Opencast Coal Act 1958

1958 CHAPTER 69 6 and 7 Eliz 2

PART I

AUTHORISATION OF, AND FACILITIES FOR, OPENCAST WORKING OF COAL

16 Acquisition of rights for purposes of drainage or water supply.

(1) For the purpose of draining land **[**[F1]in respect of which opencast planning permission has been**][**[F2]applied for or granted, the Coal Authority, on an application in accordance with subsection (2A) below, may, by means of an order made by that Authority and confirmed by the Secretary of State, confer on the person with the benefit of the permission**]** a right to place drainage works on any other land, whether above or below ground, and to use, repair and maintain those works, without purchasing any other interest in that land.

(2) For the purpose of bringing a supply of water to land **[**[F1]in respect of which opencast planning permission has been**][**[F2]applied for or granted, the Coal Authority, on an application in accordance with subsection (2A) below, may, by means of an order made by that Authority and confirmed by the Secretary of State, confer on the person with the benefit of the permission**]**a right to place water pipes on any other land, whether above or below ground, and to use, repair and maintain those pipes, without purchasing any other interest in that land.

[[F3](2A) The Coal Authority shall not make an order under this section except on the application of a person who—

(a) is the person with the benefit of the opencast planning permission or, where the permission has been applied for but has not been granted, the person who will have the benefit of that permission;

(b) satisfies that Authority that he is either a licensed operator within the meaning of the Coal Industry Act 1994 or a person whose application to that Authority for a licence under Part II of that Act is pending; and

(c) also satisfies that Authority that he has served notice in the prescribed form of the application for the order on every owner, lessee and occupier of the other land (except tenants for a month or any period of less than a month);

and an order made before the opencast planning permission has been granted shall not be confirmed until after it has been granted.**]**

(3) An order **[**[F4]conferring**]** a right by virtue of this section shall specify the land (being the whole or part of the land **[**[F5]in respect of which the permission was **[**[F6]applied for or**]** granted**]**) for the benefit of which the right is to be **[**[F4]conferred**]**.

[[F7](4) Any right conferred by an order under this section shall be exercisable by, or by any person authorised by—

(a) a person who—

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

(ii) is the person on whom the right was conferred; and

(iii) was in occupation of that land when it was conferred;

or

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

(i) by, or with the written approval of, the Coal Authority, or

(ii) in any other case described in the order,

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

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

[[F8]**[** For the purposes of any order conferring rights exercisable under this section on any [F9](4A) land in England and Wales—

(a) Parts II to IV of the Acquisition of Land Act 1981 shall apply as they would apply in relation to a compulsory rights order in which that land is comprised, and section 29 of that Act shall apply accordingly but with the omission of subsections (4) and (5); and

(b) the Compulsory Purchase Act 1965 shall have effect as if—

(i) the conferring of those rights were the compulsory acquisition of those rights by the person on whom they are conferred; and

(ii)**]** references (whatever the terms used) to the land comprised in the compulsory purchase order were construed, where the context so requires, as references to the land on which the works or pipes are to be placed , and references to the obtaining or taking possession of the first mentioned land were construed as references to the exercise of the right**]**

[[F10](4B) Where at any time after an application for an order under this section has been made and before any order made on that application is confirmed—

(a) any person becomes the successor of the original applicant for the order and notifies that fact—

(i) if no order has been made on the application, to the Coal Authority, or

(ii) if such an order has been made, to the Secretary of State,

and

(b) the Authority or, as the case may be, the Secretary of State decides to proceed in relation to the application or order in accordance with this subsection,

the provisions of this Act shall have effect as if the application had been made by that person, as if he had the same right to make it as the original applicant and as if anything done for the purposes of the application by or in relation to the original applicant or a previous successor had been done by or in relation to that person.

(4C) The Coal Authority or, as the case may be, the Secretary of State may make a decision to proceed in accordance with subsection (4B) of this section subject to compliance by the successor giving the notification with such conditions as that Authority or the Secretary of State thinks fit.**]**

[[F11](5) In relation to any order conferring rights exercisable under this section as regards any land in Scotland Parts I, III and IV of Schedule 1 to the Scottish Acquisition of Land Act (and the enactments incorporated with that Act) shall apply as they would apply in relation to a compulsory rights order in which that land is comprised, and section 4(5) of this Act shall apply accordingly but as if the section did not relate to paragraphs 3 and 4 of Schedule 2 to this Act.**]**

(6) The provisions of section eleven of this Act shall apply in relation to **[**[F12]an order made and confirmed under**]** this section as they apply in relation to a compulsory rights order.

(7) In this section "drainage works" includes any pipes or other works for draining land and any works accessory to such works; and—

(a) any right to maintain drainage works or water pipes in pursuance of an order made by virtue of this section shall include the right to remove those works or pipes, whether for the purpose of replacing them by other drainage works or water pipes or otherwise, and

(b) any right to maintain drainage works on any land in pursuance of such an order shall, if the order so provides, include a right to discharge water from those works on to that land.

[[F13](7A) Subsections (2) and (3) of section 12 of the Acquisition of Land Act 1981 (statutory tenants etc. and ecclesiastical property) shall have effect in relation to the service of a notice under this section as respects any land in England and Wales as they have effect in relation to the service of a notice under that section.**]**

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

[F14](9) . . . . . .

Textual Amendments

F1 Words substituted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 7**(*a*)

F2 Words in s. 16(1) and (2) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(1)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**

F3 S. 16(2A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(2)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**

F4 Word in s. 16(3) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(3)(a)(c)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**

F5 Words substituted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 7**(*b*)

F6 Words in s. 16(3) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(3)(b)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**

F7 S. 16(4) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(4)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**

F8 S. 16(4A) inserted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34(1), **Sch. 4 para. 11(4)**

F9 S. 16(4A) substituted (31.10.1994) for words in s. 16(4A) by 1994 c. 21, s. 52, **Sch. 8 para. 14(5)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**

F10 S. 16(4B)(4C) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(6)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**

F11 S. 16(5) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(7)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**

F12 Words in s. 16(6) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(8)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**

F13 S. 16(7A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 14(9)** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**

F14 S. 16(9) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 14(10), **Sch. 11 Pt. II** (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, **art. 2**

Modifications etc. (not altering text)

C1 S. 16 restricted (31.10.1994) by 1994 c. 21, **s. 52(1)(c)(3)** (with ss. 40(7)); S.I. 1994/2553, **art. 2**

C2 S. 16(9) amended by Land Registration (Scotland) Act 1979 (c. 33, SIF 31:3), **s. 29(2)(3)**

Changes to legislation:
There are currently no known outstanding effects for the Opencast Coal Act 1958, Section 16.