



Opencast Coal Act 1958

1958 CHAPTER 69 6 and 7 Eliz 2

PART III

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

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 [^{F1}on the application of the Coal Authority] 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 [^{F2}the Coal Authority] 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

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dispose of any such samples as [^{F2}the Coal Authority may think fit to authorise him to dispose of]:

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 [^{F2}the Coal Authority] 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 [^{F3}opencast planning permission] or the making or confirmation of any order under Part I of this Act; or
 - (b) (where [^{F4}opencast planning permission] has been granted) for any purpose in connection with, or preparatory to, the carrying [^{F5}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 [^{F6}section 15A(4)(c) or any of the provisions of the], Second or Ninth Schedule to this Act.
- (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 [^{F7}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 [^{F8}a sewerage undertaking or sewage disposal undertaking, or is held by a [^{F9}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 [^{F9}water authority] or other drainage authority, to) [^{F8}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

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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 [^{F2}the Coal Authority]; 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 [^{F2}the Coal Authority] in respect of the disturbance.

[^{F10}(7A) The persons who may be authorised by the Coal Authority to exercise the powers conferred by this section shall include any person who proposes to exercise those powers for the purposes and on behalf of any person who is or has applied to become a licensed operator within the meaning of the Coal Industry Act 1994; but where—

- (a) any person does exercise powers under this section for the purposes of such a person, and
(b) his written authority specifies that person and states that he is authorised to exercise those powers for the purposes and on behalf of that person,

subsection (7) of this section shall have effect as if the references to the Coal Authority were references to the specified person.

(7B) Any authorisation by the Coal Authority of any person for the purposes of the exercise of the powers conferred by this section, and any conditions of such an authorisation, may be revoked or varied by that Authority at any time.]

(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 [^{F11}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 . . . ^{F12}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.

Textual Amendments

- F1** Words in s. 39(1) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 29(1)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F2** Words in s. 39(2)(3)(7) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 29(2)(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F3** Words substituted by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(3), Sch. 8 para. 10(a)
- F4** Words substituted by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 10(b)(i)**
- F5** Words substituted by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 10(b)(ii)**
- F6** Words substituted by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 10(c)**
- F7** Words substituted by [Housing and Planning Act 1986](#) (c. 63, SIF 86), s. 39(3), **Sch. 8 para. 11**
- F8** 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)
- F9** Words substituted by virtue of [Water Act 1973](#) (c. 37), **s. 9**

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- F10** S. 39(7A)(7B) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 29(5)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F11** 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**
- F12** Words repealed by Housing and Planning Act 1986 (c. 63, (SIF 86), s. 39(4), Sch. 12 Pt. II

Modifications etc. (not altering text)

- C1** 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**
- C2** S. 39 modified by Gas Act 1986 (c. 44, SIF 44:2), s. 67(1), **Sch. 7 para. 2(9)(b)**
- C3** S. 39 modified (E.W.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1), **Sch. 16 para. 3(1)(b)**
- C4** S. 39 modified (S.) by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1), **Sch. 16 para. 3(2)(9)**
- C5** S. 39(2) restricted (31.10.1994) by 1994 c. 21, s. 52(2)(3); S.I. 1994/2553, **art. 2**
- C6** S. 39: references in subsections (3)(d) and (5) to section 15A(4)(c) to be construed (*retrospective to* 11.12.1987) as references to 15A(5)(c) by 1994 c. 21, s. 52, **Sch. 8 para. 29(4)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
 S. 39 modified (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. para. 10(a)**; S.I. 1996/218, **art. 2**
- C7** S. 39(6)(b) modified (1.4.2001) by 2000 c.38, s. 37, **Sch. 5 para. 1** (with s. 106); S.I. 2001/869, **art. 2**
- C8** S. 39(6)(b) extended by Post Office Act 1969 (c. 48), **Sch. 4**, para. 93(1)(xiv)(2)(f)
- C9** S. 39(6)(b) extended by Civil Aviation Act 1982 (c. 16, SIF 9), **Sch. 2 para. 4**

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