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*Changes to legislation: There are currently no known outstanding effects for the Opencast Coal Act 1958, EIGHTH SCHEDULE. (See end of Document for details)*

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## SCHEDULES

### EIGHTH SCHEDULE

#### TENANCIES OF ALLOTMENT GARDENS AND OTHER ALLOTMENTS

- 1 (1) In this Schedule—
- “the Act of 1908” means the <sup>M1</sup>Small Holdings and Allotments Act 1908;
  - “the Act of 1922” means the <sup>M2</sup>Allotments Act 1922;
  - “allotment tenancy” means a tenancy under which land is occupied by the tenant and is either—
    - (a) land let under that tenancy for use by the tenant as an allotment garden, or
    - (b) an allotment, not being an allotment garden.
- (2) Subsection (4) of section twenty-two of the Act of 1922 (whereby land used by the tenant thereof as an allotment garden is to be presumed to have been let for use by him as an allotment garden) shall apply for the purposes of this Schedule as it applies for the purposes of that Act.

#### Marginal Citations

- M1** 1908 c. 36.  
**M2** 1922 c. 51.

- 2 Where the land comprised in a compulsory rights order consists of or includes any land which, immediately before the operative date of the order, is occupied (with or without other land) under an allotment tenancy, that tenancy (if not previously terminated) shall terminate by virtue of this paragraph on the date of entry.
- 3 (1) On the termination of an allotment tenancy by virtue of the last preceding paragraph, the tenant under that tenancy shall not be entitled to any compensation from his landlord by virtue of the Act of 1908 or the Act of 1922 or the <sup>M3</sup>Allotments Act 1950, or by virtue of any other enactment relating to allotments, but the following provisions of this paragraph shall have effect as to compensation payable by [<sup>F1</sup>the person on whose application the order was made]to the tenant in respect of the termination of that tenancy.
- (2) Subject to sub-paragraph (4) of this paragraph, the amount of the compensation payable in respect of an allotment tenancy under this paragraph shall be the amount of the compensation (if any) to which, under any of the enactments mentioned in the next following sub-paragraph, the tenant under that tenancy would have been entitled from his landlord, on quitting the land on the termination of his tenancy, if—
  - (a) the tenancy had been terminated by the landlord as from the date of entry, and
  - (b) in the case of an allotment garden, the tenancy had been so terminated by such re-entry as is mentioned in subsection (2) of section two of the Act of 1922.
- (3) The said enactments are the following, that is to say,—

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- (a) sections two, three and five of the Act of 1922; and
- (b) section forty-seven of the Act of 1908.

- (4) In addition to any amount payable in accordance with sub-paragraph (2) of this paragraph, compensation shall be payable under this paragraph in respect of an allotment tenancy of an amount equal to one year's rent under that tenancy, at the rate at which rent was payable thereunder immediately before the date on which the compulsory rights order was made:

Provided that, if the tenancy did not subsist at the time when the order was made, the amount payable by virtue of this sub-paragraph shall be equal to one year's rent at such rate as would have represented a reasonable rent in relation to that tenancy if the order had not been made.

#### Textual Amendments

- F1** Words in [Sch. 8 para. 3](#) substituted (31.10.1994) by [1994 c. 21, s. 52, Sch. 8 para. 43\(1\)](#) (with [s. 40\(7\)](#)); [S.I. 1994/2553, art. 2](#)

#### Marginal Citations

- M3** [1950 c. 31](#).

- 4 In determining the amount of any compensation payable <sup>F2</sup>. . . under the last preceding paragraph, no account shall be taken of any sum due to the landlord from the tenant, or of any right which the landlord would have had (under the Allotments Act 1950, or otherwise) to deduct any sum so due.

#### Textual Amendments

- F2** Words in [Sch. 8 para. 4](#) repealed (31.10.1994) by [1994 c. 21, ss. 52, 67, Sch. 8 para. 43\(2\), Sch. 11 Pt. II](#)

- 5 (1) Where in consequence of the confirmation of a compulsory rights order the tenant under an allotment tenancy incurs a loss in respect of a forced sale of any trees, bushes, structures, improvements or other property which, in pursuance of section four or section five of the Act of 1922, or of subsection (4) of section forty-seven of the Act of 1908, he has removed from the land which was comprised in the tenancy, he shall, subject to the following provisions of this paragraph, be entitled to compensation <sup>F3</sup>. . . of an amount equal to that loss.

[<sup>F4</sup>(1A) Compensation under this paragraph shall be payable by the person by whom it would be payable if it were compensation under section 27 of this Act.]

- (2) Subsection (3) of section twenty-seven of this Act shall apply for the purposes of this paragraph as it applies for the purposes of that section.
- (3) The preceding provisions of this paragraph shall have effect without prejudice to any right to compensation under the said section twenty-seven as applied by section twenty-nine of this Act; but compensation shall not be payable under this paragraph in respect of a forced sale if compensation is payable in respect thereof under the said section twenty-seven as so applied.

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#### Textual Amendments

- F3** Words in Sch. 8 para. 5 repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 43(3), **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F4** Sch. 8 para. 5(1A) inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 43(3)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

- 6 (1) Any compensation payable under paragraph 3 of this Schedule shall accrue due on the date of entry.
- (2) Any compensation payable under the last preceding paragraph in respect of a forced sale shall accrue due on the effective date of the sale, or, if that date was before the operative date of the order, shall be treated as having accrued due on the effective date of the sale.
- (3) Subsections (7) and (8) of section thirty-five of this Act shall apply in relation to any compensation payable<sup>F5</sup> . . . under this Schedule as they apply in relation to any such compensation as is referred to in subsection (7) of that section, and “effective date” in this paragraph has the same meaning as in that section.

#### Textual Amendments

- F5** Words in Sch. 8 para. 6(3) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 13(4), **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**

- 7 Any dispute—
- (a) as to a right to compensation<sup>F6</sup> . . . under this Schedule, or as to the amount of any such compensation, or
- (b) as to a right to compensation<sup>F6</sup> . . . under section seventeen of this Act, as applied by section twenty-nine thereof, in respect of a holding consisting exclusively of land occupied under an allotment tenancy, or as to the amount of any such compensation,
- shall, notwithstanding anything in subsection (3) of section forty of this Act, be determined by a valuation made by a person appointed in default of agreement by<sup>F7</sup> . . . the county court<sup>F7</sup> . . ., on an application in writing made for the purpose by the person claiming the compensation or by [<sup>F8</sup>the person from whom it is claimed].

#### Textual Amendments

- F6** Words in Sch. 8 para. 7(a)(b) repealed (31.10.1994) by 1994 c. 21, ss. 52, 67, Sch. 8 para. 43(5)(a), **Sch. 11 Pt. II** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F7** Words in Sch. EIGHTH para. 7 omitted (22.4.2014) by virtue of Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 22**; S.I. 2014/954, **art. 2(c)** (with **art. 3**) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F8** Words in Sch. 8 para. 7 substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 43(5)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

#### Modifications etc. (not altering text)

- C1** Reference to judge of county court to be construed as reference to judge assigned to county court district or acting as judge so assigned: Courts Act 1971 (c. 23), **Sch. 8 Pt. I para. 2**

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- 8 Subsection (2) of section six of the Act of 1922 (which relates to the charges of the valuer for a valuation under that section) shall apply in relation to a valuation under the last preceding paragraph as it applies in relation to a valuation under that section, with the substitution, for the reference to the landlord, of a reference to <sup>F9</sup>the person from whom the compensation under this Schedule is claimed] .

**Textual Amendments**

**F9** Words in Sch. 8 para. 8 substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 43(6) (with s. 40(7)); S.I. 1994/2553, art. 2

- 9 (1) Where on the termination of an allotment tenancy any compensation is payable by virtue of sub-paragraph (2) of paragraph 3 of this Schedule, in respect of any matters referred to in the enactments mentioned in sub-paragraph (3) of that paragraph, and the land which, immediately before the operative date of the compulsory rights order in question, was occupied under that tenancy constitutes a holding to which section twenty-nine of this Act applies, sections twenty-two and twenty-three of this Act shall apply in relation to that holding subject to the following provisions of this paragraph.
- (2) The said section twenty-two shall apply in relation to the holding as if any reference in that section to the condition in which land was immediately before the date of entry were a reference to the condition in which the land in question would have been, immediately before the date of entry, if the matters qualifying for compensation had not existed.
- (3) In the application of subsection (2) of the said section twenty-three to that holding, for the value mentioned in paragraph (c) of that subsection there shall be substituted the value which, at the end of the period of occupation, a freehold interest in the holding would have if it were then in the state in which it might reasonably have been expected to be, immediately before the date of entry, if the matters qualifying for compensation had not existed.
- (4) In this paragraph “the matters qualifying for compensation” means the matters in respect of which compensation is payable by virtue of sub-paragraph (2) of paragraph 3 of this Schedule.
- 10 In the application of this Schedule to Scotland—
- <sup>F10</sup>(a) paragraph 1 applies as if sub-paragraph (2) were omitted;]
- <sup>F11</sup>(b) sub-paragraph (1) of paragraph 3 applies as if for “the Act of 1908 or the Act of 1922 or the Allotments Act, 1950, or by virtue of any other enactment relating to allotments” there were substituted “ Part 9 of the Community Empowerment (Scotland) Act 2015 ”;]
- <sup>F12</sup>(c) sub-paragraph (2) of paragraph 3 applies as if—
- (i) for “any of the enactments mentioned in the next following sub-paragraph” there were substituted “ Part 9 of the Community Empowerment (Scotland) Act 2015 (but excluding any compensation for disturbance) ”,
- (ii) “garden” were omitted, and
- (iii) for “subsection (2) of section two of the Act of 1922” there were substituted “section 127(2) of the Community Empowerment (Scotland) Act 2015;]
- (d) sub-paragraph (3) of paragraph 3 shall be omitted;

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- (e) subject to sub-paragraph (b) of this paragraph, [<sup>F13</sup>any reference to the Allotments Act, 1950 is to be read as a reference to Part 9 of the Community Empowerment (Scotland) Act 2015] ;
- [<sup>F14</sup>(f) sub-paragraph (1) of paragraph 5 applies as if for “section four or section five of the Act of 1922, or of subsection (4) of section forty-seven of the Act of 1908” there were substituted “ section 132 of the Community Empowerment (Scotland) Act 2015 ”;]
- (g) for references to a valuation and to the judge of the county court there shall be substituted respectively references to arbitration and to the sheriff; and
- (h) paragraph 8 shall be omitted, <sup>F15</sup>...

#### Textual Amendments

- F10** Sch. EIGHTH para. 10(a) substituted (S.) (1.4.2018) by Community Empowerment (Scotland) Act 2015 (asp 6), s. 142(1), **sch. 4 para. 4(3)(a)**; S.S.I. 2017/458, art. 2, sch.
- F11** Sch. EIGHTH para. 10(b) substituted (S.) (1.4.2018) by Community Empowerment (Scotland) Act 2015 (asp 6), s. 142(1), **sch. 4 para. 4(3)(b)**; S.S.I. 2017/458, art. 2, sch. (with art. 4)
- F12** Sch. EIGHTH para. 10(c) substituted (S.) (1.4.2018) by Community Empowerment (Scotland) Act 2015 (asp 6), s. 142(1), **sch. 4 para. 4(3)(c)**; S.S.I. 2017/458, art. 2, sch. (with art. 4)
- F13** Words in Sch. EIGHTH para. 10(e) substituted (S.) (1.4.2018) by Community Empowerment (Scotland) Act 2015 (asp 6), s. 142(1), **sch. 4 para. 4(3)(d)**; S.S.I. 2017/458, art. 2, sch. (with art. 4)
- F14** Sch. EIGHTH para. 10(f) substituted (S.) (1.4.2018) by Community Empowerment (Scotland) Act 2015 (asp 6), s. 142(1), **sch. 4 para. 4(3)(e)**; S.S.I. 2017/458, art. 2, sch.
- F15** Words in Sch. EIGHTH para. 10(h) repealed (S.) (1.4.2018) by Community Empowerment (Scotland) Act 2015 (asp 6), s. 142(1), **sch. 5**; S.S.I. 2017/458, art. 2, sch. (with art. 9)

#### Modifications etc. (not altering text)

- C2** Reference to judge of county court to be construed as reference to judge assigned to county court district or acting as judge so assigned: Courts Act 1971 (c. 23), **Sch. 8 Pt. 1 para. 2**.

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