

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

## SCHEDULES

### THIRD SCHEDULE

#### 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;

[<sup>F1</sup> “ final operator ” means the person who immediately before the end of the period of occupation is the person entitled to the rights conferred by the order; ]

“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 [<sup>F2</sup>Upper Tribunal or, in the application of this Act to Scotland, the Lands Tribunal for Scotland].

#### Textual Amendments

- F1** Definition in Sch. 3 para. 1 inserted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 40(1)(a)**
- F2** Words in **Sch. THIRD para. 1** substituted (1.6.2009) by **The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307)**, art. 1, **Sch. 1 para. 34** (with Sch. 5)

2 (1) [<sup>F3</sup>The final operator] 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 [<sup>F3</sup>the final operator], 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 [<sup>F3</sup>the final operator] 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.

#### Textual Amendments

- F3** Words in **Sch. 3** substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 40(1)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

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- 3 Where a notice has been given under the last preceding paragraph, [<sup>F4</sup>the final operator], within the prescribed time after the giving of that notice, may serve on the applicant a counter-notice, stating—
- (a) that [<sup>F4</sup>the final operator][<sup>F5</sup>objects] 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 [<sup>F6</sup>the final operator objects] 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.

#### Textual Amendments

- F4** Words in Sch. 3 substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 40(1)(b)
- F5** Word in Sch. 3 para. 3(a) substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 40(2)(a) (with s. 40(7)); S.I. 1994/2553, art. 2
- F6** Words in Sch. 3 para. 3(b) substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 40(2)(b) (with s. 40(7)); S.I. 1994/2553, art. 2

- 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,—
- (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

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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 final operator]<sup>F7</sup>has not]before that date served a counter-notice objecting to that work, or, if [<sup>F7</sup>the final operator has] 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 [<sup>F8</sup>the final operator], 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

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- (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 [<sup>F8</sup>the final operator], 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 [<sup>F8</sup>the final operator][<sup>F9</sup>serves]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.

#### Textual Amendments

- F7** Words in Sch. 3 para. 5(4)(a)(ii) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 40(3)(a)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F8** Words in Sch. 3 para. 5 substituted (31.10.1994) by 1994 c. 21, **Sch. 8 para. 40(1)(b)** (with s.40(7)); S.I. 1994/2553, **art. 2**
- F9** Word in Sch. 3 para. 5(5) substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 40(3)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

- 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.

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- (4) Sections ten and eleven of the <sup>M1</sup>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 <sup>M2</sup>Agriculture Act 1947, there shall be substituted a reference to the Fifth and Sixth Schedules to the <sup>M3</sup>Agriculture (Scotland) Act 1948.

#### Marginal Citations

- M1** 1947 c. 48.  
**M2** 1947 c. 48.  
**M3** 1948 c. 45.

- 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 [<sup>F10</sup>the final operator][<sup>F11</sup>has 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 [<sup>F10</sup>the final operator][<sup>F11</sup>has 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.

#### Textual Amendments

- F10** Words in Sch. 3 para. 8 substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 40(1)(b) (with s. 40(7)); S.I. 1994/2553, art. 2
- F11** Words in Sch. 3 para. 8(a)(b) substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 40(4)(a)(b) (with s. 40(7)); S.I. 1994/2553, art. 2

- 9 (1) Where a notice has been given under paragraph 2 of this Schedule, and [<sup>F12</sup>the final operator][<sup>F13</sup>has 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 [<sup>F12</sup>the final operator][<sup>F13</sup>is precluded] by the last preceding paragraph from objecting to that claim) [<sup>F12</sup>the final operator] 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,—

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- (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.

#### Textual Amendments

- F12** Words in Sch. 3 para. 9 substituted (31.10.1994) by 1994 c. 21, Sch. 8 para. 40(1)(b) (with s.40(7)); S.I. 1994/2553, art. 2
- F13** Words in Sch. 3 para. 9(1) and (2) substituted (31.10.1994) by 1994 c. 21, s. 52, Sch. 8 para. 40(5)(a) (b) (with s. 40(7)); S.I. 1994/2553, art. 2

- 10 (1) If, in a case where a notice has been given under paragraph 2 of this Schedule, and [F14the final operator][F15has 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 [F14the final operator][F16maintains]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.

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### Textual Amendments

- F14** Words in **Sch. 3 para. 10** substituted (31.10.1994) by 1994 c. 21, **Sch. 8 para. 40(1)(b)** (with s.40(7)); S.I. 1994/2553, **art. 2**
- F15** Words in **Sch. 3 para. 10(1)** substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 40(6)(a)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F16** Word in **Sch. 3 para. 10(1)(b)** substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 40(6)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

- 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 sub-paragraph (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 sub-paragraph, nothing in the preceding provisions of this Schedule shall be construed as precluding [<sup>F17</sup>the final operator] 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.

### Textual Amendments

- F17** Words in **Sch. 3 para. 13** substituted (31.10.1994) by 1994 c. 21, s. 52, **Sch. 8 para. 40(1)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

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