



# Coal Industry Act 1975

## CHAPTER 56

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## ELIZABETH II



## Coal Industry Act 1975

## 1975 CHAPTER 56

An Act to provide for grants to the National Coal Board to meet expenditure under a scheme providing for compensation for pneumoconiosis; to enable the Board to withdraw support to enable coal to be worked and to work coal in former copyhold land; to make further provision in relation to opencast operations; and for purposes connected therewith. [1st August 1975]

**B**E 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:—

- 1.—(1) The Secretary of State may make, in accordance with this section, grants out of money provided by Parliament towards expenditure incurred, whether before or after the commencement of this Act, by the National Coal Board (in this Act referred to as “the Board”) under or for the purposes of the industry's pneumoconiosis compensation scheme. Grants to National Coal Board to meet expenditure under pneumoconiosis compensation scheme.
- (2) The total of grants under this section shall not exceed £100 million.
- (3) No grant shall be made under this section towards any expenditure incurred by the Board in paying benefits under the industry's pneumoconiosis compensation scheme to or in respect of any person unless it appears to the Secretary of State—
- (a) that that person became entitled before 1st October 1974, in respect of pneumoconiosis contracted by him, to such other description of benefit as, in accordance with the scheme, qualifies him, or any other person in respect of him, to benefit under the scheme; or

(b) that, in a case where paragraph (a) above does not apply, pneumoconiosis contracted by that person would be treated, for the purposes of a claim to any such other description of benefit as is referred to in that paragraph, as having developed on a date before 1st October 1974.

(4) In this section “ the industry’s pneumoconiosis compensation scheme ” means—

(a) the scheme set out in the Schedule to an agreement dated 13th September 1974 and made between the Board and the National Union of Mineworkers, the National Association of Colliery Overmen Deputies and Shotfirers and the British Association of Colliery Management ; and

(b) any variation of that scheme (whether operating by way of amendment or replacement of that scheme or otherwise) which is for the time being approved by the Secretary of State, with the consent of the Treasury.

New right of Board to withdraw support to enable coal to be worked.

2.—(1) Subject to the provisions of this section and of Schedule 1 to this Act, so far as may be reasonably requisite for the working of any coal, the Board shall be entitled, after the expiry of the period of three months beginning on the relevant date of publication of a notice under this section, to withdraw support from any land to which the notice relates (whether the coal concerned lies under that land or under land adjacent to that land) ; and on and after the commencement of this Act the right conferred on the Board by this section shall have effect in substitution for any right to withdraw support vested in or conferred on the Board before that commencement under or by virtue of any other enactment.

(2) A notice under this section—

(a) shall indicate the land to which it relates, either by reference to a map or in such other manner as appears to the Board to be appropriate in the circumstances of the case, and

(b) shall state the Board’s intention to exercise in relation to that land the right conferred on the Board by this section, and

(c) shall be published—

(i) in the London Gazette or, if the land to which the notice relates is situated in Scotland, in the Edinburgh Gazette ; and

(ii) on two successive weeks in such newspapers circulating in the locality concerned as appear to the Board to be desirable for giving adequate publicity to the notice ;

and any reference in this section to the relevant date of publica-

tion of a notice is a reference to the date on which the notice is published in accordance with sub-paragraph (i) or, if it is later, is first published in accordance with sub-paragraph (ii) of paragraph (c) above.

(3) Not later than the relevant date of publication of a notice under this section, the Board shall—

(a) serve a copy of the notice on every local planning authority in whose area or, in Scotland, on every planning authority in whose district lies any part of the land to which the notice relates, and

(b) post a copy or copies of the notice in some conspicuous place or places on the land to which the notice relates, and the reference in this subsection to a local planning authority shall be construed, in relation to England and Wales, as if this subsection were included in the Town and Country Planning Act 1971 c. 78. 1971.

(4) Subject to the provisions of Schedule 1 to this Act, where damage to any land arises from the exercise of the right to withdraw support conferred on the Board by this section, the Board shall either—

(a) pay proper compensation for the damage, or

(b) with the consent (which shall not be unreasonably withheld) of the person who would otherwise be entitled to the payment of compensation for the damage, make good the damage to the reasonable satisfaction of that person and without expense to him ;

and the obligation imposed on the Board by this subsection shall extend to damage to buildings and works on that land, whenever constructed.

(5) In any case where, immediately before the commencement of this Act, the Board or a licensee of the Board had a right to withdraw support from any land—

(a) by virtue of paragraph 5 of Schedule 2 to the Coal Act 1938 (cases where rights to withdraw support were annexed to coal or a mine of coal before the valuation date), or

(b) by virtue of paragraph 1 of Schedule 2 to the Coal Act 1943 (rights to withdraw support from protected and other land originally comprised in a coal-mining lease),

the Board shall be deemed to have published, on the date on which this Act comes into operation, a notice under this section relating to that land and, in relation to the withdrawal of support from that land, subsection (1) above shall have effect with the

substitution for the words “ the expiry of the period of three months beginning on the relevant date of publication of ” of the word “ publishing ” and, accordingly, subsections (2)(c) and (3) above shall not apply.

1938 c. 52.

(6) In any case where, before the commencement of this Act, the Board or the Coal Commission have given public notice under paragraph 6(2) of Schedule 2 to the Coal Act 1938 (notice of first exercising a right to withdraw support or of granting the benefit of such a right to another person) relating to any land under which there subsists at the commencement of this Act any coal or a mine of coal, the Board shall be deemed to have published, on the date on which this Act comes into operation, a notice under this section relating to that land and, in relation to the withdrawal of support from that land, subsection (1) above shall have effect with the substitution for the words “ the expiry of the period of three months beginning on the relevant date of publication of ” of the word “ publishing ” and, accordingly, subsections (2)(c) and (3) above shall not apply.

(7) In any case where, by virtue of a licence granted by or otherwise binding on the Board, any person other than the Board exercises the right to withdraw support conferred on the Board by this section, the existence of the licence shall not affect any liability of the Board in respect of damage caused in the exercise of that right (but without prejudice to any right of the Board to recover any expenditure from the licensee).

(8) Nothing in this section shall affect—

- (a) any agreement binding on the Board immediately before the commencement of this Act, being an agreement made between the Board, the Coal Commission or a coal owner and a person interested in any land whereby the Board, the Coal Commission or the coal owner agreed not to work any coal or (as the case may be) any minerals or not to withdraw support from any land, or
- (b) any provision contained in a coal-mining lease which is binding on the Board immediately before the commencement of this Act and which prohibits the withdrawal of support from any land specified in the lease, or
- (c) any restrictions, terms or conditions applicable to the working of any coal—
  - (i) by virtue of an agreement binding on the Board and entered into after 1st July 1942 and before the commencement of this Act, or

(ii) by virtue of an order made, whether before or after the commencement of this Act under section 1 or section 7 of the Mines (Working Facilities and Support) Act 1966, or

(iii) by virtue of, or of any consent in relation to a restriction imposed by, section 33 of the Coal Act 1938 c. 52. 1938.

(d) any such right as is referred to in section 34(1) of the Coal Act 1938 (statutory rights of the Crown, local authorities, statutory undertakers, and other persons to restrict the withdrawal of support etc.),

and in paragraph (a) above "coal owner" means the person in whom the fee simple in the coal in question was for the time being vested.

(9) Nothing in this section shall confer on the Board any right to withdraw support in connection with the working of coal or mines of coal comprised in the land specified in section 43(1) of the Coal Act 1938 (land in the Forest of Dean, etc. in which the privileges of free miners are exercisable).

(10) The following provisions of the Coal Act 1938 shall have effect as if the preceding provisions of this section and Schedule 1 to this Act were included in Part I of that Act, namely,—

- (a) section 42 (application of Part I to Crown and Duchy land);
- (b) section 44 (interpretation of Part I);
- (c) section 45 (application of Part I to Scotland); and
- (d) section 55 (service of notices etc.).

3.—(1) Notwithstanding anything in section 5(6) of the Coal Act 1938 (interests of former copyholders which were preserved after enfranchisement to be retained interests) where any coal or a mine of coal vested in the Board is comprised in or lies under land—

- (a) which was formerly copyhold, and
- (b) which is comprised in an area specified in a notice under this section,

the Board shall have the like right to work that coal or, for any coal-mining purpose, to use that mine as if they had acquired all retained interests subsisting in that coal or mine immediately before the commencement of this Act.

(2) Before exercising their rights under subsection (1) above with respect to land in any area the Board shall publish notice of their intention to do so—

- (a) in the London Gazette, and

(b) on two successive weeks in such newspapers circulating in the area concerned as appear to the Board to be desirable for giving adequate publicity to their intention.

(3) Every notice under subsection (2) above—

(a) shall indicate the area of land to which it relates either by reference to a map or in such other manner as appears to the Board to be appropriate in the circumstances of the case ;

(b) shall invite the owners of retained interests in coal or any mine of coal comprised in or lying under land in that area to give notice of their interests to the Board within the period of twelve years beginning with the date on which the notice under subsection (2) above is first published ; and

(c) shall contain such other particulars as may be prescribed.

(4) Where the Board—

(a) have published a notice under subsection (2) above, and

(b) have been given notice of a retained interest as mentioned in subsection (3)(b) above, and

(c) have begun to exercise the right conferred on them by subsection (1) above in relation to any coal or a mine of coal comprised in or lying under any land in which the retained interest subsists,

then, in respect of that interest, the Board shall pay compensation calculated by reference to the consideration which, on the date on which they began to exercise the right referred to in paragraph (c) above, would have been appropriate, as between a willing grantor and a willing grantee, on a conveyance of that interest to the Board ; and any dispute as to the amount of compensation payable by the Board by virtue of this subsection shall be determined by the Lands Tribunal.

(5) Schedule 2 to this Act shall have effect for supplementing the provisions of this section.

(6) Where compensation is payable to any person under subsection (4) above there shall be paid to him, in addition to the compensation, any reasonable valuation expenses incurred by him for the purpose of ascertaining the value, at the date referred to in subsection (4) above, of the retained interest to which the compensation relates, but this subsection is without prejudice to the powers of the Lands Tribunal in respect of the costs of proceedings before the Tribunal by virtue of subsection (4) above.

(7) Subject to paragraph 9 of Schedule 2 to this Act, the service of a notice under subsection (2) above shall not prevent

the Board from acquiring by agreement any retained interest in coal or a mine of coal comprised in or lying under land in the area to which the notice relates.

(8) If, by virtue of an order under section 1 of the Mines 1966 c. 4. (Working Facilities and Support) Act 1966 or of any agreement, the Board are entitled immediately before the commencement of this Act to work any coal or to use any mine of coal in which a retained interest subsists at that time, then, if and so long as the Board continue on and after the commencement of this Act to be so entitled, nothing in the preceding provisions of this section shall apply with respect to that coal or mine of coal or to any retained interest therein; and accordingly—

(a) in so far as any notice which is published under subsection (2) above at a time when the Board are so entitled specifies an area which includes the land in or under which that coal or mine of coal is comprised or lies, so much of that land as consists of that coal or mine of coal shall be deemed to be excluded from that area; and

(b) in so far as notice of a retained interest which is given as mentioned in subsection (3)(b) above at a time when the Board are so entitled relates to a retained interest in any land in or under which that coal or mine of coal is comprised or lies, for the purposes of determining the amount of any compensation payable under subsection (4) above, that interest shall be treated as not subsisting in that coal or mine of coal.

(9) In this section and Schedule 2 to this Act “prescribed” means prescribed by the Secretary of State by regulations made by statutory instrument; and a statutory instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(10) Section 42 of the Coal Act 1938 (application of Part I 1938 c. 52. to Crown and Duchy Land) and, except in so far as it defines “prescribed”, section 44 of that Act (interpretation of Part I) shall have effect as if the preceding provisions of this section and Schedule 2 to this Act were included in Part I of that Act.

4.—(1) For subsections (1) to (4) of section 4 of the Opencast Compulsory Coal Act 1958 (which provided for the making, within the period of ten years beginning with the commencement of that Act, of compulsory rights orders known as “opencast site orders” and “storage site orders”) there shall be substituted the following subsections:—

acquisition of rights over land for opencast operations.  
1958 c. 69.

“ (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 Secretary of State, compulsorily acquire, in accordance with the following provisions of this Part of this Act, temporary rights of occupation and use of the whole or part of the land comprised in an authorisation under section 1 of this Act.

(2) Subject to the provisions of Part III of this Act as to the variation of orders, the period for which a compulsory rights order has effect shall be a period—

- (a) beginning with the date on which the order becomes operative (in this Act referred to as "the operative date"), and
- (b) of such duration, not exceeding twenty years, as may be specified in the order."

1958 c. 69. (2) In consequence of the provisions of subsection (1) above, the Opencast Coal Act 1958 shall have effect subject to the amendments in Schedule 3 to this Act.

New procedure  
for suspending  
public rights  
of way affected  
by opencast  
operations.  
1946 c. 49.  
1947 c. 42.

5.—(1) Subject to subsection (3) below, for section 15 of the Opencast Coal Act 1958 (which provides for the suspension of certain public rights of way by the application of section 3 of either the Acquisition of Land (Authorisation Procedure) Act 1946 or the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947) there shall be substituted the following section:—

"Suspension  
of certain  
public rights  
of way

15.—(1) Where an application is made to the Secretary of State for an authorisation under section 1 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, there may be included in the application for the authorisation an application for an order under this section suspending the public right of way.

(2) The Secretary of State shall not make an order under this section suspending a right of way unless—

- (a) an application is made therefor in accordance with subsection (1) above;
- (b) he grants an authorisation under section 1 of this Act comprising the land over which the right of way subsists; and
- (c) he is satisfied either 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, or that the provision of such an alternative way is not required.

(3) An order under this section suspending a right of way shall specify the date, which shall not be earlier than the making of the order, with effect from which the right is suspended.

(4) Where an order has been made under this section suspending a right of way, the Secretary of State shall revoke the order—

(a) if no authorised operations have been carried out in pursuance of the authorisation which comprises the land over which the right subsisted and the Secretary of State 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 under this section suspending a right of way shall include such provisions as may appear to the Secretary of State 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 an authorisation is granted under section 1 of this Act and an order is made under this section suspending a right of way over land comprised in the authorisation then, in connection with the provision of such a suitable alternative way as is referred to in subsection (2)(c) above,—

(a) the order under this section may provide that, in so far as the carrying out of any operations, or any change in the use of land, involved in making the alternative way available as mentioned in that subsection, or in permitting it to be used by the public, constitutes development within the meaning of the Planning Act, permission for that development shall be deemed to be granted under Part III of the Planning Act subject to such conditions (if any) as may be specified in the order ;

(b) where the order under this section includes provisions in accordance with paragraph (a)

above, subsection (3) of section 2 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 the authorisation is made, then, in the application to that order of subsection (5) of section 5 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 the said subsection (5), as against all persons directly concerned, shall include the right to permit the public to use any way so made available ; and
- (d) if the land on which the alternative way is to be made available is specified in the order under 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 the authorisation may include that land as if it were part of the land comprised in the authorisation.

(7) In this section ‘the Planning Act’ means the Town and Country Planning Act 1971 or, as respects Scotland, the Town and Country Planning (Scotland) Act 1972.”

1971 c. 78.

1972 c. 52.

(2) For the purpose—

1958 c. 69.

- (a) of giving effect to section 15 of the Opencast Coal Act 1958, as set out in subsection (1) above, and
- (b) of securing that, before he grants an authorisation under section 1 of that Act, the Secretary of State considers every objection which is duly made and not withdrawn,

Schedule 1 to that Act (procedure for granting authorisations) shall have effect subject to the amendments in Schedule 4 to this Act.

(3) In any case where—

- (a) before the commencement of this Act the Board have, in accordance with any provision of paragraph 4 of Schedule 1 to the Opencast Coal Act 1958, published or served notice of an application for an authorisation under section 1 of that Act, and

- (b) there subsists over any part of the land described in the application as land which the Board will require to occupy any such public right of way as is referred to in subsection (1) of section 15 of that Act,

nothing in subsection (1) or subsection (2) above or in the repeals effected by this Act shall affect the operation of that Act or of any other enactment in relation to that application or (unless that application is rejected and a further application is made after the commencement of this Act) the suspension of that right of way.

6.—(1) After section 23 of the Opencast Coal Act 1958 there shall be inserted the following section:—

“Additional compensation on re-occupation.

23A.—(1) Subject to the following provisions of this section, with a view to furthering the resumption of agriculture on land formerly comprised in a compulsory rights order, a person shall be entitled to compensation by virtue of this section in respect of a holding to which section 21 of this Act applies if he is in occupation of the holding at the end of the period of occupation or if he enters into occupation of the holding at or after the end of that period, provided that he is occupying the holding or (as the case may be) he enters into occupation of the holding wholly or mainly for the purposes of agriculture carried on by way of a trade or business.

Additional compensation on re-occupation after opencast working. 1958 c. 69.

(2) No compensation shall be payable to a person by virtue of this section unless he is either the person who, immediately before the operative date of the compulsory rights order, was entitled to occupy the holding (in this subsection referred to as “the original occupier”) or a person who, before the end of the period of occupation, became entitled to the relevant interest in the holding 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.

(3) In subsection (2) above—

“the relevant interest”, in relation to any person, means the interest by virtue of which he became entitled to occupy the holding (or would have become so entitled if the compulsory rights order had not been made); and

“will” includes a codicil.

(4) The compensation payable in respect of a holding by virtue of this section shall be payable by the Board and, subject to the following provisions of this section, shall be an amount equal to the compensation payable in respect of that holding under sections 18 and 19 of this Act for the last twelve months of the period of occupation.

(5) Subject to the following provisions of this section, in any case where the compensation last payable in respect of a holding under sections 18 and 19 was in fact payable by reference to a period of less than twelve months, the compensation payable in respect of that holding by virtue of this section shall be an amount equal to the compensation which was so payable under sections 18 and 19, multiplied by the fraction of which the numerator is 365 and the denominator is the number of days in the period by reference to which the compensation was so payable under those sections.

(6) Where the person entitled, immediately after the end of the period of occupation, to occupy the holding concerned ceases, before he enters into occupation, to be entitled to occupy some part of it then, subject to subsection (7) below,—

- (a) his entry into occupation of the part which he remains entitled to occupy shall be treated for the purposes of subsection (1) above as entry into occupation of the holding ; but
- (b) the compensation payable to him by virtue of this section shall be such proportion of the compensation which would have been so payable had he remained entitled to enter into occupation of the whole of the holding as is properly attributable to the part of the holding which he remains entitled to occupy.

(7) If, immediately before the end of the period of occupation, only part of the holding concerned (in this subsection referred to as “the compensatable portion”) was comprised in the compulsory rights order and (after the end of the period of occupation) subsection (6) above applies, then—

- (a) if the part of the holding which the person concerned ceased to be entitled to occupy comprises the whole of the compensatable portion, no compensation shall be payable to him by virtue of this section ;

- (b) if the person concerned remains entitled to occupy the whole of the compensatable portion, the compensation so payable to him shall not be reduced under paragraph (b) of subsection (6) above; and
- (c) in any other case, for the purpose of determining the proportion of the compensation properly attributable to any part of the holding under paragraph (b) of subsection (6) above, the holding shall be treated as consisting of the compensatable portion only."

(2) In section 35 of the Opencast Coal Act 1958 (time when 1958 c. 69. compensation accrues due) after subsection (4) there shall be inserted the following subsection:—

"(4A) Any compensation payable under section 23A of this Act shall accrue due on the date when the person entitled to compensation enters into occupation, if after the end of the period of occupation, and at the end of the period of occupation in any other case."

(3) In Schedule 6 to that Act (application of compensation provisions to special cases), after paragraph 4 there shall be inserted the following paragraph—

"4A. 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."

7.—(1) Without prejudice to the operation of section 38 of Savings, the Interpretation Act 1889 (effect of repeals) nothing in this transitional provisions Act shall affect the continued operation of any enactment and repeals. repealed by this Act in relation to a case where, after the commencement of this Act, damage is caused to land by the working of coal, within the meaning of the Coal Act 1938, 1889 c. 63. 1938 c. 52. before that commencement in exercise of a right to withdraw support then in existence.

(2) If, in a case where subsection (6) of section 2 of this Act applies,—

- (a) notification of a proposal to construct any buildings or works has been given under paragraph 6(3)(a) of Schedule 2 to the Coal Act 1938, and

(b) the construction of those buildings or works has not been completed (whether or not it has been begun) before the commencement of this Act, and

(c) paragraph 3 of Schedule 1 to this Act does not apply, paragraph 1 of Schedule 1 to this Act shall apply in relation to those buildings or works (whether or not their construction is begun before the commencement of this Act), as if this Act had come into operation immediately before the giving of the notification and, accordingly, as if the notification given and any request made or other thing done in relation to those buildings or works under paragraph 6(3) of Schedule 2 to the Coal Act 1938 had been given, made or done under the corresponding provision of paragraph 1 of Schedule 1 to this Act.

1938 c. 52.

(3) Nothing in this Act shall affect the operation of section 3 of—

1946 c. 49.

(a) the Acquisition of Land (Authorisation Procedure) Act 1946, or

1947 c. 42.

(b) the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947,

in any case where an order under that section was made, or notice of such an order was published, before the commencement of this Act.

(4) The enactments specified in Schedule 5 to this Act are hereby repealed to the extent specified in the third column of that Schedule.

Short title,  
commence-  
ment and  
extent.

**8.**—(1) This Act may be cited as the Coal Industry Act 1975.

(2) This Act shall come into operation at the expiry of the period of one month beginning with the day on which it is passed.

(3) Section 3 of this Act does not extend to Scotland.

(4) This Act does not extend to Northern Ireland.

## SCHEDULES

## SCHEDULE 1

Section 2.

SUPPLEMENTARY PROVISIONS RELATING TO RIGHT TO  
WITHDRAW SUPPORT

1.—(1) Subject to paragraph 3 below, the provisions of this paragraph shall apply in any case where the construction of any buildings or works is to be begun on land to which a notice under section 2 of this Act relates, other than a notice which is deemed to have been published by virtue of subsection (5) of that section.

(2) Before the construction of the buildings or works is begun, the person at whose expense they are to be constructed (in this paragraph referred to as “the building owner”) shall notify the Board of the proposal to construct them, and shall, if so requested by the Board within fourteen days from the receipt by them of the notice, produce for the inspection of a person duly authorised by them in that behalf plans and specifications of the buildings or works showing their design and the proposed materials for and method of construction of their foundations, and shall, if so requested within that period or within seven days after the plans and specifications have been produced in accordance with the preceding provisions of this subparagraph, furnish the Board with copies of any such plans or specifications.

(3) At any time within twenty-eight days from the time when any request made by the Board with respect to the production or furnishing of copies of the plans and specifications has been complied with, or within such further period as the building owner may allow, the Board may make such proposals as to the materials for and the method of construction of the foundations as appear to them to be desirable for minimising damage in the event of subsidence and, if they do so, and the foundations are constructed otherwise than in accordance with the Board’s proposals, the obligation to pay compensation or to make good under section 2(4) of this Act shall be limited so as not to extend to any damage that would have been avoided if they had been so constructed.

(4) The Board shall have the right to have the foundations inspected by a person duly authorised by them in that behalf from time to time during their construction as that person may reasonably require, and if it is alleged by the Board that the foundations are being constructed otherwise than in accordance with any plans or specifications produced or furnished to them, or otherwise than in accordance with any such plans or specifications as modified in accordance with proposals made by the Board (as the case may be), the Board shall notify the building owner of the matter alleged to constitute a departure therefrom, and any question arising in relation to any such allegation shall be determined by arbitration.

(5) The Board shall pay all costs reasonably incurred by the building owner in the production or furnishing of copies of plans and specifications pursuant to a request made by the Board under this paragraph, and the amount of any addition to the expense incurred



## SCH. 1

by him in constructing the buildings or works which is attributable to giving effect to the Board's proposals or to any postponement or interruption of the construction consequent upon an allegation on the part of the Board of a departure from plans and specifications which is determined not to have been well founded, and any question as to the subsistence of a liability of the Board by virtue of this provision, or as to the amount payable by them in respect of any such liability shall be determined by the Lands Tribunal or, if the land concerned is in Scotland, the Lands Tribunal for Scotland.

(6) If the building owner fails to give notice to the Board in accordance with this paragraph of the proposal to construct the buildings or works or fails to comply with a request made by the Board thereunder, the obligation to pay compensation or to make good under section 2(4) of this Act shall be limited to damage which could not have been avoided by reasonable and proper precautions taken in the design and construction of the foundations to minimise damage in the event of subsidence.

## 2. In any case where—

- 1938 c. 52.
- 1943 c. 38.
- (a) immediately before the commencement of this Act the Board had a right to withdraw support from any land by virtue of paragraph 5 of Schedule 2 to the Coal Act 1938, including that paragraph as applied by paragraph 1(2) of Schedule 2 to the Coal Act 1943, and
  - (b) after the commencement of this Act that land is damaged by the working of coal in exercise of the right to withdraw support conferred on the Board by section 2 of this Act,

any person interested in that land may claim compensation for the damage in accordance with the terms and conditions relating to compensation which were applicable before the commencement of this Act to the right to withdraw support referred to in sub-paragraph (a) above ; but no person shall be entitled both to receive compensation for any damage under this paragraph and to receive compensation for that damage, or have that damage made good, under section 2(4) of this Act.

## 3. In any case where—

- (a) before the commencement of this Act, public notice was given in relation to any land under sub-paragraph (2) of paragraph 6 of Schedule 2 to the Coal Act 1938 (in the following provisions of this paragraph referred to as "paragraph 6"), and
- (b) at any time between the first publication of that notice and the commencement of this Act, the construction began of any buildings or works on land to which the notice applied, and
- (c) immediately before the commencement of this Act, the obligation of the Board under sub-paragraph (1) of paragraph 6 in relation to those buildings or works was limited as mentioned in paragraph (b) or paragraph (e) of sub-paragraph (3) of paragraph 6 (which contained provisions similar to sub-paragraphs (3) and (6) of paragraph 1 above),

the obligation of the Board, in relation to those buildings or works, to pay compensation or make good any damage under section 2(4) of this Act shall be limited as mentioned in sub-paragraph (3) or, as the case may require, sub-paragraph (6) of paragraph 1 above.

SCH. 1

4.—(1) Any question as to the subsistence by virtue of section 2 of this Act or of any of the preceding provisions of this Schedule of an obligation to pay proper compensation for or make good any damage or as to the rights or liabilities of any person in respect of the enforcement of any such obligation and any question as to the amount of any compensation payable under section 2(4) of this Act or paragraph 2 above shall be determined by the Lands Tribunal or, if the land concerned is in Scotland, the Lands Tribunal for Scotland.

5.—(1) Subject to sub-paragraph (2) below, on an application under section 7 of the Mines (Working Facilities and Support) Act 1966 (imposition of restrictions on the working of minerals where a person having an interest in land is not entitled to support or to sufficient support for buildings or works), the applicant shall not be required to pay or give any compensation or consideration in respect of the imposition of restrictions appearing to the court to be justified by the existence of the right to withdraw support conferred on the Board by section 2 of this Act. 1966 c. 4.

(2) Sub-paragraph (1) above shall not apply in any case falling within subsection (5)(a) of section 2 of this Act and shall not apply in any other case, other than one falling within subsection (5)(b) of that section, unless the application is sent to the Secretary of State before the end of the period of six months beginning with the date of the first publication of a notice under that section relating to the land to which the application relates or, in a case falling within subsection (6) of that section, the first publication of the notice under paragraph 6 of Schedule 2 to the Coal Act 1938 referred to in that subsection. 1938 c. 52.

(3) Notwithstanding anything in section 12 of the Mines (Working Facilities and Support) Act 1966, restrictions the imposition of which appears to the court to be justified as mentioned in sub-paragraph (1) above may be imposed under section 7 of that Act on the application of, and so as to vest the right to enforce the restrictions in, any such company, authority or body as is mentioned in section 12; and such restrictions may be so imposed on the application of, and so as to vest the right to enforce the restrictions in, any company or other body or person carrying on an undertaking primarily for the supply of gas, electricity, water or hydraulic power for public purposes or to members of the public.

## SCHEDULE 2

Section 3.

### RETAINED INTERESTS: NOTICES AND COMPENSATION

1. The provisions of this Schedule apply where a person (in this Schedule referred to as "the claimant") gives to the Board notice of a retained interest as mentioned in section 3(3)(b) of this Act (in this Schedule referred to as a "retained interest notice").

## SCH. 2

2.—(1) Together with a retained interest notice given by him to the Board the claimant shall furnish to the Board adequate proof of his title to the interest at the time the notice is given.

(2) Within the period of three months beginning on the date on which the Board receive a retained interest notice or within such longer period as may be agreed between the Board and the claimant the Board shall serve on the claimant either—

(a) a notice in the prescribed form accepting his title to the retained interest and acknowledging the obligation of the Board to pay compensation in respect of it under section 3 of this Act ; or

(b) a notice rejecting the claimant's retained interest notice ;

and in this Schedule a notice under paragraph (a) above is referred to as an "acceptance notice" and a notice under paragraph (b) above is referred to as a "rejection notice".

(3) A rejection notice shall specify the ground or grounds on which the Board reject the claimant's retained interest notice.

3. Subject to paragraph 5 below, as soon as practicable after the Board have served an acceptance notice on a claimant, the Board shall pay to the claimant any reasonable legal expenses incurred by him for the purposes of—

(a) establishing his ownership of the retained interest to which the acceptance notice relates ; and

(b) giving the retained interest notice by virtue of which the acceptance notice came to be served.

4. Subject to paragraph 5 below, where, after the receipt of a retained interest notice, the Board have served an acceptance notice in respect of the retained interest concerned, the service of that acceptance notice shall be a valid ground for the service of a rejection notice in respect of any other retained interest notice received by the Board after the first-mentioned notice and relating to any of the land in which subsists the retained interest in respect of which the acceptance notice was served.

5.—(1) A claimant who—

(a) has served a retained interest notice relating to any land (in this paragraph referred to as "the relevant land"); and

(b) is aggrieved by the service on him of a rejection notice relating to his retained interest notice, other than a rejection notice served pursuant to an order under this paragraph,

may, within the period of 3 months beginning on the date of service of the rejection notice make an application to the county court for an order directing the Board to withdraw the rejection notice and to serve an acceptance notice in respect of the retained interest which he claims.

(2) On an application under this paragraph, the court may direct that, in addition to the applicant and the Board, any other person who has given a retained interest notice relating to the whole or part

of any of the relevant land shall be made a party to the application unless—

- (a) the Board have already served a rejection notice in respect of that person's retained interest notice ; and
- (b) the time within which he might have made an application under this paragraph in respect of that rejection notice has expired without such an application having been made.

(3) On an application under this paragraph the court shall determine whether—

- (a) the applicant, or
- (b) any other party to the application who contests the applicant's claim, or
- (c) any other person (whether a party to the application or not) on whom the Board have served an acceptance notice relating to the whole or any part of the relevant land,

was at the time he gave his retained interest notice entitled to a retained interest in the whole or any part of the relevant land and shall order the Board (so far as they have not already done so) to serve an acceptance notice on that person or, if more than one of them were so entitled to a retained interest in the same piece of land, on that one of them whose retained interest notice was given first.

(4) An order under sub-paragraph (3) above may contain such provisions as the court considers appropriate to secure—

- (a) that a rejection notice is or has been served on every party to the application (other than the Board) on whom an acceptance notice is not ordered to be or has not been served ; and
- (b) that, where it appears to the court that an acceptance notice has been served which should not have been served, that notice is cancelled and that the Board bring the cancellation to the notice of the person who, if the notice had not been cancelled, would for the time being have been entitled to receive compensation under section 3(4) of this Act in respect of the interest to which the acceptance notice related.

(5) If, in accordance with sub-paragraph (4), above, the court orders the cancellation of an acceptance notice, it shall be conclusively presumed for the purposes of section 3 of this Act and of the provisions of this Schedule other than this paragraph—

- (a) that the person on whom the acceptance notice was served did not have a retained interest in the relevant land at the time he served his retained interest notice ; and
- (b) that the Board served a rejection notice in respect of that retained interest notice.

(6) Nothing in paragraph 3 above shall affect the power of the court on an application under this paragraph (or in any subsequent proceedings) to make such order as to costs as it thinks fit ; and any such order may make such modifications, if any, of the Board's obligation under paragraph 3 above as appear to the court to be just in the light of the other provisions as to costs contained in the order.

## SCH. 2

6. The person having the right to receive compensation under section 3(4) of this Act in respect of a retained interest to which an acceptance notice relates shall be the person on whom that notice was served, notwithstanding that he may not own the retained interest at the time when the compensation becomes payable and, accordingly, that right shall devolve on his death and may be assigned in like manner as the right of a creditor under an unsecured debt.

7. Notwithstanding anything in paragraph 6 above if, at the time at which compensation becomes payable in respect of a retained interest, the Board pay compensation in good faith to the person who produces the acceptance notice relating to that interest, the surrender of that notice to the Board by way of receipt for the compensation shall constitute an adequate discharge to the Board of their liability to pay that compensation, without any further proof that the person producing the acceptance notice is entitled in accordance with paragraph 6 above to receive the compensation.

8. If at any time—

- (a) after the Board have served an acceptance notice in respect of a retained interest, and
- (b) before the date on which compensation becomes payable in respect of that interest,

the Board enter into an agreement in that behalf with the person who for the time being has the right to receive any such compensation, then, on payment to that person of such consideration as may be agreed, the Board shall be relieved of any contingent liability under subsection (4) or subsection (6) of section 3 of this Act in respect of that retained interest; and where any such agreement is entered into, paragraph 7 above shall apply in relation to the payment of the consideration agreed as it applies in relation to a payment of compensation at the time referred to in that paragraph.

9. Without prejudice to paragraph 8 above, at any time after the Board have served an acceptance notice in respect of a retained interest, they shall cease to be entitled to acquire by agreement that interest or any other retained interest in coal or a mine of coal comprised in or lying under any of the land in which subsists the retained interest to which the acceptance notice relates.

10.—(1) The Board shall keep, at such places as may be prescribed, a record of—

- (a) all retained interest notices given to the Board and all acceptance notices and rejection notices served by them, and
- (b) all sums paid by way of compensation under section 3(4) of this Act,

and that record shall contain a description of the land in which subsists the retained interest (or in the case of a rejection notice, the claimed retained interest) to which each such notice or payment relates sufficient to enable the land to be identified.

(2) The record kept under this paragraph shall be open to public inspection at all reasonable hours, and different places may be prescribed for the keeping of the record relating to retained interests in different areas. SCH. 2

11. Section 55 of the Coal Act 1938 (service of notices, etc.) shall have effect as if the provisions of this Schedule were included in that Act. 1938 c. 52.

### SCHEDULE 3

Section 4.

#### AMENDMENTS OF OPENCAST COAL ACT 1958 CONSEQUENTIAL ON SECTION 4 1958 c. 69.

1. In section 4(6) the words "being an opencast site order" shall be omitted.

2. In section 5 for the words "an opencast site order", in each place where they occur, there shall be substituted the words "a compulsory rights order".

3. Section 6 shall cease to have effect.

4.—(1) In section 7, in subsection (1) the words "or in accordance with subsection (3) of section six of this Act" shall be omitted.

(2) In subsection (3) of that section the words "In relation to an opencast site order" shall be omitted.

(3) In subsection (5) of that section the words from "or of" to the end of the subsection shall be omitted.

(4) In subsection (6) of that section the words "or section six of this Act" shall be omitted.

(5) In subsection (7) of that section the words "or in subsection (4) of section six of this Act" shall be omitted.

5.—(1) In section 8, in subsection (1) the words "(whether it is an opencast site order or a storage site order)" shall be omitted.

(2) In subsection (3)(b) of that section the words "or subsection (2) of section six of this Act, as the case may be" shall be omitted.

6. In section 9 for the words "an opencast site order", in each place where they occur, there shall be substituted the words "a compulsory rights order".

7. In section 36, in subsection (2) for the words "an opencast site order", in the first place where they occur, there shall be substituted the words "any compulsory rights order" and the words "opencast site", where they occur in the proviso to the subsection, shall be omitted.

8. In section 49, for the proviso to subsection (5) there shall be substituted the following proviso:—

"Provided that where the period specified in the order is less than twenty years, this subsection shall not prevent the variation

SCH. 3 of the order by the extension of that period, if the period as extended does not exceed twenty years”.

9. In section 51(1) the definitions of “opencast site order” and “storage site order” shall be omitted and in each of the definitions of “period of occupation” and “persons directly concerned” for the words following “assigned to it” there shall be substituted the words “by section 5 of this Act”.

10. In paragraph 5(1) of Schedule 2, for the words “an opencast site order” there shall be substituted the words “a compulsory rights order”.

11. In Schedule 10, paragraph 12 shall be omitted.

Section 5.

#### SCHEDULE 4

1958 c. 69.

#### SUSPENSION OF PUBLIC RIGHTS OF WAY: AMENDMENTS OF SCHEDULE 1 TO OPENCAST COAL ACT 1958

1. At the end of paragraph 2 of the Schedule there shall be added the words “and

(c) in the case of an application which includes an application for an order under section 15 of this Act, shall indicate, by reference to the map, the right of way to which the application relates and the alternative way (if any) which the Board propose to make available”.

2. At the beginning of paragraph 4 of the Schedule there shall be inserted “(1)” and at the end of that paragraph there shall be added the following sub-paragraph:—

“(2) If the Board propose to include in an application for an authorisation under section 1 of this Act an application for an order under section 15 thereof, sub-paragraph (1) above shall have effect as if—

(a) any reference therein to the application for the authorisation included a reference to the application for the order under section 15 ;

(b) the local authorities specified in paragraph (b) thereof included the council of a parish or community and the parish meeting of a parish which does not have a separate parish council ; and

(c) at the end of paragraph (d) thereof there were inserted the following paragraph:—

‘(e) in any case where the application is to include an application for an order under section 15 of this Act suspending a public right of way, cause a copy of the notice referred to in paragraph (b) of this paragraph to be displayed in a prominent position at the ends of the public right of way to which the application relates’.”

3.—(1) Paragraph 7 of the Schedule shall be amended in accordance with the provisions of this paragraph.

(2) In sub-paragraph (1) of that paragraph for the words from “grant the authorisation” to the end of the sub-paragraph there shall be substituted the words “after considering any other objections which are duly made and not withdrawn—

(a) grant the authorisation, and

(b) where the application includes an application for an order under section 15 of this Act, make such an order,

either in accordance with the Board’s application or subject to such modifications as he may determine”.

(3) In sub-paragraph (2) of that paragraph after the words “any objection” there shall be inserted the words “to the grant of the authorisation is” after the words “lessee or occupier” there shall be inserted the word “and” and for the words “the objection” there shall be substituted the words “all objections to the grant of the authorisation which are duly made and not withdrawn”.

(4) At the end of sub-paragraph (2) of that paragraph there shall be inserted the following sub-paragraphs:—

“(2A) If, in the case of an application which includes an application for an order under section 15 of this Act, any objection to the making of the order is duly made by the council of any such county or district or, in Scotland, by any such local authority as is mentioned in paragraph 4(1)(b) of this Schedule and is not withdrawn, the Secretary of State shall cause a public local inquiry to be held and shall consider all objections to the making of the order which are duly made and not withdrawn and the report of the person who held the inquiry before determining whether to make the order; and if he determines to make the order, he may do so either in accordance with the Board’s application or subject to such modification as he may determine.

(2B) If, in a case where a public local inquiry is required to be held by virtue of sub-paragraph (2) above, such an inquiry is also required to be held by virtue of sub-paragraph (2A) above the Secretary of State may direct that those inquiries, including, in a case falling within paragraph 6 of this 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.”

(5) In sub-paragraph (3) of that paragraph for the words “the last preceding sub-paragraph” there shall be substituted the words “sub-paragraphs (2) and (2A) above”, after the word “authorisation” there shall be inserted the words “or, as the case may be, make an order” and for the words “that sub-paragraph” there shall be substituted the words “either or both of those sub-paragraphs”.

4. At the beginning of paragraph 8 of the Schedule there shall be inserted “(1)” and at the end of that paragraph there shall be added the following sub-paragraph:—

“(2) Where an order is made under section 15 of this Act,



SCH. 4

sub-paragraph (1) above shall have effect in relation to the order as if—

- (a) any reference therein to the authorisation were a reference to the order ;
- (b) any reference therein to the grant of the authorisation were a reference to the making of the order ; and
- (c) any reference to the relevant land were a reference both to the right of way which is suspended by the order and the alternative way which is to be made available as mentioned in section 15(2)(c) of this Act."

5. In paragraph 11 of the Schedule, for the words " paragraph 5 " there shall be substituted the words " paragraphs 4(2)(b) and 5 ".

Section 7(4.)

**SCHEDULE 5**  
**ENACTMENTS REPEALED**

Chapter	Short title	Extent of repeal
1 & 2 Geo. 6. c. 52.	The Coal Act 1938.	In Schedule 2, Part II and, in Part III, paragraph 8(c).
6 & 7 Geo. 6. c. 38.	The Coal Act 1943.	Section 11. Schedule 2.
9 & 10 Geo. 6. c. 49.	The Acquisition of Land (Authorisation Procedure) Act 1946.	In section 3, subsections (2) and (3) so far as not otherwise repealed.
6 & 7 Eliz. 2. c. 69.	The Opencast Coal Act 1958.	In section 4(6) the words " being an opencast site order " . Section 6. In section 7, in subsection (1), the words " or in accordance with subsection (3) of section six of this Act " ; in subsection (3), the words " In relation to an opencast site order " ; in subsection (5), the words from " or of " to the end of the subsection ; in subsection (6), the words " or section six of this Act " ; and in subsection (7), the words " or in subsection (4) of section six of this Act " . In section 8, in subsection (1), the words " (whether it is an opencast site order or a storage site order) " ; and in subsection (3)(b) the words " or subsection (2) of section six of this Act, as the case may be " . In section 36(2), the words " opencast site " , where they occur in the proviso to the subsection.

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Chapter	Short Title	Extent of Repeal
6 & 7 Eliz. 2. c. 69.— <i>cont.</i>	The Opencast Coal Act 1958.— <i>cont.</i>	In section 45, in subsection (3), the words “section three of the Acquisition of Land Act, as applied by”; and subsection (5). In section 51(1) the definitions of “ opencast site order ” and “ storage site order ”.
1968 c. 41.	The Countryside Act 1968.	In Schedule 10, paragraph 12. In Schedule 3, in Part I, para- graph 3 of the provisions relating to the Acquisition of Land (Authorisation Pro- cedure) Act 1946.
1971 c. 78.	The Town and Country Planning Act 1971.	In Schedule 3, paragraph 8(c).

PRINTED IN ENGLAND BY HAROLD GLOVER

Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament

LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE  
37p net