



# Opencast Coal Act 1958

## 1958 CHAPTER 69

An Act to make provision with respect to the working of coal by opencast operations, including provision for the compulsory acquisition by the National Coal Board of rights over land and provision for the payment of compensation in connection therewith ; to provide for adjustments between landlords and tenants, and in respect of mortgages, mining leases and orders conferring working rights, in consequence of the authorisation of such operations or of the acquisition by the Board of such rights over land; and for purposes connected with the matters aforesaid. [1st August, 1958]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## PART I

### AUTHORISATION OF, AND FACILITIES FOR, OPENCAST WORKING OF COAL

#### **1 Authorisation of opencast working of coal**

- (1) The National Coal Board (in this Act referred to as " the Board ") shall not work any coal by opencast operations, or cause or permit any coal to be worked by such operations, except in pursuance of an authorisation granted in that behalf by the Minister of Power (in this Act referred to as " the Minister "):

Provided that this subsection shall have effect subject to the provisions of section forty-six of this Act and to the transitional provisions having effect by virtue of section forty-eight of this Act.

- (2) The provisions of the First Schedule to this Act shall have effect with respect to authorisations under this section.

- (3) Except in so far as any rights are conferred 'upon the Board by virtue of the following provisions of this Act, an authorisation under this section shall not confer upon the Board any rights or powers to which the Board would not be entitled if this section had not been enacted.
- (4) In the following provisions of this Act any reference to the land comprised in an authorisation under this section is a reference to the aggregate of the land specified in the authorisation as land which the Board will require to occupy for the purpose of enabling authorised operations to be carried out.
- (5) In this Act " the authorised purposes ", in relation to an authorisation under this section, means either or both of the following, that is to say, the purposes—
  - (a) of working coal by opencast operations in pursuance of the authorisation, and
  - (b) of restoring land affected by the working of coal in pursuance of the authorisation or by operations connected therewith,
 and " authorised operations ", in relation to such an authorisation, means operations carried out for, or incidental to, the fulfilment of the authorised purposes.

## 2 Planning permission for authorised operations

- (1) Upon granting an authorisation under the preceding section, the Minister may direct that, in so far as the carrying out of any authorised operations, or any change in the use of land which is made for the authorised purposes, constitutes development within the meaning of the Town and Country Planning Act, 1947 (in this Act referred to as " the Act of 1947 "), permission for that development shall be deemed to be granted under Part III of that Act, subject to such conditions as may be specified in the directions.
- (2) Any directions given by the Minister under this section shall include such conditions as the Minister may consider reasonable with respect to the restoration, by or at the cost of the Board, of land worked or damaged in the course of any authorised operations:
 

Provided that, in the case of land which, at the time when the directions are given, is agricultural land, the conditions so included (except where the Minister is satisfied that the land is not likely to be used as agricultural land when it ceases to be occupied for the authorised purposes) shall be such as in the opinion of the Minister will" secure its restoration so as to be reasonably fit for use as agricultural land.
- (3) Where permission is deemed to be granted under Part III of the Act of 1947 by virtue of any directions given under this section, the provisions of that Act shall apply in relation thereto as if the permission had been granted by the Minister of Housing and Local Government on an application referred to him under section fifteen of that Act; and, in so far as any conditions specified in the directions are conditions of such a description that they could not have been imposed by that Minister on granting permission on such an application, those provisions shall apply as if the powers exercisable by that Minister by virtue of the said section fifteen included power to impose conditions of that description.
- (4) Where the Minister has granted an authorisation under the preceding section, and any of the land comprised in the authorisation is affected by a tree preservation order,—
  - (a) subject to the following provisions of this subsection, any authorised operations may be carried out as if the tree preservation order had not been made ;

- (b) in giving any directions under this section in connection with such an authorisation, in relation to land affected by a tree preservation order, the Minister shall consider what conditions (if any) should be imposed with respect to the planting of trees in place of any which may be felled in the course of the operations, or for securing the preservation of particular trees; and
  - (c) without prejudice to the last preceding paragraph, the Minister may designate any trees on that land which in his opinion should be excepted from the operation of paragraph (a) of this subsection, and that paragraph shall not apply to any trees designated by the Minister under this paragraph.
- (5) The Board shall not be entitled by virtue of the Act of 1947 or any regulations made thereunder to the payment of compensation by any local planning authority in respect of—
  - (a) any order revoking or modifying permission deemed to have been granted by virtue of directions under this section, or
  - (b) any order (not falling within the preceding paragraph) revoking or modifying permission for the working of coal by opencast operations or for any development incidental to any such working of coal, or
  - (c) any decision whereby any such permission as is mentioned in the last preceding paragraph is refused, or is granted subject to conditions, or
  - (d) any order or decision (not falling within any of the preceding paragraphs) relating to land in respect of which, immediately before that order or decision, there is in force any such permission as is mentioned in paragraph (a) or paragraph (b) of this subsection,being (in any such case) an order or decision in respect of which, apart from this subsection, a right to claim compensation from the local planning authority would have accrued after the commencement of this Act.
- (6) In this section " tree preservation order " has the meaning assigned to it by section twenty-eight of the Act of 1947.
- (7) In the application of this section to Scotland, for references to the Act of 1947, to Part III of that Act, and to sections fifteen and twenty-eight of that Act, there shall be substituted respectively references to the Town and Country Planning (Scotland) Act, 1947 (in this Act referred to as " the Scottish Act of 1947 " ), to Part II of that Act, and to sections thirteen and twenty-six of that Act; and for the references to the Minister of Housing and Local Government there shall be substituted references to the Secretary of State.

### **3 Preservation of amenity**

- (1) Where for the purposes of section one or section two of this Act—
  - (a) the Board are formulating any proposals as to the working of coal by opencast operations or the carrying out of operations connected therewith, or
  - (b) the Minister is considering any such proposals, whether in relation to the granting of an authorisation under section one or to the imposition of conditions under the last preceding sectionthe Board or the Minister, as the case may be, having regard to the desirability of preserving natural beauty, of conserving flora, fauna and geological or physiographical features of special interest, and of protecting buildings and other objects of architectural or historic interest, shall take into account any effect which the proposals

would have on the natural beauty of the countryside or on any such flora, fauna, features, buildings or objects.

- (2) The provisions of the preceding subsection shall apply, with the necessary modifications, where—
- (a) the Board are formulating any proposals as to the restoration of land affected by the working of coal by opencast operations or by operations connected therewith, or
  - (b) the Minister is considering any such proposals, whether in relation to the granting of an authorisation under section one or to the imposition of conditions under the last preceding section,
- as those provisions apply in the circumstances mentioned in the preceding subsection.

#### **4 Compulsory rights orders**

- (1) For the purpose of facilitating the working of coal by opencast operations, the Board may, by means of an order (in this Act referred to as a " compulsory rights order ") made by the Board and confirmed by the Minister, compulsorily acquire temporary rights of occupation and use of land in accordance with the following provisions of this Part of this Act:

Provided that no compulsory rights order shall be made after the end of the period of ten years beginning with the commencement of this Act.

- (2) Subject to the next following subsection, a compulsory rights order may be either—
- (a) an order (in this Act referred to as an " opencast site order ") whereby, when the order becomes operative, the Board compulsorily acquire temporary rights of occupation and use of the whole or part of the land comprised in an authorisation under section one of this Act; or
  - (b) an order (in this Act referred to as a " storage site order ") whereby, when the order becomes operative, the Board compulsorily acquire temporary rights of occupation and use of land for the purpose of storing, cleaning or sorting coal or otherwise preparing it for disposal.
- (3) A storage site order shall not be made in respect of any land unless—
- (a) possession of that land was taken in the exercise of emergency powers before the eighteenth day of December, nineteen hundred and fifty-seven ;
  - (b) possession of that land was on that day retained in the exercise of those powers for the purpose of storing, cleaning or sorting coal or otherwise preparing it for disposal, and continues to be so retained for that purpose at the time when the order is made ; and
  - (c) during the period beginning with that day and ending with the date on which the order is made, the coal stored or otherwise dealt with on that land has been wholly or mainly coal got by opencast operations.
- (4) The period for which a compulsory rights order has effect shall be a period beginning with the date on which the order becomes operative (in this Act referred to as " the operative date ") and being—
- (a) in the case of an opencast site order, a period of such duration, not exceeding ten years, as may be specified in the order;
  - (b) in the case of a storage site order, a period not extending beyond the tenth anniversary of the date of the commencement of this Act, and (subject to that limitation) of such duration as may be specified in the order:

Provided that this subsection shall have effect subject to the provisions of Part III of this Act as to the variation of orders.

- (5) The provisions of Parts I, III and IV of the First Schedule to the Acquisition of Land Act (which relate to the procedure for authorising compulsory purchases by local authorities) shall apply to compulsory rights orders, subject to the adaptations, modifications and exceptions set out in Part I of the Second Schedule to this Act.
- (6) A compulsory rights order, being an opencast site-order, may be made either before or after the granting, of an authorisation under section one of this Act to work the coal in question, so however that
  - (a) where the order is made after the relevant authorisation has been granted, the order, as from the time when it is made, shall include a reference to that authorisation ;
  - (b) where the order is made before the relevant authorisation has been granted, the Minister shall not confirm it unless he grants that authorisation, and, if he grants the authorisation and confirms the order, the order as confirmed shall include a reference to that authorisation; and
  - (c) in either case, the order, as confirmed, shall not extend to any land which is not comprised in the authorisation referred to in the order.
- (7) The Lands Clauses Acts shall not apply to the compulsory acquisition of rights by virtue of a compulsory rights order, or to the taking or retention of possession of land in the exercise of such rights.
- (8) In the application of this section to Scotland, for the reference to the Acquisition of Land Act there shall be substituted a reference to the Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947 (in this Act referred to as " the Scottish Acquisition of Land Act " ).

## **5 Effect of opencast site orders**

- (1) Subject to the following provisions of this Part of this Act, the effect of an opencast site order shall be in accordance with the provisions of this section.
- (2) The Board shall publish, serve and affix notices specifying the date on which the rights conferred by the order are to become exercisable (in this Act referred to as " the date of entry ") being a date—
  - (a) not less than fifty-six days after the first publication (in accordance with the provisions mentioned in the next following subsection) of a notice specifying that date, and
  - (b) not more than six months after the operative date.
- (3) The provisions of Part II of the Second Schedule to this Act shall have effect as to the publication, service and affixing of notices under the last preceding subsection.
- (4) As from the date of entry and during the period for which, on and after that date, the order has effect (in this Act referred to as " the period of occupation " ), the order shall confer upon the Board, and upon persons authorised by the Board, the like rights to occupy the land comprised in the order, and to exclude other persons therefrom, as if the Board had acquired a freehold interest in the entirety of that land with vacant possession and free from incumbrances of any description.

- (5) In addition to the rights mentioned in the last preceding subsection, an opencast site order shall confer upon the Board, and upon persons authorised by the Board, the right during the period of occupation, as against all persons directly concerned, to carry out, on or in relation to any of the land comprised in the order, all such operations as may appear to the Board, in relation to the authorisation referred to in the order, to be requisite for, or incidental to, the fulfilment of the authorised purposes.
- (6) Subject to the following provisions of this Act, in this Act " persons directly concerned ", in relation to an opencast site order, means persons who for the time being have any interest in any of the land comprised in the order, or have (apart from the order) a right to occupy any of that land, or are entitled to any right restrictive of the use of any of that land.

## 6 Effect of storage site orders

- (1) Subject to the provisions of this Part of this Act, the effect of a storage site order shall be in accordance with the following provisions of this section.
- (2) As from the operative date, and during the period for which, on and after that date, the order has effect (in this Act referred to as " the period of occupation "), the order shall confer upon the Board, and upon persons authorised by the Board, the like rights to occupy the land comprised in the order, and to exclude other persons therefrom, as if the Board had acquired a freehold interest in the entirety of that land with vacant possession and free from incumbrances of any description.
- (3) In addition to the rights mentioned in the last preceding subsection, a storage site order shall confer upon the Board, and upon persons authorised by the Board, the right during the period of occupation, as against all persons directly concerned, to carry out, on or in relation to any of the land comprised in the order, all such operations as may appear to the Board to be requisite for the purpose of the use of that land for storing, cleaning or sorting coal or otherwise preparing it for disposal.
- (4) Subject to the following provisions of this Act, in this Act " persons directly concerned ", in relation to a storage site order, means persons who for the time being have any interest in any of the land comprised in the order, or have (apart from the order) a right to occupy any of that land, or are entitled to any right restrictive of the use of any of that land.

## 7 General limitations on effect of compulsory rights orders

- (1) The rights conferred by a compulsory rights order in accordance with subsection (5) of section five of this Act, or in accordance with subsection (3) of section six of this Act, shall not affect any of the rights mentioned in subsection (2) or subsection (3) of this section.
- (2) Subject to the next following subsection, the said rights are:—
  - (a) any right of support for any land not comprised in the order, or for any building or structure on any such land, or any right of action of any person in so far as it arises from the withdrawal of support to which he is entitled for any such land, building or structure;
  - (b) any rights of any statutory water undertakers under any public general Act relating to the supply of water, or under any byelaw made by virtue of such an Act, or under any local enactment, in so far as (apart from this Act) the

Act, byelaw or enactment restricts, or enables the undertakers to restrict, the working of coal or other minerals, or the doing of any other act, on land comprised in the order;

- (c) any rights of any statutory undertakers, or of the body carrying on a sewerage undertaking or sewage disposal undertaking, or of any river board or other drainage authority, in respect of any apparatus on, under or over land comprised in the order, being apparatus in respect of which, at any time since the granting of the authorisation referred to in the order, the Board have been entitled to serve a notice under the provisions of the Town and Country Planning Act, 1944, applied by section thirteen of this Act.

(3) In relation to an opencast site order, the said rights also include the following:—

- (a) the rights conferred by any agreement made by the Board and for the time being in force whereby (apart from this Act) the Board are required to leave any coal un-worked;
- (b) any rights of the body carrying on a railway, canal, inland navigation, harbour or dock undertaking (not being rights falling within the last preceding subsection) under any enactment (whether contained in a public general Act or in any other Act) in so far as (apart from this Act) the enactment would operate so as—
  - (i) to restrict, or enable that body to restrict, the working of coal or other minerals on land comprised in the order which is adjacent to a railway, waterway, harbour, dock or other works situated on land not comprised in the order, being works vested in that body or works which they have any right or duty to maintain, or
  - (ii) to require, or enable that body to require, coal or other minerals on land comprised in the order to be left unworked for the protection or support of such a railway, waterway, harbour, dock or other works.

(4) Without prejudice to the preceding provisions of this section, the rights conferred by a compulsory rights order as mentioned in subsection (1) of this section—

- (a) shall not affect any right of action of a person who is not a person directly concerned, and
- (b) in the case of a person directly concerned, shall not affect any right of action of his in so far as it arises otherwise than by virtue of his being entitled to an interest in or right over land, or in so far as it arises by virtue of his being entitled to an interest in, or right over, land not comprised in the order.

(5) Nothing in the preceding provisions of this section shall affect the operation of subsection (4) of section five of this Act, or of subsection (2) of section six of this Act.

(6) Without prejudice to the preceding provisions of this section, nothing in section .five or section six of this Act shall be construed as authorising any interference with the exercise of a public right of way.

(7) Notwithstanding anything in subsection (6) of section five of this Act, or in subsection (4) of section six of this Act, a person shall not be taken to be a person directly concerned in relation to a compulsory rights order by reason only that he is entitled to any such right as is mentioned in subsection (2) or subsection (3) of this section.

(8) In this section " statutory water undertakers" and " local enactment " have the same meanings as in the Water Act, 1945.

- (9) In the application of this section to Scotland, for references to statutory water undertakers, to the Water Act, 1945, and to the Town and Country Planning Act, 1944, there shall be substituted respectively references to a local water authority, to the Water (Scotland) Act, 1946, and to the Town and Country Planning (Scotland) Act, 1945.

## **8 Limited compulsory rights orders**

- (1) A compulsory rights order (whether it is an opencast site order or a storage site order) may provide that its operation shall be limited so as to extend only to such one or more interests or rights (being interests or rights of a description mentioned in the next following subsection) as may be specified in the order.
- (2) Any interest or right specified in an order made in accordance with the preceding subsection shall be of one of the following descriptions, that is to say,—
- (a) an easement or similar right in respect of the whole or part of the land comprised in the order;
  - (b) a right restrictive of the use of the whole or part of that land;
  - (c) the interest or rights created or conferred by a mining lease or order conferring working rights in respect of minerals in or under that land or part thereof.
- (3) In relation to a compulsory rights order which provides that its operation shall be limited as mentioned in subsection (1) of this section,—
- (a) " persons directly concerned " in this Act means persons who for the time being are entitled to any interest or right specified in the order, and does not include any other person;
  - (b) subsection (4) of section five of this Act, or subsection (2) of section six of this Act, as the case may be, shall have effect as if for the words from " confer upon the Board" to the words " exclude other persons therefrom " there were substituted the words " as against all persons directly concerned", confer upon the Board, and upon persons authorised by the Board, the like right exclude persons from the land comprised in the order ";
  - (c) paragraph (b) of subsection (4) of the last preceding section shall have effect as if for the words " interest in, or right over land not comprised in the order " there were substituted the words " interest or right not specified in the order ".

## **9 Property exempt from inclusion in compulsory rights orders**

- (1) A compulsory rights order shall not comprise any part of a building which, at the time when the order is made, is a building whereof the whole or any part is occupied as a dwelling-house, or any part of the land adjacent to such a building which, at that time, is occupied) together with the whole or part of that building and either—
- (a) is within fifty yards from a part of that building, or
  - (b) not being land falling within the preceding paragraph, and not being agricultural land, forms part of a garden, yard, court or forecourt belonging to that building.
- (2) Without prejudice to the preceding subsection, an opencast site order, as confirmed by the Minister, shall not include any land which, on the date on which the authorisation referred to in the order was granted, was covered by a building, unless, on the granting of that authorisation.—
- (a) the Minister gave directions under section two of this Act;



- (b) those directions included conditions for the restoration of the building or its replacement by another building or (where a structure other than a building would be of comparable benefit to the land) by a structure of a description specified in the directions;
  - (c) those conditions were stated in the directions to be the conditions appearing to the Minister to be appropriate, having regard to the purpose for which the building was then used ; and
  - (d) those conditions specified a time within which the restoration or replacement of the building was to be completed, being a time not later than the end of the period specified in the order as the period for which the order is to have effect.
- (3) No compulsory rights order shall be made so as to comprise any land which is or has been comprised in a previous compulsory rights order as confirmed by the Minister, other than a previous order which, as so confirmed, provided that its operation should be limited as mentioned in subsection (1) of the last preceding section.
- (4) An opencast site order, as confirmed by the Minister, shall not comprise any land of which possession—
  - (a) has previously been taken in the exercise of emergency powers, and
  - (b) has at any time (whether before or after the commencement of this Act) been retained in the exercise of those powers for the purpose of working coal on that land, or on land contiguous therewith, by opencast operations, and
  - (c) has before the confirmation of the order ceased to be retained in the exercise of those powers,

unless, at the time of confirming the order, the Minister is satisfied that there are special circumstances existing at that time, or special circumstances relating to the land in question, which justify its inclusion in an opencast site order notwithstanding that possession thereof has previously been so taken and retained.

## **10 Provisions as to minerals other than coal, and as to timber, crops etc.**

- (1) A compulsory rights order shall confer upon the Board, and upon persons authorised by the Board, the right to get and carry away any minerals worked in the exercise of rights conferred by the order, in so far as any such minerals are not already the property of the Board; and any minerals got and carried away by virtue of this subsection, and removed from the land comprised in the order, shall become the property of the Board.
- (2) Where, in the exercise of rights conferred by a compulsory rights order, any trees are felled, or any buildings, fences, sheds or other fixtures or structures are dismantled, the order shall confer upon the Board, and upon persons authorised by the Board, the right to carry away and dispose of the timber, or, as the case may be, of any resulting materials; and any timber or materials carried away by virtue of this subsection, and removed from the land comprised in the order, shall become the property of the Board.
- (3) Where on the date of entry any crops are growing on any of the land comprised in a compulsory rights order, or any crops are grown on any of that land during the period of occupation, the order shall confer upon the Board, and upon persons authorised by the Board, the right during the period of occupation to harvest or lift those crops and to remove or otherwise dispose of them; and any crops harvested or lifted by virtue of this subsection shall become the property of the Board.

## 11 Registration of compulsory rights orders

- (1) As soon as may be after a compulsory rights order has been made, it shall be registered in the prescribed manner in the register of local land charges by the proper officer of the council of any county borough or county district in which the land comprised in the order, or any part of that land, is situated; and it shall be the duty of the Board to notify the making of a compulsory rights order to any such officer by whom the order is required to be so registered, and to furnish him with all necessary information relating to the order.
- (2) The power conferred by subsection (6) of section fifteen of the Land Charges Act, 1925, to make rules for giving effect to the provisions of that section shall be exercisable for giving effect to the provisions of the preceding subsection; and in the preceding subsection "prescribed" means prescribed by rules made in the exercise of that power.
- (3) Any rules made by virtue of subsection (6) of the said section fifteen as applied by the last preceding subsection shall include provision—
  - (a) for cancelling the registration of a compulsory rights order if the Minister decides not to confirm the order, or if the order is revoked, or at the end of the period for which it has effect, and
  - (b) for varying the registration of such an order if the order as confirmed by the Minister differs from the order as made, or if the order is subsequently varied.
- (4) In the application of this section to Scotland, the following subsection shall be substituted for subsections (1) to (3) of this section:—
 

“(1) As soon as may be after a compulsory rights order has been confirmed it shall be recorded by the Board in the appropriate register of sasines; and any order revoking or varying such an order shall be so recorded; and at the end of the period for which such an order has effect the Board shall so record notice that the order has ceased to have effect.”

## 12 Removal and disposal of chattels from land comprised in compulsory rights order

- (1) At any time on or after the operative date of a compulsory rights order, the Board may serve notice on the person who is for the time being entitled to possession of any chattel which is on, under or over any of the land comprised in the order, requiring him to remove it from that land within such period, not being less than fifty-six days from the date of service of the notice, as may be specified in the notice:

Provided that this subsection shall not apply to any apparatus belonging to statutory undertakers, or to the body carrying on a sewerage undertaking or sewage disposal undertaking, and used by those undertakers or that body for the purposes of their undertaking, or belonging to a river board or other drainage authority and used by that authority for the purposes of their functions.

- (2) If the person on whom a notice is served under the preceding subsection fails to comply with the notice within the period specified therein, the Board may cause the chattel to which the notice relates to be removed from the land comprised in the order, or to be removed from one part of that land to another part thereof, and shall not be liable for any loss or damage attributable to the removal except any such loss or damage which is shown to be due to failure to exercise reasonable care.

- (3) Where the Board cause a chattel to be removed under the last preceding subsection, the Board may dispose of the chattel, by sale, destruction or otherwise, as the Board may think fit, unless before the end of the period of three months beginning with the date of the removal the person for the time being entitled to possession of the chattel claims it from the Board and takes all reasonable steps for accepting custody of it.
- (4) Where a chattel is sold in the exercise of the powers conferred by the last preceding subsection, the Board shall pay the proceeds of sale to the person who was entitled to possession of the chattel immediately before the sale, and the receipt of that person shall be a sufficient discharge to the Board for those proceeds.
- (5) In this section "chattel" includes apparatus of any description, whether above or below the surface of the land.

### **13 Apparatus of statutory undertakers and other bodies**

- (1) The provisions of section twenty-five of the Town and Country Planning Act, 1944 (which relates to the extinguishment of rights, and removal of apparatus, belonging to statutory undertakers) shall have effect in relation to land which is for the time being comprised in an authorisation under section one of this Act, but shall so have effect subject to the following modifications, that is to say.—
  - (a) so much of those provisions as relates to the extinguishment of rights shall not apply;
  - (b) subject to the preceding paragraph, those provisions shall apply as if any reference to land which has been acquired or appropriated as therein mentioned were a reference to land Comprised in an authorisation under section one of this Act, and as if any reference to the purchasing or appropriating authority were a reference to the Board;
  - (c) those provisions shall apply as if any reference to a statutory undertaking included a reference to a sewerage undertaking and to a sewage disposal undertaking and any reference to the appropriate Minister were a reference to the appropriate Minister as defined by this Act; and
  - (d) subsection (4) of the said section twenty-five shall apply as if any reference to a local authority or statutory undertakers were a reference to the Board, and as if any reference to " the Minister " were a reference to the Minister of Power.
- (2) Without prejudice to the preceding subsection, the provisions of the said section twenty-five shall have effect in relation to land which is for the time being comprised in an authorisation under section one of this Act—
  - (a) subject to the modifications specified in paragraphs (a), (b) and (d) of the preceding subsection, and
  - (b) as if any reference in those provisions to the person carrying on a statutory undertaking included a reference to a river board or other drainage authority, and, in relation to a river board or other drainage authority, any reference to the carrying on of the undertaking were a reference to the performance of the functions of the authority.
- (3) Where any requirement is imposed by virtue of section twenty-five of the said Act of 1944 as applied by either of the preceding subsections, the provisions of sections twenty-six and twenty-seven of that Act (which relate to the powers, duties and obligations of statutory undertakers) and of the First and Fourth Schedules to that Act (which relate respectively to the procedure for dealing with objections under

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*Status: This is the original version (as it was originally enacted).*

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those sections and to the assessment of compensation) shall have effect in relation to that requirement (subject to the modifications specified in paragraphs (c) and (d) of subsection (1) of this section, or, as the case may be, subject to those modifications and the further modifications specified in paragraph (b) of the last preceding subsection) as if it were a requirement imposed under the said section twenty-five as applied for the purposes of Part IV of the Act of 1947.

- (4) For the avoidance of doubt, it is hereby declared that the provisions referred to in the preceding subsections apply in accordance with those subsections in relation to land which is comprised in an authorisation under section one of this Act and constitutes the site of a highway which is for the time being stopped up or diverted (whether permanently or temporarily) by virtue of any enactment, as those provisions apply in relation to other land comprised in such an authorisation.
- (5) Subsection (3) of section thirty-two of the Mineral Workings Act, 1951 (which applies the provisions of the said section twenty-five to highways stopped up or diverted by virtue of section forty-nine of the Act of 1947), shall not apply to land constituting the site of a highway which is for the time being comprised in an authorisation under section one of this Act.
- (6) In the application of this section to Scotland, for references to sections twenty-five, twenty-six and twenty-seven of the Town and Country Planning Act, 1944, and to the First and Fourth Schedules to that Act, there shall be substituted respectively references to sections twenty-four, twenty-five and twenty-six of the Town and Country Planning (Scotland) Act, 1945, and to the First and Fourth Schedules to that Act; for references to section forty-nine of the Act of 1947 and to Part IV of that Act there shall be substituted respectively references to section forty-six of the Scottish Act of 1947 and to Part III of that Act; " highway " includes a public right of way ; and in paragraph (d) of subsection (1), for the words " the Minister " there shall be substituted the words " the Secretary of State ".

## **14 Provisions as to agricultural tenancies**

- (1) Without prejudice to the provisions of Part III of this Act as to matters arising between landlords and tenants in consequence of compulsory rights orders, the provisions of this section shall have effect where—
  - (a) an authorisation is granted under section one of this Act, and
  - (b) immediately before that authorisation becomes operative, any of the land comprised therein consists of an agricultural holding or part of an agricultural holding,
 whether any of that land is comprised in a compulsory rights order or not.
- (2) For the purposes of the Agricultural Holdings Act, 1948 (in this Act referred to as " the Act of 1948 ")—
  - (a) the holding shall not be taken to have ceased to be an agricultural holding, and
  - (b) where only part of the holding is comprised in the authorisation, that part shall not be taken to have ceased to form part of an agricultural holding,
 by reason only that, while occupied or used for the authorised purposes, the land is not being used for agriculture within the meaning of that Act.
- (3) For the purposes of the Act of 1948, the tenant of the holding shall not be taken to have failed to fulfil his responsibilities to farm in accordance with the rules of good husbandry—

- (a) by reason of his having permitted any of the land comprised in the authorisation to be occupied for the authorised purposes, or by reason of any other thing, done or omitted by the tenant for facilitating the use of any of that land for those purposes, or
  - (b) where any of that land is comprised in a compulsory rights order, by reason of the occupation or use of any of that land in the exercise of rights conferred by the order, in so far as that occupation or use was not permitted or facilitated by the tenant as mentioned in the preceding paragraph.
- (4) For the purposes of the Act of 1948 nothing done or omitted by the tenant or by the landlord of the holding by way of permitting any of the land comprised in the authorisation to be occupied for the authorised purposes, or by way of facilitating the use of any of that land for those purposes, shall be taken to be a breach of any term or condition of the tenancy, either on the part of the tenant or on the part of the landlord.
- (5) For the purposes of paragraph (b) of subsection (2) of section twenty-four of the Act of 1948 (which relates to a notice to quit given on the ground that the land is required for a use, other than for agriculture, for which planning permission has been granted, or for which planning permission is not required) no account shall be taken of the provisions of section two of this Act, and that paragraph shall apply as if section two of this Act had not been enacted.
- (6) For the purposes of subsection (1) of section twenty-five of the Act of 1948 (which specifies conditions for the giving of consent under section twenty-four of that Act to the operation of a notice to quit) the condition specified in paragraph (e) of that subsection shall not be treated as satisfied if the use, for the purpose of which the landlord proposes to terminate the tenancy, is the use of the land for the authorised purposes.
- (7) On a reference to arbitration under section eight of the Act of 1948 with respect to the rent which should be properly payable for the holding, in respect of any period for which the Board are in occupation of the holding, or of any part thereof, for the authorised purposes, the arbitrator shall not take into account any increase or diminution in the rental value of the holding, in so far as that increase or diminution is attributable to the occupation of the holding, or of that part of the holding, by the Board for those purposes, or to any authorised operations.
- (8) For the purposes of the operation of section nine of the Act of 1948 (which relates to increases of rent for improvements carried out by the landlord) in relation to an improvement carried out on the holding, in a case where the improvement has been affected by any authorised operations, the increase (if any) of the rental value of the holding attributable to the carrying out of the improvement shall be assessed as if those operations, in so far as they have affected the improvement, had not been carried out.
- (9) In the application of this section to Scotland—
  - (a) for the references to the Act of 1948, to sections eight and nine of that Act, to paragraph (b) of subsection (2) of section twenty-four of that Act, to subsection (1) of section twenty-five of that Act and to paragraph (e) of the said subsection (1), there shall be substituted respectively references to the Agricultural Holdings (Scotland) Act, 1949 (in this Act referred to as " the Scottish Act of 1949 " ), to sections seven and eight of that Act, to paragraph (c) of subsection (2) of section twenty-five of that Act, to subsection (1) of section twenty-six of that Act, and to paragraph (e) of subsection (1) of the said section twenty-six;

- (b) for references to an arbitrator there shall be substituted references to an arbiter; and
- (c) at the end of subsection (5) of this section there shall be added the words " and the use of any of the land comprised in the authorisation for the authorised purposes shall not be a use for the purpose of which the landlord shall be entitled to resume the land ".

## **15 Suspension of certain public rights of way**

- (1) Where an application is made to the Minister for an authorisation under section one of this Act, and over any part of the land described in the application as land which the Board will require to occupy there subsists a public right of way, not being a right enjoyable by vehicular traffic, the provisions of section three of the Acquisition of Land Act (which relates to the extinguishment of such public rights of way over land acquired) shall apply in relation to that right of way, subject to the modifications specified in the following provisions of this section.
- (2) For the purposes of the application of that section in accordance with the preceding subsection—
  - (a) any reference to the extinguishment of a public right of way by an order under that section shall be construed as a reference to the suspension of a public right of way by such an order while the order remains in force;
  - (b) any reference to the Minister of Housing and Local Government shall be construed as a reference to the Minister;
  - (c) any reference to the provision of a suitable alternative right of way shall be construed as a reference to the making of a suitable alternative way available for use by the public during the period for which the order under that section remains in force ;
  - (d) any reference to the acquiring authority shall be construed as a reference to the Board ;
  - (e) any reference to land acquired or proposed to be acquired as mentioned in subsection (1) of that section shall be construed as a reference to land described in the application as mentioned in subsection (1) of this section.
- (3) The Minister shall not make an order suspending a right of way under the said section three as applied by this section unless he has granted an authorisation under section one of this Act comprising the land over which the right of way subsists:

Provided that this subsection shall not prevent any steps preparatory to the making of such an order from being taken at any time after an application for the authorisation has been made and before it is granted.

- (4) An order made under the said section three as applied by this section may suspend the right of way in question as from such time (not being earlier than the making of the order) as may be specified in the order, and accordingly sub-paragraphs (i) to (iii) of subsection (1) of that section, and the proviso to that subsection, shall not apply; but, where such an order has been made in connection with an authorisation under section one of this Act, the Minister shall revoke the order—
  - (a) if no authorised operations have been carried out in pursuance of that authorisation, and the Minister is satisfied that there is no early prospect of their being carried out, or

- (b) as soon after such operations have been carried out as he is satisfied that it is no longer necessary for the fulfilment of the authorised purposes that the right of way should be suspended.
- (5) An order made in respect of a right of way under the said section three as applied by this section shall include such provisions as may appear to the Minister 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 in accordance with the provisions of subsection (3) of the said section three as applied by this section a public local inquiry is to be held, and in accordance with the provisions of the First Schedule to this Act a public local inquiry is to be held with respect to the relevant application for an authorisation under section one of this Act, the Minister may direct that those inquiries (including, in a case falling within paragraph 6 of that Schedule, any inquiry relating to a compulsory rights order on which proceedings are to be taken concurrently with the proceedings relating to the application for an authorisation) shall be held concurrently.
- (7) Where the Minister makes an order under the said section three, as applied by this section, in respect of a public right of way over any land, and grants an authorisation under section one of this Act in respect of that land, and the order is expressed to be made on the footing that a suitable alternative way will be made available by the Board (whether on land comprised in the authorisation or on other land) for use by the public during the period for which the order remains in force.—
  - (a) the order may provide that, in so far as the carrying out of any operations, or any change in the use of land, involved in making that alternative way so available, or in permitting it to be used by the public, constitutes development within the meaning of the Act of 1947, 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 an order includes provisions in accordance with the preceding paragraph, subsection (3) of section two of this Act shall apply in relation to those provisions as it applies in relation to directions given under that section;
  - (c) if a compulsory rights order referring to that authorisation is made, then, in the application to that order of subsection (5) of section five of this Act, the authorised purposes shall be taken to include the purpose of making an alternative way available for use by the public on land comprised in the order, 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;
  - (d) if the land on which the alternative way is to be made available is specified in the order made under the said section three, as applied by this section, and is land which does not form part of, but is contiguous with, the land comprised in the authorisation, a compulsory rights order referring to that authorisation may include that land as if it were part of the land comprised in the authorisation.
- (8) In the application of this section to Scotland, for references to section three of the Acquisition of Land Act there shall be substituted references to section three of the Scottish Acquisition of Land Act, for references to the Act of 1947 and to Part III of that Act there shall be substituted respectively references to the Scottish Act of 1947 and to Part II of that Act, and for the reference to the Minister of Housing and Local Government there shall be substituted a reference to the Secretary of State.

## **16 Acquisition of rights for purposes of drainage or water supply**

- (1) For the purpose of draining land which is or has been comprised in an authorisation under section one of this Act, the Minister may authorise the Board to purchase compulsorily a right to place drainage works on any other land, whether above or below ground, and to use, repair and maintain those works, without purchasing any other interest in that land.
- (2) For the purpose of bringing a supply of water to land which is or has been comprised in an authorisation under section one of this Act, the Minister may authorise the Board to purchase compulsorily a right to place water pipes on any other land, whether above or below ground, and to use, repair and maintain those pipes, without purchasing any other interest in that land.
- (3) An order authorising the compulsory purchase of a right by virtue of this section shall specify the land (being the whole or part of the land comprised in the relevant authorisation under section one of this Act) for the benefit of which the right is to be acquired.
- (4) Any right purchased by the Board in pursuance of such an order—
  - (a) if so purchased while the Board are in occupation of the land specified in the order in accordance with the last preceding subsection, shall be exercisable by the Board, and by persons authorised by the Board, while the Board continue to be in occupation of that land;
  - (b) whether purchased while the Board are in occupation of that land or not, shall be treated for all purposes as an easement appurtenant in perpetuity to that land.
- (5) In relation to the compulsory purchase of a right by virtue of this section—
  - (a) the Acquisition of Land Act shall apply as if the Board were a local authority within the meaning of that Act and as if this Act had been in force immediately before the commencement of that Act; and
  - (b) that Act, and the enactments incorporated therewith, shall have effect as if references (whatever the terms used) to the land comprised in the compulsory purchase order were construed, where the context so requires, as references to the land on which the works or pipes are to be placed, and references to the obtaining or taking possession of the first-mentioned land were construed as references to the exercise of the right.
- (6) The provisions of section eleven of this Act shall apply in relation to a compulsory purchase order made by virtue of this section as they apply in relation to a compulsory rights order.
- (7) In this section "drainage works" includes any pipes or other works for draining land and any works accessory to such works ; and—
  - (a) any right to maintain drainage works or water pipes in pursuance of an order made by virtue of this section shall include the right to remove those works or pipes, whether for the purpose of replacing them by other drainage works or water pipes or otherwise, and
  - (b) any right to maintain drainage works on any land in pursuance of such an order shall, if the order so provides, include a right to discharge water from those works on to that land.



- (8) Nothing in this section 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 any enactment (whether contained in a public general Act or in any other Act).
- (9) In the application of this section to Scotland, for references to the Acquisition of Land Act there shall be substituted references to the Scottish Acquisition of Land Act; and for subsection (4) there shall be substituted the following subsection:—
- “(4) The title to any right purchased by the Board in pursuance of such an order shall be recorded by the Board in the appropriate register of sasines, and on the title being so recorded the right shall be exercisable in all time coming by the Board or any other person in occupation of the land specified in the order in accordance with the last preceding subsection.”

## 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.
- (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

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- (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.—
- (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 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.

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- (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,
- 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;
- (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

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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 to rights 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.

*Compensation in respect of non-agricultural land*

**29 Annual and terminal compensation, and compensation in respect of forced sales**

- (1) Where land, immediately before the operative date of a compulsory rights order.—
  - (a) was occupied as a unit, but
  - (b) was not 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.
- (2) The provisions of subsections (1), (3) and (4) of section seventeen of this Act, the provisions of sections eighteen to twenty of this Act, and the provisions of section twenty-seven of this Act, shall have effect in relation to a holding to which this section applies as they have effect in relation to a holding to which section seventeen of this Act applies:

Provided that the provisions of section twenty-seven of this Act shall have effect, in relation to a holding to which this section applies, as if, in paragraph (b) of subsection (1) of that section, for the reference to such a fixture or building as is therein mentioned, there were substituted a reference to any trade or other fixture (not falling within paragraph (a) of that subsection) which the person in question has lawfully removed from the holding.

- (3) The provisions of section twenty-one of this Act (except subsection (2) of that section) and the provisions of sections twenty-two and twenty-three of this Act shall have effect in relation to a holding to which this section applies as they have effect in relation to a holding to which section twenty-one of this Act applies.

### **30 Non-agricultural tenant's improvements**

- (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 a holding to which Part I of the Act of 1927 applies, and
  - (b) is land on which, before that date, there have been carried out improvements 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, and
  - (b) that land is subject to the same tenancy as immediately before the date of entry, and that tenancy continues until after the end of the period of occupation, the provisions of the Act of 1927 as to compensation for improvements shall apply as mentioned in the next following subsection.
- (3) The said provisions of the Act of 1927 shall apply as if—
- (a) the tenant's land were in the state in which it was immediately before the date of entry ;
  - (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 ; and
  - (c) it were established that, after the termination of that tenancy, there was no intention to demolish or make structural alterations in any premises on the tenant's land or any part of such premises or to change the use of that land or any premises thereon:

Provided that, if the tenant's land has lost the benefit of some of the improvements in question, but has not lost the benefit of all of them, those provisions of the Act of 1927 shall apply as mentioned in paragraphs (a) to (c) of this subsection, but as if the improvements of which the tenant's land has not lost the benefit had not been improvements qualifying for compensation under that Act.

- (4) For the purposes of the last preceding subsection the tenant's land shall be taken to have lost the benefit of an improvement if the benefit of that improvement has been lost (wholly or in part) without being replaced by another improvement of comparable benefit to the land.
- (5) The provisions of the Act of 1927 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 determination of such claims, as to the recovery of any such compensation, and as to any other matters incidental thereto:

Provided that the provisions of the Act of 1927 as to the making of such claims shall apply with the modification that the time for making a claim shall be any time not later than three months after the end of the period of occupation.

- (6) In this section any reference to an improvement qualifying for compensation under the Act of 1927 is a reference to an improvement in respect of which, immediately before the date of entry, the tenant of the holding in question had a prospective right to compensation under that Act on quitting the holding on the termination of his tenancy.
- (7) In determining whether the conditions specified in the last preceding subsection are fulfilled, no account shall be taken of any provisions of the Act of 1927 whereby a right to compensation is conditional upon the making of a claim, or is liable to be affected by the service of a notice by the landlord.
- (8) In this section " the Act of 1927 " means the Landlord and Tenant Act, 1927, and " improvement" includes the erection of a building.
- (9) In the application of this section to Scotland, for any reference to the Act of 1927, or to any provision thereof, there shall be substituted a reference to any term of the tenant's lease entitling him to compensation for improvements ; and paragraph (c) of subsection (3) shall be omitted.

#### *Compensation in respect of other matters*

### **31 Compensation in respect of easements and similar rights**

- (1) The provisions of this section shall have effect where, by reason of a compulsory rights order or of anything done in the exercise of rights conferred by such an order, the exercise of an easement or similar right over any land comprised in the order, or of any right restrictive of the use of any such land, is prevented or injuriously affected:

Provided that this section shall not apply to any easement or other right which consists of any such right as is mentioned in subsection (2) or subsection (3) of section seven of this Act.

- (2) For the year beginning with the operative date of the order, and for each subsequent year which begins with an anniversary of that date and falls within the period of occupation, the person for the time being entitled to the easement or right in question shall be entitled to compensation from the Board of an amount equal to the loss (if any) suffered by him by reason that the exercise of the easement or right is prevented or injuriously affected as mentioned in the preceding subsection.
- (3) Where, after the end of the period of occupation, the exercise of the easement or right continues to be prevented or injuriously affected by reason of anything done during that period in the exercise of rights conferred by the compulsory rights order.—
  - (a) if that easement or right is appurtenant to, or the benefit thereof is in any other way annexed to, any land, the person who, at the end of the period of occupation, is the owner of that land shall be entitled to compensation from the Board of an amount equal to the diminution (if any) in the value of that land, in so far as any such diminution is attributable to the fact that the exercise of the easement or right is so prevented or injuriously affected;
  - (b) in any other case, the person who at the end of the period of occupation is entitled to the right in question shall be entitled to compensation from the

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Board of an amount equal to the market value which the right would then have if its exercise were not so prevented or affected, reduced by the amount of any market value which the right actually has at the end of that period.

- (4) For the purposes of paragraph (a) of the last preceding subsection the value of the land in question shall be taken to have been diminished if (and to the extent to which) the value of a freehold interest in that land at the end of the period of occupation is less than the value which such an interest would then have if the land comprised in the order, over which the easement or right is exercisable, were in the state in which it was immediately before the date of entry ; and for the purpose of computing those values the provisions of subsection (4) of section twenty-three of this Act shall apply as they apply for the purposes of subsection (2) of that section, but with the substitution, for references to the holding, of references to the land to which the benefit of the easement or right is annexed.
- (5) In relation to common or waste lands (within the meaning of the Lands Clauses Consolidation Act, 1845) the Minister may make regulations modifying the operation of the preceding provisions of this section so as to secure that compensation under this section in respect of commonable or other rights (being rights which, if the land were being compulsorily purchased in accordance with that Act, would be subject to compensation assessed globally, and apportioned among the persons entitled to the rights) shall be assessed globally, and apportioned among the persons entitled thereto, in such manner as the Minister may consider appropriate.
- (6) In the application of this section to Scotland, for the reference to common or waste lands within the meaning of the Lands Clauses Consolidation Act, 1845, there shall be substituted a reference to lands of the nature of commonry within the meaning of the Lands Clauses Consolidation (Scotland) Act, 1845.

## **32 Compensation for depreciation of other land in same ownership**

- (1) This section applies, in relation to a compulsory rights order, to any land which—
  - (a) does not form part of the land comprised in the order, or of any holding to which section seventeen or section twenty-nine of this Act applies, but
  - (b) immediately before the operative date of the order, is land wherein the interest of the owner is held by a person who is also the owner of the whole or part of the land comprised in the order.
- (2) Where a compulsory rights order has become operative, and in the case of any land which, in relation to that order, is land to which this section applies (in this and the next following subsection referred to as " the relevant land ") it is shown that for any year (being either the year beginning with the operative date of the order, or a year beginning with an anniversary of that date and falling within the period of occupation) the annual value of the relevant land is less than the annual value of that land would have been if—
  - (a) the land comprised in the order had not included any of the owner's land comprised therein, and
  - (b) all the owner's land comprised in the order had remained in the state in which it was immediately before the operative date,

the person who is for the time being the owner of the relevant land shall be entitled to compensation from the Board for that year of an amount equal to the difference.

(3) Subsection (2) of section eighteen of this Act 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).—

- (a) in determining the annual value of the relevant land for any year, shall be taken to be the actual circumstances existing immediately before the beginning of that year, and
- (b) in determining what would have been the annual value of the relevant land in the circumstances specified in paragraphs (a) and (b) of the last preceding subsection, shall be taken to be the circumstances specified in those paragraphs:

Provided that in either case the relevant land shall be assumed to have been available for letting with vacant possession immediately before the beginning of the year in question.

(4) Where a compulsory rights order has become operative, and in the case of any land which, in relation to that order, is land to which this section applies it is shown that the value at the end of the period of occupation of the interest in that land which then constitutes the interest of the owner thereof (in this and the two next following subsections referred to as "the owner's interest in the relevant land"), computed in accordance with paragraph (a) of the next following subsection, is less than the value of that interest computed in accordance with paragraph (b) of that subsection, the person who at the end of that period is entitled to the owner's interest in the relevant land shall be entitled to compensation from the Board of an amount equal to the difference.

(5) For the purposes of the last preceding subsection there shall be computed the following values, that is to say.—

- (a) the value at the end of the period of occupation of the owner's interest in the relevant land, assessed on the assumption that, in so far as any of the owner's land comprised in the order has not then been restored to the condition in which it was immediately before the date of entry, there will be carried out on that land in due course all such work as would qualify for compensation under section twenty4wo of this Act;
- (b) the value which, at the end of the period of occupation, the owner's interest in the relevant land would have if the entirety of the owner's land comprised in the order were in the state in which it was immediately before the date of entry.

(6) In computing value as mentioned in paragraph (a) or paragraph (b) of the last preceding subsection, it shall be assumed that the owner's interest in the relevant land is, in the circumstances mentioned in the paragraph in question, being offered for sale subject to any incumbrances to which that interest is subject at the end of the period of occupation.

(7) For the purposes of the operation of this section in relation to a compulsory rights order—

- (a) any reference to the owner's land comprised in the order is a reference to so much of the land comprised in the order as, immediately before the operative date, was land wherein the interest of the owner was held by the following person, that is to say,—
  - (i) where the reference in question is in subsection (2) of this section, the person who was then the owner of the relevant land within the meaning of that subsection;

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- (ii) where the reference is in subsection (5) of this section, the person who was then entitled to the owner's interest in the relevant land within the meaning of that subsection;
- (b) any reference to work which would qualify for compensation under section twenty-two of this Act, in relation to any land, is a reference to work for the purpose of further restoring that land to or towards the condition in which it was immediately before the date of entry, or a condition substantially similar thereto, being work in respect of which (in so far as the nature of the work is concerned) expenses would be treated as reasonably incurred for the purposes of subsection (1) of that section; and
- (c) any reference to the carrying out of any such work in due course is a reference to its being carried out at the first reasonable opportunity after the end of the period of occupation, or within a reasonable time after that opportunity arises.

### **33 Compensation in respect of minerals**

- (1) The provisions of the Fifth Schedule to this Act shall have effect where the land comprised in a compulsory rights order consists of or includes land which, immediately before the operative date of the order.—
  - (a) is subject to a mining lease or order conferring working rights the benefit of which is held for the purposes of a mineral undertaking, or
  - (b) is land wherein the interest of the owner of the land or of any stratum thereof (whether on or below the surface) is held for the purposes of a mineral undertaking.
- (2) The provisions of this Part of this Act, other than this section, shall have effect subject to the provisions of that Schedule in cases falling within that Schedule.

*Supplementary provisions as to compensation*

### **34 Provisions as to compensation in special cases**

The provisions of the Sixth Schedule to this Act shall have effect as to the application of the preceding provisions of this Part of this Act in cases falling within that Schedule.

### **35 Time when compensation accrues due**

- (1) Subject to the provisions of Part III of this Act as to claims for compensation under this Act, the provisions of this section shall have effect as to compensation payable by the Board by virtue of this Part of this Act.
- (2) In respect of any compensation payable by virtue of section seventeen of this Act, or by virtue of that section as applied by section twenty-nine of this Act, or by virtue of subsection (2) of section thirty-one or subsection (2) of section thirty-two of this Act or of paragraph 4, paragraph 5 or paragraph 12 of the Fifth Schedule to this Act.—
  - (a) the Board shall make such quarterly payments as may be reasonable in the circumstances;
  - (b) subject to the preceding paragraph, the Board shall not be required to make payments until after the end of the year for which the compensation is payable;
  - (c) if the amount of the compensation payable to any person for any year exceeds the aggregate amount of the quarterly payments made on account thereof



- during that year, the balance shall be payable together with interest on the amount of the balance from the end of that year to the date of payment;
- (d) if the aggregate amount of the compensation paid to a person for any year in respect of any such compensation (excluding any amount paid on account of interest) exceeds the principal amount of the compensation payable to him for that year, the Board (without prejudice to any right of recovery apart from this subsection) shall be entitled to deduct the amount of the overpayment from any compensation payable to that person for any subsequent year.
- (3) Subject to the last preceding subsection, any such compensation as is therein mentioned shall be considered as accruing due from day to day and shall be apportionable in respect of time accordingly.
- (4) Any compensation payable—
- (a) under section twenty-three of this Act, or
  - (b) under that section as applied by section twenty-nine of this Act, or
  - (c) under subsection (3) of section thirty-one of this Act, or
  - (d) under subsection (4) of section thirty-two of this Act, or
  - (e) under paragraph 8, paragraph 10 or paragraph 13 of the Fifth Schedule to this Act, or
  - (f) under section fifty-two of this Act,
- shall accrue due at the end of the period of occupation.
- (5) Any compensation under section twenty-six of this Act shall accrue due at the beginning of the period of occupation.
- (6) Any compensation payable under section twenty-seven of this Act, or under that section as applied by section twenty-nine of this Act, 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.
- (7) Any compensation payable by the Board as mentioned in any of subsections (4) to (6) of this section, if not paid within the period of thirty days beginning with the date on which it accrues due, shall be payable together with interest thereon, from the date on which it accrues due to the date of payment.
- (8) The Treasury may by order prescribe the rate of interest for the purposes of this section; and where in accordance with the preceding provisions of this section any compensation is payable with interest, the rate of interest shall be the rate for the time being in force by virtue of an order under this subsection.
- (9) In this section "quarterly payments" means payments calculated by reference to the usual quarter days, and "effective date", in relation to a sale, means the date on which the property sold becomes the property of the purchaser.

## **36 Record of condition of land**

- (1) For the purpose of facilitating the assessment of compensation under this Part of this Act, the Board shall cause records to be made in accordance with the following provisions of this section.
- (2) In the case of an opencast site order, where the Board have published, served and affixed notices under subsection (2) of section five of this Act, the Board shall cause a record to be made of the condition, as on the date of entry.—

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- (a) of all the land comprised in the order, and
- (b) of any other land which, in relation to that order, forms part of a holding to which section seventeen or section twenty-nine of this Act applies:

Provided that, in relation to an opencast site order made in accordance with section eight of this Act, this subsection shall apply as if paragraph (b) thereof were omitted.

- (3) In the case of any compulsory rights order (other than any order made in accordance with section eight of this Act) the Board shall, at the end of the period of occupation, cause a record to be made of the condition, as at the end of that period, of all the land comprised in the order.
- (4) Any record of the condition of land made under this section shall be made in pursuance of a comprehensive survey of the land, in so far as such a survey can be carried out by inspection and without any operations involving the excavation of land or the making of borings therein, and shall include all such particulars of the land and of things in or on the land as are reasonably required for recording the results of such a survey.
- (5) Where the Board have caused a record to be made under this section they shall—
  - (a) in the case of a record made under subsection (2) of this section, within twenty-one days after the date of entry, and
  - (b) in the case of a record made under subsection (3) of this section, within twenty-one days after the end of the period of occupation,
 serve on every person who is then known to them to be a person directly concerned a notice in the prescribed form together with a copy of the record.
- (6) If any person, to whom a copy of a record is sent under this section, gives notice of objection to the Board, within twenty-one days after the date on which the copy was sent to him, requiring the record to be amended in one or more respects specified in the notice, then—
  - (a) if all the persons whose agreement is requisite agree on an amendment of the record (whether the amendment is that specified in the notice of objection or another amendment in substitution for it), the Board shall cause the record to be amended accordingly ;
  - (b) if no such agreement is reached, and the objection is not withdrawn, the matter in dispute shall be determined by arbitration.
- (7) For the purposes of the last preceding subsection, the persons whose agreement is requisite shall be the Board, the person who gave the notice of objection, and all other persons to whom copies of the record were sent under this section.
- (8) For the purposes of any arbitration under paragraph (b) of subsection (6) of this section—
  - (a) the reference shall be to a single arbitrator appointed by the Board and the person who gave the notice of objection in consequence of which the dispute arose;
  - (b) except in relation to the appointment of an arbitrator, all persons whose agreement is requisite for the purposes of that subsection shall be parties to the reference.
- (9) With respect to professional and other fees incurred by persons in obtaining advice or conducting negotiations with regard to any record made under this section, the Minister may make regulations requiring the Board, within such limits (whether as to

descriptions of fees, or as to amount, or otherwise) and subject to such conditions as may be prescribed, to pay fees so incurred:

Provided that no regulations under this section shall apply to any fees in so far as they form part of the costs of an arbitration under this section, or shall affect any power of an arbitrator with respect to any such costs.

- (10) In the application of this section to Scotland, for references to costs, and to an arbitrator, there shall be substituted respectively references to expenses and to an arbiter.

### **PART III**

#### **MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS**

#### **37 Consequential adjustments between landlords and tenants and in respect of mortgages and mining leases and orders**

The provisions of the Seventh Schedule to this Act shall have effect as to matters arising between landlords and tenants, or (in England and Wales) between mortgagees and mortgagors, or in respect of mining leases or orders conferring working rights, as mentioned in that Schedule, in consequence of the coming into operation of a compulsory rights order or the occupation or use of land in the exercise of rights conferred by such an order.

#### **38 Protection from compulsory purchase of land occupied for authorised purposes**

Where a compulsory purchase order (within the meaning of the Acquisition of Land Act or, in Scotland, the Scottish Acquisition of Land Act) has been submitted or prepared, and—

- (a) the land comprised in the order includes land which is comprised in an authorisation under section one of this Act and is for the time being occupied by the Board for the authorised purposes, and
- (b) within the time limited for making objections to the order, the Board give notice of that fact to the Minister to whom the order has been submitted, or by whom it has been prepared, as the case may be, specifying the land comprised in the authorisation which is occupied as mentioned in the preceding paragraph,

the compulsory purchase order shall not be confirmed or made so as to authorise the compulsory purchase of any of the land specified in that notice, unless the Minister of Power is satisfied that it can be purchased without serious detriment to the fulfilment of the authorised purposes.

#### **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

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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 be specified

- (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 twenty pounds.
- (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 First or 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.

#### **40 Claims for compensation payable by Board**

- (1) Compensation under this Act shall not be payable by the Board unless a claim for it is duly made to the Board.
- (2) Regulations made under this section by the Minister may—
  - (a) require claims for compensation under this Act to be made in such form, and within such time, as may be prescribed by the regulations ;
  - (b) require a claimant to provide such evidence in support of the claim, and such information as to the interest of the claimant in land to which the claim relates, and as to the interests of other persons therein which are known to the claimant, as may be so prescribed;
  - (c) include provisions as to professional and other fees incurred by claimants in preparing and supporting claims for compensation under this Act, requiring the Board, within such limits (whether as to descriptions of fees, or as to amount, or otherwise) and subject to such conditions as may be prescribed, to pay fees so incurred:

Provided that no such regulations, in so far as they are made under paragraph (c) of this subsection, shall apply to the costs of any proceedings before a court or tribunal, or shall affect any power of a court or tribunal with respect to any such costs.

- (3) Any dispute—
  - (a) as to a right to compensation from the Board under this Act, or as to the amount of any such compensation, or
  - (b) as to a right to the payment of any fees by virtue of regulations made under this section, or under section thirty-six of this Act, or as to the amount of the fees payable in any case by virtue of any such regulations, or
  - (c) as to the amount of the quarterly payments payable in accordance with subsection (2) of section thirty-five of this Act in respect of any such compensation as is mentioned in that subsection,
 shall be determined by the Lands Tribunal.
- (4) References in this section to compensation under this Act do not include any compensation payable in accordance with any enactment applied by section thirteen

or section sixteen of this Act, or any sum payable in accordance with any enactment applied by section forty-five of this Act.

- (5) In the application of this section to Scotland, any reference to costs shall be construed as a reference to expenses.

#### **41 Provisions as to allotment gardens and other allotments**

- (1) The provisions of the Eighth Schedule to this Act shall have effect with respect to tenancies of allotments (including tenancies of allotment gardens).
- (2) In this Act " allotment " has the meaning assigned to it by section three of the Allotments Act, 1922, and " allotment garden " has the meaning assigned to it by section twenty-two of that Act.
- (3) In the application of this Act to Scotland, " allotment " has the like meaning as in the Allotments (Scotland) Acts, 1892 to 1950, and " allotment garden " has the meaning assigned to it by section nineteen of the Allotments (Scotland) Act, 1922.

#### **42 Special provisions as to property held for religious purposes**

- (1) The provisions of this section shall have effect where any compensation is payable by the Board under this Act, and apart from this section would be payable to a person in right of an interest in land held by him for religious purposes:

Provided that this section shall not apply to any compensation payable by virtue of section twenty-two of this Act.

- (2) If the land, not- being land in Scotland, Wales or Monmouthshire, is ecclesiastical property, the compensation shall be paid to the Church Commissioners.
- (3) If the land, being land in Scotland, is property belonging to the Church of Scotland, the compensation shall be paid to the general treasurer of that Church.
- (4) If, in the case of land not falling within subsection (2) or subsection (3) of this section, the Board are so requested by or on behalf of a body of persons notified to the Board by the Minister, after consultation with such persons or organisations as he may think appropriate, as the appropriate representative body, the Board shall pay the compensation to that representative body.
- (5) Where apart from this section compensation would be payable to a person as the owner of land, and—
- (a) by virtue of subsection (2) or subsection (4) of this section the compensation is payable to the Church Commissioners or a representative body, and
- (b) by virtue of the operation in relation to that land of section twenty-four or section thirty of this Act, compensation is recoverable from him by another person,
- the Church Commissioners or representative body, as the case may be, shall indemnify him against any liability in respect of the compensation referred to in paragraph (b) of this subsection, and for that purpose may apply any money or securities held by them.
- (6) Where the fee simple of any ecclesiastical property, not being property in Wales or Monmouthshire, is in abeyance, it shall be treated for the purposes of this Act as being vested in the Church Commissioners.

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*Status: This is the original version (as it was originally enacted).*

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- (7) In this section "ecclesiastical property" means property belonging to an ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a bishop of a diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction.

#### **43 Provisions as to mortgaged land and other special cases**

- (1) For the purposes of Part II of this Act in its application to land in which there is an interest which is subject to a mortgage, a mortgagee shall not be taken to be entitled to occupy that land, or to be the person, who, but for a compulsory rights order, would be entitled to occupy it, unless—
  - (a) the interest which is subject to the mortgage is the interest of the person who (apart from the mortgage) is entitled to occupy that land, or who would, but for the compulsory rights order, be entitled to occupy it, and
  - (b) the mortgagee is, to the extent of the interest comprised in the mortgage, and subject to the rights conferred by the compulsory rights order, in possession of the land or of the rents and profits thereof.
- (2) If, in the circumstances specified in paragraphs (a) and (b) of the last preceding subsection, a mortgagee is the person entitled to any annual compensation under Part II of this Act, any such compensation paid to him shall be applied by him in or towards the satisfaction of interest arising under the mortgage, and, in so far as not so applied, shall be applied towards the reduction of the principal debt secured by the mortgage.
- (3) Where under subsection (2) of section thirty-two of this Act a person is entitled to compensation as the owner of any land, and his interest in that land is subject to a mortgage and the mortgagee is, to the extent of that interest, in possession of the land or of the rents and profits thereof, the compensation shall be paid by the Board to the mortgagee, and shall be paid or applied by him as mentioned in the last preceding subsection.
- (4) Where any compensation payable by the Board under this Act, not being annual compensation or compensation under section twenty-two of this Act, is payable in right of an interest in land which is subject to a mortgage.—
  - (a) a claim for the compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest; and
  - (b) the compensation payable in respect of the interest shall be paid by the Board to the mortgagee, or, where there is more than one mortgage, shall be payable to the first mortgagee, and, subject to the next following subsection, shall in either case be applied by him as if it were proceeds of sale.
- (5) Where apart from the last preceding subsection any compensation falling within that subsection would be payable to a person as the owner of land which is subject to a mortgage, and—
  - (a) by virtue of the last preceding subsection that compensation is payable to a mortgagee, and
  - (b) by virtue of the operation in relation to that land of section twenty-four or section thirty of this Act, compensation is recoverable from him by another person,

the compensation paid to the mortgagee shall be applied by him in the first place in or towards the payment of the compensation referred to in paragraph (b) of this subsection, and any balance shall be applied as if it were proceeds of sale.

- (6) Where any compensation falling within subsection (4) of this section is payable in right of an interest in land which is subject to a settlement, or is otherwise held in such a manner that the person entitled to that interest would not be competent to give an effective discharge for the proceeds of a sale thereof, that compensation shall be paid by the Board to the person who would be competent to give such a discharge.
- (7) In this section " annual compensation " means any such compensation as is mentioned in subsection (2) of section thirty-five of this Act.
- (8) In the application of this section to Scotland—
  - (a) for references to a mortgage, to a mortgagor and to a mortgagee there shall be substituted respectively references to a heritable security, to a debtor in a heritable security and to a heritable creditor ;
  - (b) for references to the first mortgagee there shall be substituted references to that heritable creditor whose security has priority over any other heritable securities secured on the same interest; and
  - (c) for any reference to the application of a sum as if it were proceeds of sale there shall be substituted a reference to the application of a sum as if it were the price realised on the sale by a heritable creditor of land subject to a heritable security.

#### **44 Crown land**

- (1) Subject to the provisions of this section, the provisions of this Act shall apply in relation to land in which there is a Crown or Duchy interest as they apply in relation to land in which there is no such interest: Provided that (subject to any express provision in this Act to the contrary) the provisions of this Act shall not apply to any land in which there is a Crown or Duchy interest, but no private interest other than any interest belonging to the Board.
- (2) Except with the consent of the appropriate authority—
  - (a) no compulsory rights order shall be made in respect of any land in which for the time being there is a Crown or Duchy interest;
  - (b) no order shall be made under section sixteen of this Act in respect of any such land ;
  - (c) the powers conferred by section thirty-nine of this Act shall not be exercisable in relation to any such land:

Provided that nothing in this section shall affect the validity or operation of an order, or the exercise of any power, as against any person having, in or over the land in question, any interest or right other than a Crown or Duchy interest.

- (3) Where a compulsory rights order is, with the consent of the appropriate authority, made in respect of land in which there is a Crown or Duchy interest, that interest (in so far as the order confers rights exercisable as against all persons directly concerned) shall be treated as not being the interest of a person directly concerned, and no compensation shall be payable by the Board under Part II of this Act in respect of that interest.
- (4) In this section " Crown or Duchy interest " means an interest belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of

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Cornwall, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department; " private interest" means an interest which is not a Crown or Duchy interest; and " the appropriate authority "—

- (a) in relation to land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners, and, in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land ;
- (b) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy;
- (c) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; and
- (d) in relation to land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department;

and if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

- (5) The preceding provisions of this section shall apply in relation to land which is subject to a right restrictive of the use thereof, being a right the benefit of which is annexed to land in which there is a Crown or Duchy interest, or (not being so annexed) belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belongs to the Duchy of Cornwall, or belongs to a government department, or is held in trust for Her Majesty for the purposes of a government department, as those provisions apply in relation to land in which there is a Crown or Duchy interest:

Provided that those provisions shall so apply with the necessary modifications, and, in particular, as if the proviso to subsection (1) of this section were omitted, and, in paragraphs (a) to (d) of the last preceding subsection, any reference to land belonging as therein mentioned were a reference to a right the benefit of which belongs, or is annexed to land belonging, as therein mentioned.

## **45 Provision as to telegraphic lines**

- (1) Notwithstanding anything in Part I of this Act, none of the rights or powers conferred thereby or by any order made thereunder shall authorise any interference with any telegraphic line belonging to or used by the Postmaster General, or include any right or power to require such a line to be altered.
- (2) Where an authorisation has been granted under section one of this Act, and, for the purpose of enabling any authorised operations to be carried out, the Board require an alteration to be made in any telegraphic line of the Postmaster General, the provisions of paragraphs (1) to (8) of section seven of the Telegraph Act, 1878 (which provides for the alteration of such telegraphic lines in the case of work proposed to be done in the execution of an undertaking authorised by an Act of Parliament), shall apply as if the authorised operations were (within the meaning of that section) work proposed to be done in the execution of an undertaking authorised by an Act of Parliament, if apart from this subsection those operations would not be taken to be work so proposed to be done.
- (3) Where in pursuance of an order made under section three of the Acquisition of Land Act, as applied by section fifteen of this Act, a public right of way is suspended, and, immediately before the date on which that order became operative, there was under,



in, upon, over, along or across the way to which the order relates a telegraphic line belonging to or used by the Postmaster General, the Postmaster General shall have the same powers in respect of that line as if the order had not become operative:

Provided that this subsection shall have effect without prejudice to the provisions of the last preceding subsection.

- (4) In this section " telegraphic line " and " alter " have the same meanings as in the Telegraph Act, 1878.
- (5) In the application of this section to Scotland, for the reference to the Acquisition of Land Act there shall be substituted a reference to the Scottish Acquisition of Land Act.

#### **46      Licence to work coal by opencast operations**

- (1) Subsection (2) of section thirty-six of the Coal Industry Nationalisation Act, 1946 (which authorises the Board in certain cases to grant licences for the working and getting of coal) shall be amended by inserting at the end of paragraph (b) of that subsection the words "or
  - (c) coal which, in accordance with the licence, is to be worked by opencast operations, where the amount of coal got by such operations from the area specified in the licence is, in the opinion of the Board, not likely to exceed, or greatly to exceed, twenty-five thousand tons".
- (2) Subsection (1) of section one of this Act shall not apply to the granting of a licence under subsection (2) of the said section thirty-six as amended by the preceding subsection; and subsection (5) of section two of this Act shall not apply to a refusal of permission for the working of coal in pursuance of such a licence.

#### **47      Provisions as to notices and public inquiries**

- (1) The provisions of the Ninth Schedule to this Act shall have effect as to the service of notices under this Act.
- (2) Subsections (2) to (5) of section two hundred and ninety of the Local Government Act, 1933 (which relate to local inquiries) shall have effect in relation to any inquiry held under this Act in relation to land in England or Wales (including any inquiry so held under any provisions of the Acquisition of Land Act as applied by this Act) with the substitution, for references to a department, of references to the Minister.
- (3) Subsections (2) to (9) of section three hundred and fifty-five of the Local Government (Scotland) Act, 1947, shall have effect in relation to any inquiry held under this Act in relation to land in Scotland, including any inquiry so held under any provisions of the Scottish Acquisition of Land Act as applied by this Act.

#### **48      Transitional provisions**

The transitional provisions contained in the Tenth Schedule to this Act shall have effect for the purposes of this Act.

#### **49      Provisions as to regulations and orders**

- (1) The Minister may make regulations prescribing anything authorised or required to be prescribed for the purposes of any provision of this Act, or for the purposes of any

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enactment applied by or incorporated with this Act, except any provision whereby anything is expressly authorised or required to be prescribed by some other Minister of the Crown or government department.

- (2) Any power to make regulations under this Act shall be exercisable by statutory instrument; and any instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) The power to make orders under subsection (5) of section twenty-six of this Act, under subsection (5) of section twenty-eight of this Act, and under subsection (8) of section thirty-five of this Act, shall be exercisable by statutory instrument; and any instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subject to the following provisions of this section, any power conferred by this Act to make an order or give any directions shall include power, subject to the like provisions and conditions, to vary or revoke the order or directions by a subsequent order or subsequent directions, as the case may be.
- (5) A compulsory rights order shall not be varied by extending the period for which it is to have effect:

Provided that—

- (a) in the case of an opencast site order, where the period specified in the order is less than ten years, this subsection shall not prevent the variation of the order by the extension of that period, if the period as extended does not exceed ten years ;
- (b) in the case of a storage site order, where the period specified in the order is a period ending before the tenth anniversary of the date of the commencement of this Act, this subsection shall not prevent the variation of the order by the extension of that period to a date not later than that anniversary.
- (6) Subsection (4) of this section shall not affect the revocation of an order made by virtue of section fifteen of this Act where, in accordance with subsection (4) of that section, the Minister is required to revoke the order.

## **50 Expenses**

Any expenses incurred for the purposes of this Act by the Minister shall be payable out of moneys provided by Parliament.

## **51 Interpretation**

- (1) In this Act, except in so far as the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—
  - " the Acquisition of Land Act " means the Acquisition of Land (Authorisation Procedure) Act, 1946;
  - " the Act of 1947 " means the Town and Country Planning Act, 1947;
  - " the Act of 1948 " means the Agricultural Holdings Act, 1948;
  - " agriculture " has the same meaning as in the Agriculture Act, 1947, and " agricultural " (except in the expressions " agricultural holding " and " agricultural land " shall be construed accordingly;

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*Status: This is the original version (as it was originally enacted).*

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" agricultural holding " has the meaning assigned to it by section one of the Act of 1948 ;

" agricultural land " means land used for agriculture which is so used for the purposes of a trade or business;

" appropriate Minister " in relation to a statutory undertaking has the same meaning as in the Act of 1947, in relation to a sewerage undertaking or sewage disposal undertaking means the Minister of Housing and Local Government, and in relation to a river board or other drainage authority means the Minister of Agriculture, Fisheries and Food;

" the authorised purposes " and " authorised operations " have the meanings assigned to them respectively by section one of this Act;

" the Board " means the National Coal Board ;

" coal " means bituminous coal, cannel coal and anthracite ;

" compulsory rights order " has the meaning assigned to it by section four of this Act;

" date of entry " has the meaning assigned to it by section five of this Act;

" drainage authority " has the same meaning as in the Land Drainage Act, 1930;

" emergency powers " means any powers exercisable by virtue of the Defence (General) Regulations, 1939, or by virtue of the Requisitioned Land and War Works Act, 1945, or by virtue of the prerogative of the Crown ;

" functions " includes powers and duties, and references to the performance of functions shall be construed accordingly;

" incumbrance ", in relation to any land, includes any interest in or right over that land (including any such right inuring for the benefit of the public or of a section thereof);

" land " includes land covered by water ;

" local planning authority " and " local authority " have the meanings assigned to them by the Act of 1947;

" minerals " includes stone, slate, clay, gravel, sand and similar deposits;

" mineral undertaking " means an undertaking for the working and getting of minerals, whether by underground or by surface working ;

" mining lease " means a lease for the purpose of working and getting minerals, whether by underground or by surface working; and in this definition " lease " includes an underlease and an agreement for a lease or underlease and a tenancy agreement, and also includes a licence, but does not include an option to take a lease, underlease or tenancy agreement, and does not include a mortgage;

" the Minister " means the Minister of Power;

" mortgage " includes any charge or lien on property for securing money or money's worth, and " mortgagee " and " mortgagor " shall be construed accordingly;

" National Trust " has the same meaning as in the Act of 1947;

" opencast site order " has the meaning assigned to it by section four of this Act;

" operative date " has the meaning assigned to it by section four of this Act;

" order conferring working rights " means an order made under Part I of the Mines (Working Facilities and Support) Act, 1923;

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*Status: This is the original version (as it was originally enacted).*

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" owner " in relation to land, subject to the next following subsection, means the estate owner in respect of the fee simple thereof;

" period of occupation " has the meaning assigned to it in relation to opencast site orders by section five and in relation to storage site orders by section six of this Act;

" persons directly concerned " has (subject to the provisions of sections seven and eight of this Act) the meaning assigned to it in relation to opencast site orders by section five and in relation to storage site orders by section six of this Act;

" prescribed " means prescribed by regulations made under this Act;

" restoration ", in relation to land, includes rehabilitation, and " restore " shall be construed accordingly;

" river board " has the same meaning as in the River Boards Act, 1948 ;

" sewage disposal undertaking " means an undertaking for the purification and disposal of the contents of sewers (as defined by the Public Health Act, 1936);

" sewerage undertaking " means an undertaking for the drainage of any locality by means of sewers (as defined by the Public Health Act, 1936);

" statutory undertakers " and " statutory undertaking " have the same meanings as in the Act of 1947 ;

" storage site order " has the meaning assigned to it by section four of this Act;

" tenancy " has the meaning assigned to it by the Landlord and Tenant Act, 1954 ;

" termination ", in relation to a tenancy, means the cesser of the tenancy, whether by effluxion of time or for any other reason;

" year " means any period of twelve months.

- (2) In relation to any land which is subject to a long tenancy, " owner " in this Act means the person entitled to that tenancy, so however that for the purposes of this subsection a long tenancy, which is in reversion expectant (whether immediately or not) upon the termination of another long tenancy, shall be disregarded.

In this subsection " long tenancy " means a tenancy granted for a term of years certain, being a term of ninety-nine years or more, whether subsequently extended (by act of the parties or by virtue of any enactment) or not.

- (3) In this Act " similar right", where the reference is to an easement or similar right in relation to any land, means any of the following rights, that is to say, any right to take game or fish or other sporting right exercisable in respect of that land, any right to fell and remove trees standing thereon, any right to take timber or other wood, water, turf or other materials therefrom, any right to work minerals thereon (otherwise than by virtue of a mining lease or of an order conferring working rights), and any right to depasture cattle or other animals thereon, except any such sporting or other right which—

- (a) subsists only as a right incidental to the ownership of the land in question, or to some other interest therein, or to a right to occupy that land, or
- (b) is exercisable by virtue of a licence granted otherwise than for valuable consideration ;

and any right over land which constitutes an easement or similar right in relation thereto, if apart from this subsection it would not constitute an interest in that land, shall be treated for the purposes of this Act as constituting an interest therein.

- (4) For the purposes of any provision of this Act, in so far as it refers to the state or condition in which land was at a time specified in that provision, regard shall be had to all matters relevant to the state or condition of the land at that time, including (but without prejudice to the generality of this subsection) the characteristics of the soil (whether on or below the surface), the presence of any minerals in or under the land, the growth of trees, hedges or other vegetation thereon, and any buildings, structures, apparatus or other works which were on, in, under or over the land at that time; and any reference in any provision of this Act to the state or condition in which land would have been, or might reasonably have been expected to be, in circumstances specified in that provision, shall be construed accordingly.
- (5) Any reference in this Act to the working of coal by opencast operations includes a reference to the getting and winning of coal worked by such operations, and to the carrying away of any such coal from the land on which it has been worked.
- (6) Any reference in this Act to the working of coal or other minerals on any land, or to the carrying out of any other operations on any land, shall be construed as including a reference to the working of the coal or other minerals, or the carrying out of those operations, as the case may be, in or under that land.
- (7) For the purposes of this Act waste heaps and other deposits resulting from the working of minerals shall be taken to form part of the land on which they are situated, if apart from this subsection they would not be taken to form part thereof, and any reference in this Act to the working of minerals on, in or under land, or to underground or surface working, shall be construed accordingly.
- (8) In relation to land comprised in a compulsory rights order, any reference in this Act to the person who would be entitled to occupy that land if the order had not been made shall be construed, in relation to any time before the date of entry thereunder, as a reference to the person who is for the time being entitled to occupy that land.
- (9) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment.
- (10) In the application of this section to Scotland, for references to an underlease there shall be substituted references to a sublease, references to the Public Health Act, 1936, shall be omitted, and in subsection (2) the words from "so however that" to "disregarded" shall be omitted.

## **52 General application to Scotland**

- (1) The provisions of this section shall, in addition to any express provision for the application to Scotland of any provision of this Act, have effect for the general application of this Act to Scotland.
- (2) In this Act, except in so far as the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—
  - "agriculture" has the same meaning as in the Agriculture (Scotland) Act, 1948, and "agricultural" (except in the expressions "agricultural holding" and "agricultural land") shall be construed accordingly;

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" agricultural holding " has the meaning assigned to it by section one of the Scottish Act of 1949;

" appropriate Minister " in relation to a statutory undertaking has the same meaning as in the Scottish Act of 1947 and in relation to a sewerage undertaking or sewage disposal undertaking or a river purification authority means the Secretary of State ;

" chattels " means corporeal moveables;

" easement " means servitude ;

" freehold interest " means the interest of the owner of the dominium utile;

" land " includes salmon fishings;

" local authority ", " local planning authority ", " statutory undertakers ", " statutory undertaking ", " heritable security ", " heritable creditor ", and " National Trust for Scotland " have the same meanings as in the Scottish Act of 1947 ;

" owner " in relation to land, subject to subsection (2) of the last preceding section, means the owner of the dominium utile;

" the Landholders Acts " means the Small Landholders (Scotland) Acts, 1886 to 1931;

" the Scottish Acquisition of Land Act " means the Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947;

" the Scottish Act of 1947 " means the Town and Country Planning (Scotland) Act, 1947;

" the Scottish Act of 1949 " means the Agricultural Holdings (Scotland) Act, 1949.

- (3) For any reference to a river board there shall be substituted a reference to a river purification authority within the meaning of the Rivers (Prevention of Pollution) (Scotland) Act, 1951.

- (4) For any reference to the Lands Tribunal there shall be substituted a reference to the Lands Tribunal for Scotland:

Provided that until sections one to three of the Lands Tribunal Act, 1949, come into force as regards Scotland, this subsection shall have effect as if for the reference to the Lands Tribunal for Scotland there were substituted a reference to an official arbiter appointed under the Acquisition of Land (Assessment of Compensation) Act, 1919; and sections three, five and six of that Act shall apply, subject to any necessary modifications, in relation to the determination of any dispute under this Act by an arbiter so appointed.

- (5) Where, immediately before the coming into operation of an authorisation under section one of this Act, any of the land comprised in the authorisation consists of or includes a holding to which any of the provisions of the Landholders Acts apply or a croft within the meaning of the Crofters (Scotland) Act, 1955, or part of such a holding or croft, the provisions of this Act shall, in relation to that land, have effect subject to the following modifications, that is to say—

- (a) references to an agricultural holding, to the tenant of an agricultural holding and to the Scottish Act of 1949 shall include respectively references to such a holding or croft as aforesaid, to a landholder or crofter, and to the Landholders Acts or the Crofters (Scotland) Act, 1955, as the case may be and for references to sections fifty-seven and fifty-eight of the Scottish Act of 1949 there shall be substituted references to section ten of the Crofters

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Holding (Scotland) Act, 1886, or section fourteen 'of the Crofters (Scotland) Act, 1955, as the case may require:

Provided that for the purposes of section twenty-three of this Act any improvement on the holding for which the landholder or the crofter would on the termination of his tenancy be entitled to compensation under the Landholders Acts or the Crofters (Scotland) Act, 1955, as the case may be, shall be treated as a separate holding, and any compensation payable under the said section in respect of the improvement shall be payable to the landholder or crofter as if he were the owner thereof; and sections twenty-four and twenty-five shall not apply to any improvement in respect of which compensation is so payable;

- (b) any dispute as to a right to compensation under this Act of a landholder or crofter or of the owner of a holding or croft in respect thereof or as to the amount of any such compensation, and any matter arising in relation to a holding or croft which is referred to arbitration under this Act, shall be determined by the Scottish Land Court, and the provisions of the Landholders Acts shall, with any necessary modifications, apply for the purpose as they apply for the determination of matters referred to that Court under those Acts.
- (6) For the purposes of any feu charter, feu contract or feu disposition, the owner of any land comprised in a compulsory rights order shall not be taken to be in breach of any obligation or liable to pay any sum by way of damages or penalty or to suffer any forfeiture by reason of anything done or omitted to be done by him by way of permitting or facilitating the occupation or use of that land in the exercise of rights conferred by the order.
- (7) Where compensation is payable by the Board under section twenty-three of this Act, or under that section as applied by section twenty-nine thereof, to the owner of any land comprised in a compulsory rights order by reference to the diminution in value of the land, being land which is subject to a feu duty or a ground annual, and the person who is the superior entitled to the feu duty or the creditor in the ground annual (which person is in this subsection referred to as "the creditor ") shows—
- (a) that the amount of the feu duty or ground annual exceeds the annual value of the land at the end of the period of occupation ; and
  - (b) that it is unlikely that within a reasonable period such works of restoration will be carried out on the land as will make good the excess;

the creditor shall be entitled to claim (but without prejudice to the making of a claim by the owner) and to receive payment from the Board in respect of the feu duty or ground annual so much of the compensation which, apart from this subsection, would be payable to the owner as aforesaid as is equal to the capital equivalent of the said excess:

Provided that the creditor shall not be entitled to receive a payment under this subsection until he has executed and delivered any necessary deeds discharging such part of the feu duty or ground annual as is equal to the said excess.

- (8) For the purposes of the last preceding subsection the annual value of the land shall be ascertained in accordance with the provisions of subsection (2) of section eighteen of this Act, with the omission, however, of the words "in the appropriate circumstances"; and the capital equivalent of the excess of a feu duty or ground annual over the annual value of land subject to it at the end of the period of occupation shall be taken to be that excess multiplied by the number of years purchase which the feu duty or ground annual

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might have been expected to realise on a sale thereof in the open market immediately before the beginning of the period of occupation.

**53 Short title, commencement and extent**

- (1) This Act may be cited as the Opencast Coal Act, 1958.
- (2) This Act shall come into operation on the thirtieth day of September, nineteen hundred and fifty-eight.
- (3) This Act shall not extend to Northern Ireland.



## SCHEDULES

### FIRST SCHEDULE

Sections 1, 15, 39.

#### PROCEDURE FOR GRANTING AUTHORISATIONS UNDER SECTION ONE

- 1 The Minister shall not grant an authorisation under section one of this Act except in pursuance of an application made by the Board in accordance with the following provisions of this Schedule.
- 2 Every such application—
  - (a) shall be in the prescribed form, and shall describe by reference to a map the land which the Board will require to occupy for the purpose of enabling operations Which (if the authorisation is granted) will be authorised operations to be carried out (in this Schedule referred to as " the relevant land "), and
  - (b) shall indicate by reference to the map which are the parts of the relevant land on which it is proposed to work coal by opencast operations.
- 3 (1) Every such application shall also include the prescribed information as to the operations proposed to be carried out—
  - (a) for the purpose of working the coal;
  - (b) for the purpose of restoring land affected by the working of the coal or by operations connected therewith ;
  - (c) for any purpose incidental to either of those purposes.

(2) The information prescribed for the purposes of the preceding sub-paragraph shall be information of such descriptions, and containing such particulars as to the operations proposed to be carried out for the several purposes mentioned in that sub-paragraph, as in the opinion of the Minister would be requisite for enabling him to perform his functions under this Act with due regard to the nature, extent and duration of the proposed operations.
- 4 Before submitting to the Minister an application for the Minister's authorisation under section one of this Act, the Board shall—
  - (a) in two successive weeks publish in one or more local newspapers circulating in the locality in which the relevant land is situated and in the London Gazette a notice in the prescribed form stating the intention of the Board to submit the application to the Minister, describing the relevant land, naming a place in the locality where a copy of the application and of the map referred to therein can be inspected, and specifying the time (not being less than twenty-eight days from the first publication of the notice) within which, and the manner in which, objections to the application can be made;
  - (b) serve on every local planning authority in whose area any part of the relevant land is situated, and on every other local authority, being the council of a county, county borough or county district, in whose area any part of that land is situated, a notice in the prescribed form stating that the application is intended to be submitted to the Minister, and specifying the

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time (not being less than twenty-eight days from the service of the notice) within which, and the manner in which, objections to the application can be made;

- (c) except in so far as the Minister directs that this provision shall not have effect in any particular case, serve a like notice on every owner, lessee and occupier (except tenants for a month or any period less than a month) of any part of the relevant land;
- (d) in the case of any land with respect to which a direction is given under the last preceding sub-paragraph, affix to some conspicuous object or objects on the land a notice or notices in the prescribed form addressed to "the owners and any occupiers" of the land (describing it) containing the particulars required to be contained in a notice served under the last preceding sub-paragraph:

Provided that no direction under sub-paragraph (c) of this paragraph shall have effect in relation to an owner, lessee or occupier being a local authority or statutory undertakers or the National Trust.

- 5 (1) Where under the last preceding paragraph a notice is required to be served on an owner of land, and the land is ecclesiastical property, a like notice shall be served on the Church Commissioners.
- (2) In this paragraph "ecclesiastical property" means land belonging to an ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of the bishop of a diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction.
- 6 (1) In the case of any application under this Schedule where the Minister, after consultation with the Board, is satisfied that a compulsory rights order will be required in respect of the relevant land or part thereof, the Minister, if he thinks fit, may give notice to the Board that he does not propose to proceed with the application until the Board have made such an order, and have applied to the Minister for confirmation thereof, and that he will then proceed concurrently with respect to the application for authorisation under section one of this Act and with respect to the application for confirmation of the compulsory rights order.
- (2) Where the Minister gives notice to the Board under the preceding sub-paragraph, he shall give a like notice to every local planning authority or other local authority, and to every owner, lessee or occupier, on whom notice was required to be served under paragraph 4 of this Schedule and who has made objection to the application.
- (3) Where the Minister has given notice to the Board under this paragraph he shall not (unless he otherwise determines) be required to proceed with the application for authorisation except in accordance with the notice.
- 7 (1) Subject to the last preceding paragraph, if no objection is made by any such local planning authority or other local authority as is mentioned in sub-paragraph (6) of paragraph 4 of this Schedule, or by any such owner, lessee or occupier as is mentioned in sub-paragraph (c) of that paragraph, or if all objections so made are withdrawn, the Minister, upon being satisfied that the proper notices have been published and served, may if he thinks fit grant the authorisation, either in accordance with the Board's application or subject to such modifications as he may determine.
- (2) If any objection duly made by any such local planning authority or other local authority, or by any such owner, lessee or occupier, is not withdrawn, the Minister shall cause a public local inquiry to be held, and shall consider the objection and the

report of the person who held the inquiry before determining whether to grant the authorisation ; and if he determines to grant it, he may do so either in accordance with the Board's application or subject to such modifications as he may determine.

- (3) Without prejudice to the last preceding sub-paragraph, the Minister may, if he thinks fit, cause a public local inquiry to be held before determining whether to grant the authorisation, notwithstanding that no objection has been made as mentioned in that sub-paragraph or that every objection so made has been withdrawn.
  - (4) In a case where the Minister determines to accede to the application subject to modifications, the authorisation shall not extend to land not comprised in the relevant land as described in the application, and shall not authorise the working of coal by opencast operations on a part of the relevant land which was not indicated in the application as a part of the land on which coal was proposed to be so worked.
- 8 As soon as may be after the authorisation has been granted, the Board shall publish in one or more local newspapers circulating in the locality in which the relevant land is situated and in the London Gazette a notice in the prescribed form describing the relevant land, stating that the authorisation has been granted, and naming a place in the locality where a copy of the authorisation and of the map referred to therein can be inspected at all reasonable hours, and shall serve a like notice and a copy of the authorisation on any persons on whom notices of the application were required to be served under paragraph 4 of this Schedule.
  - 9 Paragraphs 15 and 16 of the First Schedule to the Acquisition of Land Act (which relate to the validity and date of operation of compulsory purchase orders) shall with the necessary modifications (and, in particular, with the substitution of references to this Act for references to that Act) apply in relation to authorisations under section one of this Act as they apply in relation to compulsory purchase orders.
  - 10 For the purposes of the provisions of paragraph 4 of this Schedule, and of the provisions of paragraph 15 of the First Schedule to the Acquisition of Land Act as applied by the last preceding paragraph, the first publication of a notice shall be treated as taking place on the date on which the notice is first published in accordance with those provisions in a local newspaper, or the date on which it is first published in the London Gazette, whichever is the later date.
  - 11 In the application of this Schedule to Scotland, for references to a county borough, to a county district, to the London Gazette, to the National Trust and to the Acquisition of Land Act there shall be substituted respectively references to a burgh, to a district, to the Edinburgh Gazette, to the National Trust for Scotland and to the Scottish Acquisition of Land Act; and paragraph 5 shall be omitted and paragraph 15 of the First Schedule to the last-mentioned Act shall apply as if sub-paragraph (2) thereof were omitted.

## SECOND SCHEDULE

Sections 4, 5, 39.

### PROCEDURE RELATING TO COMPULSORY RIGHTS ORDERS PART I

#### *Making, confirmation, validity and date of operation of orders*

- 1 (1) Subject to the following provisions of this Part of this Schedule, the provisions of Parts I, III and IV of the First Schedule to the Acquisition of Land Act shall apply in relation to compulsory rights orders as if, in that Schedule.—
  - (a) any reference to a compulsory purchase order were a reference to a compulsory rights order ;
  - (b) any reference to the acquiring authority were a reference to the Board, and any reference to the confirming authority were a reference to the Minister ; and
  - (c) any reference to authorising the compulsory purchase of land were a reference to operating so as to confer on the Board temporary rights of occupation and use of land.
- (2) Any modifications of particular provisions of the said First Schedule which are specified in the following paragraphs of this Part of this Schedule shall have effect, in relation to those provisions, in addition to the general modifications mentioned in the preceding sub-paragraph.
- 2 Paragraph 1 of that Schedule (which relates to the general effect of the Schedule in relation to the Acquisition of Land Act) shall not apply.
- 3 (1) Sub-paragraph (1) of paragraph 3 of that Schedule shall apply with the substitution, for heads (b) and (c) of, and the proviso to, that sub-paragraph, of the following provisions:—
  - “(b) serve on the appropriate persons a notice in the prescribed form stating the effect of the order and that it is about to be submitted for confirmation, and specifying the time (not being less than twenty-one days from the service of the notice) within which and the manner in which objections thereto can be made ; and
  - (c) affix conspicuously to some conspicuous object or objects on the land comprised in the order a notice or notices containing the particulars specified in head (6) of this sub-paragraph”.
- (2) For the purposes of the provisions of sub-paragraph (1) of the said paragraph 3, as modified by the preceding sub-paragraph, the appropriate persons, in relation to a compulsory rights order, shall be taken to be all persons who, at the time when notice of the order is first published in accordance with those provisions, are known to the Board to be persons directly concerned.
- 4 Paragraph 4 of the said First Schedule shall apply as if, for any reference to any such owner, lessee or occupier as is therein mentioned, there were substituted a reference to any person who, in relation to the order, is a person directly concerned.
- 5 (1) Except where the Minister is proceeding concurrently with respect to an application for an authorisation under section one of this Act and an opencast site order, the Minister may disregard an objection to such an order if he is satisfied that it relates to the question whether an authorisation under section one of this Act should have been, or should be, granted to work the coal in question by opencast operations and either—

- (a) it relates exclusively to that question, or
  - (b) in so far as it relates to other matters, they consist entirely of matters which can be dealt with in the assessment of compensation.
- (2) The preceding sub-paragraph shall have effect without prejudice to the operation of sub-paragraph (4) of paragraph 4 of the said First Schedule (whereby objectors can be required to give reasons, and objections relating exclusively to matters of compensation can be disregarded).
- 6 Paragraph 10 of the said First Schedule shall apply as if the references to the preparation of an order, and to the making of an order, were omitted.
- 7 In paragraph 11 of the said First Schedule (which relates to land forming part of a common, open space or fuel or field garden allotment)—
  - (a) any reference to giving other land in exchange shall be construed as a reference to making other land available during the period for which the compulsory rights order is to have effect;
  - (b) the provisions of that paragraph as to the vesting of land, and to its being made subject to the like rights, trusts and incidents as the land purchased, shall apply with the necessary modifications; and
  - (c) the provision contained in the said paragraph 11 for discharging land from rights, trusts and incidents to which it was previously subject shall not apply.
- 8 Paragraph 13 of the said First Schedule shall apply with the substitution, for the reference to the local authority or Minister by whom the order was submitted or prepared, of a reference to the Board.
- 9 In paragraph 15 of the said First Schedule, the first reference to the Acquisition of Land Act shall be construed as a reference to this Act, and the second reference to that Act shall be construed as including a reference to this Act.
- 10 Paragraph 16 of the said First Schedule shall apply subject to the modification that the date on which the order becomes operative shall be the date mentioned in that paragraph or such later date (not being later than one year after the confirmation of the order) as may be determined by the Minister and specified in the order as confirmed.
- 11 In the application of the said First Schedule to compulsory rights orders "prescribed" means prescribed by regulations under this Act.
- 12 In the application of this Part of this Schedule to Scotland, for references to the Acquisition of Land Act, to sub-paragraph (1) of paragraph 3 of the First Schedule to that Act, and to heads (b) and (c) of, and the proviso to, that sub-paragraph, there shall be substituted respectively references to the Scottish Acquisition of Land Act, to paragraph 3 of the First Schedule to that Act, and to sub-paragraph (b) of that paragraph ; and the First Schedule to that Act shall apply as if, in paragraph 15, sub-paragraph (2) were omitted.

## PART II

### *Notification of date of entry*

- 13 (1) The provisions of this paragraph shall have effect as to the publication, service and affixing of notices as mentioned in subsection (2) of section five of this Act.

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- (2) The Board shall in two successive weeks publish in one or more local newspapers circulating in the locality in which the land comprised in the compulsory rights order is situated a notice referring to the order and specifying a date as being the date on which the rights conferred by the order are to become exercisable.
  - (3) The Board shall serve a like notice on every person who, at the time of the first publication of the notice under the last preceding sub-paragraph, is known to the Board to be, in relation to the order, a person directly concerned.
  - (4) The Board shall also affix conspicuously to some conspicuous object or objects on the land comprised in the order a notice or notices containing the particulars required to be contained in a notice served under the last preceding sub-paragraph.
  - (5) The notices referred to in sub-paragraphs (3) and (4) of this paragraph shall be served or affixed, as the case may be, either before or after the first publication of the notice required by sub-paragraph (2) of this paragraph, but not later than the end of the period of seven days beginning with the date of the first publication of that notice.
- 14 (1) If, after the first publication of a notice in accordance with sub-paragraph (2) of the last preceding paragraph, any person who, in relation to the order referred to in the notice, is a person directly concerned claims that any of the relevant requirements have not been complied with, he may, at any time not later than the end of the period of six weeks beginning with the date of the first publication of that notice, make an application to the High Court.
- (2) On any such application, the court may by interim order direct, either generally or in relation to any part of the land comprised in the compulsory rights order, that such rights (if any) as may be conferred by the order shall not be exercised until the final determination of the proceedings.
  - (3) Where, on determining such an application, the court is satisfied that any of the relevant requirements have not been complied with, and that the interests of the applicant have been substantially prejudiced by the failure to comply with them, the court may, by an order made either generally or with respect to so much of the land comprised in the compulsory rights order as may be specified in the order under this sub-paragraph,—
    - (a) declare that the rights which (if all the relevant requirements had been complied with) would have been conferred by the compulsory rights order have not become exercisable, and
    - (b) direct that the compulsory rights order shall cease to have effect as from such date as may be specified in the order under this sub-paragraph.
- 15 Subject to the last preceding paragraph, and without prejudice to any application thereunder or to any proceedings on or in consequence of such an application, where the first publication of a notice has been effected in accordance with sub-paragraph (2) of paragraph 13 of this Schedule—
- (a) all the requisite notices of the order referred to in that notice shall be deemed to have been published, served and affixed in accordance with the requirements of the said paragraph 13, and to have specified the date specified in that notice ;
  - (b) that date shall be deemed for all purposes to be a date satisfying the requirements of subsection (2) of section five of this Act; and

- (c) the exercise of any rights by virtue of the compulsory rights order shall not be questioned in any legal proceedings whatsoever on the ground that any of the relevant requirements have not been complied with.
- 16 In this Part of this Schedule " the relevant requirements" means the requirements of subsection (2) of section five of this Act and of paragraph 13 of this Schedule.
- 17 In the application of this Part of this Schedule to Scotland, for any reference to the High Court there shall be substituted a reference to the Court of Session.

## THIRD SCHEDULE

Section 22.

## PROVISIONS AS TO COMPENSATION BY WAY OF PAYMENT OF COST OF WORKS

- 1 In this Schedule—
  - " compensation " means compensation under section twenty-two of this Act;
  - " former use ", in relation to any land, means the use for which it was used immediately before the operative date of the order in question;
  - " proper cost ", in relation to any work, means such cost as is reasonable, having regard to the prices of materials and rates of remuneration for services current at the time when the work is carried out;
  - " the Tribunal " means the Lands Tribunal.
- 2 (1) The Board shall not be required to pay compensation in respect of expenses incurred in carrying out any work unless—
  - (a) not less than the prescribed length of time before the work was begun, the person incurring the expenses gave to the Board, in the prescribed manner, notice in writing containing adequate particulars of the work, together with a statement of the time when it was proposed to carry out the work and an estimate of the cost of the work, and
  - (b) at all reasonable times after the service of that notice, that person afforded to the Board reasonable facilities to inspect the land to which the notice related, in so far as he was in a position to afford such facilities.
- (2) In the following provisions of this Schedule "the applicant", in relation to a notice under this paragraph, means the person who gave that notice.
- 3 Where a notice has been given under the last preceding paragraph, the Board, within the prescribed time after the giving of that notice, may serve on the applicant a counter-notice, stating—
  - (a) that the Board object to the work specified in the applicant's notice, or to such one or more items thereof as may be specified in the counter-notice, and
  - (b) that they object thereto on such one or more grounds as may be specified in the counter-notice, being one or more of the grounds mentioned in the next following paragraph.
- 4 Subject to the next following paragraph, the said grounds, in relation to any work specified in a notice under paragraph 2 of this Schedule, are the following, that is to say,—

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- (a) that the work could not reasonably be regarded as work falling within paragraph (b) of subsection (1) of section twenty-two of this Act;
  - (b) that the work is likely to be ineffective, or is by its nature unsuitable to the land in question, or is proposed to be carried out in an unsuitable way;
  - (c) that the estimated cost of the work is grossly disproportionate to any prospective increase attributable to the work in the value of the land;
  - (d) that the work, in a case where the former use of the land in question was agricultural, would not be appropriate to the use of that land for agriculture, or, in any other case, would not be appropriate to the use of that land for its former use;
  - (e) that the work would not be required but for dilapidation, deterioration or damage which has occurred since the end of the period of occupation and is attributable to default on the part of the owner or of an occupier of the land;
  - (f) that the work, if carried out at the time specified in the applicant's notice, would be premature;
  - (g) that the work, if carried out at the time specified in the applicant's notice, would not have been carried out at the first reasonable opportunity after the end of the period of occupation, or within a reasonable time after that opportunity arose.
- 5 (1) In so far as a notice given under paragraph 2 of this Schedule (in this paragraph referred to as "the current notice") specifies any work (in this paragraph referred to as "the new work") in a case where the applicant has previously given one or more notices under that paragraph specifying similar work which he proposed to carry out in respect of the same land, the last preceding paragraph shall apply in relation to the new work with the substitution, for sub-paragraph (c) of that paragraph, of the following sub-paragraph (in this paragraph referred to as "the substituted sub-paragraph (c)"):—
- “(c) that the aggregate cost of that work and of all relevant work specified in previous notices relating to the same land is grossly disproportionate to the aggregate increase attributable to all such work in the value of the land”.
- (2) In the substituted sub-paragraph (c) the reference to the aggregate cost of the new work and of all other relevant work specified in previous notices relating to the same land is a reference to the aggregate of—
- (a) the estimated cost of the new work, and
  - (b) the estimated cost of any similar work specified in any previous notice given by the applicant which is still outstanding on the relevant date, and
  - (c) the proper cost of any similar work specified in any previous notice given by the applicant in respect of which a claim for compensation has been allowed before the relevant date or is still outstanding on that date.
- (3) In the substituted sub-paragraph (c) the reference to the aggregate increase attributable to all such work as is therein mentioned in the value of the land is a reference to the aggregate of—
- (a) the prospective increase in that value attributable to the new work, and
  - (b) the prospective increase in that value attributable to any similar work specified in any previous notice given by the applicant which is still outstanding on the relevant date, and
  - (c) the increase in that value attributable to any similar work specified in any previous notice given by the applicant in respect of which a claim for



compensation has been allowed before the relevant date or is still outstanding on that date.

- (4) For the purposes of sub-paragraphs (2) and (3) of this paragraph—
- (a) a previous notice specifying similar work shall be taken to be outstanding on the relevant date if—
    - (i) such a notice has been given before the relevant date and has not been withdrawn, and
    - (ii) either the Board have not before that date served a counter-notice objecting to that work, or, if they have served such a counter-notice, that objection has before that date been withdrawn or determined by the Tribunal not to be well-founded, and
    - (iii) no claim for compensation has before the relevant date been made in respect of expenses incurred in carrying out that work;
  - (b) a claim for compensation in respect of any work shall be taken to have been allowed before the relevant date if before that date—
    - (i) a claim for compensation has been made in respect of expenses incurred in carrying out that work, and
    - (ii) it has been agreed by the Board, or determined by the Tribunal, that compensation is payable in respect of those expenses, whether the amount of compensation so agreed or determined to be payable was the amount claimed or a different amount;
  - (c) a claim for compensation in respect of any work shall be taken to be still outstanding on the relevant date if at that date—
    - (i) a claim for compensation has been made in respect of expenses incurred in carrying out that work, and
    - (ii) that claim has not been withdrawn, and it has not been determined by the Tribunal that no compensation is payable in respect of those expenses, but
    - (iii) it has not been agreed by the Board, or determined by the Tribunal, that compensation is payable in respect of those expenses.
- (5) In this paragraph " similar work ", in relation to the new work, means work directed to the same aspect of restoration as the new work; " previous notice ", in relation to the current notice, means a notice given under paragraph 2 of this Schedule before the date on which the current notice was given; and " the relevant date ", in relation to the current notice, means the date on which the Board serve a counter-notice objecting to the new work, or the date on which the time for serving such a counter-notice expires, whichever is the earlier.
- (6) In the following provisions of this Schedule (except where the contrary is expressly provided) any reference to sub-paragraph (c) of the last preceding paragraph, in relation to work to which that paragraph applies in accordance with sub-paragraph (1) of this paragraph, shall be construed as a reference to the substituted sub-paragraph (c), and any reference in this Schedule to the grounds mentioned in the last preceding paragraph shall be construed accordingly.
- 6 For the purpose of determining whether an objection on the grounds mentioned in sub-paragraph (c) of paragraph 4 of this Schedule is well-founded, the estimated cost of any work shall be taken to be such amount as may be agreed, or determined by the Tribunal, to be a fair estimate of the cost of the work, whether that amount

is equal to, or greater or less than, the estimated cost of the work as stated in the applicant's notice specifying that work.

- 7 (1) In sub-paragraph (e) of paragraph 4 of this Schedule, the reference to default on the part of the owner or of an occupier of the land shall be construed in accordance with the following provisions of this paragraph.
- (2) In relation to agricultural land, the reference to default on the part of the owner shall be construed as a reference to failure on his part to manage the land in accordance with the rules of good estate management, and the reference to default on the part of an occupier of the land shall be construed as a reference to failure on the part of such an occupier to fulfil his responsibilities to farm the land in accordance with the rules of good husbandry.
- (3) In relation to any other land, the reference to default on the part of the owner shall be construed as a reference to failure on his part to deal with the land in a proper and due course of management, and the reference to default on the part of an occupier of the land shall be construed as a reference to failure on the part of such an occupier to maintain and use the land in a reasonable manner.
- (4) Sections ten and eleven of the Agriculture Act, 1947 (which prescribe tests for determining good estate management and good husbandry) shall apply for the purposes of sub-paragraph (2) of this paragraph.
- (5) In the application of this paragraph to Scotland, for the reference to sections ten and eleven of the Agriculture Act, 1947, there shall be substituted a reference to the Fifth and Sixth Schedules to the Agriculture (Scotland) Act, 1948.
- 8 Where a notice has been given under paragraph 2 of this Schedule, and the applicant has incurred expenses in carrying out any of the work specified in that notice, and claims compensation in respect of those expenses.—
- (a) if the Board have not served a counter-notice under paragraph 3 of this Schedule in respect of that notice, they shall not be entitled to object to that claim on any of the grounds mentioned in paragraph 4 of this Schedule;
- (b) if the Board have served such a counter-notice, they shall not be entitled to object to that claim on any of the grounds mentioned in paragraph 4 of this Schedule, except in so far as the claim relates to items which were specified in the counter-notice and the objection is on grounds which were so specified in relation to those items.
- 9 (1) Where a notice has been given under paragraph 2 of this Schedule, and the Board have served a counter-notice objecting to the work specified in the notice, or to one or more items thereof, the applicant, before beginning to carry out any item to which such an objection relates, may require the question whether the objection is well-founded to be referred to the Tribunal.
- (2) If on such a reference the Tribunal determines that the objection is not well-founded, and the applicant incurs expenses in carrying out any of the work to which the objection relates and claims compensation in respect of those expenses, then (in addition to any grounds on which the Board are precluded by the last preceding paragraph from objecting to that claim) the Board shall not be entitled to object to that claim on any of the grounds which were the grounds of that objection.
- (3) If on such a reference the Tribunal determines that the objection is well-founded, and the applicant incurs expenses in carrying out any of the work to which the Objection relates, and claims compensation in respect of those expenses.—

- (a) if the objection was on the grounds mentioned in any of sub-paragraphs (a), (b), (c), (d) and (e) of paragraph 4 of this Schedule, no compensation shall be payable in respect of those expenses;
  - (b) if the objection was on the grounds mentioned in sub-paragraph (f) of the said paragraph 4, no compensation shall be payable in respect of those expenses by virtue of the notice referred to in sub-paragraph (1) of this paragraph, but without prejudice to the service of a further notice under paragraph 2 of this Schedule in respect of the work in question;
  - (c) if the objection was on the grounds mentioned in sub-paragraph (g) of the said paragraph 4, the expenses shall be disallowed by virtue of this sub-paragraph in so far as (but no further than) they were greater than they would have been if the work to which the objection related had been carried out at the first reasonable opportunity after the end of the period of occupation.
- 10 (1) If, in a case where a notice has been given under paragraph 2 of this Schedule, and the Board have served a counter-notice objecting to the work specified in the notice, or to one or more items thereof,—
  - (a) the applicant incurs expenses in carrying out work to which the objection relates, without having required the question whether the objection is well-founded to be referred to the Tribunal, and claims compensation in respect of those expenses,
  - (b) on a reference to the Tribunal with respect to that claim the Board maintain the objection, and
  - (c) on that reference the Tribunal determines that the objection is well-founded, the provisions of heads (a) to (c) of sub-paragraph (3) of the last preceding paragraph shall apply (subject to the following provisions of this paragraph) as they apply in the circumstances mentioned in that sub-paragraph.
- (2) Where the objection was on the grounds mentioned in sub-paragraph (c) of paragraph 4 of this Schedule (otherwise than in a case falling within paragraph 5 of this Schedule) so much of the preceding sub-paragraph as relates to the maintenance of the objection, and to a determination that the objection is well-founded, shall apply as if, in the said sub-paragraph (c), the reference to the estimated cost of the work were a reference to the proper cost of the work.
- (3) Where the objection was on the grounds mentioned in the substituted sub-paragraph (c), within the meaning of paragraph 5 of this Schedule, so much of sub-paragraph (1) of this paragraph as relates to the maintenance of the objection, and to a determination that the objection is well-founded, shall apply as if, in the said paragraph 5, any reference to the relevant date were a reference to the date on which the question whether compensation is payable in respect of expenses incurred in carrying out the new work (within the meaning of that paragraph) falls to be determined by the Tribunal, and the objection had been formulated accordingly.
- 11 (1) Subject to the next following sub-paragraph, expenses incurred in carrying out any work shall not be treated as having been reasonably incurred as mentioned in paragraph (b) of subsection (1) of section twenty-two of this Act, if the work was begun more than fifteen years after the end of the period of occupation.
- (2) The preceding sub-paragraph shall not apply to any work required for making good damage caused by the settlement of soil replaced in the course of restoring the land or any other damage to the land caused by subsidence which is attributable to anything done in the exercise of rights conferred by the compulsory rights order in question.

- 12       Where it is shown that the expenses incurred in carrying out any work exceeded the proper cost of the work, any claim for compensation in respect of those expenses shall (without prejudice to any other grounds on which the claim may be liable to be disallowed, wholly or in part) be disallowed to the extent of the excess.
- 13       (1) Except in so far as objection is made to any work on the grounds mentioned in subparagraph (c) of paragraph 4 of this Schedule, and subject to the provisions of this Schedule relating to any such objection, expenses incurred in carrying out any work shall not be disallowed (wholly or in part) on the grounds that the proper cost of that work (or of that work together with any other work) is greater than any increase attributable thereto in the value of the land.
- (2) Subject to the preceding subparagraph, nothing in the preceding provisions of this Schedule shall be construed as precluding the Board from maintaining any objection to a claim for compensation, in so far as the objection is on any grounds other than those mentioned in paragraph 4 of this Schedule.

## FOURTH SCHEDULE

Sections 26, 28.

### SHORT-TERM IMPROVEMENTS AND RELATED MATTERS FOR WHICH COMPENSATION IS PAYABLE

#### PART I

##### *Improvements*

- 1       Mole drainage and works carried out to secure the efficient functioning thereof.
- 2       Protection of fruit trees against animals.
- 3       Chalking of land.
- 4       Clay-burning.
- 5       Liming of land.
- 6       Application to land of purchased manure (including artificial manure).
- 7       Consumption on the land of corn (whether produced on the land or not) or of cake or other feeding stuff not produced on the land, by—
- (a)   horses, cattle, sheep or pigs ;
- (b)   poultry folded on the land as part of a system of farming practised on the land.

#### PART II

##### *Other matters*

- 8       Growing crops and severed or harvested crops and produce, being in either case crops or produce grown on the land in the year ending with the date of entry.
- 9       Seeds sown and cultivations, fallows and acts of husbandry performed on the land at the expense of the tenant.

- 10 Pasture laid down with clover, grass, lucerne, sainfoin or other seeds, being either—
- (a) pasture laid down at the expense of the tenant otherwise than in compliance with an obligation imposed on him by an agreement in writing to lay it down to replace temporary pasture comprised in the land when the tenant entered thereon which was not paid for by him; or
  - (b) pasture paid for by the tenant on entering on the land.
- 11 Acclimatisation, hefting or settlement of hill sheep on hill land.

### PART III

#### *Modifications of Part II of this Schedule in relation to land not occupied by a tenant*

In paragraph 9, the words " at the expense of the tenant" shall be omitted.

In paragraph 10, the words from " being either " to the end of the paragraph shall be omitted.

### PART IV

#### *Improvements (Scotland)*

- 12 Protecting fruit trees against animals.
- 13 Chalking of land.
- 14 Clay-burning.
- 15 Claying of land.
- 16 Liming of land.
- 17 Marling of land.
- 18 Eradication of bracken, whins, or broom growing on the land at the commencement of a tenancy, and in the case of arable land the removal of tree roots, boulders, stones or other like obstacles to cultivation.
- 19 Application to land of purchased manure (including artificial manure).
- 20 Consumption on the land of corn (whether produced on the land or not), or of cake or other feeding stuff not produced on the land, by—
- (a) horses, cattle, sheep or pigs ; or
  - (b) poultry folded on the land as part of a system of farming practised on the land.
- 21 Laying down temporary pasture with clover, grass, lucerne, sainfoin, or other seeds, sown more than two years prior to the date of entry, in so far as the value of the temporary pasture on the land at the date of entry exceeds the value of the temporary pasture on the land at the commencement of the tenancy for which the tenant did not pay compensation.

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*Status: This is the original version (as it was originally enacted).*

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## PART V

### *Modifications of Part IV of this Schedule in relation to land not occupied by a tenant*

In paragraph 18 the words " growing on the land at the commencement of a tenancy " shall be omitted.

For paragraph 21, there shall be substituted the following paragraph:—

“**21** Pasture laid down with clover, grass, lucerne, sainfoin or other seeds.”

## PART VI

### *Market garden improvements*

- 22 Planting of standard or other fruit trees permanently set out.
- 23 Planting of fruit bushes permanently set out.
- 24 Planting of strawberry plants.
- 25 Planting of asparagus, rhubarb and other vegetable crops which continue productive for two or more years.
- 26 Erection, alteration or enlargement of buildings for the purposes of the trade or business of a market gardener.

## FIFTH SCHEDULE

Sections 33, 35.

### COMPENSATION IN RESPECT OF MINERALS

#### *General provisions*

- 1 (1) The provisions of this Schedule shall have effect in relation to land comprised in a compulsory rights order in the circumstances specified in subsection (1) of section thirty-three of this Act; and any reference in this Schedule to land to which this Schedule applies is a reference to land which, immediately before the operative date of such an order, falls within paragraph (a) or paragraph (b) of that subsection.
- (2) In this Schedule " the mineral operator "—
  - (a) in relation to land which, immediately before the operative date of the order in question, is subject to a mining lease or order conferring working rights as mentioned in paragraph (a) of the said subsection (1), means the person for the time being entitled to the benefit of that mining lease or order, and
  - (b) in relation to land which, immediately before that date, is land falling within paragraph (b) of the said subsection (1), means the person for the time being entitled to the interest referred to in that paragraph ;

and, in relation to any land to which this Schedule applies, " the relevant undertaking " means the mineral undertaking of the mineral operator.
- (3) In this Schedule " the relevant rights and facilities ", in relation to a mineral undertaking, means all rights and facilities for the time being available to the person carrying on that undertaking for the purposes of working, getting, carrying away,

using, treating, converting and disposing of minerals, whether on land comprised in the compulsory rights order in question or elsewhere.

- (4) Any reference in any provision of this Schedule to the exercise of the relevant rights and facilities in the manner in which they might reasonably have been expected to be exercised in circumstances mentioned in that provision shall be construed as including a reference to the exercise of those rights and facilities to the extent to which they might reasonably have been expected to be exercised in those circumstances.
- 2 Any provision of this Schedule to the effect that a person shall be entitled to compensation, or that compensation shall be payable, shall be construed as a provision that he shall be entitled to compensation from the Board, or that the compensation in question shall be payable by the Board, as the case may be.

*Annual and initial compensation payable to mineral operator*

- 3 For the year beginning with the operative date of the compulsory rights order, and for each subsequent year which begins with an anniversary of that date and falls within the period of occupation, there shall be assessed—
- (a) the profit or loss which a person carrying on the relevant undertaking might reasonably have been expected to make for that year by the exercise of the relevant rights and facilities if the compulsory rights order had not been made, and
  - (b) the profit or loss which such a person might reasonably have been expected to make for that year by the exercise of those rights and facilities in the circumstances existing in that year.
- 4 (1) Where the assessment for any year under sub-paragraph (a) of the last preceding paragraph shows a profit, and the assessment under sub-paragraph (b) of that paragraph also shows a profit, but a smaller profit than the assessment under sub-paragraph (a), the mineral operator shall be entitled to compensation for that year of an amount equal to the difference.
- (2) Where the assessment for any year under sub-paragraph (a) of the last preceding paragraph shows a profit, and the assessment under paragraph (b) of that paragraph shows a loss, the amount of that loss shall be added to the amount of that profit, and the mineral operator shall be entitled to compensation for that year of an amount equal to the sum of those amounts.
- (3) Where the assessment for any year under sub-paragraph (a) of the last preceding paragraph shows a loss, and the assessment under sub-paragraph (b) of that paragraph also shows a loss, but a greater loss than the assessment under sub-paragraph (a), the mineral operator shall be entitled to compensation for that year of an amount equal to the difference.
- 5 (1) For the year beginning with the operative date of the order, the mineral operator (in addition to any compensation payable by virtue of the last preceding paragraph) shall be entitled to compensation of an amount equal to the amount of any expenses reasonably incurred by him which are directly attributable to his being required to vacate land comprised in the order.
- (2) Without prejudice to the generality of the preceding sub-paragraph, the expenses referred to in that sub-paragraph shall be taken to include any expenses reasonably

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incurred by the mineral operator in procuring the cancellation or modification of a contract in force immediately before the operative date, in so far as it is—

- (a) a contract for the supply of goods or the rendering of services which would have been required by him for the purposes of the relevant undertaking if the order had not been made, but in consequence of the order are not required for those purposes, or
- (b) a contract for the supply by him of minerals or other goods which but for the order would have been supplied by him, directly or indirectly, by means of operations on land comprised in the order and, in consequence of the order, cannot be so supplied.

- 6 (1) If, in consequence of the confirmation of the compulsory rights order, the mineral operator incurs a loss in respect of a forced sale of any livestock, vehicles, plant, equipment or other chattels which are kept on land comprised in the order, or which are used on any such land for the purposes of the relevant undertaking, the mineral operator shall (subject to the next following sub-paragraph) be entitled to compensation of an amount equal to that loss.
- (2) Subsection (3) of section twenty-seven of this Act shall apply for the purposes of this paragraph.

*Terminal compensation payable to mineral operator*

- 7 (1) The provisions of this and the next following paragraph shall have effect in relation to land to which this Schedule applies where, after the end of the period of occupation, it continues to be land falling within paragraph (a) or paragraph (b) of subsection (1) of section thirty-three of this Act.
- (2) For the purposes of this paragraph there shall be assessed the profit which, for each year after the period of occupation, a person carrying on the relevant undertaking might reasonably have been expected to make by the exercise of the relevant rights and facilities, as those rights and facilities might reasonably have been expected to subsist at the end of the period of occupation, and in the circumstances which might reasonably have been expected to exist at the end of that period, if—
- (a) the compulsory rights order had not been made, and
  - (b) during the period of occupation, the person carrying on the relevant undertaking had exercised the relevant rights and facilities in the manner in which (had that order not been made) he might reasonably have been expected to exercise them.
- (3) There shall also be assessed the profit which, for each year after the period of occupation, a person carrying on the relevant undertaking might reasonably be expected to make by the exercise of the relevant rights and facilities, as those rights and facilities subsist at the end of the period of occupation, and in the circumstances existing at the end of that period, on the assumption that, during that period, he had exercised the relevant rights and facilities (so far as was reasonably practicable, having regard to the effect of the compulsory rights order) in such manner as in the circumstances he might reasonably have been expected to exercise them.
- (4) In this paragraph, and in paragraphs 8 to 10 of this Schedule, " year after the period of occupation " means a year which is either the year beginning with the end of the period of occupation or a year beginning with an anniversary of the end of that period.



- 8 (1) For each year after the period of occupation there shall be assessed the following values, that is to say.—
- (a) the current value, as at the end of the period of occupation, of the expectation of making a profit for that year assessed in accordance with sub-paragraph (3) of the last preceding paragraph, and
  - (b) the current value, as at the end of the period of occupation, of the expectation of making a profit for that year assessed in accordance with sub-paragraph (2) of that paragraph.
- (2) If the aggregate of the values assessed in accordance with head (a) of the preceding sub-paragraph is less than the aggregate of the values assessed in accordance with head (b) thereof, the mineral operator shall be entitled to compensation of an amount equal to the difference.
- 9 (1) The provisions of this and the next following paragraph shall have effect in relation to land to which this Schedule applies where, after the end of the period of occupation, it continues to be subject to a mining lease the benefit of which is held for the purposes of a mineral undertaking, and that mining lease contains a provision as to minimum rent.
- (2) For each year after the period of occupation there shall be assessed the minimum rent liability (if any) which the mineral operator might reasonably have been expected to incur under that mining lease if—
- (a) the compulsory rights order had not been made, and
  - (b) during the period of occupation, he had exercised the relevant rights and facilities in the manner in which (had that order not been made) he might reasonably have been expected to exercise them.
- (3) For each such year there shall also be assessed, in the circumstances existing at the end of the period of occupation, the minimum rent liability (if any) which the mineral operator might reasonably be expected to incur under that mining lease, on the assumption that, during that period, he had exercised the relevant rights and facilities (so far as was reasonably practicable, having regard to the effect of the compulsory rights order) in such manner as in the circumstances he might have reasonably been expected to exercise them.
- (4) In this and the next following paragraph any reference to a minimum rent liability for any year, in relation to a mining lease, is a reference to the difference between—
- (a) the rent payable for that year under that mining lease, and
  - (b) the rent which would have been payable for that year under that mining lease if the lease had not contained any provision as to minimum rent.
- (5) The preceding provisions of this paragraph shall have effect in relation to an order conferring working rights as they have effect in relation to a mining lease.
- (6) In this paragraph "rent" includes yearly or other rent, and any toll, duty, royalty or other annual or periodical payment in the nature of rent, whether payable in money or in money's worth or otherwise.
- 10 (1) The following capital equivalents shall be assessed, that is to say.—
- (a) the capital equivalent, as at the end of the period of occupation, of the aggregate minimum rent liabilities assessed in accordance with sub-paragraph (3) of the last preceding paragraph, and

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- (b) the capital equivalent, as at the end of the period of occupation, of the aggregate minimum rent liabilities assessed in accordance with sub-paragraph (2) of that paragraph.
- (2) If the capital equivalent assessed in accordance with head (a) of the preceding sub-paragraph is greater than the capital equivalent assessed in accordance with head (b) thereof, the mineral operator shall be entitled to compensation of an amount equal to the difference.
- (3) For the purposes of this paragraph the capital equivalent of the aggregate minimum rent liabilities for any years (whether assessed in accordance with sub-paragraph (2) or sub-paragraph (3) of the last preceding paragraph) shall be taken to be the amount of a fund which, if set aside for the purpose at the end of the period of occupation, would afford a sufficient (but not more than sufficient) indemnity against those liabilities as so assessed.

*Compensation payable to owner other than mineral operator*

- 11 (1) The provisions of paragraphs 12 and 13 of this Schedule shall have effect in relation to land to which this Schedule applies where, immediately before the operative date of the order, the interest of the owner of the land, or a stratum thereof, is held by a person other than the mineral operator.
- (2) In those provisions " the separate interest" means the interest which is held as mentioned in the preceding sub-paragraph, and any reference to the owner of the separate interest is a reference to the person who is for the time being entitled to that interest.
- 12 (1) For the year beginning with the operative date of the order, and for each subsequent year which begins with an anniversary of that date and falls within the period of occupation, there shall be assessed the aggregate amount of the rent, royalties and other sums to which the owner of the separate interest might reasonably have been expected to be entitled for that year in respect of that interest, and in respect of any interest of his in any other relevant land, if—
  - (a) the compulsory rights order had not been made, and
  - (b) the person carrying on the relevant undertaking had exercised the relevant rights and facilities in the manner in which, in those circumstances, he might reasonably have been expected to exercise them.
- (2) For any such year there shall also be assessed the aggregate amount of the rent, royalties and other sums to which the owner of the separate interest might reasonably have been expected to be entitled for that year in respect of that interest, and in respect of any interest of his in any other relevant land, on the assumption that the person carrying on the relevant undertaking exercised the relevant rights and facilities during that year (so far as was reasonably practicable, having regard to the effect of the compulsory rights order) in such manner as in those circumstances he might reasonably have been expected to exercise them.
- (3) For any year for which the amount assessed under the last preceding sub-paragraph is less than the amount assessed under sub-paragraph (1) of this paragraph, the owner of the separate interest shall be entitled to compensation of an amount equal to the difference.

- (4) In this paragraph " other relevant land" means land, other than the land in which the separate interest subsists, being land in which the mineral operator has an interest held for the purposes of the relevant undertaking.
- 13 (1) For the purposes of this paragraph there shall be assessed the market value which, at the end of the period of occupation, the separate interest might reasonably have been expected to have if—
- (a) the compulsory rights order had not been made, and
  - (b) the person carrying on the relevant undertaking had exercised the relevant rights and facilities in the manner in which in those circumstances he might reasonably have been expected to exercise them.
- (2) There shall also be assessed the market value which, in the circumstances existing at the end of the period of occupation, the separate interest might reasonably be expected to have, on the assumption that, during that period, the person carrying on the relevant undertaking exercised the relevant rights and facilities (so far as was reasonably practicable, having regard to the effect of the compulsory rights order) in the manner in which in those circumstances he might reasonably have been expected to exercise them.
- (3) If the value assessed under the last preceding sub-paragraph is less than the value assessed under sub-paragraph (1) of this paragraph, the owner of the separate interest shall be entitled to compensation of an amount equal to the difference.

*Provisions as to compensation under other provisions of Part II*

- 14 (1) Where any land to which this Schedule applies consists or forms part of land which constitutes a holding to which section seventeen, section twenty-one or section twenty-nine of this Act applies, the following provisions of this paragraph shall have effect.
- (2) Where for any year—
- (a) compensation would (apart from this sub-paragraph) be payable in respect of that holding by virtue of section seventeen of this Act, but
  - (b) it may reasonably be assumed that part of the holding would have been prevented from being used as mentioned in paragraph (c) of subsection (1) of section nineteen of this Act if the compulsory rights order had not been made, and the person carrying on the relevant undertaking had exercised the relevant rights and facilities in the manner in which, in those circumstances, he might reasonably have been expected to exercise them,
- the provisions of sections eighteen and nineteen of this Act shall apply in relation to that year as if that part of the holding were not comprised in the holding, and any reference in those sections to the entirety of the holding shall be construed accordingly.
- (3) Compensation under section twenty-two of this Act shall not be payable in respect of work carried out on land which forms part of the holding and is land to which this Schedule applies.
- (4) If the entirety of the holding consists of land to which this Schedule applies, no compensation under section twenty-three of this Act shall be payable in respect of the holding.
- (5) If only part of the holding consists of land to which this Schedule applies.—

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- (a) section twenty-three of this Act shall have effect in relation to the holding, but
  - (b) subsections (2) and (4) of that section shall apply as if that land did not form part of the holding, and any reference in that section to values computed in accordance with any of paragraphs (a), (b) and (c) of subsection (2) thereof shall be construed accordingly.
- (6) In this paragraph any reference to section seventeen, section eighteen, section nineteen, section twenty-two or section twenty-three of this Act includes a reference to the provisions of that section as applied by section twenty-nine of this Act.
- 15 (1) Where the land comprised in a compulsory rights order consists of or includes land of which, immediately before the operative date of the order, the surface is occupied by one person and any of the subjacent strata are occupied by another person, those subjacent strata shall not be treated as constituting a holding to which section seventeen, section twenty-one or section twenty-nine of this Act applies.
- (2) Where the land comprised in a compulsory rights order consists of or includes land of which, at the end of the period of occupation, the surface is owned by one person and any of the subjacent strata are owned by another person, the subjacent strata shall not be treated as constituting or forming part of a holding to which section twenty-one of this Act applies, or a holding in respect of which the provisions of that section have effect as applied by section twenty-nine of this Act.

## SIXTH SCHEDULE

Section 34.

### APPLICATION OF COMPENSATION PROVISIONS TO SPECIAL CASES

#### *Changes in right of occupation, or division of ownership of holding*

- 1 (1) Subject to the next following paragraph, where a compulsory rights order comprises the whole or part of a holding to which section seventeen of this Act applies, and at any time on or after the operative date and before the end of the period of occupation an act or event occurs whereby—
  - (a) one person becomes the person who is for the time being entitled to occupy part of that holding or who would be so entitled if the order had not been made, and
  - (b) another person becomes the person who is for the time being entitled to occupy another part of that holding or who would be so entitled if the order had not been made,
 the following provisions of this paragraph shall have effect.
- (2) As from the occurrence of that act or event, each of those parts of the holding shall be treated, for the purposes of sections seventeen to nineteen of this Act, as if it were a separate holding, and were a holding to which section seventeen of this Act applied:

Provided that no compensation shall be payable by virtue of section seventeen of this Act in respect of land which (in accordance with the preceding provisions of this sub-paragraph) is to be treated as a separate holding, but does not include any of the land comprised in the compulsory rights order.

- 2       Where a compulsory rights order comprises the whole or part of a holding to which section seventeen of this Act applies, and at any time on or after the operative date and before the end of the period of occupation a new tenancy is created which comprises the holding or any part thereof, that tenancy shall be disregarded for the purposes of sections seventeen to twenty of this Act, and for the purposes of the preceding paragraph, and the provisions of those sections and of that paragraph shall apply as if that tenancy had not been created.
- 3       (1) Where by virtue of section seventeen of this Act compensation is payable for any year in respect of a holding to which that section applies (or to which, in accordance with the preceding provisions of this Schedule, it is to be treated as applying), and the person entitled to that compensation is not the person who was entitled to occupy the holding on the operative date (in this paragraph referred to as "the original occupier") and is not a person who has become entitled to the relevant interest in the holding—
- (a) on or after the death of the original occupier, in accordance with the disposition of the original occupier's estate effected by his will, or the law relating to intestacy, or the combination of his will and that law, or
- (b) under an agreement which was made for valuable consideration by the person entitled to the compensation and was in force immediately before the operative date, or under a disposition creating or transferring the relevant interest in the holding in pursuance of such an agreement,
- the compensation payable to him for that year shall not include any sum assessed in accordance with the provisions of section nineteen of this Act.
- (2) In this paragraph "the relevant interest", in relation to a person entitled to compensation for any year in respect of a holding, means the interest in or right over the holding by virtue of which he is entitled to that compensation ; "will" includes a codicil; and "disposition", where the reference is to a disposition creating or transferring an interest, does not include any provision contained in a will, but, with that exception, includes any conveyance, assignment, lease or other assurance.
- 4       (1) The provisions of this paragraph shall have effect where a compulsory rights order comprises the whole or part of a holding to which section twenty-one of this Act applies, and at the end of the period of occupation one person is the owner of part of that holding and another person is the owner of another part thereof.
- (2) For the purposes of sections twenty-one to twenty-three of this Act, each of those parts of the holding shall be treated as if it were a separate holding, and were a holding to which section twenty-one of this Act applied:
- Provided that no compensation shall be payable by virtue of any of those sections in respect of land which (in accordance with the preceding provisions of this subparagraph) is to be treated as a separate holding, but does not include any of the land comprised in the compulsory rights order.
- 5       The provisions of paragraphs 1 to 4 of this Schedule shall (with the necessary modifications) have effect in relation to a holding to which section twenty-nine of this Act applies as they have effect in relation to a holding to which sections seventeen and twenty-one of this Act apply.
- 6       In the following paragraphs of this Schedule, any reference to a holding, in relation to any provisions of Part II of this Act, includes a reference to land which, in accordance with any of the preceding paragraphs of this Schedule, is to be treated as if it were a separate holding for the purposes of those provisions.

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*Provisions as to assessment of profit or loss under s. 19*

- 7 For the purposes of section nineteen of this Act, the period preceding the operative date of a compulsory rights order, shall, in relation to a particular holding, be taken to be such period (either longer or shorter than four years) immediately preceding that date as may be agreed, or determined by the Lands Tribunal, to be appropriate, if it is shown that, in the case of that holding, a period of four years immediately preceding that date would be inappropriate for the purposes of that section.
- 8 (1) Where a person is entitled to compensation for any year in respect of a holding by virtue of section seventeen of this Act, then in so far as it is shown that—
- (a) reasonable opportunities were open to him (apart from the occupation and use of any part of the holding not comprised in the order) to mitigate any loss of profit from the holding by augmenting his income for that year in other ways, and
  - (b) those opportunities would not have been open to him if he had continued to be in occupation of the entirety of the holding,
- the amount of any profit assessed for that year under subsection (1) of section nineteen of this Act shall be reduced by the amount by which he has augmented his income for that year by availing himself of those opportunities, or by which he might reasonably have been expected to augment his income for that year if he had availed himself of those opportunities, as the case may be.
- (2) For the purposes of this paragraph no account shall be taken of any opportunities of which the person in question has not availed himself (notwithstanding that they were opportunities of the kind described in the preceding sub-paragraph) in so far as they would have involved his engaging (whether as an employed person or otherwise) in a substantially different occupation from that in which he was engaged during the period preceding the operative date of the order.
- (3) Paragraph (a) of subsection (8) of section nineteen of this Act, and the last preceding paragraph, shall apply for the purposes of this paragraph as they apply for the purposes of that section.
- 9 (1) Where a person is entitled to compensation for any year in respect of a holding by virtue of section seventeen of this Act, and he has received any compensation—
- (a) by virtue of section twenty-six of this Act, in respect of any improvements carried out on land comprised in that holding, being improvements of a description specified in Part I or Part VI of the Fourth Schedule to this Act, or
  - (b) by virtue of section twenty-seven of this Act, in respect of a forced sale of any property kept on or used for the purposes of that holding, or removed from that holding, as the case may be,
- the amount of any profit assessed for that year under subsection (1) of section nineteen of this Act shall be reduced by the amount of the income from that compensation which is attributable to that year.
- (2) For the purposes of the preceding sub-paragraph, the income from any compensation which is attributable to any year—
- (a) in a case where the compensation is shown to have been invested by the recipient thereof, shall be taken to be the amount of income accruing in respect of that year from the property representing the compensation, and
  - (b) in any other case, shall be taken to be an amount equal to the income which would have accrued for that year from property representing the

compensation if it had been invested in securities bearing interest at the rate for the time being in force for the purposes of section thirty-five of this Act.

- (3) In this paragraph any reference to Part I or Part VI of the Fourth Schedule 'to this Act includes a reference to that Part as varied by any order made under section twenty-six or section twenty-eight of this Act.
- 10 The provisions of paragraphs 8 and 9 of this Schedule shall have effect (with the necessary modifications) in relation to any compensation payable under paragraph 4 of the Fifth Schedule to this Act, and to any compensation received by virtue of paragraph 5 or paragraph 6 of that Schedule, as those provisions have effect in relation to compensation to which a person is entitled by virtue of section seventeen of this Act, and to compensation received by virtue of section twenty-six or twenty-seven of this Act.
- 11 In paragraphs 7 to 9 of this Schedule, references to sections seventeen, nineteen and twenty-seven of this Act shall include references to the provisions of those sections as applied by section twenty-nine of this Act.

*Assessment of annual compensation otherwise than by reference to letting from year to year*

- 12 (1) Where compensation is payable by virtue of section seventeen of this Act in respect of a holding which consists of or includes—
- (a) land which, immediately before the operative date of the compulsory rights order in question, was used for a purpose for which land would not normally be let from year to year, or
  - (b) land in respect of which, immediately before the operative date, there was in force permission granted under Part III of the Act of 1947 for the land to be used for such a purpose,
- subsections (2) to (4) of section eighteen of this Act shall not apply, and for the purposes of that section, and for the purposes of paragraph (b) of subsection (1) of section nineteen of this Act, and (where applicable) for the purposes of subsection (3) of the said section nineteen, the annual value of the land for any year shall be determined in accordance with regulations made by the Minister under this paragraph.
- (2) Any regulations made under this paragraph may include provisions specifying purposes which, in relation to the provisions of this paragraph, are to be treated as purposes for which land would not normally be let from year to year.
- (3) In this paragraph any reference to any of the provisions of sections seventeen to nineteen of this Act includes a reference to that provision as applied by section twenty-nine of this Act.
- 13 (1) Where any land to which section thirty-two of this Act applies in relation to a compulsory rights order is—
- (a) land which, immediately before the operative date of the order, was used for a purpose for which land would not normally be let from year to year, or
  - (b) land in respect of which, immediately before the operative date, there was in force permission granted under Part III of the Act of 1947 for the land to be used for such a purpose,
- subsection (3) of that section shall not apply, and for the purposes of subsection (2) of that section annual value shall be determined in accordance with regulations made by the Minister under this paragraph.

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*Status: This is the original version (as it was originally enacted).*

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- (2) Sub-paragraph (2) of the last preceding paragraph shall apply for the purposes of this paragraph as it applies for the purposes of that paragraph.

*Valuation of property otherwise than by reference to sale in open market*

- 14 (1) This paragraph applies to any provision of this Act under which compensation is to be assessed by reference to the value which any property would have if it were offered for sale.
- (2) For the purposes of the application of any such provision to property of a kind not normally the subject of sales in the open market, the Minister may make regulations providing for value to be ascertained by reference to such matters as may be specified in the regulations.

*Woodlands*

- 15 The Minister may by regulations make provision for modifying or adapting any of the provisions of this Act relating to compensation in respect of compulsory rights orders in their application to land which, immediately before the operative date of such an order, or the date of entry thereunder, was used as woodlands, or as woodlands of a particular description specified in the regulations.

*Terminal compensation in respect of agricultural  
land qualifying for compensation under s. 26*

- 16 (1) The provisions of this paragraph shall have effect where compensation under section twenty-six of this Act is payable in respect of any improvements or other matters, and the land in relation to which that compensation is payable constitutes or forms part of a holding to which section twenty-one of this Act applies.
- (2) Section twenty-two of this Act shall apply in relation to that holding as if any reference in that section to the condition in which the land was immediately before the date of entry (in so far as any such reference is applicable to the land referred to in the preceding sub-paragraph) were a reference to the condition in which that land would have been, immediately before the date of entry, if those improvements or other matters had not been carried out, or had not applied to that land, as the case may be.
- (3) Section twenty-three of this Act shall apply in relation to the holding as if, for the value mentioned in paragraph (c) of subsection (2) of that section, there were substituted the value which, at the end of the period of occupation, a freehold interest in the holding would have if—
- (a) those improvements or other matters had not been carried out, or had not applied to the land in question, as the case may be, but
  - (b) in all other respects the entirety of the holding were in the state in which it was immediately before the date of entry.
- (4) Subsection (4) of section twenty-three of this Act shall apply for the purpose of computing value as mentioned in the last preceding sub-paragraph as it applies for the purpose of computing the values referred to in that subsection.



*Provisions as to compensation under s. 32*

- 17 (1) No compensation shall be payable under subsection (2) of section thirty-two of this Act for any year for which the interest of the owner of the relevant land is held subject to, and with the benefit of, a tenancy which was subsisting immediately before the operative date of the compulsory rights order in question, unless the rent payable under that tenancy for that year is a rent which is subject to a liability to be reduced in consequence of that order or of anything done in the exercise of rights conferred by that order, or is a rent which has been so reduced in pursuance of such a liability.
- (2) For the purposes of the preceding sub-paragraph the rent payable under a tenancy shall be taken to be subject to a liability to be reduced as therein mentioned if, under the terms and conditions of the tenancy or under any enactment applicable thereto, the tenant is entitled to require that rent to be so reduced, or is entitled to require the question whether the rent should be so reduced, or generally what rent should be payable under the tenancy, to be referred to arbitration or to any court or tribunal; and the reference in that sub-paragraph to a rent which has been so reduced in pursuance of such a liability shall be construed accordingly.
- 18 (1) No compensation shall be payable under subsection (2) of the said section thirty-two for any year for which the owner of the relevant land is entitled to compensation under subsection (2) of section thirty-one of this Act in respect of a right to which this paragraph applies.
- (2) This paragraph applies to any right which fulfils the following conditions, that is to say.—
- (a) that it is a right restrictive of the use of the whole or part of the land comprised in the compulsory rights order in question ;
  - (b) that the benefit of the right is annexed to the relevant land, or to that land together with other land, or (if the benefit of the right is not so annexed) that the right is exercisable by a person who is the owner of the relevant land ; and
  - (c) that the exercise of the right, in relation to any land comprised in the order, could (apart from the order) have prevented that land from being used for the purposes which, in relation to the authorisation referred to in the order, constitute the authorised purposes.
- 19 In paragraphs 17 and 18 of this Schedule any reference to the relevant land shall be construed in accordance with subsection (2) of section thirty-two of this Act.

*Restricted lettings, and easements and similar rights*

- 20 This paragraph applies to the following rights, that is to say.—
- (a) any right conferred by a letting of land, or a licence to occupy land, in pursuance of an agreement made (whether the agreement expressly so provides or not) in contemplation of the use of the land only for grazing or mowing during some specified period of the year;
  - (b) any easement or similar right over land.
- 21 For the purposes of the following provisions of this Act, that is to say, subsections (2) and (3) of section seventeen, subsection (2) of section twenty-one, subsection (1) of section twenty-nine, and the provisions of subsection (3) of section seventeen as applied by subsection (2) of section twenty-nine, any right to which the last preceding paragraph applies shall be disregarded; and, in relation to any land which is subject to any such right, those provisions shall apply as if that right had not been conferred, reserved or otherwise acquired, as the case may be.

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*Status: This is the original version (as it was originally enacted).*

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- 22 (1) Where in accordance with the provisions of section seventeen of this Act (as modified by the last preceding paragraph) any land constitutes a holding to which that section applies, and, during any year for which compensation is payable in respect of that holding by virtue of that section, any land comprised in the holding is subject to any right to which paragraph 20 of this Schedule applies, the provisions of the next following sub-paragraph shall have effect as to the assessment under section nineteen of this Act of profit or loss for that year in respect of that holding.
- (2) Any profit or loss required to be so assessed under subsection (1) of section nineteen of this Act, and (if the remainder of the holding referred to in subsection (3) of that section includes any of the land which is subject to the right in question) any profit or loss required to be so assessed for that year under subsection (3) of that section, shall be assessed on the basis of an occupation of the holding, or of the remainder of the holding, as the case may be.—
- (a) subject to that right, in so far as it would (if the compulsory rights order had not been made) have been exercisable during the year in question in relation to land comprised in the holding, or in the remainder of the holding, as the case may be, but
  - (b) with the benefit of any rent which (if the order had not been made) would have been payable for that year in respect of the exercise of that right in relation to any such land, and
  - (c) in all other respects, on the terms and in the circumstances specified in subsection (1) or subsection (3) of that section, as the case may be.
- (3) For the purposes of the last preceding sub-paragraph it shall be assumed that the manner and extent of the exercise of the right in question, during the year for which the profit or loss is required to be assessed, is such as it might reasonably have been expected to be during that year if the compulsory rights order had not been made.
- (4) Where the preceding provisions of this paragraph have effect in relation to the assessment of compensation for any year in accordance with section nineteen of this Act, and in respect of the right in question, in so far as it relates to land comprised in the holding, any rent is payable for that year (notwithstanding the compulsory rights order) to the person entitled to that compensation, the amount of that compensation (calculated apart from this sub-paragraph) shall be reduced by the amount of that rent.
- (5) In the preceding provisions of this paragraph any reference to section seventeen of this Act includes a reference to section twenty-nine of this Act, and any reference to section nineteen of this Act includes a reference to the provisions of that section as applied by section twenty-nine of this Act.
- (6) In this paragraph " rent " includes any sums payable in respect of the exercise of a right to which paragraph 20 of this Schedule applies.
- 23 Where the whole or part of the land comprised in a compulsory rights order is subject to any such right as is mentioned in sub-paragraph (a) of paragraph 20 of this Schedule, and in any year in which that right subsists, being any such year as is mentioned in subsection (2) of section thirty-one of this Act, the exercise of that right is prevented or injuriously affected by reason of the order or of anything done in the exercise of rights conferred by the order, the said subsection (2) shall have effect in relation to that right as if it were an easement to which that section applies.
- 24 Any agreement for the letting of land or the grant of a licence in respect of land, where, before the agreement was entered into, the letting or grant was approved by the Minister of Agriculture, Fisheries and Food for the purposes of section two

of the Act of 1948 (which relates to the effect of certain lettings and licences to occupy agricultural land, but excepts lettings and licences approved by the said Minister from the operation of the section) shall be treated for the purposes of section seventeen of this Act as conferring a right to occupy the land to which the agreement relates, if apart from this paragraph it would not be treated as conferring such a right.

25 Where the whole or part of a holding to which section seventeen of this Act applies consists of land occupied under a letting or licence approved by the Minister of Agriculture, Fisheries and Food for the purposes of section two of the Act of 1948, and—

- (a) by the agreement under which the land was let or the licence granted a right to use the land for specified purposes was reserved to the person letting the land or granting the licence, as the case may be;
- (b) the exercise of that right is prevented or injuriously affected by reason of the compulsory rights order or of anything done in the exercise of rights conferred by the order; and
- (c) that right does not constitute an easement or similar right,

subsection (2) of section thirty-one of this Act shall have effect in relation to that right as if it were an easement to which that section applies

*Apportionment of annual compensation in respect of parts of a year*

26 (1) Where, in consequence of any such act or event as is mentioned in paragraph 1 of this Schedule, a part of a holding is to be treated as a separate holding as mentioned in that paragraph (or in that paragraph as applied by paragraph 5 of this Schedule), and that act or event occurs during the course of the year beginning with the operative date of the compulsory rights order in question, or in the course of a year beginning with an anniversary of that date, the provisions of Part II of this Act, and the provisions of this Schedule other than this sub-paragraph, shall apply—

- (a) in relation to the entirety of the holding, with respect to the part of that year ending with that act or event, and
- (b) in relation to each of those separate holdings, with respect to the part of that year after that act or event,

as if any reference in those provisions to a year included a reference both to the part of that year ending with that act or event and to the part of that year after that act or event.

(2) Where in consequence of any act or event occurring on or after the operative date of a compulsory rights order and before the end of the period of occupation, other than any such act or event as is mentioned in the preceding sub-paragraph,—

- (a) one person would (apart from this sub-paragraph) be entitled to compensation for any year in respect of a holding if that act or event had occurred before the beginning of that year, and
- (b) another person would (apart from this sub-paragraph) be entitled to compensation for that year in respect of the holding if that act or event had occurred after the end of that year,

the provisions of Part II of this Act, and the provisions of this Schedule other than this sub-paragraph, shall apply as if any reference to a year included a reference both to the part of that year ending with that act or event and to the part of that year after that act or event.

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*Status: This is the original version (as it was originally enacted).*

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- (3) For the purposes of the application of the provisions of Part II of this Act, or of the provisions of this Schedule other than this sub-paragraph, to a compulsory rights order which has effect only for part of a year, or for one or more complete years followed by part of another year, any reference in those provisions to a year shall be construed as including a reference to that part of a year.
- (4) In the application of any of the said provisions to a part of a year, in accordance with the preceding provisions of this paragraph, any reference to annual value, or to any other amount which is required to be assessed by reference to a year, shall be construed as a reference to so much of the annual value for (that year, or of the amount in question assessed by reference to that year, as (on a rateable apportionment of that value or amount as between different parts of that year) is properly attributable to that part of that year,
- 27 Sub-paragraphs (2) to (4) of the last preceding paragraph shall have effect (with the necessary modifications) in relation to compensation under paragraph 4, paragraph 5 or paragraph 12 of the Fifth Schedule to this Act as they have effect in relation to annual compensation in respect of a holding to which section seventeen of this Act applies.
- 28 (1) Where, in the case of land to which section thirty-two of this Act applies in relation to a compulsory rights order, a person is the owner of that land for part, but not the whole, of a year, subsection (2) of that section shall apply as if any reference to a year included a reference to that part of a year.
- (2) The preceding sub-paragraph shall have effect without prejudice to the operation of sub-paragraph (3) of paragraph 26 of this Schedule, where the said sub-paragraph (3) is applicable ; and sub-paragraph (4) of that paragraph shall have effect in relation to the preceding sub-paragraph as it has effect in relation to sub-paragraphs (1) to (3) of that paragraph.

#### *Concurrent compulsory rights orders*

- 29 The Minister may by regulations make provision for modifying or adapting any of the provisions of this Act relating to compensation in respect of compulsory rights orders in their application to land which—
- (a) constitutes or forms part of the land comprised in a compulsory rights order, or, in relation to a compulsory rights order, forms part of a holding to which section seventeen or section twenty-nine of this Act applies, or is land to which section thirty-two of this Act applies, and
  - (b) at any time after the operative date of that order, and before the end of the period of occupation thereunder, constitutes or forms part of the land comprised in another Compulsory rights order, or, in relation to another such order, forms part of a holding to which section seventeen or section twenty-nine of this Act applies, or is land to which section thirty-two of this Act applies.

#### *Compensation in respect of limited compulsory rights orders*

- 30 (1) In respect of a compulsory rights order which provides that its operation shall be limited as mentioned in subsection (1) of section eight of this Act, the provisions of Part II of this Act shall apply subject to the following provisions of this paragraph.

- (2) In so far as the operation of the order extends to an easement or similar right in respect of the whole or part of the land comprised in the order, or to a right restrictive of the use of the whole or part of that land, the provisions of section thirty-one of this Act shall have effect with respect to that easement or right, but not with respect to any easement or right to which the operation of the order does not extend.
- (3) In so far as the operation of the order extends to the interest or rights created or conferred by a mining lease or order conferring working rights in respect of minerals in or under the land comprised in the compulsory rights order or part thereof, the provisions of section thirty-three of this Act and of the Fifth Schedule thereto shall have effect with respect to that interest or those rights, but not with respect to any interest or rights created or conferred by a mining lease or order conferring working rights to which the compulsory rights order does not extend.
- (4) Subject to sub-paragraphs (2) and (3) of this paragraph, none of the provisions of Part II of this Act (except subsection (4) of section twenty-three in so far as it applies for the purposes of section thirty-one of this Act) shall have effect in relation to the order.

#### *Application to Scotland*

- 31 In the application of this Schedule to Scotland, for references to Part I of the Fourth Schedule to this Act there shall be substituted references to Part IV of that Schedule, excluding paragraph 21 thereof, and for references to Part III of the Act of 1947 there shall be substituted references to Part II of the Scottish Act of 1947, and for references to an agreement for the letting of land, to the Minister of Agriculture, Fisheries and Food, and to section two of the Act of 1948, there shall be substituted respectively references to a lease, to the Secretary of State, and to section two of the Scottish Act of 1949.

## SEVENTH SCHEDULE

Section 37.

### ADJUSTMENTS BETWEEN LANDLORDS AND TENANTS AND IN RESPECT OF MORTGAGES AND MINING LEASES AND ORDERS

## PART I

### *Agricultural holdings*

- 1 (1) The provisions of this paragraph shall have effect where—
- (a) the land comprised in a compulsory rights order consists of or includes land falling within paragraphs (a) and (b) of subsection (1) of section twenty-four of this Act, and
  - (b) the tenancy under which the tenant could have claimed compensation for the improvements or special system of farming in question, or a subsequent tenancy under which the tenant has retained or succeeded to the relevant right to compensation, terminates on or after the date of entry, but before the end of the period of occupation, without being succeeded by another such subsequent tenancy.

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*Status: This is the original version (as it was originally enacted).*

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- (2) In the circumstances specified in the preceding sub-paragraph, the provisions of the Act of 1948 as to compensation for long-term improvements, and as to compensation for a special system of farming.—
    - (a) shall apply, in relation to the tenancy terminating as mentioned in that sub-paragraph, as if, at the termination of that tenancy, the land in question were in the state in which it was immediately before the date of entry, and
    - (b) if the tenant under that tenancy quitted the holding before the termination of his tenancy, shall so apply as if he had quitted the holding on the termination of his tenancy.
  - (3) Subsection (5) of section twenty-four of this Act shall apply for the purposes of sub-paragraph (1) of this paragraph as it applies for the purposes mentioned in that subsection ; and subsection (6) of that section shall apply in relation to the last preceding sub-paragraph as it applies in relation to subsection (2) of that section.
- 2
  - (1) The provisions of this paragraph shall have effect where land comprised in an agricultural holding is comprised in a compulsory rights order (whether any other land is comprised in the holding, or comprised in the order, or not), and—
    - (a) before the date of entry long-term improvements qualifying for compensation under the Act of 1948 (in this Act referred to as " the former improvements ") had been carried out on the land in question, or a special system of farming qualifying for compensation under that Act (in this paragraph referred to as " the former system ") had been adopted on that land, and
    - (b) at the end of the period of occupation the circumstances are such that the provisions of the Act of 1948 referred to in subsection (2) of section twenty-four of this Act (as extended by subsection (6) of that section) would have applied as mentioned in subsection (3) of that section, but for the fact that the benefit of the former improvements, or the increased value attributable to the former system, as the case may be, has been replaced or regained, on the restoration of the land, by works (in this paragraph referred to as " the new improvements ") or the continuous adoption of a system of farming (in this paragraph referred to as " the new system ") of comparable benefit to the land.
  - (2) In the circumstances specified in the preceding sub-paragraph, the said provisions of the Act of 1948 shall have effect in relation to the new improvements or the new system, as the case may be, as if those improvements had been carried out, or that system had been adopted, by the person who carried out or adopted the former improvements or the former system.
  - (3) Subsections (7) and (8) of section twenty-four of this Act shall apply for the purposes of this paragraph as they apply for the purposes of that section.
- 3
  - (1) Where by virtue of section twenty-four of this Act a tenant is entitled to compensation for long-term improvements or for a special system of farming, as mentioned in that section, and—
    - (a) after the end of the period of occupation expenses are incurred in replacing the benefit of the improvements by other long-term improvements of comparable benefit to the land, or in regaining the increased value attributable to that system of farming by the continuous adoption of a special system of farming of comparable benefit to the land, as the case may be, and

- (b) the person incurring those expenses (whether he is the landlord or not) is entitled to compensation in respect of those expenses under section twenty-two of this Act,
- the provisions of the Act of 1948 shall apply as if the works in respect of which those expenses are incurred were improvements carried out by the landlord at the request of the tenant, if apart from this paragraph they would not constitute such improvements.
- (2) Subsection (8) of section fourteen of this Act shall not affect the operation of section nine of the Act of 1948 in so far as the said section nine applies in accordance with the preceding sub-paragraph.
- 4 (1) The provisions of this paragraph shall apply where—
- (a) immediately before the operative date of a compulsory rights order, any of the land comprised in the order consisted of or included an agricultural holding or part of an agricultural holding, and
- (b) the tenancy relating to that holding continues until after the end of the period of occupation.
- (2) The landlord or the tenant of the agricultural holding may, by notice in writing served on his tenant or landlord, demand a reference to arbitration under the Act of 1948 of the question whether any of the terms and conditions of the contract of tenancy (including any term or condition relating to rent) should be varied in consequence of any change in the state of the land resulting from the occupation or use of the land in the exercise of rights conferred by the order.
- (3) On a reference under this paragraph the arbitrator shall determine what variations (if any) should be made in the terms and conditions of the contract of tenancy, as mentioned in the last preceding sub-paragraph, and the date (not being earlier than the end of the period of occupation) from which any such variations are to take effect or to be treated as having taken effect; and as from that date the contract of tenancy shall have effect, or, as the case may be, shall be treated as having had effect, subject to any variations determined by the arbitrator under this paragraph.
- (4) Section seventy-seven of the Act of 1948 shall apply to references to arbitration by virtue of this paragraph as it applies to matters which by virtue of the Act of 1948 are required to be determined by arbitration thereunder.
- (5) The provisions of this paragraph shall not affect any right of the landlord or the tenant, or the jurisdiction of the arbitrator, under section eight or section nine of the Act of 1948 ; but where there is a reference to arbitration under either of those sections and under this paragraph in respect of the same agricultural holding, and it appears to the arbitrator that the reference under that section relates wholly or mainly to the consequences of the occupation or use of the land in the exercise of rights conferred by the order, he may direct that proceedings on the two references shall be taken concurrently.
- (6) In the last preceding sub-paragraph references to section nine of the Act of 1948 include references to the provisions of that section as applied by paragraph 3 of this Schedule.
- 5 (1) Where the land comprised in a compulsory rights order consists of or includes the whole or part of an agricultural holding, section thirteen of the Act of 1948 (which relates to the removal of fixtures and buildings) shall have effect in relation to the holding subject to the following provisions of this paragraph.

- (2) In relation to the service of a notice by the tenant on or after the operative date of the order, in respect of a fixture or building on a part of the holding which is within the land comprised in the order, paragraph (b) of subsection (2) of that section (under which the tenant is required to give at least one month's notice of his intention to remove a fixture or building) shall apply with the substitution, for the words " one month " , of the words " fourteen days ".
- (3) Where the tenant has given to the landlord notice under the said subsection (2) (or under that subsection as modified by the last preceding sub-paragraph) of his intention to remove a fixture or building on a part of the holding which is within the land comprised in the order, and that notice is given on or after the operative date of the order, or, if given before that date, expires on or after that date, subsection (3) of that section (under which the landlord can elect to purchase a fixture or building which the tenant has signified his intention of removing) shall not apply to that fixture or building.
- (4) The last preceding sub-paragraph shall have effect in relation to a notice served before the operative date of the order notwithstanding that the landlord has given a counter-notice in respect of the fixture or building before the operative date.
- (5) In this paragraph any reference to section thirteen of the Act of 1948 includes a reference to the provisions of that section as extended by paragraph (b) of subsection (1) of section sixty-seven of that Act (which relates to market gardens).
- 6 (1) Where an agricultural holding consists of or includes land which was comprised in a compulsory rights order, and after the end of the period of occupation the landlord proposes to carry out any such work as is mentioned in paragraph (b) of subsection (1) of section twenty-two of this Act, the landlord or any person authorised by him may at all reasonable times enter upon the holding for the purpose of carrying out that work.
- (2) Nothing in the preceding sub-paragraph shall affect any right exercisable by virtue of section seventeen of the Act of 1948 (which confers rights of entry for the purposes therein mentioned).
- 7 The provisions of paragraph 4 of this Schedule shall apply in relation to mortgages as they apply in relation to contracts of tenancy, as if any reference in that paragraph to such a contract, or to a tenancy, were a reference to a mortgage, and any reference to land consisting of or including an agricultural holding or part of an agricultural holding were a reference to agricultural land subject to a mortgage, and any reference to a landlord or to a tenant were a reference to a mortgagee or to a mortgagor, as the case may be.

## PART II

### *Other land*

- 8 (1) The provisions of this paragraph shall have effect where—
  - (a) the land comprised in a compulsory rights order consists of or includes land falling within paragraphs (a) and (b) of subsection (1) of section thirty of this Act, and



- (b) the tenancy under which the tenant could have claimed compensation for the improvements terminates on or after the date of entry, but before the end of the period of occupation.
  - (2) In the circumstances specified in the preceding sub-paragraph, the provisions of the Act of 1927 as to compensation for improvements—
    - (a) shall apply, in relation to that tenancy, as if at the termination thereof the land in question were in the state in which it was immediately before the date of entry, and
    - (b) if the tenant under that tenancy quitted the holding before the termination of his tenancy, shall so apply as if he had quitted the holding on the termination of his tenancy.
  - (3) Subsection (5) of section thirty of this Act shall apply for the purposes of this paragraph with the substitution, for references to subsection (2) of that section, of references to the last preceding sub-paragraph.
  - (4) In this Part of this Schedule " the Act of 1927 " means the Landlord and Tenant Act, 1927, and " improvement " includes the erection of a building.
- 9 (1) The provisions of this paragraph shall have effect where land comprised in a holding to which Part I of the said Act of 1927 applies is comprised in a compulsory rights order (whether any other land is comprised in the holding, or comprised in the order, or not), and—
- (a) the tenancy under which that holding was held immediately before the operative date continues until after the end of the period of occupation, and
  - (b) before the operative date improvements (in this paragraph referred to as " the former improvements ") had been carried out on the land in question, and
  - (c) at the end of the period of occupation the circumstances are such that compensation would be payable in respect of the former improvements under section thirty of this Act, but for the fact that the benefit of those improvements has been replaced, on the restoration of the land, by works (in this paragraph referred to as " the new improvements ") of comparable benefit to the land.
- (2) In the circumstances specified in the preceding sub-paragraph, the provisions of Part I of the said Act of 1927 as to compensation for improvements shall apply to the new improvements as if they had been carried out by the person who carried out the former improvements.
- 10 Where a compulsory rights order comprises the whole or part of a holding to which section twenty-nine of this Act applies, and after the end of the period of occupation the tenant carries out improvements thereon, and, in respect of expenses incurred in carrying out those improvements, is entitled to compensation under section twenty-two of this Act as applied by section twenty-nine of this Act, those improvements shall be treated for the purposes of the Act of 1927, and for the purposes of Part II of the Landlord and Tenant Act, 1954, as if they had been carried out by the landlord.
- 11 (1) Where a holding to which Part I of the Act of 1927 applies consists of or includes land which was comprised in a compulsory rights order, and after the end of the period of occupation the landlord proposes to carry out any such work as is mentioned in paragraph (b) of subsection (1) of section twenty-two of this Act, the landlord or any person authorised by him may at all reasonable times enter upon the holding for the purpose of carrying out that work.

- (2) Nothing in the preceding sub-paragraph shall affect any right exercisable by virtue of section ten of the Act of 1927 (which confers rights of entry for the purposes therein mentioned).
- 12 (1) The provisions of this paragraph shall apply where—
- (a) immediately before the operative date of a compulsory rights order, any of the land comprised in the order was subject to a tenancy, but did not constitute or form part of an agricultural holding, and
  - (b) the tenancy continues until after the end of the period of occupation.
- (2) The landlord or the tenant of the holding may, by notice in writing served on his tenant or landlord, demand a reference to the court of the question whether any of the terms and conditions of the contract of tenancy (including any term or condition as to rent) should be varied in consequence of any change in the state of the holding resulting from the occupation or use of the land in the exercise of rights conferred by the compulsory rights order.
- (3) On a reference under this paragraph the court shall determine what Variations (if any) should be made in the terms and conditions of the contract of tenancy, as mentioned in the last preceding sub-paragraph, and the date (not being earlier than the end of the period of occupation) from which any such variations are to take effect or to be treated as having taken effect; and as from that date the contract of tenancy shall have effect, or, as the case may be, shall be treated as having had effect, subject to any variations determined by the court under this paragraph.
- (4) In this paragraph " the court" means the court exercising, in accordance with the provisions of section sixty-three of the Landlord and Tenant Act, 1954, the jurisdiction conferred on the tribunal by Part I of the Landlord and Tenant Act, 1927 ; and the provisions of the said section sixty-three shall apply, in relation to references under this paragraph, as they apply in relation to matters which, by virtue of the said Part I, are required to be determined by the tribunal thereunder.
- 13 The provisions of the last preceding paragraph shall apply in relation to mortgages as they apply in relation to contracts of tenancy, as if any reference to such a contract, or to a tenancy, were a reference to a mortgage, and any reference to a landlord or to a tenant were a reference to a mortgagee or to a mortgagor, as the case may be.

### PART III

#### *General provisions for protection in respect of tenancies and mortgages*

- 14 Where any land comprised in a compulsory rights order is subject to a tenancy or mortgage, and—
- (a) any obligation or restriction imposed by the terms and conditions of the tenancy or mortgage would (apart from this Act) fall to be performed or observed at a time within the period of occupation, whether by the landlord or the tenant, or by the mortgagee or the mortgagor, as the case may be, and
  - (b) in consequence of the rights conferred by the order, or of anything done in the exercise of those rights, that obligation or restriction cannot be so performed or observed at that time,

the failure to perform or observe the obligation or restriction at that time shall be deemed not to be a breach of any of the terms and conditions of the tenancy or mortgage.

- 15 (1) Where at any time while any land was comprised in a compulsory rights order it was subject to a tenancy or mortgage which continues until after the end of the period of occupation, and at any time within twelve months after the end of that period proceedings are brought to enforce a right of re-entry, forfeiture or foreclosure, or a right to damages or any other remedy, in respect of any failure after the end of that period to comply with any of the terms and conditions of the tenancy or mortgage, the person against whom the proceedings are brought may apply in those proceedings for relief under this paragraph.
- (2) If, in a case where application is made for relief under this paragraph, the court to which the application is made is satisfied that the failure to comply with the term or condition in question was attributable to a change in the state of the land resulting from the occupation and use thereof in the exercise of rights conferred by the compulsory rights order, the court may grant such relief, in respect of the matters to which the proceedings relate, as the court may consider reasonable in the circumstances.
- 16 The provisions of paragraphs 14 and 15 of this Schedule shall be without prejudice to the provisions of paragraph 4 or paragraph 12 of this Schedule, or to any of those provisions as applied in relation to mortgages by paragraph 7 or paragraph 13 thereof.

## PART IV

### *Provisions as to mining leases and orders*

- 17 (1) The provisions of this Part of this Schedule shall have effect where the land comprised in a compulsory rights order consists of or includes land which, immediately before the operative date of the order, is subject to a mining lease or order conferring working rights the benefit of which is held for the purposes of a mineral undertaking.
- (2) In this Part of this Schedule " the mineral operator " and " the relevant rights and facilities ", in relation to such a mining lease or order as is mentioned in the preceding sub-paragraph, have the same meanings as in the Fifth Schedule to this Act.
- 18 The provisions of the mining lease or order shall have effect subject to the provision that the aggregate amount of the rent, royalties and other sums payable by the mineral operator by virtue of the lease or order for any year which is either—
  - (a) the year beginning with the operative date of the compulsory rights order, or
  - (b) a year beginning with an anniversary of that date and falling within the period of occupation, shall not exceed the aggregate amount of the rent, royalties and other sums which would have been payable by the mineral operator thereunder for that year if the compulsory rights order had not been made, and he had exercised the relevant rights and facilities in the manner in which, and to the extent to which, he might reasonably have been expected to exercise them in those circumstances.

## PART V

### *Special provisions as to business, professional and other tenants*

- 19 (1) The provisions of this Part of this Schedule shall have effect where any of the land comprised in a compulsory rights order is land which, immediately before the operative date of the order, was subject to a tenancy to which Part II of the Act of 1954 applied ; and any reference in this Part of this Schedule to a tenancy to which this Part of this Schedule applies is a reference to a tenancy which—
- (a) immediately before the operative date of such an order, was a tenancy to which Part II of that Act applied, and
  - (b) comprises the whole or part of the land comprised in that order.
- (2) In this Part of this Schedule " the Act of 1954 " means the Landlord and Tenant Act, 1954, and " business " has the same meaning as in Part II of that Act.
- (3) Sub-paragraph (4) of paragraph 12 of this Schedule shall apply for the purposes of this Part of this Schedule as it applies for the purposes of that paragraph.
- 20 (1) As from the operative date of the order and so long thereafter as the tenancy continues and the order continues to have effect, so much of the land comprised in the order as—
- (a) is comprised in the tenancy, and
  - (b) immediately before the operative date was occupied by the tenant for the purposes of the relevant business (or for those and other purposes) or was occupied by a person employed by the tenant for the purposes of the relevant business, and
  - (c) is not for the time being so occupied by the tenant or by such a person,
- shall be treated for the purposes of Part II of the Act of 1954 as if it had continued to be so occupied.
- (2) In this paragraph " the relevant business " means the business by reason of which, immediately before the operative date, the tenancy was a tenancy to which Part II of the Act of 1954 applied.
- 21 (1) For the purposes mentioned in the next following sub-paragraph, in relation to a tenancy to which this Part of this Schedule applies, paragraphs (f) and (g) of subsection (1) of section thirty of the Act of 1954 (which specify certain grounds on which a landlord may oppose an application for a new tenancy) shall apply as if any reference to the termination of the current tenancy were a reference to the end of the period of occupation.
- (2) The said purposes are—
- (a) the purposes of the operation of subsection (6) of section twenty-five of the Act of 1954 (which requires a notice by the landlord terminating a tenancy to state whether the landlord would oppose an application for a new tenancy, and, if so, on which of the grounds mentioned in section thirty of that Act he would do so) in relation to the service of a notice under the said section twenty-five at any time on or after the operative date of the order in question and before the end of the period of occupation ;
  - (b) the purposes of the operation of subsection (6) of section twenty-six of that Act (which enables a landlord, where the tenant has requested a new tenancy, to give notice that he will oppose an application for a new tenancy, and requires him to state on which of the grounds mentioned in section thirty

of that Act he will do so) in relation to the service of a notice under that subsection at any such time;

- (c) the purposes of the operation of the said section thirty and of section thirty-one of that Act (which relates to the dismissal of an application for a new tenancy where the landlord successfully opposes it) in relation to the determination by the court of an application for a new tenancy, where that application falls to be determined at any such time.

- 22 (1) Where an application made under subsection (1) of section twenty-four of the Act of 1954 (whether before or after the commencement of this Act) falls to be determined by the court at a time when the current tenancy is a tenancy to which this Part of this Schedule applies (being a time on or after the operative date of the order in question and before the end of the period of occupation) and on that application an order for the grant of a new tenancy is made under section twenty-nine of that Act, the following provisions of this paragraph shall have effect.
- (2) If it falls to the court to determine the rent payable under the new tenancy, the court shall determine that rent as if the compulsory rights order had not been made, and as if so much of the property comprised in the current tenancy as is comprised in the compulsory rights order were in the state in which it was immediately before the operative date.
- (3) If it falls to the court to determine any of the terms and conditions of the new tenancy (other than any term or condition as to the rent payable thereunder) the court shall determine those terms or conditions as if the compulsory rights order had not been made ; but, in so far as any such terms or conditions of the new tenancy impose an obligation or restriction in respect of land comprised in the compulsory rights order, the court may suspend the operation of that obligation or restriction during the period of occupation.
- (4) If the new tenancy continues until after the end of the period of occupation, the landlord or the tenant may, by notice in writing served on his tenant or landlord, demand a reference to the court of the question whether any of the terms and conditions of the tenancy (including any term or condition as to rent) should be varied, having regard to the state of the land and other circumstances existing at the time when the reference is determined by the court:

Provided that the court shall not entertain such a reference unless the proceedings are begun within twelve months after the end of the period of occupation.

- (5) On a reference under the last preceding sub-paragraph, the court shall determine what variations (if any) should be made in the terms and conditions of the tenancy, as mentioned in that sub-paragraph, and the date (not being earlier than the end of the period of occupation) from which any such variations are to take effect or to be treated as having taken effect; and as from that date the tenancy shall have effect, or, as the case may be, shall be treated as having had effect, subject to any variations determined by the court under this paragraph.
- 23 (1) The provisions of this paragraph shall have effect, in the case of a tenancy to which this Part of this Schedule applies, where an application under subsection (1) of section twenty-four of the Act of 1954—
- (a) is made by the tenant before the end of the period of occupation, but falls to be determined by the court after the end of that period, or
  - (b) is made by the tenant within twelve months after the end of that period,

and the landlord opposes the application on grounds consisting of or including any of the grounds specified in paragraphs (a) and (c) of subsection (1) of section thirty of that Act (which relate respectively to the state of repair of the holding and to the tenant's use or management of the holding during the current tenancy).

- (2) If the court is satisfied that the matters to which the objection in question relates are attributable to a change in the state of the land resulting from the occupation and use thereof in the exercise of rights conferred by the compulsory rights order, the court, in so far as it considers it reasonable to do so in the circumstances, may disregard those matters in determining whether to make an order for the grant of a new tenancy.
  - (3) The provisions of the last preceding sub-paragraph shall be without prejudice to the operation of paragraph 14 of this Schedule in relation to things done or omitted during the period of occupation.
- 24 (1) In relation to an application made under subsection (1) of section twenty-four of the Act of 1954 (whether before or after the commencement of this Act) which falls to be determined by the court at a time when the current tenancy is a tenancy to which this Part of this Schedule applies (being a time on or after the operative date of the order in question and before the end of the period of occupation) section thirty-seven of that Act (under which a tenant is entitled to compensation from the landlord if an order for the grant of a new tenancy is precluded on certain grounds therein mentioned) shall apply subject to the following provisions of this paragraph.
- (2) In subsection (1) of that section—
    - (a) the reference to paragraphs (f) and (g) of subsection (1) of section thirty of that Act shall be construed as a reference to those paragraphs as modified by sub-paragraph (1) of paragraph 21 of this Schedule ;
    - (b) the reference to quitting the holding shall be construed as a reference to the termination of the current tenancy.
  - (3) In subsection (2) of that section, for any reference to the rateable value of the holding there shall be substituted a reference to the amount which would have been the rateable value of the holding on the material date if—
    - (a) the compulsory rights order in question 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, and
    - (b) so much of the land comprised in the order as is comprised in the current tenancy had remained in the state in which it was immediately before the operative date of the order.
  - (4) Paragraphs (a) to (c) of subsection (5) of that section shall not apply ; but—
    - (a) the amount which, in the circumstances mentioned in the last preceding sub-paragraph, would have been the rateable value of the holding on the material date shall be taken to be the value which, in those circumstances, and apart from any exemption from assessment to rates, would on a proper assessment have been the value to be entered in the valuation list as the annual value of the holding ; and
    - (b) the provisions of subsection (5) of that section as to the determination of disputes and as to appeals, and the provisions of subsection (6) of that section (which authorises the Commissioners of Inland Revenue to make rules as to procedure) shall apply in relation to any dispute or reference relating to that amount as they apply in relation to any such dispute or reference as is mentioned in those provisions.

- (5) The modifications of the said section thirty-seven specified in the preceding provisions of this paragraph shall apply without prejudice to the operation, in relation to that section, of paragraph 20 of this Schedule.
- (6) In this paragraph " the material date ", in relation to an application under subsection (1) of section twenty-four of the Act of 1954, means the date of the landlord's notice under section twenty-five of that Act or under subsection (6) of section twenty-six of that Act, as the case may be, and " annual value " has the same meaning as in section thirty-seven of that Act.

## PART VI

### *Application to Scotland*

- 25 In the application of this Schedule to Scotland—
- (a) for references to the Act of 1948, and to sections eight, nine, thirteen, seventeen, sixty-seven, and seventy-seven of that Act, there shall be substituted respectively references to the Scottish Act of 1949, and to sections seven, eight, fourteen, eighteen, sixty-five, and seventy-five of that Act;
  - (b) for references to an arbitrator there shall be substituted references to an arbiter ;
  - (c) paragraphs 7 and 13 shall be omitted ;
  - (d) for any reference to a holding to which Part I of the Landlord and Tenant Act, 1927, applies there shall be substituted a reference to a holding the tenant of which is entitled by the terms of his lease to claim compensation in respect of improvements, and any reference to the said Part I or to a tenant entitled to compensation thereunder shall be construed accordingly ;
  - (e) in paragraph 12 for sub-paragraph (4) there shall be substituted the following sub-paragraph:—
 

“(4) In this paragraph ' the court ' means the sheriff having jurisdiction in the place where the holding, or any part of it, is situated”;
  - (f) in Part III references to a mortgage shall be omitted ;
  - (g) Part V shall be omitted.

## EIGHTH SCHEDULE

Section 41.

### TENANCIES OF ALLOTMENT GARDENS AND OTHER ALLOTMENTS

- 1 (1) In this Schedule—
- " the Act of 1908 " means the Small Holdings and Allotments Act, 1908 ;
  - " the Act of 1922 " means the 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.

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*Status: This is the original version (as it was originally enacted).*

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- (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.
- 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 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 the Board 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,—
- (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.
- 4       In determining the amount of any compensation payable by the Board 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.
- 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 from the Board of an amount equal to that loss.



- (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.
- 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 by the Board 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.
- 7 Any dispute—
- (a) as to a right to compensation from the Board under this Schedule, or as to the amount of any such compensation, or
- (b) as to a right to compensation from the Board 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 the judge of the county court having jurisdiction in the place where the land in question is situated, on an application in writing made for the purpose by the person claiming the compensation or by the Board.
- 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 the Board.
- 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.

*Status: This is the original version (as it was originally enacted).*

- (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—
- (a) for the reference to subsection (4) of section twenty-two of the Act of 1922 there shall be substituted a reference to subsection (3) of section nineteen of the Allotments (Scotland) Act, 1922 ;
  - (b) in sub-paragraph (1) of paragraph 3, for the words " the Act of 1908 or the Act of 1922 or the Allotments Act, 1950 " there shall be substituted the words " the Allotments (Scotland) Acts, 1892 to 1950 ";
  - (c) in sub-paragraph (2) of paragraph 3, for the words " under any of the enactments mentioned in the next following sub-paragraph" there shall be substituted the words " by virtue of the Allotments (Scotland) Acts, 1892 to 1950 (but excluding any compensation for disturbance) ", and for the words " such re-entry as is mentioned in subsection (2) of section two of the Act of 1922 " there shall be substituted the words " such resumption of possession as is mentioned in subsection (3) of section two of the Allotments (Scotland) Act, 1922 ";
  - (d) sub-paragraph (3) of paragraph 3 shall be omitted ;
  - (e) subject to sub-paragraph (b) of this paragraph, for any reference to the Allotments Act, 1950, there shall be substituted a reference to the Allotments (Scotland) Act, 1950 ;
  - (f) in paragraph 5, for the references to section four or section five of the Act of 1922 and to subsection (4) of section forty-seven of the Act of 1908 there shall be substituted respectively references to subsection (8) of section two or section four of the Allotments (Scotland) Act, 1922, and to subsections (5) and (6) of section seven of the Allotments (Scotland) Act, 1892 ;
  - (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, but paragraph (c) of subsection (9) of section two of the Allotments (Scotland) Act, 1922, shall apply in relation to the expenses of an arbitration under paragraph 7 of this Schedule as it applies in relation to the expenses of an arbitration under the said subsection (9).

## NINTH SCHEDULE

Sections 39, 47.

### PROVISIONS AS TO NOTICES

- 1 Subject to the following provisions of this Schedule, any notice or other document required or authorised to be served or given under this Act, or under any enactment applied by or incorporated with this Act, may be served or given either—

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given; or
  - (b) by leaving it at the usual or last known place of abode of that person, or, in a case where an address for service has been given by that person, at that address ; or
  - (c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode, or, in a case in which an address for service has been given by him, at that address ; or
  - (d) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office, or sending it in a prepaid registered letter addressed to the secretary or clerk of the company or body at that office.
- 2 Where the notice or document is required or authorised to be served on any person as having an interest in land, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or authorised to be served on any person as an occupier of land, the notice shall be deemed to be duly served if—
  - (a) being addressed to him either by name or by the description of " the owner " or " the occupier ", as the case may be, of the land (describing it), it is delivered or sent in the manner prescribed by the preceding paragraph; or
  - (b) being so addressed, it is sent in a prepaid registered letter to the land in question and is not returned to the person by whom or on whose behalf it is sent, or is delivered to some person on that land or is affixed conspicuously to some object on that land.
- 3 (1) Subject to the next following sub-paragraph, where the notice or other document is required to be served on or given to all persons having interests (or interests of a specified description) in any land, or being occupiers of any land, and it appears to the person required or authorised to serve or give the notice or other document that any part of that land is unoccupied, the notice or other document shall be deemed to be duly served on all persons having interests (or the relevant interests, as the case may be) in that part of the land and on any occupiers of that part of the land (other than a person who has given an address for the service of the notice on him) if it is addressed to " the owners and any occupiers " of that part of the land (describing it) and is affixed conspicuously to some object on the land.  
  
(2) This paragraph shall not apply to any notice required to be served or given under the First Schedule to this Act, or under the provisions of the First Schedule to the Acquisition of Land Act, or the Scottish Acquisition of Land Act, as applied, in relation to compulsory rights orders, by section four of this Act.
- 4 The preceding provisions of this Schedule shall not apply to any notice for which a method of service is prescribed by regulations under this Act, except in so far as any of those provisions are applied by those regulations.

## TENTH SCHEDULE

Section 48.

### TRANSITIONAL PROVISIONS

#### PART I

##### GENERAL

- 1 (1) In this Schedule, except in so far as the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—
- " annual compensation under this Act " means compensation under any of the following provisions of this Act, that is to say, sections seventeen to twenty, the provisions of any of those sections as applied by section twenty-nine, and subsection (2) of section thirty-one ;
  - " the date of requisition ", in relation to any land, means the date on which possession of that land was or is taken in the exercise of emergency powers ;
  - " the existing arrangements ", in relation to any land which, at the commencement of this Act, is land already requisitioned for opencast operations, or land requisitioned as an opencast storage site, means the following provisions and arrangements in so far as they apply to that land, that is to say,—
    - (a) the provisions of subsection (1) of section two of the Compensation (Defence) Act, 1939, and
    - (b) any arrangements in force at the commencement of this Act whereby compensation (either in substitution for, or in addition to, compensation under those provisions) is to be payable by or on behalf of the Minister in consequence of the taking or retention of possession of the land in the exercise of emergency powers ;
  - " interest ", in relation to any land, includes any right by virtue of which a person is entitled, or would (apart from this Act or any exercise of emergency powers) be entitled, to occupy that land, and also includes any right restrictive of the use of that land ;
  - " land already requisitioned for opencast operations " means land of which possession has before the commencement of this Act been taken in the exercise of emergency powers, and is for the time being retained in the exercise of those powers for the purpose of working coal on that land, or on land contiguous therewith, by opencast operations, or for the purpose of restoring that land after it has been affected by the working of coal by such operations ;
  - " land hereafter requisitioned for opencast operations " means land of which possession is after the commencement of this Act taken in the exercise of emergency powers for the purpose of working coal on that land, or on land contiguous therewith, by opencast operations, and is for the time being retained in the exercise of those powers for that purpose, or for the purpose of restoring that land after it has been affected by the working of coal by such operations ;
  - " land requisitioned for opencast operations " means land which is either land already requisitioned for opencast operations or land hereafter requisitioned for such operations ;
  - " land requisitioned as an opencast storage site " means land which fulfils the following conditions, that is to say, that—

- (a) possession of that land was taken in the exercise of emergency powers before the eighteenth day of December, nineteen hundred and fifty-seven ;
- (b) possession of that land was on that day retained in the exercise of those powers for the purpose of storing, cleaning or sorting coal or otherwise preparing it for disposal, and continues for the time being to be so retained for that purpose ; and
- (c) during the period beginning with that day and ending with the commencement of this Act, the coal stored or otherwise dealt with on that land has been wholly or mainly coal got by opencast operations ;

" terminal compensation under this Act " means compensation under any of the following provisions of this Act, that is to say, sections twenty-one, twenty-two and twenty-three, or under the provisions of any of those sections as applied by section twenty-nine, or under subsection (3) of section thirty-one ;

" terminal compensation under the Act of 1939 " means compensation under paragraph (b) of subsection (1) of section two of the Compensation (Defence) Act, 1939 ;

" terminal date ", in relation to any land of which (by virtue of the following provisions of this Schedule) possession ceases to be retained in the exercise of emergency powers by reason of its being comprised in a compulsory rights order, means the date on which that order ceases to have effect, and, in relation to any other land, means the date on which possession thereof ceases to be retained in the exercise of emergency powers.

- (2) Any reference in any provision of this Schedule to a sum paid on account of a prospective right to compensation of a description specified in that provision includes a reference to a sum paid in consideration of a waiver (whether total or partial) of a prospective claim to compensation of that description.

## PART II

### OPENCAST SITES

#### *Authorisations*

- 2 Subsection (1) of section one of this Act shall not have effect with respect to the working of coal on land requisitioned for opencast operations ; but, for the purposes of the provisions of this Act, other than section one, any authorisation given by the Minister by virtue of the Defence (General) Regulations, 1939, whether before or after the commencement of this Act, with respect to the use of any such land by the Board shall be treated as if it were an authorisation granted under section one of this Act to work coal on that land by opencast operations, or to cause or permit coal to be so worked thereon.
- 3 (1) Where at the commencement of this Act—
  - (a) any land is occupied by the Board for the purpose of working coal on that land, or on land contiguous therewith, by opencast operations, or for the purpose of restoring that land after it has been affected by the working of coal by such operations, and

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(b) the land is either land owned by the Board, or land in which there is a Crown or Duchy interest, but no private interest other than any interest belonging to the Board, and accordingly possession of that land has not been taken, or is not for the time being retained, in the exercise of emergency powers, subsection (1) of section one of this Act shall not have effect in relation to that land ; but the powers conferred on the Minister by section two of this Act shall be exercisable in relation to that land as those powers would be exercisable by the Minister in relation thereto on granting an authorisation under section one of this Act comprising that land.

- (2) The preceding sub-paragraph shall have effect notwithstanding anything in subsection (1) of section forty-four of this Act.
- (3) In this paragraph " Crown or Duchy interest" and " private interest" have the meanings assigned to them by section forty-four of this Act.

- 4 The powers conferred on the Minister by section two of this Act shall be exercisable at any time in relation to any land requisitioned for opencast operations, notwithstanding that the Minister is not then granting an authorisation under section one of this Act in respect of that land, if the Minister has (whether before or after the commencement of this Act) given an authorisation which by virtue of paragraph 2 of this Schedule is to be treated as if it were an authorisation under that section.

#### *Termination of emergency powers*

- 5 Where a compulsory rights order is made in respect of land requisitioned for opencast operations, any power to retain possession of land in the exercise of emergency powers shall cease to apply to that land as from the operative date of the order.

#### *Compulsory rights orders in respect of requisitioned opencast sites*

- 6 Subject to the following provisions of this Part of this Schedule, where the land comprised in a compulsory rights order consists of or includes land requisitioned for opencast operations, the period specified in the order, as the period for which the order is to have effect, shall not extend beyond the tenth anniversary of the date of requisition of that land.

- 7 Where the land comprised in a compulsory rights order consists exclusively of land requisitioned for opencast operations, then, notwithstanding anything in subsection (5) of section four of this Act.—

(a) the provisions of Part I of the First Schedule to the Acquisition of Land Act, as modified by Part I of the Second Schedule to this Act, except the provisions of paragraphs 2, 5 and 6 of the said First Schedule, as so modified, and

(b) the provisions of Part III of the said First Schedule, as so modified, shall not apply to that order:

Provided that this paragraph shall have effect subject to the provisions of paragraph 9 of this Schedule in cases falling within that paragraph.

- 8 A compulsory rights order falling within paragraph 6 or paragraph 7 of this Schedule shall not be varied by extending the period for which it has effect in such

a way that, in respect of any of the land comprised in the order, that period extends beyond the tenth anniversary of the date of requisition of that land.

- 9 (1) Where the land comprised in a compulsory rights order consists of or includes land requisitioned for opencast operations, and it appears to the Board that, for either or both of the reasons mentioned in the next following sub-paragraph, it is necessary that the period specified in the order, as the period for which the order is to have effect, should extend beyond the tenth anniversary of the date of requisition of that land.—
- (a) the period specified in the order may extend beyond that anniversary, and shall (subject to the following provisions of this paragraph) be such period as the Board consider necessary in the circumstances ;
  - (b) the order shall state the reasons for which the Board consider it necessary that the period specified in the order should so extend ; and
  - (c) paragraph 7 of this Schedule shall not apply to the order, and the provisions as to the making and confirmation of the order shall be in accordance with subsection (5) of section four of this Act.
- (2) The said reasons are—
- (a) that a longer period is required for completing the restoration of land comprised in the order so as to be reasonably fit for use as agricultural land ;
  - (b) that there is in force an agreement relating to that land made between the Board and another person before the eighteenth day of December, nineteen hundred and fifty-seven, which provides for the working of coal by that person by opencast operations, and is not an agreement under which the coal is to become the property of that other person, and a longer period is required for completing the operations provided for by the agreement.
- (3) Where an order is made in the circumstances mentioned in sub-paragraph (1) of this paragraph, the period for which the order has effect shall not extend beyond the tenth anniversary of the commencement of this Act.
- (4) The Minister shall not confirm an order as being an order falling within sub-paragraph (1) of this paragraph unless he is satisfied that the reasons stated in the order in accordance with that sub-paragraph are well-founded and that it is necessary for those reasons that the period for which the order has effect should extend as mentioned in that sub-paragraph.
- 10 Where the land comprised in a compulsory rights order consists exclusively of land which, immediately before the operative date of the order, is land requisitioned for opencast operations, section five of this Act, and the Second Schedule to this Act, shall have effect in relation to the order subject to the following modifications:—
- (a) subsections (2) and (3) of that section, and Part II of that Schedule, shall not apply ;
  - (b) in subsection (4) of that section, for the words " date of entry" there shall be substituted the words " operative date ".
- 11 Subsection (2) of section nine of this Act shall not apply to land which, at the time when the compulsory rights order in question is confirmed, is land requisitioned for opencast operations.
- 12 Section thirty-six of this Act shall not apply to land comprised in an opencast site order which, immediately before the operative date of the order, is land requisitioned for opencast operations.

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*Certification of payments under existing arrangements*

- 13 In respect of any land which, at the commencement of this Act, is land already requisitioned for opencast operations, the Minister shall, as soon as may be after the commencement of this Act, issue certificates in accordance with paragraphs 14 and 15 of this Schedule.
- 14 (1) In respect of any such land as is mentioned in the last preceding paragraph the Minister shall issue, and serve on each person who, at the commencement of this Act, is a person to whom in accordance with the existing arrangements any periodical payments are payable, a certificate stating—
- (a) the interest in land in respect of which those payments are payable to him ;
  - (b) the annual amount of the payments which are payable in respect of that interest; and
  - (c) the times at which, in accordance with the existing arrangements, those payments become payable.
- (2) For the purpose of this paragraph the Minister shall determine the annual amount of the periodical payments in respect of an interest in the land by reference to the sums paid or payable in respect of that interest in accordance with the existing arrangements for the year ending with the date of the commencement of this Act:
- Provided that if, under the existing arrangements, periodical payments have been payable in respect of that interest for only part of that year, the Minister shall have regard to the amount of the sums paid or payable in respect of that interest for that part of that year, and shall adjust that amount proportionately to a full year and determine the annual amount of the periodical payments by reference to that amount as so adjusted.
- 15 In respect of any such land as is mentioned in paragraph 13 of this Schedule the Minister shall also issue a certificate and serve it on the person who, at the time of issue of the certificate, is the owner of that land, stating whether any sum has been paid in respect of that land on account of any prospective right to terminal compensation under the Act of 1939, and, if so, the amount of the sum so paid.
- 16 The Minister shall serve on the Board a copy of any certificate issued under paragraph 14 or paragraph 15 of this Schedule.

*Annual and initial compensation*

- 17 In respect of any land hereafter requisitioned for opencast operations—
- (a) no compensation shall be payable under any of paragraphs (a), (c) and (d) of subsection (1) of section two of the Compensation (Defence) Act, 1939 ;
  - (b) annual compensation under this Act shall be payable as if the land were comprised in a compulsory rights order which became operative on the date of requisition of the land ;
  - (c) compensation under section twenty-six of this Act (or under that section as extended by section twenty-eight of this Act) shall, where applicable, be payable as if the land were comprised in a compulsory rights order and the date of requisition of the land were the date of entry under that order ; and
  - (d) compensation under section twenty-seven of this Act (or under the provisions of that section as applied by section twenty-nine of this Act) shall, where applicable, be payable as if the land were comprised in a compulsory rights order which became operative on the date of requisition



of the land, and as if anything done in consequence of the taking of possession of the land in the exercise of emergency powers had been done in consequence of the confirmation of that order.

18 Subject to the following provisions of this Part of this Schedule, in respect of any land which, at the commencement of this Act, is land already requisitioned for opencast operations—

- (a) periodical payments shall continue to be payable in accordance with the existing arrangements, and
- (b) if the land is subsequently comprised in a compulsory rights order, no annual compensation under this Act shall be payable, but periodical payments shall continue to be payable in accordance with the existing arrangements as if the order had not been made:

Provided that no such periodical payments shall accrue due in respect of any land after the terminal date.

19 Any periodical payments which continue to be payable as mentioned in the last preceding paragraph, in so far as they accrue due after the commencement of this Act, shall be payable by the Board and not by the Minister or by any other person.

20 The annual amount of any such periodical payments which are payable in respect of an interest in land shall be taken to be the annual amount specified in the certificate issued in respect of that interest under paragraph 14 of this Schedule.

21 (1) In respect of any land which, at the commencement of this Act, is land already requisitioned for opencast operations, any person who claims that, if annual compensation under this Act were payable in respect of that land, he would be entitled to such compensation in respect of an interest in that land, may, at any time before the first anniversary of the commencement of this Act, serve notice on the Board requiring that annual compensation under this Act shall be payable in respect of that interest.

(2) The right to serve a notice under this paragraph shall apply whether the land in question is for the time being comprised in a compulsory rights order or not.

(3) Any notice served under this paragraph shall be in such form, and shall contain such information, as may be prescribed.

22 (1) The effect of a notice under the last preceding paragraph in respect of an interest in land shall be as follows:—

- (a) any annual compensation under this Act which, in the circumstances specified in the next following sub-paragraph, would have accrued due in respect of that interest for the period beginning with the commencement of this Act and ending with the terminal date, or for any part of that period, shall be payable, or shall be treated as having become payable, as the case may require, as if those circumstances had existed ;
- (b) if apart from the notice periodical payments would have become payable in respect of that interest in accordance with the existing arrangements, and would have accrued due after the date of service of the notice, those payments shall not be payable ;
- (c) any periodical payments already paid in respect of that interest in accordance with the existing arrangements, in so far as they accrued due after the commencement of this Act, shall be set off against annual compensation under this Act payable in respect of that interest.

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- (2) The said circumstances are those which would have existed if—
- (a) this Act had been in operation before the date of requisition of the land in question, and had contained no restriction as to the duration of the period for which a compulsory rights order could have effect;
  - (b) a compulsory rights order comprising that land had come into operation on the date of requisition, and the requirements of subsection (2) of section five of this Act in relation to that order had been duly complied with ;
  - (c) the period of occupation under that order had been a period ending on the date which, in relation to that land, is the terminal date ; and
  - (d) anything done in relation to that land in the exercise of emergency powers had been done in the exercise of rights conferred by that order.
- (3) In the preceding sub-paragraphs any reference to the commencement of this Act, or to the terminal date, in relation to any land, shall (notwithstanding anything in the last preceding sub-paragraph) be construed as a reference to the actual date on which this Act comes into operation, or to the actual terminal date in relation to that land, as the case may be.
- 23 (1) At any time after the first anniversary of the commencement of this Act, any person who is entitled to an interest in land in respect of which a notice could have been, but has not been, served under paragraph 21 of this Schedule, may serve notice on the Board requiring that annual compensation under this Act shall be payable in respect of that interest.
- (2) Sub-paragraphs (2) and (3) of paragraph 21 of this Schedule, and the provisions of the last preceding paragraph, shall apply to a notice under this paragraph as they apply to a notice under the said paragraph 21, so however that in the application of the provisions of the last preceding paragraph to a notice under this paragraph any reference to the commencement of this Act, or to the date of service of the notice, shall be construed as a reference to the anniversary of the commencement of this Act which next occurs after the service of the notice.

#### *Terminal compensation*

- 24 Where after the commencement of this Act possession of any land ceases to be retained in the exercise of emergency powers by reason of the coming into operation of a compulsory rights order comprising that land, no terminal compensation under the Act of 1939 shall be payable in respect of that land.
- 25 In respect of any land hereafter requisitioned for opencast operations of which possession ceases to be retained in the exercise of emergency powers, otherwise than by reason of the coming into operation of a compulsory rights order comprising that land.—
- (a) no terminal compensation under the Act of 1939 shall be payable, but
  - (b) terminal compensation under this Act shall be payable as if the land had been comprised in a compulsory rights order which became operative on the date of requisition of the land, and the period of occupation under that order came to an end on the terminal date, and as if anything done in relation to that land in the exercise of emergency powers had been done in the exercise of rights conferred by that order.
- 26 In respect of any land already requisitioned for opencast operations of which, after the commencement of this Act, possession ceases to be retained in the exercise

of emergency powers, otherwise than by reason of the coming into operation of a compulsory rights order comprising that land,—

- (a) no terminal compensation under the Act of 1939 shall be payable, but
- (b) there shall be payable all such terminal compensation under this Act as would have been payable in the circumstances specified in subparagraph (2) of paragraph 22 of this Schedule.

27 For the purposes of the application of any of the provisions of this Act, other than this Schedule, to any land falling within paragraph 24, paragraph 25 or paragraph 26 of this Schedule, any reference in those provisions to the date of entry shall be construed as a reference to the date of requisition of the land.

28 Where compensation under section twenty-three of this Act, or under the provisions of that section as applied by section twenty-nine of this Act, would, apart from this paragraph, be payable in respect of any land falling within paragraph 24 or paragraph 26 of this Schedule, and in a certificate issued in respect of that land under paragraph 15 of this Schedule it is stated that a sum was paid in respect of that land as therein mentioned, the amount of that sum (as stated in the certificate) shall be deducted from the amount of that compensation.

#### *Tenant's improvements*

29 In relation to any land falling within paragraph 24 of this Schedule, the provisions of section twenty-four or section thirty of this Act, where applicable, shall have effect subject to the modification specified in paragraph 27 of this Schedule.

30 In relation to any land falling within paragraph 25 of this Schedule, the provisions of section twenty-four or section thirty of this Act, where applicable, shall have effect (subject to the modification specified in paragraph 27 of this Schedule) as if the land had been comprised in a compulsory rights order which became operative on the date of requisition of the land, and the period of occupation under that order came to an end on the terminal date.

31 In relation to any land falling within paragraph 26 of this Schedule, the provisions of section twenty-four or section thirty of this Act, where applicable, shall have effect (subject to the modification specified in paragraph 27 of this Schedule) as those provisions would have had effect in the circumstances specified in subparagraph (2) of paragraph 22 of this Schedule.

#### *Depreciation of other land in same ownership*

32 (1) The Minister may by regulations make provision for the payment of compensation in respect of land which, at such time as may be prescribed by the regulations, is land wherein the interest of the owner is held by a person who is also the owner of land requisitioned for opencast operations.

(2) Any such provision made by regulations under this paragraph shall be such as the Minister may consider appropriate for securing that compensation is payable thereunder, in respect of land to which the regulations apply, in cases, and according to principles, corresponding as nearly as may be with the cases in which, and the principles according to which, compensation is payable under section thirty-two of this Act in respect of land to which that section applies.

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*Provisions as to minerals*

- 33 (1) The powers conferred by Regulation fifty-one A of the Defence (General) Regulations, 1939, shall not be exercisable for the purpose of the working of minerals on any land which is for the time being comprised in a compulsory rights order which has become operative.
- (2) The preceding sub-paragraph shall have effect without prejudice to the provisions of Part IV of this Schedule as to the temporary stopping up of highways.
- 34 In respect of any land requisitioned for opencast operations—
- (a) the provisions (where applicable) of the Fifth Schedule to this Act, other than paragraphs 7 to 10, paragraph 13 and sub-paragraphs (3) to (5) of paragraph 14 of that Schedule, and the provisions (where applicable) of Part IV of the Seventh Schedule to this Act, shall apply in relation to any time after the commencement of this Act and before the terminal date as if the land were comprised in a compulsory rights order which became operative on the date of requisition of the land, and
  - (b) the provisions of paragraphs (3) to (5) of the said Regulation fifty-one A shall not apply in relation to any such time.
- 35 Where after the commencement of this Act possession of any land ceases to be retained in the exercise of emergency powers by reason of the coming into operation of a compulsory rights order comprising that land—
- (a) no sum shall be payable in respect of that land by virtue of paragraph (b) of the said Regulation fifty-one A, but
  - (b) the provisions (where applicable) of the Fifth Schedule to this Act, other than paragraphs 3 to 6, paragraph 12 and sub-paragraph (2) of paragraph 14 of that Schedule, shall apply in relation to that land as if any reference in those provisions to the operative date or to the date of entry were a reference to the date of requisition of the land.
- 36 Where after the commencement of this Act—
- (a) possession of any land ceases to be retained in the exercise of emergency powers, otherwise than by reason of the coming into operation of a compulsory rights order comprising that land, and
  - (b) immediately before the time when possession of that land ceases to be so retained, the land was land requisitioned for opencast operations,
- no sum shall be payable in respect of that land by virtue of paragraph (b) of the said Regulation fifty-one A, but the provisions (where applicable) of the Fifth Schedule to this Act (with the exceptions specified in the last preceding paragraph) shall apply as if the land had been comprised in a compulsory rights order under which the period of occupation came to an end on the terminal date.
- 37 (1) Where at the commencement of this Act—
- (a) any land already requisitioned for opencast operations is land which, if it were comprised in a compulsory rights order which became operative immediately after the commencement of this Act, would (within the meaning of the Fifth Schedule to this Act) be land to which that Schedule applies, and
  - (b) in respect of that land any sum has been paid (whether by the Minister or by the Board) on account of any prospective right to compensation under the said Regulation fifty-one A,

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the Minister shall, as soon as may be after the commencement of this Act, issue a certificate specifying the amount and date of payment of that sum and the person to whom it was paid.

- (2) Any certificate required to be issued in respect of any land in accordance with the preceding sub-paragraph shall be served on any person who, at the date of issue of the certificate, would (within the meaning of the Fifth Schedule to this Act) be the mineral operator in relation to that land if the land were comprised in such a compulsory rights order as is mentioned in the preceding sub-paragraph.
- (3) The Minister shall serve on the Board a copy of any certificate issued under this paragraph.
- 38 (1) The provisions of this paragraph shall have effect with respect to any sum specified in a certificate issued under the last preceding paragraph.
- (2) So much (if any) of that sum as was paid in respect of compensation which (apart from paragraph 34 of this Schedule) would have accrued due after the commencement of this Act under paragraph (4) or paragraph (5) of the said Regulation fifty-one A shall be set off against any compensation becoming payable, in respect of any of the land to which the certificate relates, under paragraph 4 or paragraph 5 of the Fifth Schedule to this Act.
- (3) So much (if any) of that sum as was paid in respect of a prospective right to compensation under paragraph (b) or paragraph (7) of the said Regulation fifty-one A shall be set off against any compensation which may become payable by virtue of the operation, in relation to any of the land to which the certificate relates, of any provisions of the Fifth Schedule to this Act in accordance with paragraph 35 or paragraph 36 of this Schedule.
- (4) For the avoidance of doubt it is hereby declared that subsection (3) of section forty of this Act applies to any dispute about what proportion of any sum specified in such a certificate was paid as mentioned in sub-paragraph (2) or sub-paragraph (3) of this paragraph.

*Provisions as to allotment gardens and other allotments*

- 39 The provisions of the Eighth Schedule to this Act shall have effect in relation to any land hereafter requisitioned for opencast operations as if—
- (a) the land were comprised in a compulsory rights order which had become operative, and
  - (b) anything done in consequence of the taking of possession of the land in the exercise of emergency powers had been done in consequence of the confirmation of that order:

Provided that for the purposes of the application of those provisions in accordance with this paragraph any reference in those provisions to the operative date of the order or to the date of entry shall be construed as a reference to the date of requisition of the land.

- 40 The provisions of the Eighth Schedule to this Act shall not have effect in relation to any land which, at the commencement of this Act, is land already requisitioned for opencast operations, whether that land is subsequently comprised in a compulsory rights order or not.

*Concurrent requisitions*

- 41 The Minister may by regulations make provision for modifying or adapting any of the provisions of this Act relating to compensation (including any such provisions contained in this Schedule) in their application to any land in circumstances corresponding (by reason that two or more parcels of land are at the same time land requisitioned for opencast operations) to the circumstances for which, in relation to compulsory rights orders, provision can be made by regulations under paragraph 29 of the Sixth Schedule to this Act.

**PART III****STORAGE SITES***Termination of emergency powers*

- 42 Where a compulsory rights order is made in respect of land requisitioned as an opencast storage site, any power to retain possession of land in the exercise of emergency powers shall cease to apply to that land as from the operative date of the order.

*Certification of payments under existing arrangements*

- 43 Paragraphs 13 to 16 of this Schedule shall apply in relation to land which, at the commencement of this Act, is land requisitioned as an opencast storage site as they apply in relation to land which, at the commencement of this Act, is land already requisitioned for opencast operations.

*Annual compensation*

- 44 Paragraphs 18 to 23 of this Schedule shall apply in relation to land which, at the commencement of this Act, is land requisitioned as an opencast storage site as they apply in relation to land which, at the commencement of this Act, is land already requisitioned for opencast operations.

*Terminal compensation and tenant's improvements*

- 45 Paragraphs 24, 26, 27, 28 and 31 of this Schedule shall have effect in relation to any land which, at the commencement of this Act, is land requisitioned as an opencast storage site, as if any reference in those paragraphs to land already requisitioned for opencast operations were a reference to land requisitioned as an opencast storage site.

*Depreciation of other land in same ownership*

- 46 In sub-paragraph (1) of paragraph 32 of this Schedule, the reference to land requisitioned for opencast operations shall include a reference to land requisitioned as an opencast storage site ; and the power to make regulations under that paragraph shall be exercisable accordingly.

*Concurrent requisitions*

47 In paragraph 41 of this Schedule, the reference to two or more parcels of land which are at the same time land requisitioned for opencast operations shall include references—

- (a) to two or more parcels of land of which one or more are land requisitioned for opencast operations and the other or others are at the same time land requisitioned as opencast storage sites, and
- (b) to two or more parcels of land both or all of which are at the same time land requisitioned as opencast storage sites ;

and the power to make regulations under that paragraph shall be exercisable accordingly.

**PART IV**

## TEMPORARY STOPPING UP OF HIGHWAYS

48 (1) This Part of this Schedule applies to any order made before the commencement of this Act under Regulation fifty-one A of the Defence (General) Regulations, 1939, in so far as it—

- (a) provided for the temporary stopping up of a highway (not being a highway over which there was a public right of way enjoyable by vehicular traffic) across any land which, at the commencement of this Act, is land already requisitioned for opencast operations, and
- (b) is in force immediately after the commencement of this Act.

(2) This Part of this Schedule also applies to any order made after the commencement of this Act under that Regulation in so far as it provides for the temporary stopping up of such a highway across any land which, at the time when the order is made, is land requisitioned for opencast operations.

49 In so far as any order made under that Regulation is an order to which this Part of this Schedule applies.—

- (a) the order shall have effect as if it had been made under section three of the Acquisition of Land Act as applied by section fifteen of this Act, and may be varied or revoked accordingly, and
- (b) the order shall not be affected by any enactment or Order in Council whereby that Regulation is revoked or varied.

**PART V**

## PROVISIONS AS TO WOODLANDS

50 Without prejudice to any exercise of the power conferred on the Minister by paragraph 15 of the Sixth Schedule to this Act, the Minister may by regulations make provision for modifying or adapting any of the provisions of this Act relating to compensation (including any such provisions contained in this Schedule) in their application to land which—

- (a) at such time as may be prescribed for the purposes of this sub-paragraph (either generally, or in relation to any particular provision of this Act, or in relation to land of any description specified in the regulations)

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- is or was land requisitioned for opencast operations or land requisitioned as an opencast storage site, and
- (b) at such time as may be so prescribed for the purposes of this subparagraph, is or was land used as woodlands, or as woodlands of a particular description specified in the regulations.

## PART VI

### APPLICATION TO SCOTLAND

- 51 In the application of this Schedule to Scotland, for any reference to the Acquisition of Land Act there shall be substituted a reference to the Scottish Acquisition of Land Act.

### TABLE OF STATUTES REFERRED TO IN THIS ACT

Short Title	Session and Chapter
Lands Clauses Consolidation Act, 1845	8 & 9 Vict. c. 18.
Lands Clauses Consolidation (Scotland) Act, 1845	8 & 9 Vict. c. 19.
Telegraph Act, 1878	41 & 42 Vict. c. 76.
Crofters Holdings (Scotland) Act, 1886	49 & 50 Vict. c. 29.
Allotments (Scotland) Act, 1892	55 & 56 Vict. c. 54.
Small Holdings and Allotments Act, 1908	8 Edw. 7. c. 36.
Acquisition of Land (Assessment of Compensation) Act, 1919	9 & 10 Geo. 5. c. 57.
Allotments Act, 1922	12 & 13 Geo. 5. c. 51.
Allotments (Scotland) Act, 1922	12 & 13 Geo. 5. c. 52.
Mines (Working Facilities and Support) Act, 1923	13 & 14 Geo. 5. c.20.
Land Charges Act, 1925	15 & 16 Geo. 5. c. 22.
Landlord and Tenant Act, 1927	17 & 18 Geo. 5. c. 36.
Land Drainage Act, 1930	20 & 21 Geo. 5. c. 44.
Local Government Act, 1933	23 & 24 Geo. 5. c. 51.
Public Health Act, 1936	26 Geo. 5 & 1 Edw. 8.
Compensation (Defence) Act, 1939	2 & 3 Geo. 6. c. 75.
Town and Country Planning Act, 1944	7 & 8 Geo. 6. c. 47.
Town and Country Planning (Scotland) Act, 1945	8 & 9 Geo. 6. c. 33.
Water Act, 1945	8 & 9 Geo. 6 c. 42.
Requisitioned Land and War Works Act, 1945	8 & 9 Geo. 6. c. 43.



*Status: This is the original version (as it was originally enacted).*

Short Title	Session and Chapter
Water (Scotland) Act, 1946	9 & 10 Geo. 6. c. 42.
Acquisition of Land (Authorisation Procedure) Act, 1946	9 & 10 Geo. 6. c. 49.
Coal Industry Nationalisation Act, 1946	9 & 10 Geo. 6. c. 59.
Acquisition of Land (Authorisation Procedure) (Scotland) Act, 1947	10 & 11 Geo. 6. c. 42.
Local Government (Scotland) Act, 1947	10 & 11 Geo. 6. c. 43.
Agriculture Act, 1947	10 & 11 Geo. 6. c. 48.
Town and Country Planning Act, 1947	10 & 11 Geo. 6. c. 51.
Town and Country Planning (Scotland) Act, 1947	10 & 11 Geo. 6. c. 53.
River Boards Act, 1948	11 & 12 Geo. 6. c. 32.
Agriculture (Scotland) Act, 1948	11 & 12 Geo. 6. c. 45.
Agricultural Holdings Act, 1948	11 & 12 Geo. 6. c. 63.
Lands Tribunal Act, 1949 c. 42.	12, 13 & 14 Geo. 6.
Agricultural Holdings (Scotland) Act, 1949 c. 75.	12, 13 & 14 Geo. 6.
Allotments Act, 1950	14 Geo. 6. c. 31.
Allotments (Scotland) Act, 1950	14 Geo. 6. c. 38.
Mineral Workings Act, 1951	14 & 15 Geo. 6. c. 60.
Rivers (Prevention of Pollution) (Scotland) Act, 1951	14 & 15 Geo. 6. c. 66.
Landlord and Tenant Act, 1954	2 & 3 Eliz. 2. c. 56.
Crofters (Scotland) Act, 1955	3 & 4 Eliz. 2. c. 21.