



# Opencast Coal Act 1958

1958 CHAPTER 69 6 and 7 Eliz 2

## PART II

### COMPENSATION FOR COMPULSORY RIGHTS ORDERS

#### *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 [<sup>F1</sup>wholly or partly] within the period of occupation, the person for the time being entitled to the easement or right in question shall be entitled to compensation <sup>F2</sup>. . .

[<sup>F3</sup>(2A) Subject (where different persons have been entitled to the rights for different parts of the year) to any apportionment under section 35(3) of this Act, the liability to pay compensation under subsection (2) of this section shall fall on the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order.]

- (3) Where, after the end of the period of occupation, the exercise of the easement or right continues to be prevented or injuriously affected by reason of anything done during that period in the exercise of rights conferred by the compulsory rights order,—
- (a) if that easement or right is appurtenant to, or the benefit thereof is in any other way annexed to, any land, the person who, at the end of the period of occupation, is the owner of that land shall be entitled to compensation from

*Status: Point in time view as at 27/05/1997.*

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- [<sup>F4</sup>the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order] of an amount equal to the diminution (if any) in the value of that land, in so far as any such diminution is attributable to the fact that the exercise of the easement or right is so prevented or injuriously affected;
- (b) in any other case, the person who at the end of the period of occupation is entitled to the right in question shall be entitled to compensation from [<sup>F4</sup>the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order]of an amount equal to the market value which the right would then have if its exercise were not so prevented or affected, reduced by the amount of any market value which the right actually has at the end of that period.
- (4) For the purposes of paragraph (a) of the last preceding subsection the value of the land in question shall be taken to have been diminished if (and to the extent to which) the value of a freehold interest in that land at the end of the period of occupation is less than the value which such an interest would then have if the land comprised in the order, over which the easement or right is exercisable, were in the state in which it was immediately before the date of entry; and for the purpose of computing those values the provisions of subsection (4) of section twenty-three of this Act shall apply as they apply for the purposes of subsection (2) of that section, but with the substitution, for references to the holding, of references to the land to which the benefit of the easement or right is annexed.
- (5) In relation to common or waste lands (within the meaning of the <sup>M1</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>M2</sup>Lands Clauses Consolidation Act 1845, there shall be substituted a reference to lands of the nature of commony within the meaning of the Lands Clauses Consolidation (Scotland) Act 1845.

#### Textual Amendments

- F1** Words in s. 31(2) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 23(1)(a)** (with s. 40(7); S.I. 1994/2553, **art. 2**)
- F2** Words in s. 31(2) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, **Sch. 8 para. 23(1)(b)**, **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F3** S. 31(2A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 23(2)** (with s. 40(7); S.I. 1994/2553, **art. 2**)
- F4** Words in s. 31(3)(a)(b) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 23(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

#### Marginal Citations

- M1** 1845 c. 18.  
**M2** 1845 c. 19.

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*Status: Point in time view as at 27/05/1997.*

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**[31A F<sup>5</sup>Compensation in respect of disposable minerals.**

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

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### Textual Amendments

**F5** 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
  - (b) immediately before the operative date of the order, is land wherein the interest of the owner is held by a person who is also the owner of the whole or part of the land comprised in the order.
- (2) Where a compulsory rights order has become operative, and in the case of any land which, in relation to that order, is land to which this section applies (in this and the next following subsection referred to as “the relevant land”) it is shown that for any year (being either the year beginning with the operative date of the order, or a year beginning with an anniversary of that date and falling [<sup>F6</sup>wholly or partly] within the period of occupation) the annual value of the relevant land is less than the annual value of that land would have been if—
- (a) the land comprised in the order had not included any of the owner’s land comprised therein, and
  - (b) all the owner’s land comprised in the order had remained in the state in which it was immediately before the operative date,

the person who is for the time being the owner of the relevant land shall be entitled to compensation <sup>F7</sup> . . . .

[<sup>F8</sup>(2A) Subject (where different persons have been entitled to the rights for different parts of the year) to any apportionment under section 35(3) of this Act, the liability to pay compensation under subsection (2) of this section shall fall on the persons who, for the whole or any part of the year in question, have been entitled to the rights conferred by the order.

- (2B) For the purposes of subsection (2) of this section the annual value of any land for any year shall be taken to be an amount equal to the annual rent at which, immediately before the beginning of that year, that land, in the appropriate circumstances, might reasonably have been expected to be let from year to year under a contract of tenancy whereby the tenant undertook—
- (a) to pay all usual tenant’s rates and taxes and to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the land in a state to command that rent, and
  - (b) not to carry out any operations on the land, or to make any change in the use thereof, for which permission would be required under Part III of the Act of 1990 or [<sup>F9</sup>Part III of the Town and Country Planning (Scotland) Act 1997], except any operations for which such permission has been granted and is in force immediately before the beginning of that year.]

[<sup>F10</sup>(3) For the purposes of subsection (2B) of this section , th appropriate circumstances—]

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- (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 [F11the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order, and that compensation shall be] of an amount equal to the difference.
- (5) For the purposes of the last preceding subsection there shall be computed the following values, that is to say,—
  - (a) the value at the end of the period of occupation of the owner’s interest in the relevant land, assessed on the assumption that, in so far as any of the owner’s land comprised in the order has not then been restored to the condition in which it was immediately before the date of entry, there will be carried out on that land in due course all such work as would qualify for compensation under section twenty-two of this Act;
  - (b) the value which, at the end of the period of occupation, the owner’s interest in the relevant land would have if the entirety of the owner’s land comprised in the order were in the state in which it was immediately before the date of entry.
- (6) In computing value as mentioned in paragraph (a) or paragraph (b) of the last preceding subsection, it shall be assumed that the owner’s interest in the relevant land is, in the circumstances mentioned in the paragraph in question, being offered for sale subject to any incumbrances to which that interest is subject at the end of the period of occupation.
- (7) For the purposes of the operation of this section in relation to a compulsory rights order—
  - (a) any reference to the owner’s land comprised in the order is a reference to so much of the land comprised in the order as, immediately before the operative date, was land wherein the interest of the owner was held by the following person, that is to say,—
    - (i) where the reference in question is in subsection (2) of this section, the person who was then the owner of the relevant land within the meaning of that subsection;

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- (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

- F6** Words in s. 32(2) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 25(1)(a)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F7** Words in s. 32(2) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 25(1)(b), **Sch. 11 Pt. II**; S.I. 1994/2553, **art. 2**
- F8** S. 32(2A)(2B) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 25(2)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F9** Words in s. 32(2B)(b) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 5(4)**
- F10** S. 32(3) substituted (31.10.1994) for the words in s. 32(3) by 1994 c. 21, s. 52, **Sch. 8 para. 25(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F11** Words in s. 32(4) substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 25(4) (with s. 40(7)); S.I. 1994/2553, **art. 2**

### 33 Compensation in respect of minerals.

- (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.

**Status:**

Point in time view as at 27/05/1997.

**Changes to legislation:**

There are currently no known outstanding effects for the Opencast Coal Act 1958, Cross  
Heading: Compensation in respect of other matters.