

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

## SCHEDULES

### 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 [F117 and 18] 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.

#### Textual Amendments

- F1 Words in Sch. 6 para. 1(2) substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 42(1)(6) (with s. 40(7)); S.I. 1994/2553, art. 2

- 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 [F217 and 18] 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.

#### Textual Amendments

- F2 Words in Sch. 6 para. 2 substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 42(2)(6) (with s. 40(7)); S.I. 1994/2553, art. 2

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

F33 .....

**Textual Amendments**  
F3 Sch. 6 para. 3 repealed (31.10.1994) by 1994 c. 21, s. 67, Sch. 11 Pt. III (with s. 40(7)); S.I. 1994/2552, art. 2, Sch. 1 Appendix

- 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.

[F4A Where a compulsory rights order comprises the whole or part of a holding to which section 21 of this Act applies, and at the end of the period of occupation one person is entitled to occupy part of that holding and another person is entitled to occupy another part of that holding, each of those parts of the holding shall be treated for the purposes of section 23A of this Act as if it were a separate holding, and were a holding to which section 21 of this Act applied.]

**Textual Amendments**  
F4 Sch. 6 para. 4A inserted by Coal Industry Act 1975 (c. 56), s. 6(3)

- 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.

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

F57 .....

**Textual Amendments**  
F5 Sch. 6 para. 7 repealed (31.10.1994) by 1994 c. 21, s. 67, Sch. 11 Pt. III (with s. 40(7)); S.I. 1994/2552, art. 2, Sch. 1 Appendix

[F68 (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—

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- (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.]

#### Textual Amendments

**F6** Sch. 6 para. 8 ceased to have effect except so far as applied by para. 10 of Sch. 6 (S.)(31.10.1994) by virtue of 1994 c. 21, s. 52, Sch. 8 para. 42(3)(6) (with s. 40(7)); S.I. 1994/2553, art. 2

- [<sup>F79</sup> (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.

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

- (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.]

**Textual Amendments**

- F7** Sch. 6 para. 9 ceased to have effect except so far as applied by para. 10 of Sch. 6 (S.)(31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 42(3)(6) (with s. 40(7)); S.I. 1994/2553, art. 2

- 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*

<sup>F8</sup>12 .....

**Textual Amendments**

- F8** Sch. 6 para. 12 repealed (31.10.1994) by 1994 c. 21, s. 67, Sch. 11 Pt. III (with s. 40(7)); S.I. 1994/2552, art. 2, Sch. 1 Appendix

- 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 [<sup>F9</sup>the Act of 1971] 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.
- (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.

**Textual Amendments**

- F9** Words substituted by virtue of Town and Country Planning Act 1971 (c. 78), Sch. 24 para. 2

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*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

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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 <sup>[F10]</sup>activities which, in relation to the opencast planning permission referred to in the order, constitute the permitted activities.]

#### Textual Amendments

**F10** Words substituted by [Housing and Planning Act 1986 \(c. 63, SIF 86\)](#), s. 39(3), [Sch. 8 para. 16](#)

- 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 <sup>[F11]</sup>falling within section 2(3)(a) of the 1986 Act;
  - (b) any easement or similar right over land.

#### Textual Amendments

**F11** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), s. 100, [Sch. 14 para. 32\(2\)](#)

- 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

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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.

<sup>F12</sup>22 .....

**Textual Amendments**

**F12** Sch. 6 para. 22 repealed (31.10.1994) by 1994 c. 21, s. 67, Sch. 11 Pt. III (with s. 40(7)); S.I. 1994/2552, art. 2, Sch. 1 Appendix

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 [<sup>F13</sup>under section 2 of the Act of 1986 or of the Act of 1948 (each of]which relates to the effect of certain lettings and licenses to occupy agricultural land, but excepts lettings and licenses approved [<sup>F14</sup>under that section from the operation of that 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.

**Textual Amendments**

**F13** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 32\(3\)\(a\)](#)

**F14** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 32\(3\)\(b\)](#)

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 [<sup>F15</sup>under section 2 of the Act of 1986 or]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.

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### Textual Amendments

**F15** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), ss. 99, 100, Sch. 13 para. 3, [Sch. 14 para. 32\(4\)](#)

#### *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.
- (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.
- <sup>F16</sup>(5) This paragraph shall not apply in relation to any compensation the entitlement to which is apportioned in accordance with section 17(3A) of this Act.



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### Textual Amendments

**F16** Sch. 6 para. 26(5) inserted (S.) (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 42(4)(6) (with s. 40(7)); S.I. 1994/2553, art. 2

- 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

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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 [<sup>F17</sup>the Act of 1971] there shall be substituted references to [<sup>F18</sup>Part III of the Act of 1972], and for references to an agreement [<sup>F19</sup>falling within section 2(3)(a) of the 1986 Act, to an agreement for the letting of land ] [<sup>F20</sup>and to approval under section 2 of the Act of 1986 there shall be substituted respectively references to a lease falling within section 2(2)(a) of the Scottish Act of 1991 or (as the case may be) to section 3 of the Scottish Act of 2003, to a lease and to any short limited duration tenancy (within the meaning of the Scottish Act of 2003) of less than a year.]

#### **Textual Amendments**

- F17** Words substituted by virtue of [Town and Country Planning Act 1971 \(c. 78\)](#), **Sch. 24 para. 2**
- F18** Words substituted by virtue of [Town and Country Planning \(Scotland\) Act 1972 \(c. 52\)](#), **Sch. 22 para. 2**
- F19** Words substituted by [Agricultural Holdings Act 1986 \(c. 5, SIF 2:3\)](#), s. 100, **Sch. 14 para. 32(5)**
- F20** Words in Sch. SIXTH para. 31 substituted (S.) (27.11.2003) by [Agricultural Holdings \(Consequential Amendments\) \(Scotland\) Order 2003 \(S.S.I. 2003/583\)](#), art. 1, **Sch. para. 6**
- F21** Words in Sch. 6 para. 31 substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 42(5)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

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