



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

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—
- 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
 - 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 [^{F1}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—
- the land comprised in the order had not included any of the owner’s land comprised therein, and
 - 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 ^{F2}

[^{F3}(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

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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 [^{F4}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.]

[^{F5}(3) For the purposes of subsection (2B) of this section, the appropriate circumstances—]

- (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 [^{F6}the 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.

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- (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

- F1** 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**
- F2** 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**
- F3** 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**
- F4** Words in s. 32(2B)(b) substituted (27.5.1997) by 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 5(4)**
- F5** 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**
- F6** 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**

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