
Changes to legislation: There are currently no known outstanding effects for the Housing and Planning Act 1986, Paragraph 6. (See end of Document for details)

SCHEDULES

SCHEDULE 8

OPENCAST COAL — MISCELLANEOUS AMENDMENTS

PART I

THE 1958 ACT

6 The following sections shall be substituted for section 15—

“15 Suspension of certain public rights of ways.

(1) Where—

- (a) the Board 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 Board 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 Board (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

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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.
- (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 operations, 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 the Act of 1971, 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, the Act of 1971 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 is 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 “the Act of 1971” there were substituted “the Town and Country Planning (Scotland) Act 1972”.

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 Board shall publish a notice in the prescribed form identifying the right of way and stating—
 - (a) that the Board are proposing to apply for an order suspending it in connection with the working of coal by opencast operations;
 - (b) that opencast planning permission has been applied for, or, as the case may be, has been granted; and
 - (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.

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- (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 Board 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 Board have complied with subsections (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 Board's application or subject to such modifications as the Secretary of State may determine.
- (10) If the Secretary of State makes an order, the Board, as soon as may be after the order is made, shall publish a notice in the prescribed form that the order

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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 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.”.

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