

Status: Point in time view as at 28/11/2004.

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

SCHEDULES

^{F1}FIRST SCHEDULE

Textual Amendments

F1 Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**

^{F2}1 The Minister shall not grant an authorisation under section one of this Act except in pursuance of an application made by the [^{F3}Corporation] in accordance with the following provisions of this Schedule.

Textual Amendments

F2 Sch. 1 repealed by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(4), **Sch. 12 Pt.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**

F3 Word substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**

^{F4}2 Every such application—

- (a) shall be in the prescribed form, and shall describe by reference to a map the land which the [^{F5}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, [^{F6}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 [^{F5}Corporation] propose to make available].

Textual Amendments

F4 Sch. 1 repealed by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(4), **Sch. 12 Pt.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**

F5 Word substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**

F6 Para. 2(c) added by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 1**

^{F7}3 (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

F7 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

^{F84} [^{F9}(1)] Before submitting to the Minister an application for the Minister's authorisation under section one of this Act, the [^{F10}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 [^{F10}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 [^{F11}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.

[^{F12}(2) If the [^{F10}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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(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

- F8** Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, arts. 1, 2
- F9** Word “(1)” inserted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 2**
- F10** Word substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**
- F11** Word substituted by virtue of Local Government Act 1972 (c. 70), s. 179(3)
- F12** Para. 4(2) added by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 2**

- ^{F13}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

- F13** Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, arts. 1, 2

- ^{F14}6 (1) In the case of any application under this Schedule where the Minister, after consultation with the [^{F15}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 [^{F15}Corporation] that he does not propose to proceed with the application until the [^{F15}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 [^{F15}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 [^{F15}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

- F14** Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, arts. 1, 2

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F15 Word substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

- ^{F167} (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 [^{F17}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 [^{F18}Corporation's] application or subject to such modifications as he may determine].
- (2) If any objection [^{F19}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 [^{F19}and] is not withdrawn, the Minister shall cause a public local inquiry to be held, and shall consider [^{F20}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 [^{F18}Corporation's] application or subject to such modifications as he may determine.
- ^{F21}(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 [^{F18}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 [^{F22}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, [^{F23}or, as the case may be, make an order] notwithstanding that no objection has been made as mentioned in [^{F22}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

- F16** Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**
- F17** Words substituted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 3(1)(2)**
- F18** Word substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**
- F19** Words inserted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 3(1)(3)**
- F20** Words substituted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 3(1)(3)**
- F21** Para. 7(2A), (2B) inserted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 3(1)(4)**
- F22** Words substituted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 3(1)(5)**
- F23** Words inserted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 3(1)(5)**

^{F24}¶^{F25}(1) As soon as may be after the authorisation has been granted, the [^{F26}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.

[^{F27}(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

- F24** Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**
- F25** Word (1) inserted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 4**
- F26** Word substituted by 1987 c. 3, s. 1(20), Sch. 1 para. 7(c)
- F27** Para. 8(2) added by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 4**

^{F28}¶^{F29}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

- F28** Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**
- F29** 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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- ^{F30}10 For the purposes of the provisions of paragraph 4 of this Schedule, and of the provisions of [^{F31}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

- F30** Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**
F31 Words substituted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34(1), **Sch. 4 para. 11(5)(b)**

- ^{F32}11 In the application of this Schedule to Scotland, for references . . . ^{F33} to the London Gazette, to the National Trust . . . ^{F34}there shall be substituted respectively references . . . ^{F33} to the Edinburgh Gazette, to the National Trust for Scotland . . . ^{F34}; and [^{F35}paragraphs 4(2)(b) and 5] shall be omitted . . . ^{F34}

Textual Amendments

- F32** Sch. 1 repealed (11.12.1987) by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**; S.I. 1987/1939, **arts. 1, 2**
F33 Words repealed by Local Government (Scotland) Act 1973 (c. 65), **Sch. 29**
F34 Words repealed by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34(1), **Sch. 4 para. 11(5)(c)**
F35 Words substituted by Coal Industry Act 1975 (c. 56), s. 5(2)(3), **Sch. 4 para. 5**

SECOND SCHEDULE

Sections 4, 5, 39.

PROCEDURE RELATING TO COMPULSORY RIGHTS ORDERS

PART I

^{F36} *Making, confirmation, validity and date of operation of orders*

Textual Amendments

- F36** 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 [^{F37}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 [^{F38}Coal Authority], and any reference to the confirming authority were a reference to the Minister; and

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- (c) any reference to authorising the compulsory purchase of land were a reference to operating so as to confer^{F39} . . . 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

- F37** 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
- F38** 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
- F39** 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 [^{F40}Scottish] Acquisition of Land Act) shall not apply.

Textual Amendments

- F40** 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 [^{F41}(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 [^{F42}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 [^{F43}Coal Authority]to be persons directly concerned.

Textual Amendments

- F41** 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
- F42** 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
- F43** 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 [^{F44}an authorisation under section one of this Act][^{F44}opencast planning permission] and [^{F45}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 [^{F46}an authorisation under section one of this Act should have been, or should be, granted to work the coal in question by opencast operations][^{F46}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

F44 Words substituted (S.) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), **Sch. 8 para. 15(a)**

F45 Words substituted by [Coal Industry Act 1975 \(c. 56\)](#), **Sch. 3 para. 10**

F46 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 [^{F47}Coal Authority].

Textual Amendments

F47 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

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- 9 In Paragraph 15 of the said First Schedule, the first reference to the [^{F48}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

F48 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.

^{F49}12

Textual Amendments

F49 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

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) [^{F50}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) [^{F50}That person] shall serve a like notice on [^{F51}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 [^{F50}to the person serving the notice] to be, in relation to the order, a person directly concerned.
- (4) [^{F50}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.

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Textual Amendments

- F50** 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
- F51** 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.

Status: Point in time view as at 28/11/2004.

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

THIRD SCHEDULE

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;

[^{F52}“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 Lands Tribunal.

Textual Amendments

F52 Definition in Sch. 3 para. 1 inserted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 40(1)(a)

2 (1) [^{F53}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 [^{F53}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 [^{F53}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

F53 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, [^{F54}the final operator], within the prescribed time after the giving of that notice, may serve on the applicant a counter-notice, stating—

(a) that [^{F54}the final operator][^{F55}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

(b) that [^{F56}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.

Status: Point in time view as at 28/11/2004.

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

Textual Amendments

- F54** Words in **Sch. 3** substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 40(1)(b)**
- F55** 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**
- F56** 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—
- (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

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- (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][^{F57}has not]before that date served a counter-notice objecting to that work, or, if [^{F57}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 [^{F58}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 [^{F58}the final operator], or determined by the Tribunal, that compensation is payable in respect of those expenses.
- (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 [^{F58}the final operator][^{F59}serves]a counter-

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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

- F57** 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
- F58** 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
- F59** 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 ^{M1}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.
- (5) In the application of this paragraph to Scotland, for the reference to sections ten and eleven of the ^{M2}Agriculture Act 1947, there shall be substituted a reference to the Fifth and Sixth Schedules to the ^{M3}Agriculture (Scotland) Act 1948.

Marginal Citations

- M1** 1947 c. 48.

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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)

M2 1947 c. 48.

M3 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 [^{F60}the final operator][^{F61}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 [^{F60}the final operator][^{F61}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

F60 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

F61 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 [^{F62}the final operator][^{F63}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 [^{F62}the final operator][^{F63}is precluded] by the last preceding paragraph from objecting to that claim) [^{F62}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;
 - (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

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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

- F62** 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
- F63** 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 [^{F64}the final operator][^{F65}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 [^{F64}the final operator][^{F66}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.

Textual Amendments

- F64** 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
- F65** 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
- F66** 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

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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 [^{F67}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

F67 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](#)

FOURTH SCHEDULE

Sections 26, 28.

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

PART I

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;

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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)

- (b) poultry folded on the land as part of a system of farming practised on the land.

PART II

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

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.

PART IV

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

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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)

- (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

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

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

FIFTH SCHEDULE

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

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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.

[^{F68}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;
- (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

F68 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

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- 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—
- (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.

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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)

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,—
- (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—

Status: Point in time view as at 28/11/2004.

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

- (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.
- (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

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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.
- 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.

Status: Point in time view as at 28/11/2004.

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 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 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.

Status: Point in time view as at 28/11/2004.

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

SIXTH SCHEDULE

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 [F69 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.

Textual Amendments

F69 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 [F70 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

F70 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

F71³

Textual Amendments

F71 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

Status: Point in time view as at 28/11/2004.

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- 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.

- [^{F72}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

F72 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 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

^{F73}7

Textual Amendments

F73 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

- [^{F74}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,

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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

F74 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

- [^{F759} (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
- (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

F75 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

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- 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

F76 12

Textual Amendments

F76 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
 - (b) land in respect of which, immediately before the operative date, there was in force permission granted under Part III of [F77 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

F77 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.

Status: Point in time view as at 28/11/2004.

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

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—
- (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

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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 [^{F78}activities which, in relation to the opencast planning permission referred to in the order, constitute the permitted activities.]

Textual Amendments

F78 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.

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 [^{F79}falling within section 2(3)(a) of the 1986 Act];
 - (b) any easement or similar right over land.

Textual Amendments

F79 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.

^{F80}22

Status: Point in time view as at 28/11/2004.

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

Textual Amendments

F80 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 [^{F81}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 [^{F82}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

- F81** 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)**
- F82** 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)**

- 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 [^{F83}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

F83 Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 32(4)**

Status: Point in time view as at 28/11/2004.

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

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 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.

^{F84}(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

F84 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

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- 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.

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.

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- (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 [^{F85}the Act of 1971] there shall be substituted references to [^{F86}Part III of the Act of 1972], and for references to an agreement [^{F87}falling within section 2(3)(a) of the 1986 Act, to an agreement for the letting of land [^{F88}and to section 2 of the Act of 1986 there shall be substituted respectively references to a lease [^{F89}falling within section 2(2)(a) of the Scottish Act of 1991, to a lease and to section 2 of the Scottish Act of 1991.]]]^{F88} and 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

- F85** Words substituted by virtue of [Town and Country Planning Act 1971 \(c. 78\)](#), [Sch. 24 para. 2](#)
- F86** Words substituted by virtue of [Town and Country Planning \(Scotland\) Act 1972 \(c. 52\)](#), [Sch. 22 para. 2](#)
- F87** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), s. 100, [Sch. 14 para. 32\(5\)](#)
- F88** 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](#)
- F89** 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](#)

SEVENTH SCHEDULE

Section 37.

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

PART I

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

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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 [^{F90}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

F90 Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 33\(2\)](#)

- [^{F91}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—
- (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

F91 [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 [^{F92}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—

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- (a) before the date of entry long-term improvements qualifying for compensation under the [F93 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 [F93 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 [F93 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.

[F94(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

- F92** 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)
- F93** 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)**
- F94** **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)**

[F952A(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.

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- (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.]

Textual Amendments

F95 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 [^{F96}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 [^{F97}section 13 of the Act of 1986 in so far as the said section 13] applies in accordance with the preceding sub-paragraph.

Textual Amendments

F96 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)

F97 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)

- [^{F98}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.]

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Textual Amendments

F98 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 [F99 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) [F100 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 [F100 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 [F101 section 12 or section 13 of the Act of 1986]; but where there is a reference to arbitration under either of those sections and 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 [F102 section 13 of the Act of 1986] include references to the provisions of that section as applied by paragraph 3 of this Schedule.
- [F103 (7) In this paragraph “agricultural holding” does not include an agricultural holding held under a farm business tenancy.]

Textual Amendments

F99 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)**

F100 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)**

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- F101** 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)**
- F102** 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)**
- F103** Sch. 7 para. 4(7) added (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 20(6)** (with s. 37)

- [^{F104}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
 - (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

- F104** 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 [^{F105}held under a tenancy in relation to which the Act of 1986 applies] , [^{F106}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 [^{F107}subsection (3)] of that section (under which the tenant is required to give at least one month's notice of his intention

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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 [F108 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, [F108 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 [F109 section 10 of the Act of 1986] includes a reference to the provisions of that section as extended by [F109 sub-section (3) of section 79] of that Act (which relates to market gardens).

Textual Amendments

- F105** 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)
- F106** 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)*
- F107** 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)*
- F108** 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)*
- F109** 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 [F110—
- (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 [F111 section 23 of the Act of 1986] (which confers rights of entry for the purposes therein mentioned).
- [F112(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.]

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Textual Amendments

- F110** 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)
- F111** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 33(7)**
- F112** 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 [^{F113}sub-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 [^{F114}those 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 [^{F115}but 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

- F113** 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)
- F114** 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)
- F115** 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)

- [^{F116}7A 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

- F116** Sch. 7 para. 7A inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 20(11)** (with s. 37)

PART II

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

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- (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 ^{M4}Landlord and Tenant Act 1927, and “improvement” includes the erection of a building.

Marginal Citations

M4 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.
- 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 ^{M5}Landlord and Tenant Act 1954, as if they had been carried out by the landlord.

Marginal Citations

M5 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.

Status: Point in time view as at 28/11/2004.

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

- (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 [^{F117}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 ^{M6}Landlord and Tenant Act 1954, the jurisdiction conferred on the tribunal by Part I of the ^{M7}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.

Textual Amendments

F117 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

M6 1954 c. 56.

M7 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 [^{F118}(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 mortgagor or to a mortgagor, as the case may be.

Status: Point in time view as at 28/11/2004.

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

Textual Amendments

F118 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

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 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

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

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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

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 ^{M8}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.

Marginal Citations

M8 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,

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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)

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 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,

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Changes to legislation: There are currently no known outstanding effects
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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.
- 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;

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- (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 [F119]opencast planning permission] referred to in that order had not been granted and no application [F120]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 subparagraph, 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.

Textual Amendments

F119 Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 17\(a\)](#)

F120 Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 17\(b\)](#)

PART VI

APPLICATION TO SCOTLAND

25

In the application of this Schedule to Scotland—

- [F121] (a) [F122]subject to sub-paragraphs (ba), (bc), (bd)(i) and (be) of this paragraph,]]for references—

Status: Point in time view as at 28/11/2004.

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

- (i) [^{F123}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) [^{F124}for references to an arbitrator there shall be substituted references to an arbiter or, as the case may be, to the Scottish Land Court.]
- [^{F125}(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 [^{F126}1A, 2A, 3A, 4A, 7, 7A] and 13 shall be omitted;
- (d) for any reference to a holding to which Part I of the ^{M9}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;
- (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

F121 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](#))

Status: Point in time view as at 28/11/2004.

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

- F122** 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)
- F123** 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)**
- F124** 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)**
- F125** 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)
- F126** 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

M9 1927 c. 36.

EIGHTH SCHEDULE

TENANCIES OF ALLOTMENT GARDENS AND OTHER ALLOTMENTS

- 1 (1) In this Schedule—
- “the Act of 1908” means the ^{M10}Small Holdings and Allotments Act 1908;
- “the Act of 1922” means the ^{M11}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

M10 1908 c. 36.

M11 1922 c. 51.

- 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 ^{M12}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 [^{F127}the person on whose application the order was made]to the tenant in respect of the termination of that tenancy.

Status: Point in time view as at 28/11/2004.

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

- (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

F127 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

M12 [1950 c. 31.](#)

- 4 In determining the amount of any compensation payable ^{F128} . . . 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.

Textual Amendments

F128 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 ^{F129} . . . of an amount equal to that loss.

[^{F130}(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.]

Status: Point in time view as at 28/11/2004.

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

- (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

- F129** 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
- F130** 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 ^{F131} . . . 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

- F131** 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 ^{F132} . . . under this Schedule, or as to the amount of any such compensation, or
 - (b) as to a right to compensation ^{F132} . . . 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 the judge of the county court having jurisdiction in the place where the land in question is situated, on an application in writing made for the purpose by the person claiming the compensation or by [^{F133} the person from whom it is claimed].

Textual Amendments

- F132** 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

Status: Point in time view as at 28/11/2004.

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

F133 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)

C1 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 ^{F134}the person from whom the compensation under this Schedule is claimed] .

Textual Amendments

F134 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 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 ^{M13}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 ^{M14}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

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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 ^{M15}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 ^{M16}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 ^{M17}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 ^{M18}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)

- C2** 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. I para. 2](#).

Marginal Citations

- M13** 1922 c. 52.
M14 1950 c. 31.
M15 1922 c. 52.
M16 1950 c. 38.
M17 1892 c. 54.
M18 1922 c. 52.

NINTH SCHEDULE

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

Status: Point in time view as at 28/11/2004.

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

- (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)

- C3** 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)

- C4** 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 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 ^{F135} . . . under the provisions of the [^{F136}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

F135 Words repealed by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), **Sch. 12 Pt. II**.

F136 Words substituted by [Acquisition of land Act 1981 \(c. 67, SIF 28:1\)](#), s. 34(1), Sch. 4 para. 11(6)

Status: Point in time view as at 28/11/2004.

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

- 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.

^{F137}TENTH SCHEDULE

TRANSITIONAL PROVISIONS

Textual Amendments

F137 Sch. 10 repealed by 1986 c. 63, s. 39(4), **Sch. 12 Pt. II**

Modifications etc. (not altering text)

C5 “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)

^{F138}PART I

GENERAL

Textual Amendments

F138 Sch. 10 repealed (11.12.1987) by **Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(4), Sch. 12 Pt. II**

- ^{F139}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 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 ^{M19}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

Status: Point in time view as at 28/11/2004.

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

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 ^{M20}Compensation (Defence) Act 1939;

“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.

Status: Point in time view as at 28/11/2004.

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

Textual Amendments

F139 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

M19 1939 c. 75.

M20 1939 c. 75.

PART II

OPENCAST SITES

Authorisations

- ^{F140}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 [^{F141}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

F140 Sch. 10 repealed (11.12.1987) by [Housing and Panning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), [sch. 12 Pt. II](#)

F141 Word substituted by [1987 c. 3, s. 1\(2\)](#), [Sch. 1 para. 7\(c\)](#)

- ^{F142}3 (1) Where at the commencement of this Act—
- (a) any land is occupied by the [^{F143}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 [^{F143}Corporation], or land in which there is a Crown or Duchy interest, but no private interest other than any interest belonging to the [^{F143}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,
- 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.

Status: Point in time view as at 28/11/2004.

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

Textual Amendments

F142 Sch. 10 repealed (11.12.1987) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), [Sch. 12 Pt. II](#)

F143 Word substituted by [1987 c. 3, s. 1\(2\)](#), [Sch. 1 para. 7\(c\)](#)

- ^{F144}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

F144 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

- ^{F145}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

F145 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

- ^{F146}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

F146 Sch. 10 repealed (11.12.1987) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), [Sch. 12 Pt. II](#)

- ^{F147}^{F148}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:

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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

F147 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](#)

F148 Sch. 10 repealed (11.12.1987) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), [Sch. 12 Pt. II](#)

F149g 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

F149 Sch. 10 repealed (11.12.1987) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), [Sch. 12 Pt. II](#)

- F150g** (1) Where the land comprised in a compulsory rights order consists of or includes land requisitioned for opencast operations, and it appears to the [^{F151}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 [^{F151}Corporation] consider necessary in the circumstances;
 - (b) the order shall state the reasons for which the [^{F151}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 [^{F151}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.
- (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.

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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)

Textual Amendments

F150 Sch. 10 repealed (11.12.1987) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), **Sch. 12 Pt. II**

F151 Word substituted by [1987 c. 3, s. 1\(2\)](#), **Sch. 1 para. 7(c)**

- ^{F152}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

F152 Sch. 10 repealed (11.12.1987) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), **Sch. 12 Pt. II**

- ^{F153}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

F153 Sch. 10 repealed (11.12.1987) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), **Sch. 12 Pt. II**

- 12 ^{F154}

Textual Amendments

F154 Sch. 10 para. 12 repealed by [Coal Industry Act 1975 \(c. 56\)](#), s. 5(3), **Sch. 5**

Certification of payments under existing arrangements

- ^{F155}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.

Textual Amendments

F155 Sch. 10 para. 12 repealed by [Coal Industry Act 1975 \(c. 56\)](#), s. 5(3), **Sch. 5**

- ^{F156}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;

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- (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

F156 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 ^{F157}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

F157 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- ^{F158}16 The Minister shall serve on the [^{F159}Corporation] a copy of any certificate issued under paragraph 14 or paragraph 15 of this Schedule.

Textual Amendments

F158 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

F159 Word substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

Annual and initial compensation

- ^{F160}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 ^{M21}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

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- (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

F160 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

M21 1939 c. 75.

^{F161}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

F161 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

^{F162}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 [^{F163}Corporation] and not by the Minister or by any other person.

Textual Amendments

F162 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

F163 Word substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

^{F164}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

F164 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 28/11/2004.

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

- ^{F165}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 [^{F166}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

F165 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

F166 Word substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

- ^{F167}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—
- (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

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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)

this Act comes into operation, or to the actual terminal date in relation to that land, as the case may be.

Textual Amendments

F167 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- ^{F168}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 [^{F169}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

F168 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

F169 Word substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

Terminal compensation

- ^{F170}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

F170 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- ^{F171}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.

Status: Point in time view as at 28/11/2004.

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

Textual Amendments

F171 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

^{F172}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

F172 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

^{F173}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

F173 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

^{F174}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

F174 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

Tenant's improvements

^{F175}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

F175 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

^{F176}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

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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

F176 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- ^{F177}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 sub-paragraph (2) of paragraph 22 of this Schedule.

Textual Amendments

F177 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

- ^{F178}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

F178 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 minerals

- ^{F179}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

F179 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 28/11/2004.

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

- F180**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

F180 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- F181**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

F181 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- F182**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,
- 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

F182 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- F183**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

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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)

- 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 [^{F184}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 [^{F184}Corporation] a copy of any certificate issued under this paragraph.

Textual Amendments

F183 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

F184 Word substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

- ^{F185}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.
- (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

F185 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

- ^{F186}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—

Status: Point in time view as at 28/11/2004.

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

- (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

F186 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- ^{F187}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

F187 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

- ^{F188}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.

Textual Amendments

F188 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

STORAGE SITES

Termination of emergency powers

- ^{F189}42 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.

Status: Point in time view as at 28/11/2004.

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

Textual Amendments

F189 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

- F190**⁴³ 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

F190 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

- F191**⁴⁴ 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

F191 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

- F192**⁴⁵ 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.

Textual Amendments

F192 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

- F193**⁴⁶ 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

F193 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 28/11/2004.

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

Concurrent requisitions

- ^{F194}47 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

F194 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

TEMPORARY STOPPING UP OF HIGHWAYS

- ^{F195}48 (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.

Textual Amendments

F195 Sch. 10 repealed (11.12.1987) by 1986 c. 63, s. 39(4), Sch. 12 Pt. II; S.I. 1987/1939, arts. 1, 2

- ^{F196}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

F196 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 28/11/2004.

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

PART V

PROVISIONS AS TO WOODLANDS

- ^{F197}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

F197 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

APPLICATION TO SCOTLAND

- ^{F198}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.

Textual Amendments

F198 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 28/11/2004.

Changes to legislation:

There are currently no known outstanding effects for the Opencast Coal Act 1958.