being a highway over which there was a public right of way enjoyable by vehicular traffic) across any land which, at the commencement of this Act, is land already requisitioned for opencast operations, and
  - (b) is in force immediately after the commencement of this Act.
- (2) This Part of this Schedule also applies to any order made after the commencement of this Act under that Regulation in so far as it provides for the temporary stopping up of such a highway across any land which, at the time when the order is made, is land requisitioned for opencast operations.

*Status: Point in time view as at 01/04/2017.*

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

#### Textual Amendments

**F528** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- <sup>F529</sup>49 In so far as any order made under that Regulation is an order to which this Part of this Schedule applies,—
- (a) the order shall have effect as if it had been made under section three of the Acquisition of Land Act as applied by section fifteen of this Act, and may be varied or revoked accordingly, and
  - (b) the order shall not be affected by any enactment or Order in Council whereby that Regulation is revoked or varied.

#### Textual Amendments

**F529** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

## PART V E+W+S

### PROVISIONS AS TO WOODLANDS

- <sup>F530</sup>50 Without prejudice to any exercise of the power conferred on the Minister by paragraph 15 of the Sixth Schedule to this Act, the Minister may by regulations make provision for modifying or adapting any of the provisions of this Act relating to compensation (including any such provisions contained in this Schedule) in their application to land which—
- (a) at such time as may be prescribed for the purposes of this subparagraph (either generally, or in relation to any particular provision of this Act, or in relation to land of any description specified in the regulations) is or was land requisitioned for opencast operations or land requisitioned as an opencast storage site, and
  - (b) at such time as may be so prescribed for the purposes of this subparagraph, is or was land used as woodlands, or as woodlands of a particular description specified in the regulations.

#### Textual Amendments

**F530** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

## PART VI E+W+S

### APPLICATION TO SCOTLAND

- <sup>F531</sup>51 In the application of this Schedule to Scotland, for any reference to the Acquisition of Land Act there shall be substituted a reference to the Scottish Acquisition of Land Act.

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*Status: Point in time view as at 01/04/2017.*

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

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#### **Textual Amendments**

**F531** Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**



**Status:**

Point in time view as at 01/04/2017.

**Changes to legislation:**

There are currently no known outstanding effects for the Opencast Coal Act 1958.