



# Opencast Coal Act 1958

1958 CHAPTER 69 6 and 7 Eliz 2

## PART I

AUTHORISATION OF, AND FACILITIES FOR, OPENCAST WORKING OF COAL

### 1 Authorisation of opencast working of coal.

.....<sup>F1</sup>

#### Textual Amendments

**F1** S. 1 repealed by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(1)(4), [Sch. 12 Pt.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

### 2 Planning permission for authorised operations.

.....<sup>F2</sup>

#### Textual Amendments

**F2** S. 2 repealed by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(1)(4), [Sch. 12 Pt.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

### [<sup>F3</sup>3 Preservation of amenity.

In formulating any proposals as to the working of coal by opencast operations or the carrying out of operations incidental to such working or the restoration of land affected by such working or by such incidental operations, the British Coal Corporation (in this Act referred to as “the Corporation”) or any person who holds or is applying for a licence under section 36(2) of the Coal Industry Nationalisation Act 1946—

- (a) shall have regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest and of protecting sites, buildings and objects of architectural, historic or archaeological interest; and

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- (b) shall so far as possible ensure that the proposals include measures to mitigate any adverse effect which the proposed activities may have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.]

#### Textual Amendments

**F3** S. 3 substituted by *Coal Industry Act 1990 (c. 3, SIF 86), s. 5*

#### 4 Compulsory rights orders.

[<sup>F4</sup>(1) For the purpose of facilitating the working of coal by opencast operations, the [<sup>F5</sup>Corporation] may, by means of an order (in this Act referred to as a “compulsory rights order”) made by the [<sup>F5</sup>Corporation] and confirmed by the Secretary of State, compulsorily acquire, in accordance with the following provisions of this Part of this Act, temporary rights of occupation and use of the whole or part of [<sup>F6</sup>any land on which they desire to work coal by such operations or to carry out operations incidental to such working.]

(2) Subject to the provisions of Part III of this Act as to the variation of orders, the period for which a compulsory rights order has effect shall be a period—

- (a) beginning with the date on which the order becomes operative (in this Act referred to as “the operative date”), and  
 (b) of such duration, not exceeding twenty years, as may be specified in the order.]

[<sup>F7</sup>(4A) Parts II, III and IV of the Acquisition of Land Act 1981 shall apply to compulsory rights orders, subject to section 29 of that Act]

[<sup>F8</sup>(5) The provisions of Parts I, III and IV of the First Schedule to the Acquisition of Land Act (which relate to the procedure for authorising compulsory purchases by local authorities) shall apply to compulsory rights orders, subject to the adaptations, modifications and exceptions set out in Part I of the Second Schedule to this Act.]

[<sup>F9</sup>(6) A compulsory rights order may only be made if opencast planning permission has been applied for or granted in respect of the land comprised in the order or is deemed to have been granted in respect of it.

(6A) Where a compulsory rights order is made before opencast planning permission has been granted in respect of the land comprised in the order, the Secretary of State shall not confirm it unless such permission in respect of that land has first been granted.

(6B) Where a compulsory rights order is made in a case where opencast planning permission has been granted or is deemed to have been granted, the order, as from the time when it is made, shall include a reference to the permission.

(6C) If opencast planning permission is granted in respect of land comprised in a compulsory rights order and the Secretary of State subsequently confirms the order, the order as confirmed shall include a reference to the permission.

(6D) No compulsory rights order, as confirmed, shall extend to any land which is not comprised in the permission or deemed permission referred to in the order.]

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- (7) The Lands Clauses Acts [<sup>F10</sup>and the Compulsory Purchase Act 1965] shall not apply to the compulsory acquisition of rights by virtue of a compulsory rights order, or to the taking or retention of possession of land in the exercise of such rights.
- (8) In the application of this section to Scotland, for the reference to the Acquisition of Land Act there shall be substituted a reference to the <sup>M1</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (in this Act referred to as “the Scottish Acquisition of Land Act”).

#### Textual Amendments

- F4** S. 4(1)(2) substituted for s. 4(1)-(4) by Coal Industry Act 1975 (c. 56), s. 4(1)
- F5** Word in s. 4(1) substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)
- F6** Words substituted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), Sch. 8 para. 2(1)
- F7** S. 4(4A) inserted by Acquisition of Land Act 1981 (c. 67 SIF 28:1), Sch. 4 para. 11(2)
- F8** S. 4(5) repealed (E.W.) by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34(3), Sch. 6 Pt. I
- F9** S. 4(6) substituted by s.4(6)(6A)–(6D) by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), Sch. 8 para. 2(2)
- F10** Words inserted by Acquisition of Land Act 1981 (c. 67, SIF 28:1), s. 34(1), Sch. 4 para. 11(3)

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

- C1** Reference to Lands Clauses Acts to be construed as reference to corresponding provisions in Pt. I of Compulsory Purchase Act 1965 (c. 56): *ibid.*, s. 39(2)

#### Marginal Citations

- M1** 1947 c. 42.

## 5 Effect of opencast site orders.

- (1) Subject to the following provisions of this Part of this Act, the effect of [<sup>F11</sup>a compulsory rights order] shall be in accordance with the provisions of this section.
- (2) The [<sup>F12</sup>Corporation] shall publish, serve and affix notices specifying the date on which the rights conferred by the order are to become exercisable (in this Act referred to as “the date of entry”) being a date—
  - (a) not less than fifty-six days after the first publication (in accordance with the provisions mentioned in the next following subsection) of a notice specifying that date, and
  - (b) not more than six months after the operative date.
- (3) The provisions of Part II of the Second Schedule to this Act shall have effect as to the publication, service and affixing of notices under the last preceding subsection.
- (4) As from the date of entry and during the period for which, on and after that date, the order has effect (in this Act referred to as “the period of occupation”), the order shall confer upon the [<sup>F12</sup>Corporation], and upon persons authorised by the [<sup>F12</sup>Corporation], the like rights to occupy the land comprised in the order, and to exclude other persons therefrom, as if the [<sup>F12</sup>Corporation] had acquired a freehold interest in the entirety of that land with vacant possession and free from incumbrances of any description.
- (5) In addition to the rights mentioned in the last preceding subsection [<sup>F11</sup>a compulsory rights order] shall confer upon the [<sup>F12</sup>Corporation], and upon persons authorised by

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the [<sup>F12</sup>Corporation], the right during the period of occupation, as against all persons directly concerned, to carry out, on or in relation to any of the land comprised in the order, all such operations as may appear to the [<sup>F12</sup>Corporation], in relation to the [<sup>F13</sup>opencast planning permission]referred to in the order, to be requisite for, or incidental to, the [<sup>F14</sup>permitted activities].

- (6) Subject to the following provisions of this Act, in this Act “persons directly concerned”, in relation to [<sup>F11</sup>a compulsory rights order], means persons who for the time being have any interest in any of the land comprised in the order, or have (apart from the order) a right to occupy any of that land, or are entitled to any right restrictive of the use of any of that land.

#### Textual Amendments

- F11** Words substituted by [Coal Industry Act 1975 \(c. 56\)](#), **Sch. 3 para. 2**  
**F12** Word in [s. 5\(1\)\(2\)\(4\)\(5\)](#) substituted by [1987 c. 3, s. 1\(2\)](#), **Sch. 1 para. 7(c)**  
**F13** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), [s. 39\(3\)](#), **Sch. 8 para. 3(a)**  
**F14** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), [s. 39\(3\)](#), **Sch. 8 para. 3(b)**

6 ..... <sup>F15</sup>

#### Textual Amendments

- F15** [S. 6](#) repealed by [Coal Industry Act 1975 \(c. 56\)](#), [s. 5\(3\)](#), **Sch. 5**

### 7 **General limitations on effect of compulsory rights orders.**

- (1) The rights conferred by a compulsory rights order in accordance with subsection (5) of section five of this Act . . . <sup>F16</sup> shall not affect any of the rights mentioned in subsection (2) or subsection (3) of this section.
- (2) Subject to the next following subsection, the said rights are:—
- (a) any right of support for any land not comprised in the order, or for any building or structure on any such land, or any right of action of any person in so far as it arises from the withdrawal of support to which he is entitled for any such land, building or structure;
  - (b) any rights of any statutory water undertakers under any public general Act [<sup>F17</sup>relating to the supply of water], or under any byelaw made by virtue of such an Act, or under any local enactment, in so far as (apart from this Act) the Act, byelaw or enactment restricts, or enables the undertakers to restrict, the working of coal or other minerals, or the doing of any other act, on land comprised in the order;
  - (c) any rights of any statutory undertakers, [<sup>F18</sup>or of the body carrying on a sewerage undertaking or sewage disposal undertaking, or of any [<sup>F19</sup>water authority] or other drainage authority][<sup>F18</sup>or of any internal drainage board], in respect of any apparatus on, under or over land comprised in the order, being apparatus in respect of which, at any time since the granting of the authorisation referred to in the order, the [<sup>F20</sup>Corporation] have been entitled to serve a notice under the provisions of [<sup>F21</sup>the Act of 1971], applied by section thirteen of this Act.

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- (3) . . . <sup>F16</sup> the said rights also include the following:—
- (a) the rights conferred by any agreement made by the [<sup>F22</sup>Corporation] and for the time being in force whereby (apart from this Act) the [<sup>F22</sup>Corporation] are required to leave any coal unworked;
  - (b) any rights of the body carrying on a railway, canal, inland navigation, harbour or dock undertaking (not being rights falling within the last preceding subsection) under any enactment (whether contained in a public general Act or in any other Act) in so far as (apart from this Act) the enactment would operate so as—
    - (i) to restrict, or enable that body to restrict, the working of coal or other minerals on land comprised in the order which is adjacent to a railway, waterway, harbour, dock or other works situated on land not comprised in the order, being works vested in that body or works which they have any right or duty to maintain, or
    - (ii) to require, or enable that body to require, coal or other minerals on land comprised in the order to be left unworked for the protection or support of such a railway, waterway, harbour, dock or other works.
- (4) Without prejudice to the preceding provisions of this section, the rights conferred by a compulsory rights order as mentioned in subsection (1) of this section—
- (a) shall not affect any right of action of a person who is not a person directly concerned, and
  - (b) in the case of a person directly concerned, shall not affect any right of action of his in so far as it arises otherwise than by virtue of his being entitled to an interest in or right over land, or in so far as it arises by virtue of his being entitled to an interest in, or right over, land not comprised in the order.
- (5) Nothing in the preceding provisions of this section shall affect the operation of subsection (4) of section five of this Act, . . . <sup>F16</sup>
- (6) Without prejudice to the preceding provisions of this section, nothing in section five . . . <sup>F16</sup> shall be construed as authorising any interference with the exercise of a public right of way.
- (7) Notwithstanding anything in subsection (6) of section five of this Act, . . . <sup>F16</sup> a person shall not be taken to be a person directly concerned in relation to a compulsory rights order by reason only that he is entitled to any such right as is mentioned in subsection (2) or subsection (3) of this section.
- [<sup>F23</sup>(8) In this section “statutory water undertakers” and “local enactment” have the same meanings as in [<sup>F24</sup>the <sup>M2</sup>Water Act 1973 and] the <sup>M3</sup>Water Act 1945.]
- [<sup>F23</sup>(8) In this section “statutory water undertakers” means the National Rivers Authority, a water undertaker or a sewerage undertaker and “local enactment” means any local statutory provision within the meaning of the Water Act 1989.]
- (9) In the application of this section to Scotland, for references to statutory water undertakers, to the Water Act 1945, and to [<sup>F21</sup>the Act of 1971], there shall be substituted respectively references to a [<sup>F25</sup>water authority], to the <sup>M4</sup>Water (Scotland) Act 1946, and to [<sup>F26</sup>the Act of 1972].

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### Textual Amendments

- F16** Words repealed by [Coal Industry Act 1975 \(c. 56\)](#), s. 5(3), [Sch. 5](#)
- F17** Words repealed (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190(3), [Sch. 27 Part I](#) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 41\(1\), 57\(6\), 58](#))
- F18** Words substituted (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190(1), [Sch. 25 para. 26\(1\)\(a\)](#) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 57\(6\), 58](#))
- F19** Words substituted by virtue of [Water Act 1973 \(c. 37\)](#), [s. 9](#)
- F20** Word in [s. 7\(2\)\(c\)](#) substituted by [1987 c. 3, s. 1\(2\)](#), [SCh. 1 para. 7\(c\)](#)
- F21** Words substituted by virtue of [Town and Country Planning Act 1971 \(c. 78\)](#), [Sch. 24 para. 2](#)
- F22** Word in [s. 7\(3\)\(a\)](#) substituted by [1987 c. 3, s. 1\(2\)](#), [Sch. 1 para. 7\(c\)](#)
- F23** [S. 7\(8\)](#) for subsection (8) there is substituted (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190(1), [Sch. 25 para. 26\(1\)\(a\)](#) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 41\(1\), 57\(6\), 58](#))
- F24** Words inserted by virtue of [Interpretation Act 1978 \(c. 30\)](#), [s. 17\(2\)\(a\)](#)
- F25** Words substituted by virtue of [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), [Sch. 17 para. 1](#)
- F26** Words substituted by virtue of [Town and Country Planning \(Scotland\) Act 1972 \(c. 52\)](#), [Sch. 22 para. 2](#)

### Marginal Citations

- M2** [1973 c. 37.](#)
- M3** [1945 c. 42.](#)
- M4** [1946 c. 42.](#)

## 8 Limited compulsory rights orders.

- (1) A compulsory rights order . . . <sup>F27</sup> may provide that its operation shall be limited so as to extend only to such one or more interests or rights (being interests or rights of a description mentioned in the next following subsection) as may be specified in the order.
- (2) Any interest or right specified in an order made in accordance with the preceding subsection shall be of one of the following descriptions, that is to say,—
- (a) an easement or similar right in respect of the whole or part of the land comprised in the order;
  - (b) a right restrictive of the use of the whole or part of that land;
  - (c) the interest or rights created or conferred by a mining lease or order conferring working rights in respect of minerals in or under that land or part thereof.
- (3) In relation to a compulsory rights order which provides that its operation shall be limited as mentioned in subsection (1) of this section,—
- (a) “persons directly concerned” in this Act means persons who for the time being are entitled to any interest or right specified in the order, and does not include any other person;
  - (b) subsection (4) of section five of this Act, . . . <sup>F27</sup> shall have effect as if for the words from “confer upon the [<sup>F28</sup>Corporation]” to the words “exclude other persons therefrom” there were substituted the words “as against all persons directly concerned, confer upon the [<sup>F28</sup>Corporation], and upon persons

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authorised by the [<sup>F28</sup>Corporation], the like right to exclude persons from the land comprised in the order”;

- (c) paragraph (b) of subsection (4) of the last preceding section shall have effect as if for the words “interest in, or right over, land not comprised in the order” there were substituted the words “interest or right not specified in the order”.

#### Textual Amendments

**F27** Words repealed by [Coal Industry Act 1975 \(c. 56\)](#), s. 5(3), [Sch. 5](#)

**F28** Word in s. 8(3)(b) substituted by [1987 c. 3](#), s. 1(2), [Sch. 1 para. 7\(c\)](#)

## 9 Property exempt from inclusion in compulsory rights orders.

- (1) A compulsory rights order shall not comprise any part of a building which, at the time when the order is made, is a building whereof the whole or any part is occupied as a dwelling-house, or any part of the land adjacent to such a building which, at that time, is occupied together with the whole or part of that building and either—

- (a) is within fifty yards from a part of that building, or  
(b) not being land falling within the preceding paragraph, and not being agricultural land, forms part of a garden, yard, court or forecourt belonging to that building.

- (2) ..... <sup>F29</sup>

- (3) No compulsory rights order shall be made so as to comprise any land which is or has been comprised in a previous compulsory rights order as confirmed by the Minister, other than a previous order which, as so confirmed, provided that its operation should be limited as mentioned in subsection (1) of the last preceding section.

- (4) [<sup>F30</sup>A compulsory rights order], as confirmed by the Minister, shall not comprise any land of which possession—

- (a) has previously been taken in the exercise of emergency powers, and  
(b) has at any time (whether before or after the commencement of this Act) been retained in the exercise of those powers for the purpose of working coal on that land, or on land contiguous therewith, by opencast operations, and  
(c) has before the confirmation of the order ceased to be retained in the exercise of those powers,

unless, at the time of confirming the order, the Minister is satisfied that there are special circumstances existing at that time, or special circumstances relating to the land in question, which justify its inclusion in [<sup>F30</sup>a compulsory rights order] notwithstanding that possession thereof has previously been so taken and retained.

#### Textual Amendments

**F29** [S. 9\(2\)](#) repealed (with saving) by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(1)(4), [Sch. 12 Pt. II](#)

**F30** Words substituted by [Coal Industry Act 1975 \(c. 56\)](#), [Sch. 3 para. 6](#)

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## 10 Provisions as to minerals other than coal, and as to timber, crops etc.

- (1) A compulsory rights order shall confer upon the [<sup>F31</sup>Corporation], and upon persons authorised by the [<sup>F31</sup>Corporation], the right to get and carry away any minerals worked in the exercise of rights conferred by the order, in so far as any such minerals are not already the property of the [<sup>F31</sup>Corporation]; and any minerals got and carried away by virtue of this subsection, and removed from the land comprised in the order, shall become the property of the [<sup>F31</sup>Corporation].
- (2) Where, in the exercise of rights conferred by a compulsory rights order, any trees are felled, or any buildings, fences, sheds or other fixtures or structures are dismantled, the order shall confer upon the [<sup>F31</sup>Corporation], and upon persons authorised by the [<sup>F31</sup>Corporation], the right to carry away and dispose of the timber, or, as the case may be, of any resulting materials; and any timber or materials carried away by virtue of this subsection, and removed from the land comprised in the order, shall become the property of the [<sup>F31</sup>Corporation].
- (3) Where on the date of entry any crops are growing on any of the land comprised in a compulsory rights order, or any crops are grown on any of that land during the period of occupation, the order shall confer upon the [<sup>F31</sup>Corporation], and upon persons authorised by the [<sup>F31</sup>Corporation], the right during the period of occupation to harvest or lift those crops and to remove or otherwise dispose of them; and any crops harvested or lifted by virtue of this subsection shall become the property of the [<sup>F31</sup>Corporation].

### Textual Amendments

**F31** Word in s. 10 substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

## 11 Registration of compulsory rights orders.

- [<sup>F32</sup>(1) A compulsory rights order shall be a local land charge.]
- (2) .....<sup>F33</sup>
- (3) Any rules made [<sup>F34</sup>under section 14 of the <sup>M5</sup>Local Land Charges Act 1975 for the purposes of this section] shall include provision—
- (a) for cancelling the registration of a compulsory rights order if the Minister decides not to confirm the order, or if the order is revoked, or at the end of the period for which it has effect, and
  - (b) for varying the registration of such an order if the order as confirmed by the Minister differs from the order as made, or if the order is subsequently varied.
- (4) In the application of this section to Scotland, the following subsection shall be substituted for subsections (1) to (3) of this section:—
- “(1) As soon as may be after a compulsory rights order has been confirmed it shall be recorded by the [<sup>F35</sup>Corporation] in the appropriate register of sasines; and any order revoking or varying such an order shall be so recorded; and at the end of the period for which such an order has effect the [<sup>F35</sup>Corporation] shall so record notice that the order has ceased to have effect.”

### Textual Amendments

**F32** S. 11(1) substituted by Local Land Charges Act 1975 (c. 76), Sch. 1



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- F33** S. 11(2) repealed by [Local Land Charges Act 1975 \(c. 76\)](#), Schs. 1, 2  
**F34** Words substituted by [Local Land Charges Act 1975 \(c. 76\)](#), **Sch. 1**  
**F35** Word in s. 11 substituted by [1987 c. 3, s. 1\(2\)](#), **Sch. 1 para. 7(c)**

#### Marginal Citations

- M5** [1975 c. 76](#).

## 12 Removal and disposal of chattels from land comprised in compulsory rights order.

- (1) At any time on or after the operative date of a compulsory rights order, the [<sup>F36</sup>Corporation] may serve notice on the person who is for the time being entitled to possession of any chattel which is on, under or over any of the land comprised in the order, requiring him to remove it from that land within such period, not being less than fifty-six days from the date of service of the notice, as may be specified in the notice:

Provided that this subsection shall not apply to any apparatus belonging to statutory undertakers, [<sup>F37</sup> or to the body carrying on a sewerage undertaking or sewage disposal undertaking, and used by those undertakers or that body for the purposes of their undertaking, or belonging to a [<sup>F38</sup>water authority] or other drainage authority and used by that authority][<sup>F37</sup> and used by those undertakers for the purposes of their undertaking or belonging to an internal drainage board and used by that board]for the purposes of their functions.

- (2) If the person on whom a notice is served under the preceding subsection fails to comply with the notice within the period specified therein, the [<sup>F36</sup>Corporation] may cause the chattel to which the notice relates to be removed from the land comprised in the order, or to be removed from one part of that land to another part thereof, and shall not be liable for any loss or damage attributable to the removal except any such loss or damage which is shown to be due to failure to exercise reasonable care.
- (3) Where the [<sup>F36</sup>Corporation]cause a chattel to be removed under the last preceding subsection, the [<sup>F36</sup>Corporation] may dispose of the chattel, by sale, destruction or otherwise, as the [<sup>F36</sup>Corporation] may think fit, unless before the end of the period of three months beginning with the date of the removal the person for the time being entitled to possession of the chattel claims it from the [<sup>F36</sup>Corporation] and takes all reasonable steps for accepting custody of it.
- (4) Where a chattel is sold in the exercise of the powers conferred by the last preceding subsection, the [<sup>F36</sup>Corporation] shall pay the proceeds of sale to the person who was entitled to possession of the chattel immediately before the sale, and the receipt of that person shall be a sufficient discharge to the [<sup>F36</sup>Corporation] for those proceeds.
- (5) In this section “chattel” includes apparatus of any description, whether above or below the surface of the land.

#### Textual Amendments

- F36** Word in s. 12 substituted by [1987 c. 3, s. 1\(2\)](#), **Sch. 1 para. 7(c)**  
**F37** Words substituted (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190(1), **Sch. 25 para. 26(2)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)  
**F38** Words substituted by virtue of [Water Act 1973 \(c. 37\)](#), **s. 9**

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### 13 Apparatus of statutory undertakers and other bodies.

- (1) The [<sup>F39</sup>provisions of section 271 of the Act of 1990 (which] relates to the extinguishment of rights, and removal of apparatus, belonging to statutory undertakers) shall have effect in relation to land [<sup>F40</sup>in respect of which opencast planning permission has been granted], but shall so have effect subject to the following modifications, that is to say,—
- (a) so much of those provisions as relates to the extinguishment of rights shall not apply;
  - (b) subject to the preceding paragraph, those provisions shall apply as if any reference to land which has been acquired or appropriated as therein mentioned were a reference to land [<sup>F41</sup>in respect of which opencast planning permission has been granted], and as if any reference to the purchasing or appropriating authority were a reference to the [<sup>F42</sup>Corporation];
  - (c) those provisions shall apply as if [<sup>F43</sup>any reference to a statutory undertaking included a reference to a sewerage undertaking and to a sewage disposal undertaking and] any reference to the appropriate Minister were a reference to the appropriate Minister [<sup>F44</sup>within the meaning of this Act]; and
  - (d) [<sup>F45</sup>subsection (5) of the said section 271 shall] apply as if any reference to a local authority or statutory undertakers were a reference to the [<sup>F42</sup>Corporation], and as if any reference to “the Minister” were a reference to [<sup>F46</sup>the Secretary of State].
- (2) Without prejudice to the preceding subsection, the provisions of [<sup>F47</sup>the said section 271 shall] have effect in relation to land [<sup>F48</sup>in respect of which opencast planning permission has been granted]—
- (a) subject to the modifications specified in paragraphs (a), (b) and (d) of the preceding subsection, and
  - [<sup>F49</sup>(b) as if any reference in those provisions to the person carrying on a statutory undertaking included a reference to a [<sup>F50</sup>water authority] or other drainage authority, and, in relation to a [<sup>F50</sup>water authority] or other drainage authority, any reference to the carrying on of the undertaking were a reference to the performance of the functions of the authority.]
  - [<sup>F49</sup>(b) as if any reference in those provisions to the person carrying on a statutory undertaking included a reference to an internal drainage board and, in relation to an internal drainage board, any reference to the carrying on of the undertaking were a reference to the performance of the functions of the board.]
- (3) Where any requirement is imposed [<sup>F51</sup>by virtue of section 271 of the Act of 1990 as applied by either of the preceding subsections, the provisions of sections 275 to 277 of that Act (which relate to the powers, duties and obligations of statutory undertakers) and of sections 278 to 282 of that Act (which] relate respectively to the procedure for dealing with objections under those sections and to the assessment of compensation) shall have effect in relation to that requirement (subject to the modifications specified in paragraphs (c) and (d) of subsection (1) of this section, or, as the case may be, subject to those modifications and the further modifications specified in paragraph (b) of the last preceding subsection) as if it were a requirement imposed under [<sup>F52</sup>the said section 271].
- (4) For the avoidance of doubt, it is hereby declared that the provisions referred to in the preceding subsections apply in accordance with those subsections in relation to land [<sup>F53</sup>in respect of which opencast planning permission has been granted] and constitutes the site of a [<sup>F54</sup>highway][<sup>F54</sup>road] which is for the time being stopped up or diverted

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(whether permanently or temporarily) by virtue of any enactment, as those provisions apply in relation to other land [<sup>F55</sup>in respect of which opencast planning permission has been granted].

- (5) Subsection (3) of section thirty-two of the <sup>M6</sup>Mineral Workings Act 1951 (which applies the provisions of [<sup>F56</sup>section 219 of the Town and Country Planning (Scotland) Act 1972 to roads stopped up or diverted by virtue of section 198 of that Act) shall not apply to land constituting the site of a [<sup>F57</sup>highway][<sup>F57</sup>road][<sup>F58</sup>in respect of which opencast planning permission has been granted].

[<sup>F59</sup>(5A) In subsections (4) and (5) above, “road” has the same meaning as in the Roads (Scotland) Act 1984]

- (6) In the application of this section to Scotland, [<sup>F60</sup>for references to section 271, subsection (5) of that section and sections 275 to 282 of the Act of 1990 there shall be substituted respectively references to section 219, subsection (4) of that section, and sections 222 to 229 of the said Act of 1972; [<sup>F61</sup>“highway”]includes a public right of way;] and in paragraph (d) of subsection (1), for the words “the Minister” there shall be substituted the words “the Secretary of State”.

#### Textual Amendments

- F39** Words substituted by [Planning \(Consequential Provisions\) Act 1990](#) (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 5(a)(i)**
- F40** Words substituted by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 4(a)(i)**
- F41** Words substituted by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 4(a)(ii)**
- F42** Word in s. 13 substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**
- F43** Words repealed (E.W.) by [Water Act 1989](#) (c. 15, SIF 130), s. 190(3), **Sch. 27 Part I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)
- F44** Words substituted by S.I. 1970/1681, **Sch. 3 para. 1(4)**
- F45** Words substituted by [Planning \(Consequential Provisions\) Act 1990](#) (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 5(a)(i)**
- F46** Words substituted by virtue of S.I. 1969/1498, **arts. 2(1), 5(6)** and 1970/1537, arts. 2(2), 7(4)
- F47** Words substituted by [Planning \(Consequential Provisions\) Act 1990](#) (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 5(a)(ii)**
- F48** Words substituted by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 4(b)**
- F49** S. 13(2)(b) substituted (E.W.) by [Water Act 1989](#) (c. 15, SIF 130), s. 190(1), **Sch. 25 para. 26(3)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F50** Words substituted by virtue of [Water Act 1973](#) (c. 37), **s. 9**
- F51** Words substituted by [Planning \(Consequential Provisions\) Act 1990](#) (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 5(a)(iii)**
- F52** Words substituted by [Planning \(Consequential Provisions\) Act 1990](#) (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 5(a)(iii)**
- F53** Words substituted by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 4(c)(i)**
- F54** Word substituted (S.) by [Roads \(Scotland\) Act 1984](#) (c. 54, SIF 108), ss. 128(1), 156(1), **Sch. 9 para. 49(a)**
- F55** Words substituted by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 4(c)(ii)**
- F56** Words substituted by [Planning \(Consequential Provisions\) Act 1990](#) (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 5(a)(iv)**
- F57** Word substituted (S.) by [Roads \(Scotland\) Act 1984](#) (c. 54, SIF 108), s. 156(1), **Sch. 9 para. 49(b)**
- F58** Words substituted by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 4(d)**

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**F59** S. 13(5A) inserted (S.) by Roads (Scotland) Act 1984 (c. 54, SIF 108), ss. 128(1), 156(1), **Sch. 9 para. 49(c)**

**F60** Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 5(a)(v)**

**F61** Words repealed (S.) by Roads (Scotland) Act 1984 (c. 54, SIF 108), ss. 128(1), 156(1)(3), **Sch. 9 para. 49(d)**, Sch. 11

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

**C2** “The Minister” in s. 13(1)(d) means Minister of Town and Country Planning exercising functions under **Town and Country Planning Act 1944 (c. 47)**

**Marginal Citations**

**M6** 1951 c. 60.

**[<sup>F62</sup>14 Provisions as to agricultural tenancies in England and Wales.**

- (1) Without prejudice to the provisions of Part III of this Act as to matters arising between landlords and tenants in consequence of compulsory rights orders, the provisions of this section shall have effect where—
  - (a) opencast planning permission has been granted subject to a restoration condition and to an aftercare condition in which the use specified is use for agriculture or use for forestry, and
  - (b) immediately before that permission is granted, any of the land comprised therein consists of an agricultural holding or part of an agricultural holding whether any of that land is comprised in a compulsory rights order or not.
- (2) For the purposes of <sup>M7</sup> the Agricultural Holdings Act 1986 (in this Act referred to as “the Act of 1986”)—
  - (a) the holding shall not be taken to have ceased to be an agricultural holding; and
  - (b) where only part of the holding is comprised in opencast planning permission, that part shall not be taken to have ceased to form part of an agricultural holding,

by reason only that, while occupied or used for the permitted activities, the land is not being used for agriculture within the meaning of that Act.
- (3) For the purposes of the Act of 1986, the tenant of the holding shall not be taken to have failed to fulfill his responsibilities to farm in accordance with the rules of good husbandry—
  - (a) by reason of his having permitted any of the land comprised in the opencast planning permission to be occupied for the purpose of carrying on any of the permitted activities, or by reason of any other thing done or omitted by him for facilitating the use of any of that land for that purpose;
  - (b) where any of that land is comprised in a compulsory rights order, by reason of the occupation or use of any of that land in the exercise of rights conferred by the order, in so far as that occupation or use was not permitted or facilitated by the tenant as mentioned in the preceding paragraph.
- (4) For the purposes of the Act of 1986 nothing done or omitted by the tenant or by the landlord of the holding by way of permitting any of the land in respect of which opencast planning permission has been granted to be occupied for the purpose of carrying on any of the permitted activities, or by way of facilitating the use of any of

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that land for that purpose, shall be taken to be a breach of any term or condition of the tenancy, either on the part of the tenant or on the part of the landlord.

- (5) For the purpose of subsections (1) to (3) of section 27 of the Act of 1986 (Agricultural Land Tribunal’s consent to operation of notice to quit) the condition specified in paragraph (f) of subsection (3) of that section shall not be treated as satisfied if the use for the purpose for which the landlord proposes to terminate the tenancy is the use of the land for carrying on any of the permitted activities.
- (6) On a reference to arbitration under section 12 of the Act of 1986 with respect to the rent which should be properly payable for the holding, in respect of any period for which the [<sup>F63</sup>Corporation] are in occupation of the holding, or of any part thereof, for the purpose of carrying on any of the permitted activities, the arbitrator shall not take into account any increase or diminution in the rental value of the holding in so far as that increase or diminution is attributable to the occupation of the holding, or of that part of the holding, by the [<sup>F63</sup>Corporation] for the purpose of carrying on any of the permitted activities.
- (7) For the purpose of the operation of section 13 of the Act of 1986 (increases of rent for landlord’s improvements) in relation to improvements carried out on the holding, in a case where the improvements have been affected by anything done for the purpose of carrying on any of the permitted activities, the increase (if any) of the rental value of the holding attributable to the carrying out of the improvements shall be assessed as if it had not been done.
- (8) This section does not extend to Scotland.]

#### Textual Amendments

- F62** For S. 14 there is substituted ss. 14, 14A by [Housing and Planning Act 1986 \(c. 63, SIF 86\), s. 39\(3\), Sch. 8 para. 5](#)
- F63** Word substituted by [Coal Industry Act 1987 \(c. 3, SIF 86\), s. 1\(1\) \(2\), Sch. 1 para. 7\(c\)](#)

#### Marginal Citations

- M7** [1986 c. 5 \(2:3\)](#)

### [<sup>F64</sup>14A Provisions as to agricultural tenancies in Scotland.

- (1) Without prejudice to the provisions of Part III of this Act as to matters arising between landlords and tenants in consequence of compulsory rights orders, the provisions of this section shall have effect in Scotland where—
  - (a) opencast planning permission has been granted subject to a restoration condition and to an aftercare condition in which the use specified is use for agriculture, and
  - (b) immediately before that permission is granted, any of the land comprised therein consists of an agricultural holding or part of an agricultural holding, whether any of that land is comprised in a compulsory rights order or not.
- (2) In this section—

“aftercare condition” means a condition requiring that such steps shall be taken as may be necessary to bring land to the standard required for use for agriculture; and

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“restoration condition” has the meaning given to it in section 27A(2) of the Town and Country Planning (Scotland) Act <sup>M8</sup>1972.

(3) For the purposes of the <sup>M9</sup>Agricultural Holdings (Scotland) Act 1949 (in this Act referred to as “the Scottish Act of 1949”)—

- (a) the holding shall not be taken to have ceased to be an agricultural holding, and
- (b) where only part of the holding is comprised in the opencast planning permission, that part shall not be taken to have ceased to form part of an agricultural holding,

by reason only that, while occupied or used for the permitted activities, the land is not being used for agriculture within the meaning of that Act.

(4) For the purposes of the Scottish Act of 1949, the tenant of the holding shall not be taken to have failed to fulfil his responsibilities to farm in accordance with the rules of good husbandry—

- (a) by reason of his having permitted any of the land comprised in the opencast planning permission to be occupied for the purpose of carrying on any of the permitted activities, or by reason of any other thing done or omitted by him for facilitating the use of any of that land for that purpose;
- (b) where any of that land is comprised in a compulsory rights order, by reason of the occupation or use of any of that land in the exercise of rights conferred by the order, is so far as that occupation or use was not permitted or facilitated by the tenant as mentioned in the preceding paragraph.

(5) For the purposes of the Scottish Act of 1949 nothing done or omitted by the tenant or by the landlord of the holding by way of permitting any land in respect of which opencast planning permission has been granted to be occupied for the purpose of carrying on any of the permitted activities, or by way of facilitating the use of any of that land for that purpose, shall be taken to be a breach of any term or condition of the tenancy, either on the part of the tenant or on the part of the landlord.

(6) For the purposes of section 25(2) of the Scottish Act of 1949, no account is to be taken of permission granted as mentioned in paragraph (c) of that subsection if the permission—

- (a) is granted on an application by the [<sup>F65</sup>British Coal Corporation]; and
- (b) relates to the working of coal by opencast operations; and
- (c) is granted subject to a restoration condition and an aftercare condition.

(7) For the purposes of section 26 of the Scottish Act of 1949 (in which subsection (1) specifies conditions for the giving of consent under section 25 of that Act to the operation of a notice to quit) the condition specified in paragraph (e) of subsection (1) shall not be treated as satisfied if the use for the purpose of which the landlord proposes to terminate the tenancy is the use of the land for carrying on any of the permitted activities.

(8) On a reference to arbitration under section 7 of the Scottish Act of 1949 with respect to the rent which should be properly payable for the holding, in respect of any period for which the [<sup>F66</sup>Corporation] are in occupation of the holding, or of any part thereof, for the purpose of carrying on any of the permitted activities, the arbiter shall not take into account any increase or diminution in the rental value of the holding in so far as that increase or diminution is attributable to the occupation of the holding, or of that part of the holding, by the [<sup>F66</sup>Corporation] for the purpose of carrying on any of the permitted activities.

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- (9) For the purpose of the operation of section 8 of the Scottish Act of 1949 (which relates to increases of rent for improvements carried out by the landlord) in relation to an improvement carried out on the holding, in a case where the improvement has been affected by anything done for the purpose of carrying on any of the permitted activities, the increase (if any) of the rental value of the holding attributable to the carrying out of the improvement shall be assessed as if the improvement had not been so affected.
- (10) The use of land for the working of coal by opencast operations shall not be a use for the purposes of which a landlord shall be entitled to resume the land.]

#### Textual Amendments

- F64** For S. 14 there is substituted ss. 14, 14A by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 5](#)
- F65** Words substituted by [Coal Industry Act 1987 \(c. 3, SIF 86\)](#), s. 1(1) (2), Sch. 1 para. 7(b)
- F66** Word substituted by [Coal Industry Act 1987 \(c. 3, SIF 86\)](#), s. 1(1) (2), Sch. 1 para. 7(c)

#### Marginal Citations

- M8** [1972 c.52 \(123:2\)](#).
- M9** [1949 c. 75. \(2:3\)](#)

VALID FROM 01/09/1995

#### <sup>F67</sup>14B Provisions as to farm business tenancies.

- (1) Without prejudice to the provisions of Part III of this Act as to matters arising between landlords and tenants in consequence of compulsory rights orders, the provisions of this section shall have effect where—
- (a) opencast planning permission has been granted subject to a restoration condition, and
  - (b) immediately before that permission is granted, any of the land comprised therein consists of the holding or part of the holding held under a farm business tenancy,
- whether any of that land is comprised in a compulsory rights order or not.
- (2) For the purposes of section 1 of the Agricultural Tenancies Act 1995 (in this Act referred to as “the Act of 1995”), the land shall be taken, while it is occupied or used for the permitted activities, to be used for the purposes for which it was used immediately before it was occupied or used for the permitted activities.
- (3) For the purposes of the Act of 1995, nothing done or omitted by the tenant or by the landlord under the tenancy by way of permitting any of the land in respect of which opencast planning permission has been granted to be occupied for the purpose of carrying on any of the permitted activities, or by way of facilitating the use of any of that land for that purpose, shall be taken to be a breach of any term or condition of the tenancy, either on the part of the tenant or on the part of the landlord.
- (4) In determining under subsections (1) and (2) of section 13 of the Act of 1995 the rent which should be properly payable for the holding, in respect of any period for which the person with the benefit of the opencast planning permission is in occupation of the holding, or of any part thereof, for the purpose of carrying on any of the permitted

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activities, the arbitrator shall disregard any increase or diminution in the rental value of the holding in so far as that increase or diminution is attributable to the occupation of the holding, or of that part of the holding, by that person for the purpose of carrying on any of the permitted activities.

- (5) In this section “holding”, in relation to a farm business tenancy, has the same meaning as in the Act of 1995.
- (6) This section does not extend to Scotland.]

#### **Textual Amendments**

**F67** S. 14B inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), Sch. para. 14 (with s. 37)

### **[<sup>F68</sup>15 Suspension of certain public rights of way.**

- (1) Where—
- (a) the [<sup>F69</sup>Corporation] apply for opencast planning permission; and
  - (b) over any part of the land to which the application relates there subsists a public right of way, not being a right enjoyed by vehicular traffic,
- the [<sup>F69</sup>Corporation] may also apply to the Secretary of State for an order suspending the public right of way.
- (2) The Secretary of State shall not make such an order unless—
- (a) opencast planning permission is granted; and
  - (b) he is satisfied—
    - (i) That a suitable alternative way will be made available by the [<sup>F69</sup>Corporation](whether on land comprised in the opencast planning permission or on other land) for use by the public during the period for which the order remains in force; or
    - (ii) that the provision of such an alternative way is not required.
- (3) An order under this section shall specify the date, which shall not be earlier than the making of the order, with effect from which the right of way is suspended.
- (4) Where an order has been made under this section the Secretary of State shall revoke it—
- (a) if—
    - (i) no permitted activities have been carried on pursuant to the opencast planning permission on the land over which the right of way subsisted; and
    - (ii) he is satisfied that there is no early prospect of such activities being so carried on; or
  - (b) as soon after such permitted activities have been so carried on as he is satisfied that it is no longer necessary for the purpose of carrying on such permitted activities that the right of way should be suspended.
- (5) An order under this section shall include such provisions as may appear to the Secretary of State to be appropriate for securing the reconstruction of the way on the restoration of the land over which the right of way subsisted immediately before the order was made.



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- (6) Where an order is made under this section then, in connection with the provision of such a suitable alternative way as is referred to in subsection (2) above,—
- (a) the order under this section may provide that, in so far as the carrying out of any operation, or any change in the use of land, involved in making the alternative way available or in permitting it to be used by the public, constitutes development within the meaning of [F70the Act of 1990], permission for that development shall be deemed to be granted under Part III of that Act subject to such conditions (if any) as may be specified in the order;
  - (b) where the order under this section includes provisions in accordance with paragraph (a) above, [F70the Act of 1990] shall have effect as if they were conditions subject to which the opencast planning permission was granted;
  - (c) if a compulsory rights order referring to the opencast planning permission is made, then, in the application to that order of section 5(5) above, the permitted activities shall be taken to include making an alternative way available for use by the public, and the right exercisable in accordance with that subsection, as against all persons directly concerned, shall include the right to permit the public to use any way so made available; and
  - (d) if the land on which the alternative way is to be made available is specified in the order under this section and is land which does not form part of, but it contiguous with, the land to which the opencast planning permission relates, a compulsory rights order referring to the opencast planning permission may include that land as if it were part of the land comprised in the permission.
- (7) In the application of this section to Scotland, it shall be read as if for [F70the Act of 1990] there were substituted <sup>M10</sup>“the Town and Country Planning (Scotland) Act 1972”.]

#### Textual Amendments

- F68** For S. 15 there is substituted ss. 15, 15A by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), ss. 39(3), [Sch. 8 para. 6](#)
- F69** Word substituted by [Coal Industry Act 1987 \(c. 3, SIF 86\)](#), [s. 1\(1\) \(2\)](#), Sch. 1 para. 7(c)
- F70** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, [Sch. 2 para. 5\(b\)](#)

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

- C3** [S. 15](#) restricted (31.10.1994) by [1994 c. 21, s. 52\(1\)\(b\)\(3\)](#) (with [s. 40\(7\)](#)); [S.I. 1994/2553, art. 2](#)

#### Marginal Citations

- M10** [1972 c.52 \(123:2\)](#).

### [F71] 15A. Suspension of public rights of way—supplementary.

- (1) Before submitting to the Secretary of State an application for an order under section 15 of this Act, the [F72Corporation] shall publish a notice in the prescribed form identifying the right of way and stating—
- (a) that the [F72Corporation] are proposing to apply for an order suspending it in connection with the working of coal by open-cast operations;
  - (b) that opencast planning permission has been applied for, or, as the case may be, has been granted; and

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- (c) that objections to the application for the order may be made in writing to the Secretary of State within such time, not being less than 28 days from the publication of the notice, as may be specified.
- (2) The duty to publish a notice imposed by subsection (1) above is a duty to publish it—
- (a) in two successive weeks in one or more local newspapers circulating in the locality in which the land over which the right of way subsists is situated; and
  - (b) in the same or any other two successive weeks, in the appropriate Gazette.
- (3) The period within which objections may be made expires when the period specified in the last publication of the notice expires; and any period specified in earlier publications is to be treated as extended accordingly.
- (4) A notice under subsection (1) above shall name a place in the locality where a copy of the application and of a map showing the right of way can be inspected.
- (5) The [<sup>F72</sup>Corporation] shall also, before submitting such an application to the Secretary of State,—
- (a) inform—
    - (i) in England and Wales, the district council and, except in the case of a metropolitan district, the county council, and any parish or community council or parish meeting; and
    - (ii) in Scotland, every local authority in whose area any part of the land over which the right of way subsists is situated of the right to object conferred by subsection (1) above;
  - (b) send them a map showing the right of way and a copy of their notice under subsection (1) above; and
  - (c) affix to some conspicuous object at either end of the right of way a notice giving in the prescribed form the prescribed particulars of their proposed application concerning it and of the right to object.
- (6) If no objection is made by any such authority other than a parish or community council or parish meeting, as is mentioned in subsection (5)(a) above, or if all objections which are made by any such authority are withdrawn, the Secretary of State, upon being satisfied that the [<sup>F72</sup>Corporation] have complied with subsection (1) to (5) above, may if he thinks fit make the order.
- (7) The Secretary of State may, if he thinks fit, cause a public local inquiry to be held before determining whether to make an order, and shall cause such an inquiry to be held if an objection is made by any such authority and is not withdrawn.
- (8) If the Secretary of State causes such an inquiry to be held, he shall consider all objections to the application which are duly made by any person and not withdrawn and the report of the person who held the inquiry before determining whether to make the order.
- (9) An order under section 15 of this Act may be made either in accordance with the [<sup>F72</sup>Corporation's] application or subject to such modifications as the Secretary of State may determine.
- (10) If the Secretary of State makes an order, the [<sup>F72</sup>Corporation], as soon as may be after the order is made, shall publish a notice in the prescribed form that the order has been made, describing the right of way which is suspended, stating the date on which the order comes into operation and naming a place in the locality where a copy of the order

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and of any map to which it refers can be inspected at all reasonable hours, and shall serve a like notice and a copy of the order on any body required under this section to be informed of the application for the order.

- (11) The duty to publish a notice imposed by subsection (10) above is a duty to publish it—
- (a) in one or more local newspapers such as are mentioned in subsection (1) above; and
  - (b) in the appropriate Gazette.
- (12) In this section “the appropriate Gazette” means—
- (a) the London Gazette in a case where the land over which the right of way subsists is situated in England or Wales; and
  - (b) the Edinburgh Gazette in a case where it is situated in Scotland.]

#### Textual Amendments

- F71** For S. 15 there is substituted ss. 15, 15A by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), ss. 39(3), [Sch. 8 para. 6](#)
- F72** Word substituted by [Coal Industry Act 1987 \(c. 3, SIF 86\)](#), s. 1(1) (2), Sch. 1 para. 7(c)

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

- (1) For the purpose of draining land [<sup>F73</sup>in respect of which opencast planning permission has been granted], the Minister may authorise the [<sup>F74</sup>Corporation] to purchase compulsorily a right to place drainage works on any other land, whether above or below ground, and to use, repair and maintain those works, without purchasing any other interest in that land.
- (2) For the purpose of bringing a supply of water to land [<sup>F73</sup>in respect of which opencast planning permission has been granted], the Minister may authorise the [<sup>F74</sup>Corporaion]to purchase compulsorily 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.
- (3) An order authorising the compulsory purchase of a right by virtue of this section shall specify the land (being the whole or part of the land [<sup>F75</sup>in respect of which the permission was granted]) for the benefit of which the right is to be acquired.
- (4) Any right purchased by the [<sup>F74</sup>Corporation] in pursuance of such an order—
- (a) if so purchased while the [<sup>F74</sup>Corporation] are in occupation of the land specified in the order in accordance with the last preceding subsection, shall be exercisable by the [<sup>F74</sup>Corporation], and by persons authorised by the [<sup>F74</sup>Corporation], while the [<sup>F74</sup>Corporation]continue to be in occupation of that land;
  - (b) whether purchased while the [<sup>F74</sup>Corporation] are in occupation of that land or not, shall be treated for all purposes as an easement appurtenant in perpetuity to that land.
- [<sup>F76</sup>(4A) In relation to the compulsory purchase of a right by virtue of this section—
- (a) the <sup>M11</sup>Acquisition of Land Act 1981 shall apply, and
  - (b) that Act and the <sup>M12</sup>Compulsory Purchase Act 1965 shall have effect as if references (whatever the terms used) to the land comprised in the compulsory

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purchase order were construed, where the context so requires, as references to the land on which the works or pipes are to be placed, and references to the obtaining or taking possession of the first mentioned land were construed as references to the exercise of the right.]

- [<sup>F77</sup>(5) In relation to the compulsory purchase of a right by virtue of this section—
- (a) the Acquisition of Land Act shall apply as if the [<sup>F74</sup>Corporation] were a local authority within the meaning of that Act and as if this Act had been in force immediately before the commencement of that Act; and
  - (b) that Act, and the enactments incorporated therewith, shall have effect as if 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.]
- (6) The provisions of section eleven of this Act shall apply in relation to a compulsory purchase order made by virtue of 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.
- (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).
- (9) In the application of this section to Scotland, for references to the Acquisition of Land Act there shall be substituted references to the Scottish Acquisition of Land Act; and for subsection (4) there shall be substituted the following subsection:—
- “(4) The title to any right purchased by the [<sup>F74</sup>Corporation] in pursuance of such an order shall be recorded by the [<sup>F74</sup>Corporation] in the appropriate register of sasines, and on the title being so recorded the right shall be exercisable in all time coming by the [<sup>F74</sup>Corporation] or any other person in occupation of the land specified in the order in accordance with the last preceding subsection.”

#### Textual Amendments

- F73** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 7\(a\)](#)
- F74** Word in [s. 16](#) substituted by [1987 c. 3, s. 1\(2\)](#), [Sch. 1 para. 7\(c\)](#)
- F75** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 7\(b\)](#)
- F76** [S. 16\(4A\)](#) inserted by [Acquisition of Land Act 1981 \(c. 67, SIF 28:1\)](#), s. 34(1), [Sch. 4 para. 11\(4\)](#)
- F77** [S. 16\(5\)](#) repealed (E.W.) by [Acquisition of Land Act 1981 \(c. 67, SIF 28:1\)](#), s. 34(3), [Sch. 6 Pt. I](#)

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

- C4** S. 16 restricted (31.10.1994) by 1994 c. 21, s. 52(1)(c)(3) (with ss. 40(7), 67, Sch. 10 para. 9(5)); S.I. 1994/2553, art. 2
- C5** S. 16(9) amended by Land Registration (Scotland) Act 1979 (c. 33, SIF 31:3), s. 29(2)(3)

**Marginal Citations**

- M11** 1981 c.67 (28:1).
- M12** 1965 c.56 (28:1).

## PART II

### COMPENSATION FOR COMPULSORY RIGHTS ORDERS

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

#### 17 General provisions as to annual compensation.

- (1) Where a compulsory rights order comprises the whole or part of a holding to which this section applies, compensation shall be payable by the [<sup>F78</sup>Corporation] in respect of that holding—
- for the year beginning with the operative date, and
  - for each subsequent year which begins with an anniversary of that date and falls within the period of occupation.
- (2) For the purposes of this Part of this Act, where land, immediately before the operative date of a compulsory rights order,—
- was occupied as a unit, and
  - was so occupied wholly or mainly for the purposes of agriculture carried on by way of a trade or business,
- the entirety of that land (excluding the coal and any other minerals vested in the [<sup>F78</sup>Corporation]) shall be taken, in relation to that compulsory rights order, to constitute a holding to which this section applies.
- (3) The person entitled to any compensation payable by the [<sup>F78</sup>Corporation] for any year by virtue of this section in respect of a holding shall be the person who—
- in respect of so much (if any) of the holding as is not comprised in the compulsory rights order, is for the time being entitled to occupy that part of the holding, and
  - in respect of so much of the holding as is comprised in the order, would be entitled for the time being to occupy it if the order had not been made.
- (4) The compensation payable for any year by virtue of this section, in respect of a holding to which this section applies, shall be the aggregate of—
- the compensation payable for that year in accordance with the provisions of the next following section, and
  - any additional compensation payable for that year in accordance with the provisions of section nineteen of this Act, and
  - for the year beginning with the operative date, any additional compensation payable in accordance with the provisions of section twenty of this Act.

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### Textual Amendments

**F78** Word in s. 17 substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**

## 18 Compensation by reference to annual value.

- (1) The compensation payable for any year in respect of a holding to which the last preceding section applies, as mentioned in paragraph (a) of subsection (4) of that section, shall be a sum equal to the annual value of the holding for that year, reduced by the annual value for that year of so much (if any) of the holding as is not comprised in the compulsory rights order.
- (2) For the purposes of this section the annual value of any land for any year shall be taken to be an amount equal to the annual rent at which, immediately before the beginning of that year, that land, in the appropriate circumstances, might reasonably have been expected to let from year to year under a contract of tenancy whereby the tenant undertook—
  - (a) to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the land in a state to command that rent, and
  - (b) not to carry out any operations on the land, or to make any change in the use thereof, for which . . . <sup>F79</sup>permission would be required under Part III of [<sup>F80</sup>the Act of 1971], except any operations for which such permission has been granted and is in force immediately before the beginning of that year.
- (3) In determining for any year the annual value of the entirety of a holding, the appropriate circumstances, for the purposes of the last preceding subsection, shall be taken to be the circumstances which would have existed, immediately before the beginning of that year, if—
  - (a) the compulsory rights order had not been made, and the [<sup>F81</sup>opencast planning permission]referred to in that order had not been granted and no application had been made for such [<sup>F82</sup>permission];
  - (b) the land had then been in the state in which it was immediately before the operative date of the order; and
  - (c) the land had then been available for letting with vacant possession.
- (4) In determining for any year the annual value of land constituting so much of a holding as is not comprised in the compulsory rights order in question, the appropriate circumstances, for the purposes of subsection (2) of this section, shall be taken to be the circumstances which would have existed, immediately before the beginning of that year, if (all other relevant factors being taken to be as they actually were at that time) that land had been in the state in which it was immediately before the operative date, and had been available for letting with vacant possession.
- (5) In the application of this section to Scotland, for the reference to Part III of [<sup>F80</sup>the Act of 1971] there shall be substituted a reference to [<sup>F83</sup>Part III of the Act of 1972].

### Textual Amendments

**F79** Words repealed by **Housing and Planning Act 1986** (c. 63, SIF 86), s. 39(4), **Sch. 12 Pt. II**

**F80** Words substituted by virtue of **Town and Country Planning Act 1971** (c. 78), **Sch. 24 para. 2**

**F81** Words substituted by **Housing and Planning Act 1986** (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 8(a)**

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- F82** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para 8\(b\)](#)
- F83** Words substituted by virtue of [Town and Country Planning \(Scotland\) Act 1972 \(c. 52\)](#), [Sch. 22 para. 2](#)

## 19 Additional annual compensation.

- (1) For each year for which compensation is payable in respect of a holding by virtue of section seventeen of this Act, there shall be assessed the profit or loss which an occupier of the holding might reasonably have been expected to make for that year from his occupation of the holding if—
  - (a) the compulsory rights order had not been made;
  - (b) he were the occupier of the holding under a tenancy at a rent equal to the annual value of the holding for that year, as determined in accordance with subsections (2) and (3) of the last preceding section; and
  - (c) his use of the holding in that year, and his standard of efficiency in using it, had been the same as the use to which the holding was put, and the standard of efficiency attained in using it, in the period preceding the operative date of the order.
- (2) Subject to the following provisions of this section, for any year for which the assessment under the preceding subsection shows a profit, the compensation payable in respect of the holding by virtue of section seventeen of this Act shall include a sum equal to that profit.
- (3) Where the profit or loss referred to in subsection (1) of this section is assessed for any year in respect of a holding of which only part is comprised in the compulsory rights order in question, there shall also be assessed the profit or loss which an occupier of the remainder of the holding might reasonably have been expected to make for that year from his occupation of the land constituting that remainder, if he were the occupier of that land under a tenancy at a rent equal to the annual value of that land for that year, as determined in accordance with the next following subsection.
- (4) Subsection (2) of the last preceding section shall apply for the purposes of the last preceding subsection as it applies for the purposes of that section, so however that the appropriate circumstances referred to in the said subsection (2), in relation to any year for which annual value falls to be determined for the purposes of the last preceding subsection, shall be taken to be the circumstances which would have existed, immediately before the beginning of that year, if—
  - (a) the compulsory rights order had not been made, and the [<sup>F84</sup>opencast planning permission] referred to in that order had not been granted and no application had been made for such [<sup>F85</sup>permission];
  - (b) the land constituting the remainder of the holding had been in the state in which it was immediately before the operative date, and had been available for letting with vacant possession;
  - (c) all other relevant factors had been as they actually were immediately before the beginning of that year.
- (5) In determining, for the purposes of subsection (3) of this section, what profit or loss might reasonably have been expected to be made from the occupation of the land constituting the remainder of the holding, it shall be assumed that an occupier of that land could not reasonably have been expected—

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- (a) to use, otherwise than for agricultural purposes, land which in the period preceding the operative date of the order was used for agricultural purposes, or
  - (b) to change the use of any land which in that period was used otherwise than for agricultural purposes.
- (6) When the profit or loss for any year on the part retained has been assessed,—
- (a) if it is a profit, and the assessment for that year on the entirety of the holding shows a profit, the amount of the profit on the part retained shall be deducted from the amount of the profit on the entirety of the holding;
  - (b) if the assessment for that year on the part retained shows a loss, but the assessment for that year on the entirety of the holding shows a profit, the amount of the loss on the part retained shall be added to the amount of the profit on the entirety of the holding;
  - (c) if the assessment for that year on the part retained shows a loss, and the assessment for that year on the entirety of the holding also shows a loss, but a smaller loss than the loss on the part retained, the difference between the two losses shall be ascertained, and the assessment on the entirety of the holding shall be treated as if it had shown a profit equal to the amount of the difference;
- and accordingly the reference in subsection (2) of this section to a profit shown for any year by the assessment under subsection (1) of this section shall be construed as a reference to a profit shown for that year in accordance with the assessment as adjusted under this subsection.
- (7) In the last preceding subsection—
- (a) any reference to the assessment for any year on the entirety of the holding is a reference to the assessment for that year under subsection (1) of this section, and any reference to profit or loss for any year on the entirety of the holding is a reference to profit or loss shown by the assessment for that year under the said subsection (1);
  - (b) any reference to the assessment for any year on the part retained is a reference to the assessment for that year under subsection (3) of this section, and any reference to profit or loss for any year on the part retained is a reference to profit or loss shown by the assessment for that year under the said subsection (3).
- (8) For the purposes of this section—
- (a) any reference to the period preceding the operative date of a compulsory rights order shall be construed as a reference to the period of four years immediately preceding that date;
  - (b) the use of land in that period shall be determined by reference to that period taken as a whole; and
  - (c) the standard of efficiency attained in that period shall be determined by reference to the average standard so attained.

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#### **Textual Amendments**

**F84** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 8\(a\)](#)

**F85** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 8\(b\)](#)



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## 20 Special compensation for cost of removal.

- (1) Where compensation is payable by virtue of section seventeen of this Act in respect of a holding for the year beginning with the operative date of a compulsory rights order, the compensation payable for that year by virtue of that section shall (in addition to any sum payable in accordance with section eighteen or section nineteen of this Act) include the amount of any expenses reasonably incurred by the person entitled to the compensation which are directly attributable to his being required to vacate so much of the holding as is comprised in the order.
- (2) Without prejudice to the generality of the preceding subsection, the expenses referred to in that subsection shall be taken to include any expenses reasonably incurred by the person therein mentioned in procuring the cancellation or modification of a contract in force immediately before the operative date, in so far as it is a contract for the supply of goods or the rendering of services which—
  - (a) would have been required by him for the purposes of the holding if the order had not been made, but
  - (b) in consequence of his being required to vacate so much of the holding as is comprised in the order, are not required for those purposes.

## 21 Terminal compensation.

- (1) Where a compulsory rights order comprises the whole or part of a holding to which this section applies, the provisions of this and the two next following sections shall have effect as to compensation payable by the [<sup>F86</sup>Corporation] in respect of that holding.
- (2) Subsection (2) of section seventeen of this Act shall have effect in relation to this section as it has effect in relation to that section, and references to a holding to which this section applies shall be construed accordingly.
- (3) Compensation payable in respect of a holding under the provisions referred to in subsection (1) of this section shall consist of either or both of the following, that is to say—
  - (a) compensation by way of payment of cost of works, and
  - (b) compensation by reference to the diminution in value of the holding.

### Textual Amendments

**F86** Word in s. 21(1) substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

## 22 Compensation by way of payment of cost of works.

- (1) Subject to the following provisions of this section, compensation by way of payment of cost of works shall, in the case of a compulsory rights order, be payable in respect of a holding to which the last preceding section applies if—
  - (a) at the end of the period of occupation, any land forming part of the holding and comprised in the order has not been restored to the condition in which it was immediately before the date of entry, and
  - (b) after the end of the period of occupation, expenses are reasonably incurred by any person in respect of work carried out (over and above the ordinary maintenance and use of the land) for the purpose of further restoring that land to or towards that condition or a condition substantially similar thereto.

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- (2) Where in accordance with the preceding subsection compensation by way of payment of cost of works is payable—
  - (a) the person entitled thereto shall be the person by whom the expenses in question are incurred, and
  - (b) the compensation shall be payable from time to time as the expenses are incurred and shall be of an amount equal to the amount of the expenses.
- (3) The provisions of the Third Schedule to this Act shall have effect with respect to compensation by way of payment of cost of works under this section.

### **23 Compensation by reference to the diminution in value of the holding.**

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

#### **[<sup>F87</sup>23A Additional compensation on re-occupation.**

- (1) Subject to the following provisions of this section, with a view to furthering the resumption of agriculture on land formerly comprised in a compulsory rights order, a

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person shall be entitled to compensation by virtue of this section in respect of a holding to which section 21 of this Act applies if he is in occupation of the holding at the end of the period of occupation or if he enters into occupation of the holding at or after the end of that period, provided that he is occupying the holding or (as the case may be) he enters into occupation of the holding wholly or mainly for the purposes of agriculture carried on by way of a trade or business.

- (2) No compensation shall be payable to a person by virtue of this section unless he is either the person who, immediately before the operative date of the compulsory rights order, was entitled to occupy the holding (in this subsection referred to as “the original occupier”) or a person who, before the end of the period of occupation, became entitled to the relevant interest in the holding in accordance with the disposition of the original occupier’s estate effected by his will, or the law relating to intestacy, or the combination of his will and that law.
- (3) In subsection (2) above—
  - “the relevant interest”, in relation to any person, means the interest by virtue of which he became entitled to occupy the holding (or would have become so entitled if the compulsory rights order had not been made); and
  - “will” includes a codicil.
- (4) The compensation payable in respect of a holding by virtue of this section shall be payable by the [<sup>F88</sup>Corporation] and, subject to the following provisions of this section, shall be an amount equal to the compensation payable in respect of that holding under sections 18 and 19 of this Act for the last twelve months of the period of occupation.
- (5) Subject to the following provisions of this section, in any case where the compensation last payable in respect of a holding under sections 18 and 19 was in fact payable by reference to a period of less than twelve months, the compensation payable in respect of that holding by virtue of this section shall be an amount equal to the compensation which was so payable under sections 18 and 19, multiplied by the fraction of which the numerator is 365 and the denominator is the number of days in the period by reference to which the compensation was so payable under those sections.
- (6) Where the person entitled, immediately after the end of the period of occupation, to occupy the holding concerned ceases, before he enters into occupation, to be entitled to occupy some part of it then, subject to subsection (7) below,—
  - (a) his entry into occupation of the part which he remains entitled to occupy shall be treated for the purposes of subsection (1) above as entry into occupation of the holding; but
  - (b) the compensation payable to him by virtue of this section shall be such proportion of the compensation which would have been so payable had he remained entitled to enter into occupation of the whole of the holding as is properly attributable to the part of the holding which he remains entitled to occupy.
- (7) If, immediately before the end of the period of occupation, only part of the holding concerned (in this subsection referred to as “the compensatable portion”) was comprised in the compulsory rights order and (after the end of the period of occupation) subsection (6) above applies, then—
  - (a) if the part of the holding which the person concerned ceased to be entitled to occupy comprises the whole of the compensatable portion, no compensation shall be payable to him by virtue of this section;

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- (b) if the person concerned remains entitled to occupy the whole of the compensatable portion, the compensation so payable to him shall not be reduced under paragraph (b) of subsection (6) above; and
- (c) in any other case, for the purpose of determining the proportion of the compensation properly attributable to any part of the holding under paragraph (b) of subsection (6) above, the holding shall be treated as consisting of the compensatable portion only.]

#### Textual Amendments

**F87** S. 23A inserted by Coal Industry Act 1975 (c. 56), s. 6(1)

**F88** Word in s. 23A(4) substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

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

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

- (a) immediately before the date of entry, constitutes or forms part of an agricultural holding, and
- (b) is land on which, before that date, there have been carried out long-term improvements qualifying for compensation under the [F<sup>89</sup>Act of 1986], or there has been adopted a special system of farming qualifying for compensation under that Act.

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

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

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

and the tenancy under which that land is then held continues after the end of the period of occupation, the provisions of the [F<sup>90</sup>Act of 1986] as to compensation for long-term improvements, and as to compensation for a special system of farming, shall apply as mentioned in the next following subsection.

(3) The said provisions of the [F<sup>91</sup>Act of 1986] shall apply as if—

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

Provided that (in a case where long-term improvements qualifying for compensation under the [F<sup>91</sup>Act of 1986] had been carried out on the tenant's land) if the tenant's land has lost the benefit of some of those improvements, but has not lost the benefit of all of them, those provisions of the [F<sup>91</sup>Act of 1986] shall apply as mentioned in paragraphs (a) and (b) of this subsection, but as if the improvements of which the

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tenant's land has not lost the benefit had not been long-term improvements qualifying for compensation under that Act.

- (4) For the purposes of subsections (2) and (3) of this section—
- (a) the tenant's land shall be taken to have lost the benefit of a long-term improvement if the benefit of that improvement has been lost (wholly or in part) without being replaced by another long-term improvement of comparable benefit to the land;
  - (b) the tenant's land shall be taken to have lost the benefit of a special system of farming if the increased value attributable to that system of farming has been lost (wholly or in part) without being regained by the continuous adoption of a system of farming of comparable benefit to the land.
- (5) For the purposes of paragraph (b) of subsection (2) of this section, the tenant's land shall be taken to be subject to such a subsequent tenancy as is therein mentioned if either—
- (a) by virtue of [F92]section 69(1) of the Act of 1986 or paragraph 5(1) of Part I of Schedule 9 to that Act](which relate respectively to improvements made during one of a series of tenancies) the same tenant would have the like right to compensation in right of the subsequent tenancy as he would have had in right of the previous tenancy, or
  - (b) by virtue of [F93]section 69(2) or (3) of the Act of 1986 or paragraph 5(2) of Part I of Schedule 9 to that Act](which relate respectively to improvements paid for by an incoming tenant) the tenant under the subsequent tenancy would have the like right to compensation as the tenant would have had under the previous tenancy.
- (6) The provisions of the [F94]Act of 1986] referred to in subsection (2) of this section shall be taken to include any provisions of that Act as to the making of claims for any such compensation as is mentioned in that subsection, as to the calculation of any such compensation and the settlement or determination of such claims, as to the recovery of any such compensation, and as to any other matters incidental thereto:

Provided that—

- (a) any provisions of the [F94]Act of 1986] as to the giving of notice of intention to make a claim shall apply with the modification that the time for giving such a notice shall be any time not later than three months after the end of the period of occupation;
  - (b) [F95]section 83(4)] of that Act (which relates to the time for settling such claims) shall apply with the substitution, for the reference to [F96]four][F96]eight] months from the termination of the tenancy, of a reference to [F96]five][F96]eight] months from the end of the period of occupation.
- (7) In this section—
- (a) any reference to long-term improvements qualifying for compensation under the [F97]Act of 1986] is a reference to long-term improvements in respect of which, immediately before the date of entry, a tenant of the agricultural holding in question had a prospective right to compensation under that Act on quitting the holding on the termination of his tenancy;
  - (b) any reference to a special system of farming qualifying for compensation under the [F97]Act of 1986] is a reference to a system of farming in respect of which, immediately before the date of entry, a tenant of the agricultural holding in question had a prospective right to compensation under

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[<sup>F98</sup>section 70] of that Act on quitting the holding on the termination of his tenancy.

(8) In determining whether the conditions specified in paragraph (a) or paragraph (b) of the last preceding subsection are fulfilled, no account shall be taken of any provision of the [<sup>F99</sup>Act of 1986] whereby a right to compensation is conditional upon the making of a claim, or the giving of notice of intention to make a claim, or is liable to be affected by the service of a notice by the landlord.

(9) In this Act “long-term improvement” means any improvement (whether begun before or after the first day of March, nineteen hundred and forty-eight) of a description specified in Part I or Part II of [<sup>F100</sup>Schedule 7 to the Act of 1986].

[<sup>F101</sup>(9A) In this section the references to the Act of 1986 in subsections (1)(b), (7) and (8) and the second and fourth references to that Act in subsection (3) include references to the Agricultural Holdings Act 1948 (in this Act called the Act of 1948) and the reference to section 70 of the Act of 1986 in subsection (7)(b) includes a reference to section 56 of the Act of 1948.]

[<sup>F102</sup>(10) In the application of this section to Scotland, for references—

- (a) to the Act of 1986 and to sections 70 and 83(4) of that Act there shall be substituted respectively references to the Scottish Act of 1949 and to sections 56 and 68(3) of that Act,
- (b) to subsections (1), (2) and (3) of section 69 of the Act of 1986 there shall be substituted respectively references to sections 54, and subsections (1) and (2) of section 55 of the Scottish Act of 1949,
- (c) to Parts I and II of Schedule 7 to the Act of 1986 and to the first day of March 1984 there shall be substituted references to Parts I and II of Schedule 1 to the Scottish Act of 1949 and to the first day of November 1948, and
- (d) to sub-paragraphs (1) and (2) of paragraph 5 of Part I of Schedule 9 to the 1986 Act there shall be substituted respectively references to sections 45 and 46 of the Scottish Act of 1949.]

#### Textual Amendments

- F89** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 26\(2\)](#)
- F90** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 26\(3\)](#)
- F91** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 26\(4\)](#)
- F92** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 26\(5\)\(a\)](#)
- F93** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 26\(5\)\(b\)](#)
- F94** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 26\(6\)\(a\)](#)
- F95** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 26\(6\)\(b\)](#)
- F96** For each of the words “four” and “five” there is substituted (E.W.) the word “eight” by virtue of [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 26\(6\)](#)
- F97** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 26\(7\)\(a\)](#)

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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)

- F98** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(7)(b)**
- F99** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(8)**
- F100** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(9)**
- F101** S. 24(9A) inserted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(10)**
- F102** S. 24(10) substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 26(11)**

## 25 Deductions from tenant's compensation.

- (1) Where a tenant of an agricultural holding is entitled to compensation under section twenty-four of this Act in respect of land constituting or forming part of that holding, there shall be deducted from the amount of that compensation, calculated apart from this subsection, the amount of any compensation which would have been recoverable from the tenant by the landlord—

- (a) under [<sup>F103</sup>section 71 of the Act of 1986] (which relates to compensation for dilapidation, deterioration or damage for which the tenant is responsible), or
- (b) under [<sup>F104</sup>section 72] of that Act (which relates to compensation for general reduction in the value of the holding due to the tenant's failure to fulfil his responsibilities),

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

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

- (2) For the purposes of the last preceding subsection, any provision of the [<sup>F105</sup>Act of 1986], whereby any right to compensation is conditional upon the making of a claim, or the giving of notice of intention to make a claim, shall be disregarded.

[<sup>F106</sup>(2A) In this section references to the Act of 1986 and to sections 71 and 72 of that Act include respectively references to the Act of 1948 and to sections 57 and 58 of that Act]

- (3) In the application of this section to Scotland, for references to the [<sup>F107</sup>Act of 1986 and to sections 71 and 72] of that Act there shall be substituted respectively references to the Scottish Act of 1949 and to sections fifty-seven and fifty-eight of that Act.

### Textual Amendments

- F103** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 27(2)(a)**
- F104** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 27(2)(b)**
- F105** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 27(3)**
- F106** S. 24(2A) inserted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 27(4)**

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**F107** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 27\(5\)](#)

VALID FROM 01/09/1995

**[<sup>F108</sup>25A Tenant’s right to compensation for improvements etc.: farm business tenancies.**

- (1) The provisions of this section shall have effect where—
  - (a) any part of the land comprised in a compulsory rights order is held, immediately before the date of entry, under a farm business tenancy;
  - (b) there have been provided in relation to the land which is both so comprised and so held ( “the tenant’s land”) tenant’s improvements in respect of which, immediately before that date, the tenant had a prospective right to compensation under section 16 of the Act of 1995 on quitting the holding on the termination of the tenancy;
  - (c) at the end of the period of occupation, the tenant’s land has lost the benefit of any such improvement; and
  - (d) immediately after the end of that period, the tenant’s land is comprised in the same tenancy as immediately before the date of entry, or is comprised in a subsequent farm business tenancy at the end of which the tenant is not deprived, by virtue of section 23(3) of that Act, of his right to compensation under section 16 of that Act in respect of any tenant’s improvement provided during the earlier tenancy in relation to the tenant’s land.
- (2) For the purposes of subsection (1) of this section, subsection (2) of section 22 of the Act of 1995 (which requires notice to be given of the intention to make a claim) shall be disregarded.
- (3) Subject to subsection (4) of this section, Part III of the Act of 1995 shall apply as if—
  - (a) the tenant’s land were in the state in which it was immediately before the date of entry, and
  - (b) the tenancy under which that land is held at the end of the period of occupation had terminated immediately after the end of that period and the tenant had then quitted the holding.
- (4) Where the tenant’s land has lost the benefit of some tenant’s improvements but has not lost the benefit of all of them, Part III of the Act of 1995 shall apply as mentioned in subsection (3) above, but as if the improvements of which the tenant’s land has not lost the benefit had not been tenant’s improvements.
- (5) For the purposes of subsections (1) and (4) of this section, the tenant’s land shall be taken to have lost the benefit of a tenant’s improvement if the benefit of that improvement has been lost (wholly or in part) without being replaced by another improvement of comparable benefit to the land.
- (6) In this section “holding”, in relation to a farm business tenancy, “tenant’s improvement”, “termination”, in relation to a tenancy, and references to the provision of a tenant’s improvement have the same meaning as in the Act of 1995.
- (7) This section does not extend to Scotland.]



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### Textual Amendments

**F108** S. 25A inserted (1.9.1995) by 1995 c. 8, ss. 40, 41(2), **Sch. para. 16** (with s. 37)

## 26 Compensation for short-term improvements and related matters.

- (1) Where, in the exercise of rights conferred by a compulsory rights order, the [F109Corporation] occupy any land which, immediately before the date of entry, was agricultural land, compensation shall be payable by the [F109Corporation] in respect of any improvements or other matters to which this section applies in relation to that land.
- (2) This section applies, in relation to any land,—
  - (a) to any improvements, of a description specified in Part I of the Fourth Schedule to this Act, which had been carried out on that land before the date of entry, and
  - (b) to any matters, of a description specified in Part II of the Fourth Schedule to this Act, which applied to that land immediately before that date:

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

- (3) Where compensation is payable by the [F109Corporation] under this section in respect of any improvements or other matters, the compensation shall be of an amount equal to the amount of the compensation which would have been payable in respect of those improvements or matters under the [F110Act of 1986] if—
    - (a) where the land in question did not form part of an agricultural holding immediately before the date of entry, it had formed part of such a holding immediately before that date, and
    - (b) in any case, the tenancy of the agricultural holding comprising that land had terminated on the date of entry and the tenant thereunder had then quitted the holding.
  - (4) The person entitled to any compensation payable by virtue of this section—
    - (a) in the case of land which, immediately before the date of entry, was occupied by a tenant, shall be that tenant, and
    - (b) in any other case, shall be the person who was the owner of the land immediately before the date of entry.
  - (5) If, by virtue of the power conferred by [F111section 91 of the Act of 1986, the provisions of Schedule 8] to that Act are varied, the Minister may by order make such corresponding variations in the provisions of Parts I, II and III of the Fourth Schedule to this Act as he may consider appropriate.
- [F112(5A) the reference in subsection (3) of this section to the 1986 Act includes a reference to the 1948 Act]
- (6) In the application of this section to Scotland, the following subsection shall be substituted for subsection (2) of this section:—
    - “(2) This section applies, in relation to any land, to any improvements of a description specified in Part IV of the Fourth Schedule to this Act, which had been carried out on that land before the date of entry:

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Provided that, in relation to land which, immediately before the date of entry, is not occupied by a tenant, Part IV of that Schedule shall apply subject to the modifications set out in Part V of that Schedule” in subsection (3) of this section for the reference to the [F113 Act of 1986] there shall be substituted a reference to the Scottish Act of 1949; and in subsection (5) of this section, for the references to [F114 section 91 of the Act of 1986, and to Schedule 8] to that Act there shall be substituted respectively references to section seventy-nine of the Scottish Act of 1949 and to Part III of the First Schedule to that Act, and for the reference to Parts I, II and III of the Fourth Schedule to this Act there shall be substituted a reference to Parts IV and V of that Schedule.

#### Textual Amendments

- F109** Word in s. 26 substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**
- F110** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 28(2)**
- F111** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 28(3)**
- F112** S. 26(5A) inserted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 28(4)**
- F113** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 28(5)(a)**
- F114** Words substituted by Agricultural Holdings Act 1986 (c. 5, SIF 2:3), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 28(5)(b)**

## 27 Compensation in respect of forced sales.

- (1) Where, in consequence of the confirmation of a compulsory rights order, a person incurs a loss in respect of a forced sale of any property consisting of—
- (a) livestock, vehicles, plant, equipment or other chattels which are kept on a holding to which (when the order becomes operative) section seventeen of this Act applies, or which are used for the purposes of such a holding, or
  - (b) a fixture or building (not falling within the preceding paragraph) which he has removed from such a holding in pursuance of [F115 section 10 of the Act of 1986],

he shall, subject to the following provisions of this section, be entitled to compensation from the [F116 Corporation] of an amount equal to that loss.

- (2) The preceding subsection shall not apply except where the person incurring the loss is the person who is for the time being entitled to occupy so much of the holding as is comprised in the order, or would be entitled for the time being to occupy it if the order had not been made.
- (3) A person shall not be entitled to compensation under this section in respect of a forced sale unless he has given to the [F116 Corporation] not less than ten days’ notice of the intended sale, and has, before the sale, afforded to the [F116 Corporation] reasonable facilities to inspect the property intended to be sold, in so far as he was in a position to afford such facilities.
- (4) In the application of this section to Scotland, for the reference to [F117 section 10 of the Act of 1986] there shall be substituted a reference to section fourteen of the Scottish Act of 1949.

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### Textual Amendments

- F115** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 29(2)**
- F116** Word in [s. 27](#) substituted by [1987 c. 3, s. 1\(2\)](#), **Sch. 1 para. 7(c)**
- F117** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 29(3)**

## 28 Special provisions as to market gardens.

- (1) The provisions of this section shall have effect where the land comprised in a compulsory rights order consists of or includes land which, immediately before the date of entry, was agricultural land used as a market garden.
- (2) Subject to the next following subsection, section twenty-six of this Act shall have effect in relation to that land as if the descriptions of improvements specified in Part VI of the Fourth Schedule to this Act were included among the descriptions of improvements specified in Part I of that Schedule.
- (3) Where the land in question, immediately before the date of entry, was occupied by a tenant, the last preceding subsection shall not apply to any improvements of a description specified in Part VI of the Fourth Schedule to this Act unless they are improvements in respect of which [<sup>F118</sup>subsections (2) to (5) of section 79 of the Act of 1986] (which relates to market gardens) has effect, whether by virtue of an agreement or of a direction given under [<sup>F119</sup>subsections (2) of section 80] of that Act.
- (4) In relation to land falling within subsection (1) of this section, any reference in the preceding provisions of this Part of this Act to rights under [<sup>F120</sup>sections 10 of the Act of 1986] shall include a reference to rights under that section as extended by [<sup>F121</sup>subsection (3) of section 79 of the Act of 1986.]
- (5) If, by virtue of the power conferred by [<sup>F122</sup>section 91 of the Act of 1986 the provisions of Schedule 10] to that Act are varied, the Minister may by order make such corresponding variations in the provisions of Part VI of the Fourth Schedule to this Act as he may consider appropriate.
- (6) In the application of this section to Scotland, for the references to [<sup>F123</sup>subsections (2) to (5) of section 79 of the Act of 1986 and subsection (3) of that section] of that section, there shall be substituted respectively references to section sixty-five of the Scottish Act of 1949 and to paragraph (b) of subsection (1) of that section; for the references to [<sup>F124</sup>subsection (2) of section 80 of the Act of 1986 and to section 10] of that Act there shall be substituted respectively references to subsection (1) of section sixty-six of the Scottish Act of 1949 and to section fourteen of that Act; for the references to [<sup>F125</sup>section 91 of the Act of 1986 and to Schedule 10] to that Act there shall be substituted respectively references to section seventy-nine of the Scottish Act of 1949 and to the Fourth Schedule to that Act; and for the reference to Part I of the Fourth Schedule to this Act there shall be substituted a reference to Part IV of that Schedule.

### Textual Amendments

- F118** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(2)(a)**

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- F119** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(2)(b)**
- F120** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(3)(a)**
- F121** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(3)(b)**
- F122** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(4)**
- F123** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(5)(a)**
- F124** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(5)(b)**
- F125** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, **Sch. 14 para. 30(5)(c)**

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

## **29 Annual and terminal compensation, and compensation in respect of forced sales.**

- (1) Where land, immediately before the operative date of a compulsory rights order,—
- (a) was occupied as a unit, but
  - (b) was not so occupied wholly or mainly for the purposes of agriculture carried on by way of a trade or business,

the entirety of that land (excluding the coal and any other minerals vested in the [F126 Corporation]) shall be taken, in relation to that compulsory rights order, to constitute a holding to which this section applies.

- (2) The provisions of subsections (1), (3) and (4) of section seventeen of this Act, the provisions of sections eighteen to twenty of this Act, and the provisions of section twenty-seven of this Act, shall have effect in relation to a holding to which this section applies as they have effect in relation to a holding to which section seventeen of this Act applies:

Provided that the provisions of section twenty-seven of this Act shall have effect, in relation to a holding to which this section applies, as if, in paragraph (b) of subsection (1) of that section, for the reference to such a fixture or building as is therein mentioned, there were substituted a reference to any trade or other fixture (not falling within paragraph (a) of that subsection) which the person in question has lawfully removed from the holding.

- (3) The provisions of section twenty-one of this Act (except subsection (2) of that section) and the provisions of sections twenty-two and twenty-three of this Act shall have effect in relation to a holding to which this section applies as they have effect in relation to a holding to which section twenty-one of this Act applies.

### **Textual Amendments**

- F126** Word in s. 29 substituted by [1987 c. 3, s. 1\(2\)](#), **Sch. 1 para. 7(c)**

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### **30 Non-agricultural tenant's improvements.**

- (1) The provisions of this section shall have effect where the land comprised in a compulsory rights order consists of or includes land which—
- (a) immediately before the date of entry, constitutes or forms part of a holding to which Part I of the Act of 1927 applies, and
  - (b) is land on which, before that date, there have been carried out improvements qualifying for compensation under that Act.

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

- (2) If at the end of the period of occupation—
- (a) the tenant's land has lost the benefit of any of the improvements, and
  - (b) that land is subject to the same tenancy as immediately before the date of entry, and that tenancy continues until after the end of the period of occupation, the provisions of the Act of 1927 as to compensation for improvements shall apply as mentioned in the next following subsection.
- (3) The said provisions of the Act of 1927 shall apply as if—
- (a) the tenant's land were in the state in which it was immediately before the date of entry;
  - (b) the tenancy under which that land is held at the end of the period of occupation had terminated immediately after the end of that period and the tenant thereunder had then quitted the holding; and
  - (c) it were established that, after the termination of that tenancy, there was no intention to demolish or make structural alterations in any premises on the tenant's land or any part of such premises or to change the use of that land or any premises thereon:

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

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

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

- (6) In this section any reference to an improvement qualifying for compensation under the Act of 1927 is a reference to an improvement in respect of which, immediately

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before the date of entry, the tenant of the holding in question had a prospective right to compensation under that Act on quitting the holding on the termination of his tenancy.

- (7) In determining whether the conditions specified in the last preceding subsection are fulfilled, no account shall be taken of any provisions of the Act of 1927 whereby a right to compensation is conditional upon the making of a claim, or is liable to be affected by the service of a notice by the landlord.
- (8) In this section “the Act of 1927” means the <sup>M13</sup>Landlord and Tenant Act 1927, and “improvement” includes the erection of a building.
- (9) In the application of this section to Scotland, for any reference to the Act of 1927, or to any provision thereof, there shall be substituted a reference to any term of the tenant’s lease entitling him to compensation for improvements; and paragraph (c) of subsection (3) shall be omitted.

**Marginal Citations**

M13 1927 c. 36.

*Compensation in respect of other matters*

**31 Compensation in respect of easements and other rights.**

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

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

- (2) For the year beginning with the operative date of the order, and for each subsequent year which begins with an anniversary of that date and falls within the period of occupation, the person for the time being entitled to the easement or right in question shall be entitled to compensation from the [<sup>F127</sup>Corporation] of an amount equal to the loss (if any) suffered by him by reason that the exercise of the easement or right is prevented or injuriously affected as mentioned in the preceding subsection.
- (3) Where, after the end of the period of occupation, the exercise of the easement or right continues to be prevented or injuriously affected by reason of anything done during that period in the exercise of rights conferred by the compulsory rights order,—
- (a) if that easement or right is appurtenant to, or the benefit thereof is in any other way annexed to, any land, the person who, at the end of the period of occupation, is the owner of that land shall be entitled to compensation from the [<sup>F127</sup>Corporation] of an amount equal to the diminution (if any) in the value of that land, in so far as any such diminution is attributable to the fact that the exercise of the easement or right is so prevented or injuriously affected;
- (b) in any other case, the person who at the end of the period of occupation is entitled to the right in question shall be entitled to compensation from the [<sup>F127</sup>Corporation] of an amount equal to the market value which the right would then have if its exercise were not so prevented or affected, reduced by the

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amount of any market value which the right actually has at the end of that period.

- (4) For the purposes of paragraph (a) of the last preceding subsection the value of the land in question shall be taken to have been diminished if (and to the extent to which) the value of a freehold interest in that land at the end of the period of occupation is less than the value which such an interest would then have if the land comprised in the order, over which the easement or right is exercisable, were in the state in which it was immediately before the date of entry; and for the purpose of computing those values the provisions of subsection (4) of section twenty-three of this Act shall apply as they apply for the purposes of subsection (2) of that section, but with the substitution, for references to the holding, of references to the land to which the benefit of the easement or right is annexed.
- (5) In relation to common or waste lands (within the meaning of the <sup>M14</sup>Lands Clauses Consolidation Act 1845) the Minister may make regulations modifying the operation of the preceding provisions of this section so as to secure that compensation under this section in respect of commonable or other rights (being rights which, if the land were being compulsorily purchased in accordance with that Act, would be subject to compensation assessed globally, and apportioned among the persons entitled to the rights) shall be assessed globally, and apportioned among the persons entitled thereto, in such manner as the Minister may consider appropriate.
- (6) In the application of this section to Scotland, for the reference to common or waste lands within the meaning of the <sup>M15</sup>Lands Clauses Consolidation Act 1845, there shall be substituted a reference to lands of the nature of commonry within the meaning of the Lands Clauses Consolidation (Scotland) Act 1845.

#### Textual Amendments

**F127** Word in s. 31 substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**

#### Marginal Citations

**M14** 1845 c. 18.

**M15** 1845 c. 19.

VALID FROM 31/10/1994

### **[31A]** <sup>F128</sup>**Compensation in respect of disposable minerals.**

- (1) The provisions of this section shall have effect where—
- any person (“the operator”) exercises any right of his by virtue of a compulsory rights order and section 10(1) to this Act to get any minerals other than coal; and
  - the land where the right is exercised was not comprised in that order in the circumstances specified in section 33(1) of this Act.
- (2) The person who, apart from the compulsory rights order and section 10(1) of this Act, would have been entitled to the minerals shall be entitled (subject to the following provisions of this section) to compensation from the operator of an amount equal to 12.5 per cent. of the market value of the minerals at the time when the right is exercised.

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

#### Textual Amendments

**F128** S. 31A inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 24(1)** (with s. 40(7) and subject to saving in **Sch. 8 para. 24(2)**); S.I. 1994/2553, **art. 2**

### 32 Compensation for depreciation of other land in same ownership.

- (1) This section applies, in relation to a compulsory rights order, to any land which—
- (a) does not form part of the land comprised in the order, or of any holding to which section seventeen or section twenty-nine of this Act applies, but



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- (b) immediately before the operative date of the order, is land wherein the interest of the owner is held by a person who is also the owner of the whole or part of the land comprised in the order.
- (2) Where a compulsory rights order has become operative, and in the case of any land which, in relation to that order, is land to which this section applies (in this and the next following subsection referred to as “the relevant land”) it is shown that for any year (being either the year beginning with the operative date of the order, or a year beginning with an anniversary of that date and falling within the period of occupation) the annual value of the relevant land is less than the annual value of that land would have been if—
- (a) the land comprised in the order had not included any of the owner’s land comprised therein, and
- (b) all the owner’s land comprised in the order had remained in the state in which it was immediately before the operative date,
- the person who is for the time being the owner of the relevant land shall be entitled to compensation from the [F129Corporation] for that year of an amount equal to the difference.
- (3) Subsection (2) of section eighteen of this Act shall apply for the purposes of the last preceding subsection as it applies for the purposes of that section, so however that the appropriate circumstances referred to in the said subsection (2),—
- (a) in determining the annual value of the relevant land for any year, shall be taken to be the actual circumstances existing immediately before the beginning of that year, and
- (b) in determining what would have been the annual value of the relevant land in the circumstances specified in paragraphs (a) and (b) of the last preceding subsection, shall be taken to be the circumstances specified in those paragraphs:
- Provided that in either case the relevant land shall be assumed to have been available for letting with vacant possession immediately before the beginning of the year in question.
- (4) Where a compulsory rights order has become operative, and in the case of any land which, in relation to that order, is land to which this section applies it is shown that the value at the end of the period of occupation of the interest in that land which then constitutes the interest of the owner thereof (in this and the two next following subsections referred to as “the owner’s interest in the relevant land”), computed in accordance with paragraph (a) of the next following subsection, is less than the value of that interest computed in accordance with paragraph (b) of that subsection, the person who at the end of that period is entitled to the owner’s interest in the relevant land shall be entitled to compensation from the [F129Corporation] of an amount equal to the difference.
- (5) For the purposes of the last preceding subsection there shall be computed the following values, that is to say,—
- (a) the value at the end of the period of occupation of the owner’s interest in the relevant land, assessed on the assumption that, in so far as any of the owner’s land comprised in the order has not then been restored to the condition in which it was immediately before the date of entry, there will be carried out on that land in due course all such work as would qualify for compensation under section twenty-two of this Act;

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- (b) the value which, at the end of the period of occupation, the owner's interest in the relevant land would have if the entirety of the owner's land comprised in the order were in the state in which it was immediately before the date of entry.
- (6) In computing value as mentioned in paragraph (a) or paragraph (b) of the last preceding subsection, it shall be assumed that the owner's interest in the relevant land is, in the circumstances mentioned in the paragraph in question, being offered for sale subject to any incumbrances to which that interest is subject at the end of the period of occupation.
- (7) For the purposes of the operation of this section in relation to a compulsory rights order—
  - (a) any reference to the owner's land comprised in the order is a reference to so much of the land comprised in the order as, immediately before the operative date, was land wherein the interest of the owner was held by the following person, that is to say,—
    - (i) where the reference in question is in subsection (2) of this section, the person who was then the owner of the relevant land within the meaning of that subsection;
    - (ii) where the reference is in subsection (5) of this section, the person who was then entitled to the owner's interest in the relevant land within the meaning of that subsection;
  - (b) any reference to work which would qualify for compensation under section twenty-two of this Act, in relation to any land, is a reference to work for the purpose of further restoring that land to or towards the condition in which it was immediately before the date of entry, or a condition substantially similar thereto, being work in respect of which (in so far as the nature of the work is concerned) expenses would be treated as reasonably incurred for the purposes of subsection (1) of that section; and
  - (c) any reference to the carrying out of any such work in due course is a reference to its being carried out at the first reasonable opportunity after the end of the period of occupation, or within a reasonable time after that opportunity arises.

#### **Textual Amendments**

**F129** Word in s. 32 substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

### **33 Compensation in respect of minerals.**

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

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*Supplementary provisions as to compensation*

**34 Provisions as to compensation in special cases.**

The provisions of the Sixth Schedule to this Act shall have effect as to the application of the preceding provisions of this Part of this Act in cases falling within that Schedule.

**35 Time when compensation accrues due.**

- (1) Subject to the provisions of Part III of this Act as to claims for compensation under this Act, the provisions of this section shall have effect as to compensation payable by the [<sup>F130</sup>Corporation] by virtue of this Part of this Act.
- (2) In respect of any compensation payable by virtue of section seventeen of this Act, or by virtue of that section as applied by section twenty-nine of this Act, or by virtue of subsection (2) of section thirty-one or subsection (2) of section thirty-two of this Act or of paragraph 4, paragraph 5 or paragraph 12 of the Fifth Schedule to this Act,—
  - (a) the [<sup>F130</sup>Corporation] shall make such quarterly payments as may be reasonable in the circumstances;
  - (b) subject to the preceding paragraph, the [<sup>F130</sup>Corporation] shall not be required to make payments until after the end of the year for which the compensation is payable;
  - (c) if the amount of the compensation payable to any person for any year exceeds the aggregate amount of the quarterly payments made on account thereof during that year, the balance shall be payable together with interest on the amount of the balance from the end of that year to the date of payment;
  - (d) if the aggregate amount of the compensation paid to a person for any year in respect of any such compensation (excluding any amount paid on account of interest) exceeds the principal amount of the compensation payable to him for that year, the [<sup>F130</sup>Corporation] (without prejudice to any right of recovery apart from this subsection) shall be entitled to deduct the amount of the overpayment from any compensation payable to that person for any subsequent year.
- (3) Subject to the last preceding subsection, any such compensation as is therein mentioned shall be considered as accruing due from day to day and shall be apportionable in respect of time accordingly.
- (4) Any compensation payable—
  - (a) under section twenty-three of this Act, or
  - (b) under that section as applied by section twenty-nine of this Act, or
  - (c) under subsection (3) of section thirty-one of this Act, or
  - (d) under subsection (4) of section thirty-two of this Act, or
  - (e) under paragraph 8, paragraph 10 or paragraph 13 of the Fifth Schedule to this Act, or
  - (f) under section fifty-two of this Act,shall accrue due at the end of the period of occupation.
- [<sup>F131</sup>(4A) Any compensation payable under section 23A of this Act shall accrue due on the date when the person entitled to compensation enters into occupation, if after the end of the period of occupation, and at the end of the period of occupation in any other case.]

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- (5) Any compensation under section twenty-six of this Act shall accrue due at the beginning of the period of occupation.
- (6) Any compensation payable under section twenty-seven of this Act, or under that section as applied by section twenty-nine of this Act, in respect of a forced sale shall accrue due on the effective date of the sale, or, if that date was before the operative date of the order, shall be treated as having accrued due on the effective date of the sale.
- (7) Any compensation payable by the [F130 Corporation] as mentioned in any of subsections (4) to (6) of this section, if not paid within the period of thirty days beginning with the date on which it accrues due, shall be payable together with interest thereon, from the date on which it accrues due to the date of payment.
- (8) The Treasury may by order prescribe the rate of interest for the purposes of this section; and where in accordance with the preceding provisions of this section any compensation is payable with interest, the rate of interest shall be the rate for the time being in force by virtue of an order under this subsection.
- (9) In this section “quarterly payments” means payments calculated by reference to the usual quarter days, and “effective date”, in relation to a sale, means the date on which the property sold becomes the property of the purchaser.

#### Textual Amendments

**F130** Word in s. 35 substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

**F131** S. 35(4A) inserted by Coal Industry Act 1975 (c. 56), s. 6(2)

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

**C6** S. 35 amended (11.2.1992) by S.I. 1992/46, art.2

### 36 Record of condition of land.

- (1) For the purpose of facilitating the assessment of compensation under this Part of this Act, the [F132 Corporation] shall cause records to be made in accordance with the following provisions of this section.
- (2) In the case of [F133 any compulsory rights order], where the [F132 Corporation] have published, served and affixed notices under subsection (2) of section five of this Act, the [F132 Corporation] shall cause a record to be made of the condition, as on the date of entry,—
  - (a) of all the land comprised in the order, and
  - (b) of any other land which, in relation to that order, forms part of a holding to which section seventeen or section twenty-nine of this Act applies:

Provided that, in relation to an . . . F134 order made in accordance with section eight of this Act, this subsection shall apply as if paragraph (b) thereof were omitted.

- (3) In the case of any compulsory rights order (other than any order made in accordance with section eight of this Act) the [F132 Corporation] shall, at the end of the period of occupation, cause a record to be made of the condition, as at the end of that period, of all the land comprised in the order.

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- (4) Any record of the condition of land made under this section shall be made in pursuance of a comprehensive survey of the land, in so far as such a survey can be carried out by inspection and without any operations involving the excavation of land or the making of borings therein, and shall include all such particulars of the land and of things in or on the land as are reasonably required for recording the results of such a survey.
- (5) Where the [<sup>F132</sup>Corporation] have caused a record to be made under this section they shall—
  - (a) in the case of a record made under subsection (2) of this section, within twenty-one days after the date of entry, and
  - (b) in the case of a record made under subsection (3) of this section, within twenty-one days after the end of the period of occupation,serve on every person who is then known to them to be a person directly concerned a notice in the prescribed form together with a copy of the record.
- (6) If any person, to whom a copy of a record is sent under this section, gives notice of objection to the [<sup>F132</sup>Corporation], within twenty-one days after the date on which the copy was sent to him, requiring the record to be amended in one or more respects specified in the notice, then—
  - (a) if all the persons whose agreement is requisite agree on an amendment of the record (whether the amendment is that specified in the notice of objection or another amendment in substitution for it), the [<sup>F132</sup>Corporation] shall cause the record to be amended accordingly;
  - (b) if no such agreement is reached, and the objection is not withdrawn, the matter in dispute shall be determined by arbitration.
- (7) For the purposes of the last preceding subsection, the persons whose agreement is requisite shall be the [<sup>F132</sup>Corporation], the person who gave the notice of objection, and all other persons to whom copies of the record were sent under this section.
- (8) For the purposes of any arbitration under paragraph (b) of subsection (6) of this section—
  - (a) the reference shall be to a single arbitrator appointed by the [<sup>F132</sup>Corporation] and the person who gave the notice of objection in consequence of which the dispute arose;
  - (b) except in relation to the appointment of an arbitrator, all persons whose agreement is requisite for the purposes of that subsection shall be parties to the reference.
- (9) With respect to professional and other fees incurred by persons in obtaining advice or conducting negotiations with regard to any record made under this section, the Minister may make regulations requiring the [<sup>F132</sup>Corporation], within such limits (whether as to descriptions of fees, or as to amount, or otherwise) and subject to such conditions as may be prescribed, to pay fees so incurred:

Provided that no regulations under this section shall apply to any fees in so far as they form part of the costs of an arbitration under this section, or shall affect any power of an arbitrator with respect to any such costs.
- (10) In the application of this section to Scotland, for references to costs, and to an arbitrator, there shall be substituted respectively references to expenses and to an arbiter.

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#### Textual Amendments

- F132** Word in s. 36 substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**  
**F133** Words substituted by Coal Industry Act 1975 (c. 56), **Sch. 3 para. 7**  
**F134** Words repealed by Coal Industry Act 1975 (c. 56), s. 5(3), **Sch. 5**

## PART III

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

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

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

#### 38 Protection from compulsory purchase of land occupied for authorised purposes.

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

- (a) the land comprised in the order includes land [<sup>F135</sup>in respect of which opencast planning permission has been granted]and is for the time being occupied by the [<sup>F136</sup>Corporation] for the [<sup>F137</sup>purpose of carrying on the permitted activities], and
- (b) within the time limited for making objections to the order, the [<sup>F136</sup>Corporation]give notice of that fact to the Minister to whom the order has been submitted, or by whom it has been prepared, as the case may be, specifying the land [<sup>F138</sup>in respect of which the permission was granted and] which is occupied as mentioned in the preceding paragraph,

the compulsory purchase order shall not be confirmed or made so as to authorise the compulsory purchase of any of the land specified in that notice, unless [<sup>F139</sup>the Secretary of State] is satisfied that it can be purchased without serious detriment to the [<sup>F140</sup>permitted activities].

#### Textual Amendments

- F135** Words substituted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 9(a)(i)**  
**F136** Word in s. 38 substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**  
**F137** Words substituted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 9(a)(ii)**  
**F138** Words substituted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 9(b)**  
**F139** Words substituted by virtue of S.I. 1969/1498, **arts. 2(1), 5(6)** and 1970/1537, arts. 2(2), 7(4)  
**F140** Words substituted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 9(c)**

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### 39 Entry on land.

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

the Minister may give a direction designating that land as land in relation to which, during such period as may be specified in the direction, the powers conferred by the next following subsection are to be exercisable, subject to such conditions (if any) as may be specified in the direction.

- (2) Subject to the following provisions of this section, during any period for which, by virtue of such a direction, the powers conferred by this subsection are exercisable in relation to land designated in the direction, and subject to compliance with any conditions specified in the direction, any person authorised in writing by the [F141 Corporation] may, at any reasonable time, for either of the purposes mentioned in the preceding subsection,—
- (a) enter upon that land, or upon any other land to which entry is required for obtaining access to that land;
  - (b) carry out on the land designated in the direction such operations as may be requisite, in relation to that land, for either of the purposes mentioned in the preceding subsection; and
  - (c) remove from the land designated in the direction any samples of minerals or of other substances obtained by carrying out any such operations thereon, and dispose of any such samples as the [F141 Corporation] think fit:

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

- (3) Subject to the following provisions of this section, any person authorised in writing by the [F141 Corporation] may, at any reasonable time, enter upon and survey any land (whether comprised in a direction under subsection (1) of this section or not),—
- (a) for any purpose in connection with, or preparatory to, an application for [F142 opencast planning permission] or the making or confirmation of any order under Part I of this Act; or
  - (b) (where [F143 opencast planning permission] has been granted) for any purpose in connection with, or preparatory to, the carrying [F144 on of any of the permitted activities] or the performance of any functions under Part I of this Act, not being a purpose for which a right of entry is exercisable apart from this paragraph; or
  - (c) for the purpose of estimating value, or assessing loss, in connection with any claim for compensation under this Act; or
  - (d) for the purpose of affixing on land any notice in accordance with [F145 section 15A(4)(c) or any of the provisions of the], Second or Ninth Schedule to this Act.

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- (4) Nothing in this section shall authorise any person to enter upon any land which is covered by buildings.
- (5) A person authorised under this section to enter upon any land shall, if so required, produce evidence of his authority before entering thereon, or while remaining thereon, and (subject to the following provisions of this section) shall not demand admission as of right to any land which is occupied unless forty-two days' notice of the intended entry has been given to the occupier and to the owner of the land:

Provided that this subsection, in so far as it relates to the giving of notice, shall not apply where entry is required only for the purpose of affixing on land any notice in accordance with [F<sup>146</sup>section 15A(4)(c) or any of the provisions of the], Second or Ninth Schedule to this Act.

- (6) Where, in the exercise of the powers conferred by subsection (2) of this section, it is proposed to enter upon any land and carry out thereon any operations involving the excavation of the land, or the making of borings therein,—
- (a) the power to carry out those operations shall not be exercisable unless the notice under the last preceding subsection included notice of the intention to carry out those operations; and
  - (b) if the land in question is held by the persons carrying on a statutory undertaking, or [F<sup>147</sup>a sewerage undertaking or sewage disposal undertaking, or is held by a [F<sup>148</sup>water authority] or other drainage authority, and those persons or that authority object to the proposed operations on the ground that the carrying out thereof would be seriously detrimental to the carrying on of their undertaking, or, in the case of a [F<sup>148</sup>water authority] or other drainage authority, to] [F<sup>147</sup>by an internal drainage board, and those persons or that board object to the proposed operations on the ground that the carrying out of the operations would be seriously detrimental to the carrying on of their undertaking, or, in the case of an internal drainage board, to] the performance of their functions, the operations shall not be carried out except with the consent of the appropriate Minister.
- (7) Where in the exercise of any power conferred by this section any damage is caused to land or to chattels, any person interested in the land or chattels shall be entitled to compensation in respect of that damage from the [F<sup>141</sup>Corporation]; and where in consequence of the exercise of any such power any person is disturbed in his enjoyment of any land or chattels, he shall be entitled to compensation from the [F<sup>141</sup>Corporation] in respect of the disturbance.
- (8) Any person who wilfully obstructs a person acting in the exercise of his powers under this section shall be liable on summary conviction to a fine not exceeding [F<sup>149</sup>level 1 on the standard scale].
- (9) Any power conferred on a person by virtue of this section shall be exercisable by him either alone or with other persons, and shall be exercisable together with any vehicles, apparatus, materials or animals required for the purpose for which the power is exercised.
- (10) Any reference in this section to Part I of this Act, or to the . . . F<sup>150</sup>Second Schedule thereto, includes a reference to the provisions of any enactment as applied by the said Part I, or by that Schedule, as the case may be.



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### Textual Amendments

- F141** Word in s. 39 substituted by 1987 c. 3, s. 1(2), **Sch. 1 paras. 7(c)**
- F142** Words substituted by **Housing and Planning Act 1986** (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 10(a)**
- F143** Words substituted by **Housing and Planning Act 1986** (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 10(b)(i)**
- F144** Words substituted by **Housing and Planning Act 1986** (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 10(b)(ii)**
- F145** Words substituted by **Housing and Planning Act 1986** (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 10(c)**
- F146** Words substituted by **Housing and Planning Act 1986** (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 11**
- F147** Words substituted (E.W.) by **Water Act 1989** (c. 15, SIF 130), s. 190(1), **Sch. 25 para. 26(4)** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 16(2), 189(4)–(10), 190, 193(1), **Sch. 26 paras. 3(1), 17, 40(4), 57(6), 58**)
- F148** Words substituted by virtue of **Water Act 1973** (c. 37), **s. 9**
- F149** S. 39(8) for “twenty pounds” there is substituted “level 1 on the standard scale” by virtue of (E.W.) **Criminal Justice Act 1982** (c. 48, SIF 39:1), **ss. 38, 46** and (S.) **Criminal Procedure (Scotland) Act 1975** (c. 21, SIF 39:1), **ss. 289F, 289G**
- F150** Words repealed by **Housing and Planning Act 1986** (c. 63, (SIF 86), s. 39(4), **Sch. 12 Pt. II**

### Modifications etc. (not altering text)

- C7** Functions of Minister of Agriculture, Fisheries and Food under s. 39 now exercisable (W.) by Secretary of State for Wales: **S.I. 1978/272, Sch. 3 para. 1**
- C8** S. 39 modified by **Gas Act 1986** (c. 44, SIF 44:2), s. 67(1), **Sch. 7 para. 2(9)(b)**
- C9** S. 39 modified (E.W.) by **Electricity Act 1989** (c. 29, SIF 44:1), s. 112(1), **Sch. 16 para. 3(1)(b)**
- C10** S. 39 modified (S.) by **Electricity Act 1989** (c. 29, SIF 44:1), s. 112(1), **Sch. 16 para. 3(2)(9)**
- C11** S. 39: references in subsections (3)(d) and (5) to s. 15A(4)(c) to be construed (retrospective to 11.12.1987) as references to s. 15A(5)(c) by 1994 c. 21, s. 52, **Sch. 8 para. 29(4)** (with s. 40(7)); **S.I. 1994/2553, art. 2**
- C12** S. 39(6)(b) extended by **Post Office Act 1969** (c. 48), **Sch. 4, para. 93(1)(xiv)(2)(f)**
- C13** S. 39(6)(b) extended by **Civil Aviation Act 1982** (c. 16, SIF 9), **Sch. 2 para. 4**

## 40 Claims for compensation payable by [F151Corporation].

- (1) Compensation under this Act shall not be payable by the [F151Corporation] unless a claim for it is duly made to the [F151Corporation].
- (2) Regulations made under this section by the Minister may—
- require claims for compensation under this Act to be made in such form, and within such time, as may be prescribed by the regulations;
  - require a claimant to provide such evidence in support of the claim, and such information as to the interest of the claimant in land to which the claim relates, and as to the interests of other persons therein which are known to the claimant, as may be so prescribed;
  - include provisions as to professional and other fees incurred by claimants in preparing and supporting claims for compensation under this Act, requiring the [F151Corporation], within such limits (whether as to descriptions of fees, or as to amount, or otherwise) and subject to such conditions as may be prescribed, to pay fees so incurred:

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

- (3) Any dispute—

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- (a) as to a right to compensation from the [<sup>F151</sup>Corporation] under this Act, or as to the amount of any such compensation, or
  - (b) as to a right to the payment of any fees by virtue of regulations made under this section, or under section thirty-six of this Act, or as to the amount of the fees payable in any case by virtue of any such regulations, or
  - (c) as to the amount of the quarterly payments payable in accordance with subsection (2) of section thirty-five of this Act in respect of any such compensation as is mentioned in that subsection,
- shall be determined by the Lands Tribunal.
- (4) References in this section to compensation under this Act do not include any compensation payable in accordance with any enactment applied by section thirteen or section sixteen of this Act, or any sum payable in accordance with any enactment applied by section forty-five of this Act.
- (5) In the application of this section to Scotland, any reference to costs shall be construed as a reference to expenses.

#### Textual Amendments

**F151** Word in s. 40 substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

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

- (1) The provisions of the Eighth Schedule to this Act shall have effect with respect to tenancies of allotments (including tenancies of allotment gardens).
- (2) In this Act “allotment” has the meaning assigned to it by section three of the <sup>M16</sup>Allotments Act 1922, and “allotment garden” has the meaning assigned to it by section twenty-two of that Act.
- (3) In the application of this Act to Scotland, “allotment” has the like meaning as in the Allotments (Scotland) Acts 1892 to 1950, and “allotment garden” has the meaning assigned to it by section nineteen of the <sup>M17</sup>Allotments (Scotland) Act 1922.

#### Marginal Citations

**M16** 1922 c. 51.

**M17** 1922 c. 52.

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

- (1) The provisions of this section shall have effect where any compensation is payable by the [<sup>F152</sup>Corporation] under this Act, and apart from this section would be payable to a person in right of an interest in land held by him for religious purposes:

Provided that this section shall not apply to any compensation payable by virtue of section twenty-two of this Act.

- (2) If the land, not being land in Scotland, Wales or Monmouthshire, is ecclesiastical property, the compensation shall be paid to the Church Commissioners.

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- (3) If the land, being land in Scotland, is property belonging to the Church of Scotland, the compensation shall be paid to the general treasurer of that Church.
- (4) If, in the case of land not falling within subsection (2) or subsection (3) of this section, the [<sup>F152</sup>Corporation] are so requested by or on behalf of a body of persons notified to the [<sup>F152</sup>Corporation] by the Minister, after consultation with such persons or organisations as he may think appropriate, as the appropriate representative body, the [<sup>F152</sup>Corporation] shall pay the compensation to that representative body.
- (5) Where apart from this section compensation would be payable to a person as the owner of land, and—
  - (a) by virtue of subsection (2) or subsection (4) of this section the compensation is payable to the Church Commissioners or a representative body, and
  - (b) by virtue of the operation in relation to that land of section twenty-four or section thirty of this Act, compensation is recoverable from him by another person,  
the Church Commissioners or representative body, as the case may be, shall indemnify him against any liability in respect of the compensation referred to in paragraph (b) of this subsection, and for that purpose may apply any money or securities held by them.
- (6) Where the fee simple of any ecclesiastical property, not being property in Wales or Monmouthshire, is in abeyance, it shall be treated for the purposes of this Act as being vested in the Church Commissioners.
- (7) In this section “ecclesiastical property” means property belonging to an ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a bishop of a diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction.

#### Textual Amendments

**F152** Word in s. 42 substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

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

- (1) For the purposes of Part II of this Act in its application to land in which there is an interest which is subject to a mortgage, a mortgagee shall not be taken to be entitled to occupy that land, or to be the person, who, but for a compulsory rights order, would be entitled to occupy it, unless—
  - (a) the interest which is subject to the mortgage is the interest of the person who (apart from the mortgage) is entitled to occupy that land, or who would, but for the compulsory rights order, be entitled to occupy it, and
  - (b) the mortgagee is, to the extent of the interest comprised in the mortgage, and subject to the rights conferred by the compulsory rights order, in possession of the land or of the rents and profits thereof.
- (2) If, in the circumstances specified in paragraphs (a) and (b) of the last preceding subsection, a mortgagee is the person entitled to any annual compensation under Part II of this Act, any such compensation paid to him shall be applied by him in or towards the satisfaction of interest arising under the mortgage, and, in so far as not so applied, shall be applied towards the reduction of the principal debt secured by the mortgage.

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- (3) Where under subsection (2) of section thirty-two of this Act a person is entitled to compensation as the owner of any land, and his interest in that land is subject to a mortgage and the mortgagee is, to the extent of that interest, in possession of the land or of the rents and profits thereof, the compensation shall be paid by the Board <sup>F153</sup> . . . to the mortgagee, and shall be paid or applied by him as mentioned in the last preceding subsection.
- (4) Where any compensation payable by the Board <sup>F153</sup> . . . under this Act, not being annual compensation or compensation under section twenty-two of this Act, is payable in right of an interest in land which is subject to a mortgage,—
- (a) a claim for the compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest; and
  - (b) the compensation payable in respect of the interest shall be paid by the Board <sup>F153</sup> . . . to the mortgagee, or, where there is more than one mortgage, shall be payable to the first mortgagee, and, subject to the next following subsection, shall in either case be applied by him as if it were proceeds of sale.
- (5) Where apart from the last preceding subsection any compensation falling within that subsection would be payable to a person as the owner of land which is subject to a mortgage, and—
- (a) by virtue of the last preceding subsection that compensation is payable to a mortgagee, and
  - (b) by virtue of the operation in relation to that land of section twenty-four or section thirty of this Act, compensation is recoverable from him by another person,
- the compensation paid to the mortgagee shall be applied by him in the first place in or towards the payment of the compensation referred to in paragraph (b) of this subsection, and any balance shall be applied as if it were proceeds of sale.
- (6) Where any compensation falling within subsection (4) of this section is payable in right of an interest in land which is subject to a settlement, or is otherwise held in such a manner that the person entitled to that interest would not be competent to give an effective discharge for the proceeds of a sale thereof, that compensation shall be paid by the [<sup>F153</sup>Corporation] to the person who would be competent to give such a discharge.
- (7) In this section “annual compensation” means any such compensation as is mentioned in subsection (2) of section thirty-five of this Act.
- (8) In the application of this section to Scotland—
- (a) for references to a mortgage, to a mortgagor and to a mortgagee there shall be substituted respectively references to a heritable security, to a debtor in a heritable security and to a heritable creditor;
  - (b) for references to the first mortgagee there shall be substituted references to that heritable creditor whose security has priority over any other heritable securities secured on the same interest; and
  - (c) for any reference to the application of a sum as if it were proceeds of sale there shall be substituted a reference to the application of a sum as if it were the price realised on the sale by a heritable creditor of land subject to a heritable security.

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#### Textual Amendments

F153 Word substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

#### 44 Crown land.

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

Provided that (subject to any express provision in this Act to the contrary) the provisions of this Act shall not apply to any land in which there is a Crown or Duchy interest, but no private interest other than any interest belonging to the [F154Corporation].

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

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

- (3) Where a compulsory rights order is, with the consent of the appropriate authority, made in respect of land in which there is a Crown or Duchy interest, that interest (in so far as the order confers rights exercisable as against all persons directly concerned) shall be treated as not being the interest of a person directly concerned, and no compensation shall be payable by the [F154Corporation] under Part II of this Act in respect of that interest.
- (4) In this section “Crown or Duchy interest” means an interest belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department; “private interest” means an interest which is not a Crown or Duchy interest; and “the appropriate authority”—
- (a) in relation to land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners, and, in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land;
  - (b) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy;
  - (c) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; and
  - (d) in relation to land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department;

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

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

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

**Textual Amendments**

**F154** Word substituted by 1987 c. 3, s. 1(2), Sch. 1 para. 7(c)

**45 Provisions as to telegraphic lines.**

- (1) Notwithstanding anything in Part I of this Act, none of the rights or powers conferred thereby or by any order made thereunder shall authorise any interference with any [<sup>F155</sup>telecommunication apparatus kept installed for purposes of a telecommunications code system or include any right or power to require any such apparatus to be altered.]
- [<sup>F156</sup>(2) Where [<sup>F157</sup>opencast planning permission has been granted], paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply to the [<sup>F158</sup>Corporation] for the purposes of any [<sup>F159</sup>permitted activities].]
- (3) Where in pursuance of an order made under . . . <sup>F160</sup> section fifteen of this Act, a public right of way is suspended, and, immediately before the date on which that order became operative, there was under, in, upon, over, along or across the way to which the order relates a [<sup>F161</sup>telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system shall have the same rights in respect of that apparatus] as if the order had not become operative:  
  
Provided that this subsection shall have effect without prejudice to the provisions of the last preceding subsection.
- [<sup>F162</sup>(4) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of subsection (1) above as it applies for the purposes of that code.]
- (5) . . . . . <sup>F163</sup>

**Textual Amendments**

**F155** Words substituted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 38(2), Sch. 5 para. 45

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- F156** S. 45(2), substituted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 38(3), **Sch. 5 para. 45**
- F157** Words substituted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 12(a)**
- F158** Word substituted by Coal Industry Act 1987 (c. 3, SIF 86), s. 1(1)(2), **Sch. 1 para. 7(c)**
- F159** Words substituted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 12(b)**
- F160** Words repealed by Coal Industry Act 1975 (c. 56), s. 5(3), **Sch. 5**
- F161** Words substituted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 38(4), **Sch. 5 para. 45**
- F162** S. 45(4) substituted by Telecommunications Act 1984 (c. 12, SIF 96), s. 109, Sch. 4 para. 38(5), **Sch. 5 para. 45**
- F163** S. 45(5) repealed by Coal Industry Act 1975 (c. 56), s. 5(3), **Sch. 5**

#### 46 Licence to work coal by opencast operations.

(1) Subsection (2) of section thirty-six of the Coal Industry Nationalisation Act, 1946 (which authorises the [<sup>F164</sup>Corporation] in certain cases to grant licenses for the working and getting of coal) shall be amended by inserting at the end of paragraph (b) of that subsection the words “or

(c) coal which, in accordance with the licence, is to be worked by opencast operations, where the amount of coal got by such operations from the area specified in the licence is, in the opinion of the [<sup>F164</sup>Corporation], not likely to exceed, or greatly to exceed, twenty-five thousand tons”

(2) ..... <sup>F165</sup>

#### Textual Amendments

**F164** Word in s. 46 substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**

**F165** S. 46(2) repealed by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(4), **Sch. 12 Pt. II**

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

**C14** The text of S. 46(1) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### 47 Provisions as to notices and public inquiries.

(1) The provisions of the Ninth Schedule to this Act shall have effect as to the service of notices under this Act.

(2) Subsections (2) to (5) of [<sup>F166</sup>section 250 of the <sup>M18</sup>Local Government Act 1972] (which relate to local inquiries) shall have effect in relation to any inquiry held under this Act in relation to land in England or Wales . . . <sup>F167</sup> . . . <sup>F168</sup>

(3) [<sup>F169</sup>Subsections (2) to (8) of section 210 of the <sup>M19</sup>Local Government (Scotland) Act 1973], shall have effect in relation to any inquiry held under this Act in relation to land in Scotland, including any inquiry so held under any provisions of the Scottish Acquisition of Land Act as applied by this Act.

#### Textual Amendments

**F166** Words substituted by virtue of Local Government Act 1972 (c. 70), s. 272(2)

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- F167** Words repealed by [Acquisition of Land Act 1981 \(c. 67, SIF 28:1\)](#), s. 34(3), **Sch. 6 Pt. I**
- F168** Words spent
- F169** Words substituted by virtue of [Local Government \(Scotland\) Act 1973 \(c. 65\)](#), **s. 237(2)**

**Marginal Citations**

- M18** 1972 c. 70.
- M19** 1973 c. 65.

**48 Transitional provisions.**

F170

**Textual Amendments**

- F170** S. 48 repealed by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), **Sch. 12 Pt. II**

**49 Provisions as to regulations and orders.**

- (1) The Minister may make regulations prescribing anything authorised or required to be prescribed for the purposes of any provision of this Act, or for the purposes of any enactment applied by or incorporated with this Act, except any provision whereby anything is expressly authorised or required to be prescribed by some other Minister of the Crown or government department.
- (2) Any power to make regulations under this Act shall be exercisable by statutory instrument; and any instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) The power to make orders under subsection (5) of section twenty-six of this Act, under subsection (5) of section twenty-eight of this Act, and under subsection (8) of section thirty-five of this Act, shall be exercisable by statutory instrument; and any instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subject to the following provisions of this section, any power conferred by this Act to make an order or give any directions shall include power, subject to the like provisions and conditions, to vary or revoke the order or directions by a subsequent order or subsequent directions, as the case may be.
- (5) A compulsory rights order shall not be varied by extending the period for which it is to have effect:
  - [<sup>F171</sup>Provided that where the period specified in the order is less than twenty years, this subsection shall not prevent the variation of the order by the extension of that period, if the period as extended does not exceed twenty years].
- (6) Subsection (4) of this section shall not affect the revocation of an order made by virtue of section fifteen of this Act where, in accordance with subsection (4) of that section, the Minister is required to revoke the order.



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### Textual Amendments

F171 S. 49(5) proviso substituted by Coal Industry Act 1975 (c. 56), Sch. 3 para. 8

## 50 Expenses.

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

## 51 Interpretation.

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

[<sup>F172</sup>“the Acquisition of Land Act” means the <sup>M20</sup>Acquisition of Land (Authorisation Procedure) Act 1946;]

[<sup>F173</sup>“the Act of 1986” means the <sup>M21</sup>Agricultural Holdings Act 1986;]

[<sup>F174</sup>“the Act of 1971” ] means the [<sup>F174M22</sup>Town and Country Planning Act 1971];

“The Act of 1948” means the <sup>M23</sup>Agricultural Holdings Act 1948;

[<sup>F175</sup>“The Act of 1990” means the <sup>M24</sup>Town and Country Planning Act 1990;]

“agriculture” has the same meaning as in the <sup>M25</sup>Agriculture Act 1947, and “agricultural” (except in the expressions “agricultural holding” and “agricultural land”) shall be construed accordingly;

“agricultural holding” has the meaning assigned to it by section one of the [<sup>F176</sup>Act of 1986]; “agricultural land” means land used for agriculture which is so used for the purposes of a trade or business;

.....<sup>F177</sup>  
[<sup>F178</sup>“appropriate Minister” means—

(a) in relation to statutory undertakers carrying on any railway, light railway, tramway, road transport, dock, harbour or pier undertaking, [<sup>F179</sup>the Minister of Transport];

(b) in relation to statutory undertakers carrying on an undertaking for the supply of . . . <sup>F180</sup>hydraulic power, the Secretary of State for Energy;

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

(d) in relation to the Post Office, the Secretary of State for Industry;

(e) in relation to any [<sup>F181</sup>drainage authority][<sup>F181</sup>internal drainage board], the Minister of Agriculture, Fisheries and Food;

(f) [<sup>F182</sup>in relation to statutory undertakers carrying on an undertaking for the supply of water, in the application of this Act to Wales, the Secretary of State for Wales; and]

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

.....<sup>F183</sup>  
.....<sup>F184</sup>  
.....

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

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

[<sup>F185</sup>“the Corporation” means the British Coal Corporation;]

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

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*Changes to legislation: There are currently no known outstanding effects  
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“drainage authority” has the same meaning as in the [<sup>F186M26</sup>Land Drainage Act 1976];

“emergency powers” means any powers exercisable by virtue of the Defence (General) Regulations, 1939, or by virtue of the <sup>M27</sup>Requisitioned Land and War Works Act 1945, or by virtue of the prerogative of the Crown;

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

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

“land” includes land covered by water;

“local planning authority” and “local authority” have the meanings assigned to them by [<sup>F174</sup>the Act of 1971];

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

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

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

“the Minister” means [<sup>F187</sup>the Secretary of State];

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

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

.....<sup>F188</sup>  
 [<sup>F189</sup>“opencast planning permission” means planning permission which permits the [<sup>F190</sup>Corporation] to work coal by opencast operations to carry out operations incidental to such working;]

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

“order conferring working rights” means an order made under [<sup>F191</sup>the <sup>M28</sup>Mines (Working Facilities and Support) Act 1966];

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

“period of occupation” has the meaning assigned to it [<sup>F192</sup>by section 5 of this Act];

[<sup>F193</sup>“permitted activities” means—

- (a) the working of coal by opencast operations pursuant to opencast planning permission and the carrying out of operations incidental to such working; and
- (b) the carrying out of any conditions subject to which opencast planning permission has been granted;];

“persons directly concerned” has (subject to the provisions of sections seven and eight of this Act) the meaning assigned to it [<sup>F192</sup>by section 5 of this Act];

[<sup>F194</sup>“planning permission” means planning permission under Part III of [<sup>F195</sup>the Act of 1990]]

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

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

F196

[<sup>F197</sup>“sewage disposal undertaking” means an undertaking for the purification and disposal of the contents of sewers (as defined by the <sup>M29</sup>Public Health Act 1936);]

[<sup>F197</sup>“sewerage undertaking” means an undertaking for the drainage of any locality by means of sewers (as defined by the <sup>M30</sup>Public Health Act 1936);]

“statutory undertakers” and “statutory undertaking” have the same meanings as in [<sup>F174</sup>the Act of 1971];

F188

“tenancy” has the meaning assigned to it by the <sup>M31</sup>Landlord and Tenant Act 1954;

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

“year” means any period of twelve months.

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

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

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

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

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

- (4) For the purposes of any provision of this Act, in so far as it refers to the state or condition in which land was at a time specified in that provision, regard shall be had to all matters relevant to the state or condition of the land at that time, including (but without prejudice to the generality of this subsection) the characteristics of the soil (whether on or below the surface), the presence of any minerals in or under the land, the growth of trees, hedges or other vegetation thereon, and any buildings, structures, apparatus or other works which were on, in, under or over the land at that time; and any reference in any provision of this Act to the state or condition in which land would have been, or might reasonably have been expected to be, in circumstances specified in that provision, shall be construed accordingly.

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- (5) Any reference in this Act to the working of coal by opencast operations includes a reference to the getting and winning of coal worked by such operations, and to the carrying away of any such coal from the land on which it has been worked.
- (6) Any reference in this Act to the working of coal or other minerals on any land, or to the carrying out of any other operations on any land, shall be construed as including a reference to the working of the coal or other minerals, or the carrying out of those operations, as the case may be, in or under that land.
- (7) For the purposes of this Act waste heaps and other deposits resulting from the working of minerals shall be taken to form part of the land on which they are situated, if apart from this subsection they would not be taken to form part thereof, and any reference in this Act to the working of minerals on, in or under land, or to underground or surface working, shall be construed accordingly.
- (8) In relation to land comprised in a compulsory rights order, any reference in this Act to the person who would be entitled to occupy that land if the order had not been made shall be construed, in relation to any time before the date of entry thereunder, as a reference to the person who is for the time being entitled to occupy that land.
- (9) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment.
- (10) In the application of this section to Scotland, for references to an underlease there shall be substituted references to a sublease, references to the <sup>M32</sup>Public Health Act 1936, shall be omitted, and in subsection (2) the words from “so however that” to “disregarded” shall be omitted.

#### Textual Amendments

- F172** Definition “the Acquisition of Land Act” repealed (E.W.) by [Acquisition of Land Act 1981 \(c. 67, SIF 28:1\)](#), s. 34(3), [Sch 6 Pt. I](#)
- F173** Definition inserted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 4 para. 31\(a\)](#)
- F174** Words substituted by virtue of [Town and Country Planning Act 1971 \(c. 78\)](#), [Sch. 24 para. 2](#)
- F175** Definition inserted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, [Sch. 2 para. 5\(c\)\(i\)](#)
- F176** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 31\(b\)](#)
- F177** Definition repealed by S.I. 1970/1681, [Sch. 4](#)
- F178** Definition inserted by S.I. 1976/1775, [Sch. 3 para. 2\(1\)](#)
- F179** Words substituted by virtue of S.I. 1979/571, [arts. 2\(1\)](#), 3(5)
- F180** Words repealed by virtue of [Gas Act 1986 \(c. 44, SIF 44:2\)](#), s. 67(4), [Sch. 9 Pt. I](#) and [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(4), [Sch. 18](#)
- F181** In the definition of “appropriate Minister” in para. (e) for “drainage authority” there is substituted (E.W.) “internal drainage board” by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190(1), [Sch. 25 para. 26\(5\)](#) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 16(2), 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1), 17, 40(4) 57(6), 58)
- F182** Definition repealed (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), s. 190(3), [Sch. 27 Pt. I](#) (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)
- F183** Definitions repealed by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(4), [Sch. 12 Pt. II](#)
- F184** Definition repealed by [Coal Industry Act 1987 \(c. 3, SIF 86\)](#), [s. 10\(3\) Pt. II](#)

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- F185** Definition inserted by Coal Industry Act 1987 (c. 3, SIF 86), s. 1(1)(2), **Sch. 7 para. 7(d)**
- F186** Words substituted by virtue of Land Drainage Act 1976 (c. 70), **Sch. 6 para. 9**
- F187** Words substituted by virtue of S.I. 1969/1498, **arts. 2(1), 5(6)** and 1970/1537, arts. 2(2), 7(4)
- F188** Definition repealed by Coal Industry Act 1975 (c. 56), **s. 5(3) Sch. 5**
- F189** Definition inserted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 13(a)**
- F190** Word in s. 51 substituted by 1987 c. 3, s. 1(2), **Sch. 1 para. 7(c)**
- F191** Words substituted by virtue of Mines (Working Facilities and Support) Act 1966 (c. 4) s. 15(4)
- F192** Words substituted by Coal Industry Act 1975 (c. 56), s. 4(2), **Sch. 3 para. 9**
- F193** Definition inserted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 13(b)**
- F194** Definition inserted by Housing and Planning Act 1986 (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 13(c)**
- F195** Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2 para. 5(c)(ii)**
- F196** Definition repealed by Water Resources Act 1963 (c. 38), **Sch. 14 Pt. I**
- F197** Definitions of “sewage disposal undertaking” and “sewerage undertaking” repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), s. 190(3), **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

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

- C15** “The Act of 1947” means Town and Country Planning Act 1947 (c. 51)

#### Marginal Citations

- M20** 1946 c. 49.
- M21** 1986 c. 5.
- M22** 1971 c. 78.
- M23** 1948 c. 63.
- M24** 1990 c. 11.
- M25** 1947 c. 48.
- M26** 1976 c. 70.
- M27** 1945 c. 43.
- M28** 1966 c. 4.
- M29** 1936 c. 49.
- M30** 1936 c. 49.
- M31** 1954 c. 56.
- M32** 1936 c. 49.

## 52 General application to Scotland.

- (1) The provisions of this section shall, in addition to any express provision for the application to Scotland of any provision of this Act, have effect for the general application of this Act to Scotland.
- (2) In this Act, except in so far as the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—
- “agriculture” has the same meaning as in the <sup>M33</sup>Agriculture (Scotland) Act 1948, and “agricultural” (except in the expressions “agricultural holding” and “agricultural land”) shall be construed accordingly;
- “agricultural holding” has the meaning assigned to it by section one of the Scottish Act of 1949;

F198

.....  
[<sup>F199</sup>“appropriate Minister” means—

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- (a) in relation to statutory undertakers carrying on any railway, light railway, tramway, road transport, dock, harbour or pier undertaking, [<sup>F200</sup>the Minister of Transport];
- (b) in relation to statutory undertakers carrying on an undertaking for the supply of gas or hydraulic power, the Secretary of State for Energy;
- (c) in relation to the Civil Aviation Authority or statutory undertakers carrying on any lighthouse undertaking, the Secretary of State for Trade;
- (d) in relation to the Post Office, the Secretary of State for Industry;
- (e) in relation to statutory undertakers carrying on an undertaking for the supply of . . . <sup>F201</sup> water, the Secretary of State for Scotland; and
- (f) in all other cases, the Secretary of State for the Environment.]
- “chattels” means corporeal moveables;
- “easement” means servitude;
- “freehold interest” means the interest of the owner of the dominium utile;
- “land” includes salmon fishings;
- [<sup>F202</sup>“local authority” has the meaning assigned to it by section 235 of the <sup>M34</sup>Local Government (Scotland) Act 1973];
- . . . . . <sup>F203</sup>“local planning authority”, “statutory undertakers”, “statutory undertaking”, “heritable security”, “heritable creditor”, and “National Trust for Scotland” have the same meanings as in the Scottish Act of 1947;
- “owner” in relation to land, subject to subsection (2) of the last preceding section, means the owner of the dominium utile;
- [<sup>F204</sup>“planning permission” means planning permission under Part III of the Act of 1972]
- “the Landholders Acts” means the Small Landholders (Scotland) Acts 1886 to 1931;
- “the Scottish Acquisition of Land Act” means the <sup>M35</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947;
- [<sup>F205</sup>“the Act of 1972” ] means [<sup>F205</sup>the <sup>M36</sup>Town and Country Planning (Scotland) Act 1972];
- “the Scottish Act of 1949” means the <sup>M37</sup>Agricultural Holdings (Scotland) Act 1949.
- (3) For any reference to a [<sup>F206</sup>water authority] there shall be substituted a reference to a river purification authority within the meaning of the <sup>M38</sup>Rivers (Prevention of Pollution) (Scotland) Act 1951.
- (4) For any reference to the Lands Tribunal there shall be substituted a reference to the Lands Tribunal for Scotland: . . . <sup>F207</sup>
- (5) Where, immediately before the coming into operation of an authorisation under section one of this Act, any of the land comprised in the authorisation consists of or includes a holding to which any of the provisions of the Landholders Acts apply or a croft within the meaning of the <sup>M39</sup>Crofters (Scotland) Act 1955, or part of such a holding or croft, the provisions of this Act shall, in relation to that land, have effect subject to the following modifications, that is to say—
- (a) references to an agricultural holding, to the tenant of an agricultural holding and to the Scottish Act of 1949 shall include respectively references to such a holding or croft as aforesaid, to a landholder or crofter, and to the Landholders Acts or the <sup>M40</sup>Crofters (Scotland) Act 1955, as the case may be and for

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references to sections fifty-seven and fifty-eight of the Scottish Act of 1949 there shall be substituted references to section ten of the <sup>M41</sup>Crofters Holding (Scotland) Act 1886, or section fourteen of the <sup>M42</sup>Crofters (Scotland) Act 1955, as the case may require:

Provided that for the purposes of section twenty-three of this Act any improvement on the holding for which the landholder or the crofter would on the termination of his tenancy be entitled to compensation under the Landholders Acts or the <sup>M43</sup>Crofters (Scotland) Act 1955, as the case may be, shall be treated as a separate holding, and any compensation payable under the said section in respect of the improvement shall be payable to the landholder or crofter as if he were the owner thereof; and sections twenty-four and twenty-five shall not apply to any improvement in respect of which compensation is so payable;

- (b) any dispute as to a right to compensation under this Act of a landholder or crofter or of the owner of a holding or croft in respect thereof or as to the amount of any such compensation, and any matter arising in relation to a holding or croft which is referred to arbitration under this Act, shall be determined by the Scottish Land Court, and the provisions of the Landholders Acts shall, with any necessary modifications, apply for the purpose as they apply for the determination of matters referred to that Court under those Acts.
- (6) For the purposes of any feu charter, feu contract or feu disposition, the owner of any land comprised in a compulsory rights order shall not be taken to be in breach of any obligation or liable to pay any sum by way of damages or penalty or to suffer any forfeiture by reason of anything done or omitted to be done by him by way of permitting or facilitating the occupation or use of that land in the exercise of rights conferred by the order.
- (7) Where compensation is payable by the [<sup>F208</sup>Corporation] under section twenty-three of this Act, or under that section as applied by section twenty-nine thereof, to the owner of any land comprised in a compulsory rights order by reference to the diminution in value of the land, being land which is subject to a feu duty or a ground annual, and the person who is the superior entitled to the feu duty or the creditor in the ground annual (which person is in this subsection referred to as “the creditor”) shows—
- (a) that the amount of the feu duty or ground annual exceeds the annual value of the land at the end of the period of occupation; and
  - (b) that it is unlikely that within a reasonable period such works of restoration will be carried out on the land as will make good the excess;

the creditor shall be entitled to claim (but without prejudice to the making of a claim by the owner) and to receive payment from the [<sup>F209</sup>Corporation] in respect of the feu duty or ground annual so much of the compensation which, apart from this subsection, would be payable to the owner as aforesaid as is equal to the capital equivalent of the said excess:

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

- (8) For the purposes of the last preceding subsection the annual value of the land shall be ascertained in accordance with the provisions of subsection (2) of section eighteen of this Act, with the omission, however, of the words “in the appropriate circumstances”; and the capital equivalent of the excess of a feu duty or ground annual over the annual value of land subject to it at the end of the period of occupation shall be taken to be that excess multiplied by the number of years purchase which the feu duty or ground annual

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might have been expected to realise on a sale thereof in the open market immediately before the beginning of the period of occupation.

#### Textual Amendments

- F198** Definition repealed by S.I. 1970/1681, **Sch. 4**
- F199** Definition inserted by S.I. 1976/1775, **Sch. 3 para. 2(2)**
- F200** Words substituted by virtue of S.I. 1979/571, **arts. 2(1), 3(5)**
- F201** Words repealed by **Electricity Act 1989** (c. 29, SIF 44:1), s. 112(4), **Sch. 18**
- F202** Definition inserted by **Local Government (Scotland) Act 1973** (c. 65), **Sch. 27 Pt. II para. 141**
- F203** Words repealed by **Local Government (Scotland) Act 1973** (c. 65), **Sch. 29**
- F204** Definition inserted by **Housing and Planning Act 1986** (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 14**
- F205** Words substituted by virtue of **Town and Country Planning (Scotland) Act 1972** (c. 52), **Sch. 22 para. 2**
- F206** Words substituted by virtue of **Water Act 1973** (c. 37), **s. 9**
- F207** **S. 52(4)** proviso repealed by **Statute Law (Repeals) Act 1981** (c. 19), **Sch. 1 Pt. XII**
- F208** Word substituted by **1987 c. 3, s. 1(2)**, **Sch. 1 para. 7(c)**
- F209** Word substituted by **1987 c. 3, s. 1(2)**, **Sch. 1 para. 7(c)**

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

- C16** “The Scottish Act of 1947” means **Town and Country Planning (Scotland) Act 1947** (c. 53)

#### Marginal Citations

- M33** 1948 c. 45.
- M34** 1973 c. 65.
- M35** 1947 c. 42.
- M36** 1972 c. 52.
- M37** 1949 c. 75.
- M38** 1951 c. 66.
- M39** 1955 c. 21.
- M40** 1955 c. 21.
- M41** 1886 c. 29.
- M42** 1955 c. 21.
- M43** 1955 c. 21.

### 53 Short title, commencement and extent.

- (1) This Act may be cited as the Opencast Coal Act 1958.
- (2) ..... **F210**
- (3) This Act shall not extend to Northern Ireland.

#### Textual Amendments

- F210** **S. 53(2)** repealed by **Housing and Planning Act 1986** (c. 63, SIF 86), s. 39(4), **Sch. 12 Pt. II**



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