



# Opencast Coal Act 1958

1958 CHAPTER 69 6 and 7 Eliz 2

## PART III

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

**37 Consequential adjustments between landlords and tenants and in respect of mortgages and mining leases and orders.**

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.**

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>F1</sup>in respect of which opencast planning permission has been granted] and is for the time being occupied by [<sup>F2</sup>a relevant person] for the [<sup>F3</sup>purpose of carrying on the permitted activities], and
- (b) within the time limited for making objections to the order, [<sup>F2</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>F4</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>F5</sup>the Secretary of State] is satisfied that it can be purchased without serious detriment to the [<sup>F6</sup>permitted activities]

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[<sup>F7</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.].

#### Textual Amendments

- F1 Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), **Sch. 8 para. 9(a)(i)**
- F2 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**
- F3 Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), **Sch. 8 para. 9(a)(ii)**
- F4 Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), **Sch. 8 para. 9(b)**
- F5 Words substituted by virtue of S.I. 1969/1498, **arts. 2(1), 5(6)** and 1970/1537, arts. 2(2), 7(4)
- F6 Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), **Sch. 8 para. 9(c)**
- F7 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.

- (1) Where it appears to the Minister to be expedient that any land should be prospected—
- (a) 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
  - (b) 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>F8</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>F9</sup>the Coal Authority] may, at any reasonable time, for either of the purposes mentioned in the preceding subsection,—
- (a) enter upon that land, or upon any other land to which entry is required for obtaining access to that land;
  - (b) 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
  - (c) 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>F9</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

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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>F9</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),—
- (a) for any purpose in connection with, or preparatory to, an application for [<sup>F10</sup>opencast planning permission] or the making or confirmation of any order under Part I of this Act; or
  - (b) (where [<sup>F11</sup>opencast planning permission] has been granted) for any purpose in connection with, or preparatory to, the carrying [<sup>F12</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>F13</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>F14</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>F15</sup>a sewerage undertaking or sewage disposal undertaking, or is held by a [<sup>F16</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>F16</sup>water authority] or other drainage authority, to [<sup>F15</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.

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- (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>F9</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>F9</sup>the Coal Authority] in respect of the disturbance.
- [<sup>F17</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>F18</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>F19</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

- F8** 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**
- F9** 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**
- F10** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), **Sch. 8 para. 10(a)**
- F11** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), **Sch. 8 para. 10(b)(i)**
- F12** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), **Sch. 8 para. 10(b)(ii)**
- F13** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), **Sch. 8 para. 10(c)**
- F14** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), **Sch. 8 para. 11**
- F15** 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**)
- F16** Words substituted by virtue of [Water Act 1973 \(c. 37\)](#), **s. 9**
- F17** **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**

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**F18** 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**

**F19** Words repealed by Housing and Planning Act 1986 (c. 63, (SIF 86), s. 39(4), Sch. 12 Pt. II

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

- C1** 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**
- C2** S. 39 modified by Gas Act 1986 (c. 44, SIF 44:2), s. 67(1), **Sch. 7 para. 2(9)(b)**
- C3** S. 39 modified (E.W.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1), **Sch. 16 para. 3(1)(b)**
- C4** S. 39 modified (S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1), **Sch. 16 para. 3(2)(9)**
- C5** S. 39(2) restricted (31.10.1994) by 1994 c. 21, s. 52(2)(3); S.I. 1994/2553, **art. 2**
- C6** 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**
- C7** 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**
- C8** S. 39(6)(b) extended by Post Office Act 1969 (c. 48), **Sch. 4, para. 93(1)(xiv)(2)(f)**
- C9** S. 39(6)(b) extended by Civil Aviation Act 1982 (c. 16, SIF 9), **Sch. 2 para. 4**

#### **40 Claims for compensation payable by [F20Corporation]**

- (1) Compensation under this Act shall not be payable by [F21any person] unless a claim for it is duly made to [F21that 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 [F21any 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 [F21any 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 the Lands Tribunal.

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

#### Textual Amendments

**F20** Word substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**

**F21** 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**)

#### 41 Provisions as to allotment gardens and other allotments.

- (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>M1</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>M2</sup>Allotments (Scotland) Act 1922.

#### Marginal Citations

**M1** 1922 c. 51.

**M2** 1922 c. 52.

#### 42 Special provisions as to property held for religious purposes.

- (1) The provisions of this section shall have effect where any compensation is payable by [<sup>F22</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, not being land in Scotland, Wales or Monmouthshire, is ecclesiastical property, the compensation shall be paid to the Church Commissioners.
- (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>F22</sup>the person liable is] so requested by or on behalf of a body of persons notified to [<sup>F22</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>F22</sup>the person liable] shall pay the compensation to that representative body.

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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 Church Commissioners 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 Church Commissioners 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) Where the fee simple of any ecclesiastical property, not being property in Wales or Monmouthshire, is in abeyance, it shall be treated for the purposes of this Act as being vested in the Church Commissioners.
- (7) In this section “ecclesiastical property” means property belonging to an ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a 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

**F22** 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**)

### 43 Provisions as to mortgaged land and other special cases.

- (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.
- (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>F23</sup> . . . to the mortgagee, and shall be paid or applied by him as mentioned in the last preceding subsection.



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- (4) Where any compensation payable <sup>F23</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>F23</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>F23</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 price realised on the sale by a heritable creditor of land subject to a heritable security.

#### Textual Amendments

**F23** 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



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#### **44 Crown land.**

- (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>F24</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>F25</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;
- (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
- (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.

- (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

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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

- F24** 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**)
- F25** 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**

#### 45 Provisions as to telegraphic lines.

- (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>F26</sup>[<sup>F27</sup>electronic communications apparatus] kept installed for purposes of [<sup>F28</sup>an electronic communications code network] or include any right or power to require any such apparatus to be altered.]
- [<sup>F29</sup>(2) Where [<sup>F30</sup>opencast planning permission has been granted], paragraph 23 of [<sup>F31</sup>the electronic communications code] (which provides a procedure for certain cases where works involve the alteration of [<sup>F27</sup>electronic communications apparatus]) shall apply [<sup>F32</sup>for the purposes of any permitted activities to the person with the benefit of that permission].]
- (3) Where in pursuance of an order made under . . . <sup>F33</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 <sup>F34</sup> . . . [<sup>F35</sup>[<sup>F27</sup>electronic communications apparatus] kept installed for the purposes of [<sup>F28</sup>an electronic communications code network], the operator of [<sup>F36</sup>that 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>F37</sup>(4) Paragraph 1(2) of [<sup>F31</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>F38</sup>

#### Textual Amendments

- F26** Words substituted by **Telecommunications Act 1984** (c. 12, SIF 96), s. 109, **Sch. 4 para. 38(2)**, **Sch. 5 para. 45**
- F27** 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))

*Status: Point in time view as at 27/11/2003.*

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

- F28** 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))
- F29** S. 45(2), substituted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 38(3), **Sch. 5 para. 45**
- F30** Words substituted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 12(a)**
- F31** 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))
- F32** 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**)
- F33** Words repealed by Coal Industry Act 1975 (c. 56), s. 5(3), **Sch. 5**
- F34** 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))
- F35** Words substituted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 38(4), **Sch. 5 para. 45**
- F36** 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))
- F37** S. 45(4) substituted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 38(5), **Sch. 5 para. 45**
- F38** S. 45(5) repealed by Coal Industry Act 1975 (c. 56), s. 5(3), **Sch. 5**

- 46** <sup>F39</sup>(1) . . . . .
- (2) . . . . . <sup>F40</sup>

**Textual Amendments**

- F39** 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**
- F40** 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.**

- (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>F41</sup>section 250 of the <sup>M3</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>F42</sup> . . . <sup>F43</sup>
- (3) [<sup>F44</sup>Subsections (2) to (8) of section 210 of the <sup>M4</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.

*Status: Point in time view as at 27/11/2003.*

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

#### Textual Amendments

- F41** Words substituted by virtue of [Local Government Act 1972 \(c. 70\), s. 272\(2\)](#)  
**F42** Words repealed by [Acquisition of Land Act 1981 \(c. 67, SIF 28:1\), s. 34\(3\), Sch. 6 Pt. I](#)  
**F43** Words spent  
**F44** Words substituted by virtue of [Local Government \(Scotland\) Act 1973 \(c. 65\), s. 237\(2\)](#)

#### Marginal Citations

- M3** [1972 c. 70.](#)  
**M4** [1973 c. 65.](#)

### 48 Transitional provisions.

F45

#### Textual Amendments

- F45** [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.

- (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.
  - (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>F46</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.

*Status: Point in time view as at 27/11/2003.*

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

(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:

[<sup>F47</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

**F46** 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**

**F47** S. 49(5) proviso substituted by Coal Industry Act 1975 (c. 56), **Sch. 3 para. 8**

*Status: Point in time view as at 27/11/2003.*

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

**50 Expenses.**

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

**51 Interpretation.**

(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>F48</sup> . . . . .  
<sup>F49</sup>“the Act of 1986” means the <sup>M5</sup>Agricultural Holdings Act 1986;]  
<sup>F50</sup>“the Act of 1995” means the Agricultural Tenancies Act 1995;]  
<sup>F51</sup>“the Act of 1971” ] means the [<sup>F51</sup>Town and Country Planning Act 1971];  
 “The Act of 1948” means the Agricultural Holdings Act 1948;  
<sup>F52</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>F53</sup>Act of 1986]; “agricultural land” means land used for agriculture which is so used for the purposes of a trade or business;

<sup>F54</sup> . . . . .  
<sup>F55</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>F56</sup> the Minister of Transport];  
 (b) in relation to statutory undertakers carrying on an undertaking for the supply of <sup>F57</sup> . . . hydraulic power, the [<sup>F58</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>F59</sup> . . . . .  
 (e) in relation to any [<sup>F60</sup> internal drainage board], the Minister of Agriculture, Fisheries and Food;  
 (f) <sup>F61</sup> . . . . . and  
 (g) in all other cases, the Secretary of State for the Environment.]

<sup>F62</sup> . . . . .  
<sup>F63</sup> . . . . .

“coal” means bituminous coal, cannel coal and anthracite;  
 “compulsory rights order” has the meaning assigned to it by section four of this Act;

<sup>F64</sup> . . . . .  
 “date of entry” has the meaning assigned to it by section five of this Act;

<sup>F65</sup> . . . . .  
 “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>F66</sup>“farm business tenancy” has the same meaning as in the Act of 1995;]

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“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>F67</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>F68</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;

<sup>F69</sup>

[<sup>F70</sup>“opencast planning permission” means planning permission which permits [<sup>F71</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>F72</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>F73</sup>by section 5 of this Act];

[<sup>F74</sup>“permitted activities” means—

(a) the working of coal by opencast operations pursuant to opencast planning permission and the carrying out of operations incidental to such working; and

(b) the carrying out of any conditions subject to which opencast planning permission has been granted;];

“persons directly concerned” has (subject to the provisions of sections seven and eight of this Act) the meaning assigned to it [<sup>F73</sup>by section 5 of this Act];

[<sup>F75</sup>“planning permission” means planning permission under Part III of [<sup>F76</sup>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;

<sup>F77</sup>

<sup>F78</sup>

<sup>F78</sup>



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“statutory undertakers” and “statutory undertaking” have the same meanings as in [F67the Act of 1971][F79](but excluding a universal service provider within the meaning of the Postal Services Act 2000 and his undertaking)];

[F80“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.

[F81(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.

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;

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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.
- (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

- F48** 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](#)
- F49** Definition inserted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 4 para. 31\(a\)](#)
- F50** Definition in s. 51(1) inserted (1.9.1995) by [1995 c. 8, ss. 40, 41\(2\)](#), [Sch. para. 19\(a\)](#) (with s. 37)
- F51** Words substituted by virtue of [Town and Country Planning Act 1971 \(c. 78\)](#), [Sch. 24 para. 2](#)
- F52** Definition inserted by [1990 c. 11, s. 4](#), [Sch. 2, para. 5\(c\)\(i\)](#)
- F53** Words substituted by [Agricultural Holdings Act 1986 c. 5, ss. 99, 100, Sch. 13 para. 3](#), [Sch. 14 para. 31\(b\)](#)

*Status: Point in time view as at 27/11/2003.*

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

- F54** Definition repealed by S.I. 1970/1681, **Sch. 4**
- F55** Definition inserted by S.I. 1976/1775, **Sch. 3 para. 2(1)**
- F56** Words substituted by virtue of S.I. 1979/571, **arts. 2(1), 3(5)**
- F57** 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**
- F58** 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)**
- F59** 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))
- F60** 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)
- F61** 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
- F62** Definition repealed by Housing and Planning Act 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**
- F63** Definition repealed by Coal Industry Act 1987 c. 3, s. 10(3), **Pt. II**
- F64** 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**
- F65** 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)
- F66** Definition in s. 51(1) inserted (1.9.1995) by 1995 c. 8, ss. 41(2), 52, **Sch. para. 19(b)** (with s. 37)
- F67** 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
- F68** Words substituted by virtue of S.I. 1969/1498, **arts. 2(1), 5(6)** and S.I. 1970/1537, **arts. 2(2), 7(4)**
- F69** Definition repealed by Coal Industry Act 1975 c. 56, s. 5(3), **Sch. 5**
- F70** Definition inserted by Housing and Planning Act 1986 c. 63, s. 39(3), **Sch. 8 para. 13(a)**
- F71** 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**
- F72** Words substituted by virtue of Mines (Working Facilities and Support) Act 1966 c. 4, s. 15(4)
- F73** Words substituted by Coal Industry Act 1975 c. 56, s. 4(2), **Sch. 3 para. 9**
- F74** Definition inserted by Housing and Planning Act 1986 c. 63, s. 39(3), **Sch. 8 para. 13(b)**
- F75** Definition inserted by Housing and Planning Act 1986 c. 63, s. 39(3), **Sch. 8 para. 13(c)**
- F76** Words substituted by Planning (consequential Provisions) Act 1990 (c. 11), s. 4, **Sch. 2 para. 5(c)(ii)**
- F77** Definition repealed by Water Resources Act 1963 c. 38, **Sch. 14 Pt. I**
- F78** 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)
- F79** 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)**
- F80** 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**
- F81** 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**

#### Marginal Citations

- M5** 1986 c. 5.

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## 52 General application to Scotland.

(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>F82</sup> [ “ the Act of 1997 ” means the Town and Country Planning (Scotland) Act 1997 ]

“agriculture” has the same meaning as in the <sup>M6</sup>Agriculture (Scotland) Act 1948, and “agricultural” (except in the expressions “agricultural holding” and “agricultural land”) shall be construed accordingly;

[<sup>F83</sup> “ agricultural holding ” has the meaning assigned to it by section one of the Scottish Act of [<sup>F84</sup> 1991 ] ; ]

[<sup>F83</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>F85</sup>

[<sup>F86</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>F87</sup> the Minister of Transport];

(b) in relation to statutory undertakers carrying on an undertaking for the supply of gas or hydraulic power, the Secretary of State for Energy;

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

(d) <sup>F88</sup> .....

(e) in relation to statutory undertakers carrying on an undertaking for the supply of . . . <sup>F89</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 of the dominium utile;

“land” includes salmon fishings;

[<sup>F90</sup>“local authority” has the meaning assigned to it by section 235 of the <sup>M7</sup>Local Government (Scotland) Act 1973];

.....<sup>F91</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>F92</sup>(but “statutory undertakers” and “statutory undertaking” do not include a universal service provider within the meaning of the Postal Services Act 2000 and his undertaking).];

“owner” in relation to land, subject to subsection (2) of the last preceding section, means the owner of the dominium utile;

[<sup>F93</sup>“planning permission” means planning permission under Part III of [<sup>F94</sup>Act of 1997]]

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

“the Scottish Acquisition of Land Act” means the <sup>M8</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947;

[<sup>F95</sup>“the Act of 1972” ] means [<sup>F95</sup>the <sup>M9</sup>Town and Country Planning (Scotland) Act 1972];

[<sup>F84</sup>“the Scottish Act of 1991” means the Agricultural Holdings (Scotland) Act 1991];

[<sup>F96</sup>“the Scottish Act of 2003” means the [Agricultural Holdings \(Scotland\) Act 2003 \(asp 11\)](#).”;]

- (3) For any reference to a [<sup>F97</sup>water authority]there shall [<sup>F98</sup>, except in so far as the context otherwise requires,]be substituted a reference to [<sup>F99</sup>the Scottish Environment Protection Agency].
- (4) For any reference to the Lands Tribunal there shall be substituted a reference to the Lands Tribunal for Scotland: . . . <sup>F100</sup>
- (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>M10</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>F101</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>M11</sup>Crofters (Scotland) Act 1955, as the case may be and for references to [<sup>F101</sup>section 45 of the Scottish Act of 1991] there shall be substituted references to section ten of the <sup>M12</sup>Crofters Holding (Scotland) Act 1886, or section fourteen of the <sup>M13</sup>Crofters (Scotland) Act 1955, as the case may require:

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>M14</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.
- (6) For the purposes of any feu charter, feu contract or feu disposition, the owner of any land comprised in a compulsory rights order shall not be taken to be in breach of any obligation or liable to pay any sum by way of damages or penalty or to suffer any forfeiture by reason of anything done or omitted to be done by him by way of

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permitting or facilitating the occupation or use of that land in the exercise of rights conferred by the order.

(7) Where compensation is payable by the [<sup>F102</sup>Corporation] under section twenty-three of this Act, or under that section as applied by section twenty-nine thereof, to the owner of any land comprised in a compulsory rights order by reference to the diminution in value of the land, being land which is subject to a feu duty or a ground annual, and the person who is the superior entitled to the feu duty or the creditor in the ground annual (which person is in this subsection referred to as “the creditor”) shows—

- (a) that the amount of the feu duty or ground annual exceeds the annual value of the land at the end of the period of occupation; and
- (b) that it is unlikely that within a reasonable period such works of restoration will be carried out on the land as will make good the excess;

the creditor shall be entitled to claim (but without prejudice to the making of a claim by the owner) and to receive payment from the [<sup>F102</sup>Corporation] in respect of the feu duty or ground annual so much of the compensation which, apart from this subsection, would be payable to the owner as aforesaid as is equal to the capital equivalent of the said excess:

Provided that the creditor shall not be entitled to receive a payment under this subsection until he has executed and delivered any necessary deeds discharging such part of the feu duty or ground annual as is equal to the said excess.

(8) For the purposes of the last preceding subsection the annual value of the land shall be ascertained in accordance with the provisions of subsection (2) of section eighteen of this Act, with the omission, however, of the words “ in the appropriate circumstances”; and the capital equivalent of the excess of a feu duty or ground annual over the annual value of land subject to it at the end of the period of occupation shall be taken to be that excess multiplied by the number of years purchase which the feu duty or ground annual might have been expected to realise on a sale thereof in the open market immediately before the beginning of the period of occupation.

#### Textual Amendments

- F82** Definition in s. 52(2) inserted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 5(5)(a)**
- F83** 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)**
- F84** 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)
- F85** Definition repealed by S.I. 1970/1681, **Sch. 4**
- F86** Definition inserted by S.I. 1976/1775, **Sch. 3 para. 2(2)**
- F87** Words substituted by virtue of S.I. 1979/571, **arts. 2(1)**, 3(5)
- F88** 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))
- F89** Words repealed by **Electricity Act 1989 (c. 29, SIF 44:1)**, s. 112(4), **Sch. 18**
- F90** Definition inserted by **Local Government (Scotland) Act 1973 (c. 65)**, **Sch. 27 Pt. II para. 141**
- F91** Words repealed by **Local Government (Scotland) Act 1973 (c. 65)**, **Sch. 29**
- F92** Words in s. 52(2) inserted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 16(3)**
- F93** Definition inserted by **Housing and Planning Act 1986 (c. 63, SIF 86)**, s. 39(3), **Sch. 8 para. 14**
- F94** 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)**
- F95** Words substituted by virtue of **Town and Country Planning (Scotland) Act 1972 (c. 52)**, **Sch. 22 para. 2**

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- F96** Words in s. 52(2) inserted (S.) (27.11.2003) by Agricultural Holdings (Consequential Amendments) (Scotland) Order 2003 (S.S.I. 2003/583), art. 1, **Sch. para. 5(b)**
- F97** Words substituted by virtue of Water Act 1973 (c. 37), **s. 9**
- F98** 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**
- F99** 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**
- F100** S. 52(4) proviso repealed by Statute Law (Repeals) Act 1981 (c. 19), **Sch. 1 Pt. XII**
- F101** 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)
- F102** Word substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**

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

- C10** “The Scottish Act of 1947” means Town and Country Planning (Scotland) Act 1947 (c. 53)

#### Marginal Citations

- M6** 1948 c. 45.  
**M7** 1973 c. 65.  
**M8** 1947 c. 42.  
**M9** 1972 c. 52.  
**M10** 1955 c. 21.  
**M11** 1955 c. 21.  
**M12** 1886 c. 29.  
**M13** 1955 c. 21.  
**M14** 1955 c. 21.

### 53 Short title, commencement and extent.

- (1) This Act may be cited as the Opencast Coal Act 1958.
- (2) ..... **F103**
- (3) This Act shall not extend to Northern Ireland.

#### Textual Amendments

- F103** 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:**

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