



Coal industry Act 1994

1994 CHAPTER 21

PART III

RIGHTS AND OBLIGATIONS IN CONNECTION WITH COAL MINING

Withdrawal of support from land

38 Rights to withdraw support

- (1) Subject to the following provisions of this Part, on and after the restructuring date, any licensed operator shall be entitled, so far as may be reasonably requisite for the carrying on of any coal-mining operations to which section 25 above applies, to withdraw support from any land to which this section applies.
- (2) This section applies to any land, not being land comprised in an underground coal mine, if—
 - (a) a notice under this section relating to that land has been given in accordance with section 39 below and has come into force;
 - (b) immediately before the restructuring date the Corporation was entitled under and in accordance with section 2 of the 1975 Act (rights to withdraw support) to withdraw support from that land; or
 - (c) the following conditions are satisfied, that is to say—
 - (i) the relevant date of publication of a notice under section 2 of the 1975 Act relating to that land is a date not more than three months before the restructuring date;
 - (ii) the Corporation would (apart from subsection (7) below) have become entitled as mentioned in paragraph (b) above at the end of the period of three months beginning on the relevant date of publication; and
 - (iii) that period has expired;

and a right under this section shall have effect whether the coal in relation to which the operations concerned are carried on lies under the land to which this section applies or under adjacent land.

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- (3) A notice under this section shall come into force with whichever is the later of the following, that is to say—
- (a) the expiry of the period of three months beginning with the day after the relevant date of publication; and
 - (b) the time when particulars of the notice are first registered by the Authority in accordance with section 56 below.
- (4) In the case of any licensed operator who is entitled by virtue of this section to withdraw support from any land, the rights comprised in his entitlement shall also be exercisable by any person authorised as mentioned in section 27(4) above to act on his behalf in the carrying on of any of the operations which the operator is authorised to carry on.
- (5) In this section and section 39 below “relevant date of publication”—
- (a) in relation to a notice under section 2 of the 1975 Act, has the same meaning as in that section; and
 - (b) in relation to a notice under this section, means whichever is the later of—
 - (i) the date of the publication of the notice in the London or Edinburgh Gazette; and
 - (ii) the date of the first of the publications for the purposes of section 39(3)(b) below.
- (6) In this section “underground coal mine” means any coal mine which is a mine within the meaning of the Mines and Quarries Act 1954.
- (7) Subject to the preceding provisions of this section, the rights conferred on the Corporation by section 2 of the 1975 Act shall not be exercisable at any time on or after the restructuring date.

39 Notices under section 38

- (1) A notice under section 38 above shall not be given except—
- (a) by a person who on the relevant date of publication is a licensed operator and, as the holder of a licence under Part II of this Act, has an area of responsibility that consists of or includes all the land to which the notice relates; or
 - (b) by a person who on that date—
 - (i) is authorised by such a licence, or by virtue of subsection (3) of section 25 above, to carry on coal-mining operations to which that section applies; and
 - (ii) has the approval of the Authority for the giving of a notice relating to the land in question.
- (2) A notice under section 38 above—
- (a) shall indicate the land to which it relates either by reference to a map or in any other manner which, in the circumstances, is sufficient to identify it;
 - (b) shall identify the person by whom the notice is given and summarise the respects in which the requirements of subsection (1) above are satisfied in relation to that person; and
 - (c) shall state that there are proposals to carry on coal-mining operations which may require the exercise in relation to that land of such a right as is mentioned in section 38(1) above.
- (3) A notice under section 38 above shall be given by being published—

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- (a) in the London Gazette or the Edinburgh Gazette, according to whether the land to which the notice relates is in England and Wales or in Scotland; and
 - (b) at least once in each of two successive weeks, in newspapers circulating in the locality where that land is situated.
- (4) Not later than the relevant date of publication of a notice under section 38 above, the person giving that notice shall—
- (a) serve a copy of the notice on every planning authority within whose area or district any part of the land to which the notice relates is situated; and
 - (b) post a copy or copies of the notice in some conspicuous place or places on that land.
- (5) In subsection (4) above “planning authority” means any local planning authority within the meaning of the Town and Country Planning Act 1990 or any planning authority within the meaning of Part IX of the Local Government (Scotland) Act 1973.

40 Savings for special cases

- (1) Where the Corporation is bound, immediately before the restructuring date, by—
- (a) the provisions of an agreement which—
 - (i) was made between the Corporation or any predecessor of the Corporation and a person who (within the meaning of the Coal Act 1938) was interested in any land, and
 - (ii) has effect so as to require the Corporation to comply with an undertaking which is contained in the agreement and is an undertaking not to work any coal, not to work minerals or not to withdraw support from any land,
 - (b) any provisions containing any restriction, terms or conditions applicable to the working of coal by virtue of any agreement entered into after 1st July 1942 and before the restructuring date, or
 - (c) the provisions of any coal-mining lease (within the meaning of that Act of 1938) prohibiting the withdrawal of support from any land specified in the lease,
- section 38 above shall have effect subject to those provisions, but only so far as they have effect in relation to the Corporation or any other person who is for the time being bound by them.
- (2) Section 38 above shall not affect any restrictions, terms or conditions applicable to the working of coal by virtue of—
- (a) any order made (whether before or after the restructuring date) under section 1 or 7 of the Mines (Working Facilities and Support) Act 1966 (acquisition of rights to work minerals); or
 - (b) section 33 of the Coal Act 1938 (restriction on working of coal vested in statutory undertakers) or any consent required by virtue of that section;
- and section 38 above shall be without prejudice to the effect in relation to any restrictions, terms or conditions falling within paragraph (a) or (b) above of the provisions of any restructuring scheme.
- (3) Section 38 above shall have effect subject to any such right as was referred to in section 34(1) of the Coal Act 1938 (statutory and corresponding rights of the Crown, local authorities and statutory undertakers) and is a right to which the activities of the Corporation were subject immediately before the restructuring date.

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- (4) Nothing in section 38 above shall confer any entitlement to withdraw support in connection with the working of any coal or coal mines comprised in land in the Forest of Dean or any other part of the area of what was the Hundred of Saint Briavels in the county of Gloucester, being land in respect of which the privileges of free miners are exercisable.
- (5) References in this section, in relation to an agreement which has effect with respect to the working of any coal, to a predecessor of the Corporation are references to the Coal Commission or the person in whom the fee simple of the coal (or, in Scotland, the interest of proprietor of the *dominium utile* of the coal) was vested when the agreement was entered into.
- (6) The reference in subsection (5) above to a person in whom the interest of proprietor of the *dominium utile* was vested when the agreement was entered into shall, as regards coal in the undivided ownership of the Crown at that time, be construed as a reference to the Crown.
- (7) Nothing in this Act or in any other enactment shall be taken as preventing any person from entering, at any time on or after the restructuring date, into an agreement by virtue of which he accepts a prohibition or restriction on the exercise of his rights under section 38 above.

41 Revocation of right to withdraw support

- (1) Where the Authority gives a notice under this section in relation to any land to which section 38 above applies, that section shall cease to apply to that land in relation to any coal-mining operations carried on after the relevant date of publication.
- (2) The Authority shall not give a notice under this section unless it appears to the Authority that there is not for the time being any person who is authorised, by a licence under Part II of this Act or by virtue of section 25(3) above, to carry on coal-mining operations which might involve the withdrawal of support from the land in question.
- (3) A notice under this section—
 - (a) shall indicate the land to which it relates either by reference to a map or in any other manner which, in the circumstances, is sufficient to identify it;
 - (b) shall state that section 38 above is to cease to apply to the land; and
 - (c) shall be given by being published—
 - (i) in the London Gazette or the Edinburgh Gazette, according to whether the land to which the notice relates is in England and Wales or in Scotland; and
 - (ii) at least once in each of two successive weeks, in newspapers circulating in the locality where that land is situated.
- (4) Not later than the relevant date of publication of a notice under this section, the Authority shall serve a copy of the notice on every planning authority within whose area or district any part of the land to which the notice relates is situated.
- (5) Subsection (1) above shall be subject to the effect of any notice under section 38 above which is given at any time after the relevant date of publication of the notice under this section.
- (6) In this section—

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“planning authority” means any local planning authority within the meaning of the Town and Country Planning Act 1990 or any planning authority within the meaning of Part IX of the Local Government (Scotland) Act 1973; and

“relevant date of publication”, in relation to a notice under this section, means whichever is the later of—

- (a) the date of the publication of the notice in the London or Edinburgh Gazette; and
- (b) the date of the first of the publications of that notice for the purposes of subsection (3)(c)(ii) above.