



# Opencast Coal Act 1958

## 1958 CHAPTER 69

### 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 which is comprised in an authorisation under section one of this Act and is for the time being occupied by the Board for the authorised purposes, and
- (b) within the time limited for making objections to the order, the Board 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 comprised in the authorisation 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 the Minister of Power is satisfied that it can be purchased without serious detriment to the fulfilment of the authorised purposes.

### **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

- (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 twenty pounds.
- (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 First or 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.

### **40 Claims for compensation payable by Board**

- (1) Compensation under this Act shall not be payable by the Board unless a claim for it is duly made to the Board.
- (2) Regulations made under this section by the Minister may—
- (a) require claims for compensation under this Act to be made in such form, and within such time, as may be prescribed by the regulations ;
  - (b) 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;
  - (c) include provisions as to professional and other fees incurred by claimants in preparing and supporting claims for compensation under this Act, requiring the Board, 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—
- (a) as to a right to compensation from the Board 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

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- (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.

#### **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 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 Allotments (Scotland) Act, 1922.

#### **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 Board under this Act, and apart from this section would be payable to a person in right of an interest in land held by him for religious purposes:
- Provided that this section shall not apply to any compensation payable by virtue of section twenty-two of this Act.
- (2) If the land, not- being land in Scotland, Wales or Monmouthshire, is ecclesiastical property, the compensation shall be paid to the Church Commissioners.
- (3) If the land, being land in Scotland, is property belonging to the Church of Scotland, the compensation shall be paid to the general treasurer of that Church.
- (4) If, in the case of land not falling within subsection (2) or subsection (3) of this section, the Board are so requested by or on behalf of a body of persons notified to the Board by the Minister, after consultation with such persons or organisations as he may think appropriate, as the appropriate representative body, the Board 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,

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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.

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

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

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- (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 Board 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.

#### **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 Board.
- (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

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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 Board under Part II of this Act in respect of that interest.

- (4) In this section " Crown or Duchy interest" means an interest belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department; " private interest" means an interest which is not a Crown or Duchy interest; and " the appropriate authority"—
- (a) in relation to land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners, and, in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land ;
  - (b) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy;
  - (c) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; and
  - (d) in relation to land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department;

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

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

#### **45 Provision 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 telegraphic line belonging to or used by the Postmaster General, or include any right or power to require such a line to be altered.
- (2) Where an authorisation has been granted under section one of this Act, and, for the purpose of enabling any authorised operations to be carried out, the Board require an alteration to be made in any telegraphic line of the Postmaster General, the provisions of paragraphs (1) to (8) of section seven of the Telegraph Act, 1878 (which provides for the alteration of such telegraphic lines in the case of work proposed to be done in the execution of an undertaking authorised by an Act of Parliament), shall apply as if the authorised operations were (within the meaning of that section) work proposed to be done in the execution of an undertaking authorised by an Act of Parliament, if

apart from this subsection those operations would not be taken to be work so proposed to be done.

- (3) Where in pursuance of an order made under section three of the Acquisition of Land Act, as applied by 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 telegraphic line belonging to or used by the Postmaster General, the Postmaster General shall have the same powers in respect of that line 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.

- (4) In this section " telegraphic line " and " alter " have the same meanings as in the Telegraph Act, 1878.
- (5) 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 Scottish Acquisition of Land Act.

#### **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 Board in certain cases to grant licences 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 Board, not likely to exceed, or greatly to exceed, twenty-five thousand tons".
- (2) Subsection (1) of section one of this Act shall not apply to the granting of a licence under subsection (2) of the said section thirty-six as amended by the preceding subsection; and subsection (5) of section two of this Act shall not apply to a refusal of permission for the working of coal in pursuance of such a licence.

#### **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 section two hundred and ninety of the Local Government Act, 1933 (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 (including any inquiry so held under any provisions of the Acquisition of Land Act as applied by this Act) with the substitution, for references to a department, of references to the Minister.
- (3) Subsections (2) to (9) of section three hundred and fifty-five of the Local Government (Scotland) Act, 1947, 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.

**48 Transitional provisions**

The transitional provisions contained in the Tenth Schedule to this Act shall have effect for the purposes of this Act.

**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:  
Provided that—
  - (a) in the case of an opencast site order, where the period specified in the order is less than ten 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 ten years ;
  - (b) in the case of a storage site order, where the period specified in the order is a period ending before the tenth anniversary of the date of the commencement of this Act, this subsection shall not prevent the variation of the order by the extension of that period to a date not later than that anniversary.
- (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.

**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:—



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*Status: This is the original version (as it was originally enacted).*

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" the Acquisition of Land Act " means the Acquisition of Land (Authorisation Procedure) Act, 1946;

" the Act of 1947 " means the Town and Country Planning Act, 1947;

" the Act of 1948 " means the Agricultural Holdings Act, 1948;

" agriculture " has the same meaning as in the Agriculture Act, 1947, and " agricultural " (except in the expressions " agricultural holding " and " agricultural land " shall be construed accordingly;

" agricultural holding " has the meaning assigned to it by section one of the Act of 1948 ;

" agricultural land " means land used for agriculture which is so used for the purposes of a trade or business;

" appropriate Minister " in relation to a statutory undertaking has the same meaning as in the Act of 1947, in relation to a sewerage undertaking or sewage disposal undertaking means the Minister of Housing and Local Government, and in relation to a river board or other drainage authority means the Minister of Agriculture, Fisheries and Food;

" the authorised purposes " and " authorised operations " have the meanings assigned to them respectively by section one of this Act;

" the Board " means the National Coal Board ;

" coal " means bituminous coal, cannel coal and anthracite ;

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

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

" drainage authority " has the same meaning as in the Land Drainage Act, 1930;

" emergency powers " means any powers exercisable by virtue of the Defence (General) Regulations, 1939, or by virtue of the Requisitioned Land and War Works Act, 1945, or by virtue of the prerogative of the Crown ;

" 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 the Act of 1947;

" 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 the Minister of Power;

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

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

" opencast site order " has the meaning assigned to it by section four of this Act;

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

" order conferring working rights " means an order made under Part I of the Mines (Working Facilities and Support) Act, 1923;

" 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 in relation to opencast site orders by section five and in relation to storage site orders by section six of this Act;

" persons directly concerned " has (subject to the provisions of sections seven and eight of this Act) the meaning assigned to it in relation to opencast site orders by section five and in relation to storage site orders by section six of this Act;

" prescribed " means prescribed by regulations made under this Act;

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

" river board " has the same meaning as in the River Boards Act, 1948 ;

" sewage disposal undertaking " means an undertaking for the purification and disposal of the contents of sewers (as defined by the Public Health Act, 1936);

" sewerage undertaking " means an undertaking for the drainage of any locality by means of sewers (as defined by the Public Health Act, 1936);

" statutory undertakers " and " statutory undertaking " have the same meanings as in the Act of 1947 ;

" storage site order " has the meaning assigned to it by section four of this Act;

" tenancy " has the meaning assigned to it by the Landlord and Tenant Act, 1954 ;

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

" year " means any period of twelve months.

- (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—

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

## **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.

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- (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 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;

" appropriate Minister " in relation to a statutory undertaking has the same meaning as in the Scottish Act of 1947 and in relation to a sewerage undertaking or sewage disposal undertaking or a river purification authority means the Secretary of State ;

" chattels " means corporeal moveables;

" easement " means servitude ;

" freehold interest " means the interest of the owner of the dominium utile;

" land " includes salmon fishings;

" local authority ", " 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;

" the Landholders Acts " means the Small Landholders (Scotland) Acts, 1886 to 1931;

" the Scottish Acquisition of Land Act " means the Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947;

" the Scottish Act of 1947 " means the Town and Country Planning (Scotland) Act, 1947;

" the Scottish Act of 1949 " means the Agricultural Holdings (Scotland) Act, 1949.

- (3) For any reference to a river board there shall be substituted a reference to a river purification authority within the meaning of the 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:

Provided that until sections one to three of the Lands Tribunal Act, 1949, come into force as regards Scotland, this subsection shall have effect as if for the reference to the Lands Tribunal for Scotland there were substituted a reference to an official arbiter appointed under the Acquisition of Land (Assessment of Compensation) Act, 1919; and sections three, five and six of that Act shall apply, subject to any necessary modifications, in relation to the determination of any dispute under this Act by an arbiter so appointed.

- (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 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—

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*Status: This is the original version (as it was originally enacted).*

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- (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 Crofters (Scotland) Act, 1955, as the case may be and for references to sections fifty-seven and fifty-eight of the Scottish Act of 1949 there shall be substituted references to section ten of the Crofters Holding (Scotland) Act, 1886, or section fourteen of the 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 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 Board 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 Board 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.

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*Status: This is the original version (as it was originally enacted).*

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

**53 Short title, commencement and extent**

- (1) This Act may be cited as the Opencast Coal Act, 1958.
- (2) This Act shall come into operation on the thirtieth day of September, nineteen hundred and fifty-eight.
- (3) This Act shall not extend to Northern Ireland.