



Opencast Coal Act 1958

1958 CHAPTER 69

PART II

COMPENSATION FOR COMPULSORY RIGHTS ORDERS

Compensation in respect of agricultural land

17 General provisions as to annual compensation

- (1) Where a compulsory rights order comprises the whole or part of a holding to which this section applies, compensation shall be payable by the Board in respect of that holding—
 - (a) for the year beginning with the operative date, and
 - (b) for each subsequent year which begins with an anniversary of that date and falls within the period of occupation.
- (2) For the purposes of this Part of this Act, where land, immediately before the operative date of a compulsory rights order.—
 - (a) was occupied as a unit, and
 - (b) was so occupied wholly or mainly for the purposes of agriculture carried on by way of a trade or business,the entirety of that land (excluding the coal and any other minerals vested in the Board) shall be taken, in relation to that compulsory rights order, to constitute a holding to which this section applies.
- (3) The person entitled to any compensation payable by the Board for any year by virtue of this section in respect of a holding shall be the person who—
 - (a) in respect of so much (if any) of the holding as is not comprised in the compulsory rights order, is for the time being entitled to occupy that part of the holding, and
 - (b) in respect of so much of the holding as is comprised in the order, would be entitled for the time being to occupy it if the order had not been made.

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- (4) The compensation payable for any year by virtue of this section, in respect of a holding to which this section applies, shall be the aggregate of—
- (a) the compensation payable for that year in accordance with the provisions of the next following section, and
 - (b) any additional compensation payable for that year in accordance with the provisions of section nineteen of this Act, and
 - (c) for the year beginning with the operative date, any additional compensation payable in accordance with the provisions of section twenty of this Act.

18 Compensation by reference to annual value

- (1) The compensation payable for any year in respect of a holding to which the last preceding section applies, as mentioned in paragraph (a) of subsection (4) of that section, shall be a sum equal to the annual value of the holding for that year, reduced by the annual value for that year of so much (if any) of the holding as is not comprised in the compulsory rights order.
- (2) For the purposes 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 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 (apart from this Act) permission would be required under Part III of the Act of 1947, except any operations for which such permission has been granted and is in force immediately before the beginning of that year.
- (3) In determining for any year the annual value of the entirety of a holding, the appropriate circumstances, for the purposes of the last preceding subsection, shall be taken to be the circumstances which would have existed, immediately before the beginning of that year, if—
 - (a) the compulsory rights order had not been made, and the authorisation referred to in that order had not been granted and no application had been made for such an authorisation;
 - (b) the land had then been in the state in which it was immediately before the operative date of the order; and
 - (c) the land had then been available for letting with vacant possession.
- (4) In determining for any year the annual value of land constituting so much of a holding as is not comprised in the compulsory rights order in question, the appropriate circumstances, for the purposes of subsection (2) of this section, shall be taken to be the circumstances which would have existed, immediately before the beginning of that year, if (all other relevant factors being taken to be as they actually were at that time) that land had been in the state in which it was immediately before the operative date, and had been available for letting with vacant possession.
- (5) In the application of this section to Scotland, for the reference to Part III of the Act of 1947 there shall be substituted a reference to Part II of the Scottish Act of 1947.

19 Additional annual compensation

- (1) For each year for which compensation is payable in respect of a holding by virtue of section seventeen of this Act, there shall be assessed the profit or loss which an occupier of the holding might reasonably have been expected to make for that year from his occupation of the holding if—
 - (a) the compulsory rights order had not been made ;
 - (b) he were the occupier of the holding under a tenancy at a rent equal to the annual value of the holding for that year, as determined in accordance with subsections (2) and (3) of the last preceding section ; and
 - (c) his use of the holding in that year, and his standard of efficiency in using it, had been the same as the use to which the holding was put, and the standard of efficiency attained in using it, in the period preceding the operative date of the order.
- (2) Subject to the following provisions of this section, for any year for which the assessment under the preceding subsection shows a profit, the compensation payable in respect of the holding by virtue of section seventeen of this Act shall include a sum equal to that profit.
- (3) Where the profit or loss referred to in subsection (1) of this section is assessed for any year in respect of a holding of which only part is comprised in the compulsory rights order in question, there shall also be assessed the profit or loss which an occupier of the remainder of the holding might reasonably have been expected to make for that year from his occupation of the land constituting that remainder, if he were the occupier of that land under a tenancy at a rent equal to the annual value of that land for that year, as determined in accordance with the next following subsection.
- (4) Subsection (2) of the last preceding section shall apply for the purposes of the last preceding subsection as it applies for the purposes of that section, so however that the appropriate circumstances referred to in the said subsection (2), in relation to any year for which annual value falls to be determined for the purposes of the last preceding subsection, shall be taken to be the circumstances which would have existed, immediately before the beginning of that year, if—
 - (a) the compulsory rights order had not been made, and the authorisation referred to in that order had not been granted and no application had been made for such an authorisation;
 - (b) the land constituting the remainder of the holding had been in the state in which it was immediately before the operative date, and had been available for letting with vacant possession;
 - (c) all other relevant factors had been as they actually were immediately before the beginning of that year.
- (5) In determining, for the purposes of subsection (3) of this section, what profit or loss might reasonably have been expected to be made from the occupation of the land constituting the remainder of the holding, it shall be assumed that an occupier of that land could not reasonably have been expected—
 - (a) to use, otherwise than for agricultural purposes, land which in the period preceding the operative date of the order was used for agricultural purposes, or
 - (b) to change the use of any land which in that period was used otherwise than for agricultural purposes.
- (6) When the profit or loss for any year on the part retained has been assessed.—

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- (a) if it is a profit, and the assessment for that year on the entirety of the holding shows a profit, the amount of the profit on the part retained shall be deducted from the amount of the profit on the entirety of the holding;
 - (b) if the assessment for that year on the part retained shows a loss, but the assessment for that year on the entirety of the holding shows a profit, the amount of the loss on the part retained shall be added to the amount of the profit on the entirety of the holding;
 - (c) if the assessment for that year on the part retained shows a loss, and the assessment for that year on the entirety of the holding also shows a loss, but a smaller loss than the loss on the part retained, the difference between the two losses shall be ascertained, and the assessment on the entirety of the holding shall be treated as if it had shown a profit equal to the amount of the difference;
- and accordingly the reference in subsection (2) of this section to a profit shown for any year by the assessment under subsection (1) of this section shall be construed as a reference to a profit shown for that year in accordance with that assessment as adjusted under this subsection.

(7) In the last preceding subsection—

- (a) any reference to the assessment for any year on the entirety of the holding is a reference to the assessment for that year under subsection (1) of this section, and any reference to profit Or loss for any year on the entirety of the holding is a reference to profit or loss shown by the assessment for that year under the said subsection (1);
- (b) any reference to the assessment for any year on the part retained is a reference to the assessment for that year under subsection (3) of this section, and any reference to profit or loss for any year on the part retained is a reference to profit or loss shown by the assessment for that year under the said subsection (3).

(8) For the purposes of this section—

- (a) any reference to the period preceding the operative date of a compulsory rights order shall be construed as a reference to the period of four years immediately preceding that date;
- (b) the use of land in that period shall be determined by reference to that period taken as a whole ; and
- (c) the standard of efficiency attained in that period shall be determined by reference to the average standard so attained.

20 Special compensation for cost of removal

- (1) Where compensation is payable by virtue of section seventeen of this Act in respect of a holding for the year beginning with the operative date of a compulsory rights order, the compensation payable for that year by virtue of that section shall (in addition to any sum payable in accordance with section eighteen or section nineteen of this Act) include the amount of any expenses reasonably incurred by the person entitled to the compensation which are directly attributable to his being required to vacate so much of the holding as is comprised in the order.
- (2) Without prejudice to the generality of the preceding subsection, the expenses referred to in that subsection shall be taken to include any expenses reasonably incurred by the person therein mentioned in procuring the cancellation or modification of a contract in

force immediately before the operative date, in so far as it is a contract for the supply of goods or the rendering of services which—

- (a) would have been required by him for the purposes of the holding if the order had not been made, but
- (b) in consequence of his being required to vacate so much of the holding as is comprised in the order, are not required for those purposes.

21 Terminal compensation

- (1) Where a compulsory rights order comprises the whole or part of a holding to which this section applies, the provisions of this and the two next following sections shall have effect as to compensation payable by the Board in respect of that holding.
- (2) Subsection (2) of section seventeen of this Act shall have effect in relation to this section as it has effect in relation to that section, and references to a holding to which this section applies shall be construed accordingly.
- (3) Compensation payable in respect of a holding under the provisions referred to in subsection (1) of this section shall consist of either or both of the following, that is to say—
 - (a) compensation by way of payment of cost of works, and
 - (b) compensation by reference to the diminution in value of the holding.

22 Compensation by way of payment of cost of works

- (1) Subject to the following provisions of this section, compensation by way of payment of cost of works shall, in the case of a compulsory rights order, be payable in respect of a holding to which the last preceding section applies if—
 - (a) at the end of the period of occupation, any land forming part of the holding and comprised in the order has not been restored to the condition in which it was immediately before the date of entry, and
 - (b) after the end of the period of occupation, expenses are reasonably incurred by any person in respect of work carried out (over and above the ordinary maintenance and use of the land) for the purpose of further restoring that land to or towards that condition or a condition substantially similar thereto.
- (2) Where in accordance with the preceding subsection compensation by way of payment of cost of works is payable—
 - (a) the person entitled thereto shall be the person by whom the expenses in question are incurred, and
 - (b) the compensation shall be payable from time to time as the expenses are incurred and shall be of an amount equal to the amount of the expenses.
- (3) The provisions of the Third Schedule to this Act shall have effect with respect to compensation by way of payment of cost of works under this section.

23 Compensation by reference to the diminution in value of the holding

- (1) Compensation by reference to the diminution in value of a holding to which section twenty-one of this Act applies shall be payable if the value of a freehold interest in the holding, computed in accordance with paragraph (a) of the next following subsection, or in accordance with paragraph (b) of that subsection, as the case may be, but (in either

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case) with the benefit of any prospective right to compensation by way of payment of cost of works in respect of the holding, is less than the value of such an interest computed in accordance with paragraph (c) of that subsection.

- (2) For the purposes of the preceding subsection there shall be computed the following values, that is to say.—
- (a) where the entirety of the holding is comprised in the order, the value at the end of the period of occupation of a freehold interest in the holding ;
 - (b) where part of the holding is not comprised in the order, the value which a freehold interest in the holding would have at the end of the period of occupation if that part of the holding were in the state in which it was immediately before the date of entry, the remainder of the holding being taken to be in the state in which it is at the end of the period of occupation ;
 - (c) in either case, the value which a freehold interest in the holding would have at the end of the period of occupation if the entirety of the holding were in the state in which it was immediately before the date of entry.
- (3) Where in accordance with subsection (1) of this section compensation by reference to the diminution in value of a holding is payable, the amount of the compensation shall be the amount of the difference between the values mentioned in that subsection, and the person entitled to that compensation shall be the person who at the end of the period of occupation is the owner of the holding.
- (4) In computing value as mentioned in any of paragraphs (a), (b) and (c) of subsection (2) of this section, it shall be assumed that a freehold interest in the holding is, in the circumstances mentioned in the paragraph in question, being offered for sale in the open market by a willing seller immediately after the end of the period of occupation, with vacant possession of the holding and free from incumbrances, other than any easement or similar right, any right restrictive of the use of land, and any mining lease or order conferring working rights, affecting the holding or any part thereof at that time.

24 Tenant's right to compensation for improvements and other matters

- (1) The provisions of this section shall have effect where the land comprised in a compulsory rights order consists of or includes land which—
- (a) immediately before the date of entry, constitutes or forms part of an agricultural holding, and
 - (b) is land on which, before that date, there have been carried out long-term improvements qualifying for compensation under the Act of 1948, or there has been adopted a special system of farming qualifying for compensation under that Act.

In the following provisions of this section land comprised in a compulsory rights order which falls within paragraphs (a) and (b) of this subsection is referred to as " the tenant's land " .

- (2) If at the end of the period of occupation—
- (a) the tenant's land has lost the benefit of any of the improvements, or of the special system of farming, as the case may be, and
 - (b) that land is subject to the same tenancy as immediately before the date of entry, or is subject to a subsequent tenancy under which the tenant has retained or succeeded to the relevant right to compensation,

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and the tenancy under which that land is then held continues after the end of the period of occupation, the provisions of the Act of 1948 as to compensation for long-term improvements, and as to compensation for a special system of farming, shall apply as mentioned in the next following subsection.

- (3) The said provisions of the Act of 1948 shall apply as if—
- (a) the tenant's land were in the state in which it was immediately before the date of entry, and
 - (b) the tenancy under which that land is held at the end of the period of occupation had terminated immediately after the end of that period and the tenant thereunder had then quitted the holding:

Provided that (in a case where long-term improvements qualifying for compensation under the Act of 1948 had been carried out on the tenant's land) if the tenant's land has lost the benefit of some of those improvements, but has not lost the benefit of all of them, those provisions of the Act of 1948 shall apply as mentioned in paragraphs (a) and (b) of this subsection, but as if the improvements of which the tenant's land has not lost the benefit had not been long-term improvements qualifying for compensation under that Act.

- (4) For the purposes of subsections (2) and (3) of this section—
- (a) the tenant's land shall be taken to have lost the benefit of a long-term improvement if the benefit of that improvement has been lost (wholly or in part) without being replaced by another long-term improvement of comparable benefit to the land;
 - (b) the tenant's land shall be taken to have lost the benefit of a special system of farming if the increased value attributable to that system of farming has been lost (wholly or in part) without being regained by the continuous adoption of a system of farming of comparable benefit to the land.
- (5) For the purposes of paragraph (b) of subsection (2) of this section, the tenant's land shall be taken to be subject to such a subsequent tenancy as is therein mentioned if either—
- (a) by virtue of section forty-four or section fifty-four of the Act of 1948 (which relate respectively to improvements made during one of a series of tenancies) the same tenant would have the like right to compensation in right of the subsequent tenancy as he would have had in right of the previous tenancy, or
 - (b) by virtue of section forty-five or section fifty-five of the Act of 1948 (which relate respectively to improvements paid for by an incoming tenant) the tenant under the subsequent tenancy would have the like right to compensation as the tenant would have had under the previous tenancy.
- (6) The provisions of the Act of 1948 referred to in subsection (2) of this section shall be taken to include any provisions of that Act as to the making of claims for any such compensation as is mentioned in that subsection, as to the calculation of any such compensation and the settlement or determination of such claims, as to the recovery of any such compensation, and as to any other matters incidental thereto:

Provided that—

- (a) any provisions of the Act of 1948 as to the giving of notice of intention to make a claim shall apply with the modification that the time for giving such a notice shall be any time not later than three months after the end of the period of occupation;

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- (b) subsection (3) of section seventy of that Act (which relates to the time for settling such claims) shall apply with the substitution, for the reference to four months from the termination of the tenancy, of a reference to five months from the end of the period of occupation.
- (7) In this section—
- (a) any reference to long-term improvements qualifying for compensation under the Act of 1948 is a reference to long-term improvements in respect of which, immediately before the date of entry, a tenant of the agricultural holding in question had a prospective right to compensation under that Act on quitting the holding on the termination of his tenancy ;
 - (b) any reference to a special system of farming qualifying for compensation under the Act of 1948 is a reference to a system of farming in respect of which, immediately before the date of entry, a tenant of the agricultural holding in question had a prospective right to compensation under section fifty-six of that Act on quitting the holding on the termination of his tenancy.
- (8) In determining whether the conditions specified in paragraph (a) or paragraph (b) of the last preceding subsection are fulfilled, no account shall be taken of any provision of the Act of 1948 whereby a right to compensation is conditional upon the making of a claim, or the giving of notice of intention to make a claim, or is liable to be affected by the service of a notice by the landlord.
- (9) In this Act " long-term improvement " means any improvement (whether begun before or after the first day of March, nineteen hundred and forty-eight) of a description specified in Part I or Part II of the Third Schedule to the Act of 1948.
- (10) In the application of this section to Scotland, for references to the Act of 1948, to sections forty-four, forty-five, fifty-four, fifty-five, fifty-six and seventy of that Act, to Parts I and II of the Third Schedule to that Act, and to the first day of March, nineteen hundred and forty-eight, there shall be substituted respectively references to the Scottish Act of 1949, to sections forty-five, forty-six, fifty-four, fifty-five, fifty-six and sixty-eight of that Act, to Parts I and II of the First Schedule to that Act, and to the first day of November, nineteen hundred and forty-eight.

25 Deductions from tenant's compensation

- (1) Where a tenant of an agricultural holding is entitled to compensation under section twenty-four of this Act in respect of land constituting or forming part of that holding, there shall be deducted from the amount of that compensation, calculated apart from this subsection, the amount of any compensation which would have been recoverable from the tenant by the landlord—
- (a) under section fifty-seven of the Act of 1948 (which relates to compensation for dilapidation, deterioration or damage for which the tenant is responsible), or
 - (b) under section fifty-eight of that Act (which relates to compensation for general reduction in the value of the holding due to the tenant's failure to fulfil his responsibilities),

if the tenancy under which that land was held immediately before the date of entry had terminated immediately before that date and the tenant thereunder had then quitted the holding on the termination of his tenancy :

Provided, that for the purposes of this subsection, no account shall be taken of any dilapidation or deterioration of, or damage to, any part of the holding which was not

comprised in the compulsory rights order, or of any reduction in the value of any such part of the holding.

- (2) For the purposes of the last preceding subsection, any provision of the Act of 1948, whereby any right to compensation is conditional upon the making of a claim, or the giving of notice of intention to make a claim, shall be disregarded.
- (3) In the application of this section to Scotland, for references to the Act of 1948 and to sections fifty-seven and fifty-eight of that Act there shall be substituted respectively references to the Scottish Act of 1949 and to sections fifty-seven and fifty-eight of that Act.

26 Compensation for short-term improvements and related matters

- (1) Where, in the exercise of rights conferred by a compulsory rights order, the Board occupy any land which, immediately before the date of entry, was agricultural land, compensation shall be payable by the Board in respect of any improvements or other matters to which this section applies in relation to that land.
- (2) This section applies, in relation to any land,—
 - (a) to any improvements, of a description specified in Part I of the Fourth Schedule to this Act, which had been carried out on that land before the date of entry, and
 - (b) to any matters, of a description specified in Part II of the Fourth Schedule to this Act, which applied to that land immediately before that date:

Provided that, in relation to land which, immediately before the date of entry, was not occupied by a tenant, Part II of the Fourth Schedule to this Act shall apply subject to the modifications specified in Part III of that Schedule.

- (3) Where compensation is payable by the Board under this section in respect of any improvements or other matters, the compensation shall be of an amount equal to the amount of the compensation which would have been payable in respect of those improvements or matters under the Act of 1948 if—
 - (a) where the land in question did not form part of an agricultural holding immediately before the date of entry, it had formed part of such a holding immediately before that date, and
 - (b) in any case, the tenancy of the agricultural holding comprising that land had terminated on the date of entry and the tenant thereunder had then quitted the holding.
- (4) The person entitled to any compensation payable by virtue of this section—
 - (a) in the case of land which, immediately before the date of entry, was occupied by a tenant, shall be that tenant, and
 - (b) in any other case, shall be the person who was the owner of the land immediately before the date of entry.
- (5) If, by virtue of the power conferred by section seventy-eight of the Act of 1948, the provisions of the Fourth Schedule to that Act are varied, the Minister may by order make such corresponding variations in the provisions of Parts I, II and III of the Fourth Schedule to this Act as he may consider appropriate.
- (6) In the application of this section to Scotland, the following subsection shall be substituted for subsection (2) of this section:—

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“(2) This section applies, in relation to any land, to any improvements of a description specified in Part IV of the Fourth Schedule to this Act, which had been carried out on that land before the date of entry:

Provided that, in relation to land which, immediately before the date of entry, is not occupied by a tenant, Part IV of that Schedule shall apply subject to the modifications set out in Part V of that Schedule”;

in subsection (3) of this section for the reference to the Act of 1948. there shall be substituted a reference to the Scottish Act of 1949; and in subsection (5) of this section, for the references to section seventy-eight of the Act of 1948 and to the Fourth Schedule to that Act there shall be substituted respectively references to section seventy-nine of the Scottish Act of 1949 and to Part III of the First Schedule to that Act, and for the reference to Parts I, II and III of the Fourth Schedule to this Act there shall be substituted a reference to Parts IV and V of that Schedule.

27 Compensation in respect of forced sales

- (1) Where, in consequence of the confirmation of a compulsory rights order, a person incurs a loss in respect of a forced sale of any property consisting of—
 - (a) livestock, vehicles, plant, equipment or other chattels which are kept on a holding to which (when the order becomes operative) section seventeen of this Act applies, or which are used for the purposes of such a holding, or
 - (b) a fixture or building (not falling within the preceding paragraph) which he has removed from such a holding in pursuance of section thirteen of the Act of 1948,
 he shall, subject to the following provisions of this section, be entitled to compensation from the Board of an amount equal to that loss.
- (2) The preceding subsection shall not apply except where the person incurring the loss is the person who is for the time being entitled to occupy so much of the holding as is comprised in the order, or would be entitled for the time being to occupy it if the order had not been made.
- (3) A person shall not be entitled to compensation under this section in respect of a forced sale unless he has given to the Board not less than ten days' notice of the intended sale, and has, before the sale, afforded to the Board reasonable facilities to inspect the property intended to be sold, in so far as he was in a position to afford such facilities.
- (4) In the application of this section to Scotland, for the reference to section thirteen of the Act of 1948 there shall be substituted a reference to section fourteen of the Scottish Act of 1949.

28 Special provisions as to market gardens

- (1) The provisions of this section shall have effect where the land comprised in a compulsory rights order consists of or includes land which, immediately before the date of entry, was agricultural land used as a market garden.
- (2) Subject to the next following subsection, section twenty-six of this Act shall have effect in relation to that land as if the descriptions of improvements specified in Part VI of the Fourth Schedule to this Act were included among the descriptions of improvements specified in Part I of that Schedule.

- (3) Where the land in question, immediately before the date of entry, was occupied by a tenant, the last preceding subsection shall not apply to any improvements of a description specified in Part VI of the Fourth Schedule to this Act unless they are improvements in respect of which section sixty-seven of the Act of 1948 (which relates to market gardens) has effect, whether by virtue of an agreement or of a direction given under subsection (1) of section sixty-eight of that Act.
- (4) In relation to land falling within subsection (1) of this section, any reference in the preceding provisions of this Part of this Act to rights under section thirteen of the Act of 1948 shall include a reference under that section as extended by paragraph (b) of subsection (1) of section sixty-seven of the Act of 1948.
- (5) If, by virtue of the power conferred by section seventy-eight of the Act of 1948, the provisions of the Fifth Schedule to that Act are varied, the Minister may by order make such corresponding variations in the provisions of Part VI of the Fourth Schedule to this Act as he may consider appropriate.
- (6) In the application of this section to Scotland, for the references to section sixty-seven of the Act of 1948 and to paragraph (b) of subsection (1) of that section, there shall be substituted respectively references to section sixty-five of the Scottish Act of 1949 and to paragraph (b) of subsection (1) of that section; for the references to subsection (1) of section sixty-eight of the Act of 1948 and to section thirteen of that Act there shall be substituted respectively references to subsection (1) of section sixty-six of the Scottish Act of 1949 and to section fourteen of that Act; for the references to section seventy-eight of the Act of 1948 and to the Fifth Schedule to that Act there shall be substituted respectively references to section seventy-nine of the Scottish Act of 1949 and to the Fourth Schedule to that Act; and for the reference to Part I of the Fourth Schedule to this Act there shall be substituted a reference to Part IV of that Schedule.