



Mines (Working Facilities and Support) Act 1966

CHAPTER 4

ARRANGEMENT OF SECTIONS

Working facilities

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7. Restrictions on working minerals required for support.

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ELIZABETH II



1966 CHAPTER 4

An Act to consolidate Part I of the Mines (Working Facilities and Support) Act 1923 and certain enactments amending the said Part I. [10th March 1966]

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

Working facilities

1. The court may, subject to and in accordance with this Act, confer any rights described in the Table below. Grant of working facilities.

TABLE

Metallic ores, etc.

Paragraph 1 of Table.

(1) This paragraph applies to—

Iron ore and iron-stone.	Copper ore.
Tin ore.	Tungsten ore.
Lead ore.	Fluorspar.
Zinc ore.	Barytes.
	Oil shale.

and also, where any other mineral is being, or is to be, worked with a mineral specified above, that other mineral.

(2) A right to search for or work any minerals to which this paragraph applies (but not including coal) may be conferred on any person (exercisable either by himself or through a lessee).

(3) Where the working of any minerals to which this paragraph applies, or the working of any such minerals in the most efficient and economical manner, is impeded by any restrictions, terms or conditions contained in a mining lease, or otherwise

binding on the person entitled to work the minerals, a right may be conferred to work the minerals freed wholly or partially from the restrictions or conditions, or to work the minerals on other terms and conditions.

All minerals other than coal

Paragraph 2 of Table.

- (1) This paragraph applies to any minerals other than coal.
- (2) Where there is danger of any such minerals being left permanently unworked—
 - (a) by reason of the minerals being comprised in or lying under land which has been copyhold land, or land subject to a lease, exception, reservation, restriction, covenant or condition, or otherwise not being capable of being worked without the concurrence of two or more persons, or
 - (b) by reason of the minerals being owned in such small parcels that they cannot be properly or conveniently worked by themselves,

a right to work the minerals may be conferred on a person having an interest in the minerals or, in the case of minerals owned in small parcels, in minerals adjacent to them (exercisable either by himself or through a lessee).

Coal

Paragraph 3 of Table.

- (1) A right to search and bore for coal may be conferred on the National Coal Board.
- (2) Subject to section 4(5) of this Act, where the working of any coal, or the working of any coal in the most efficient and economical manner, is impeded by any restrictions, terms or conditions contained in a mining lease, or otherwise binding on the person entitled to work the coal, a right may be conferred to work the coal freed wholly or partially from such restrictions or conditions, or to work the coal on other terms and conditions.

In this sub-paragraph “coal” shall not include lignite or brown coal but, subject to that, includes, together with coal as defined in this Act, all other minerals worked or to be worked therewith.

All minerals

Paragraph 4 of Table.

- (1) Subject to sub-paragraph (2) below, where the persons working two adjoining mines have agreed on an adjustment of boundaries between the mines with a view to reducing the amount of minerals to be left unworked between the mines,

or to enabling the minerals to be worked more efficiently or more economically, and effect cannot be given to the agreement by reason of the failure or refusal of the lessors of the mines, or the owners of the surface, or any of them, to concur, a right may be conferred on the persons working the mines respectively to work the minerals in accordance with such adjusted boundaries.

(2) No order shall be made under this paragraph on the ground of any failure or refusal on the part of the National Coal Board.

All minerals: ancillary rights

Paragraph 5 of Table.

(1) An ancillary right may be conferred on a person having the right to work minerals, who is working or desirous of working the minerals either by himself or through his lessees, if the right is required in order that the minerals may be properly and conveniently worked by him, and the proper and efficient working of the minerals is unduly hampered by his inability or failure to obtain that right.

(2) An ancillary right may be conferred on a person on whom a right to work minerals is conferred under this Act at the same time or at any subsequent time.

2.—(1) In this Act “ancillary right” means, in relation to Ancillary minerals, any facility, right or privilege and, in particular, but rights. without prejudice to the generality of the foregoing provisions of this subsection, that expression shall include—

- (a) a right to let down the surface,
- (b) a right of air-way, shaft-way or surface or underground wayleave, or other right for the purpose of access to or conveyance of minerals (otherwise than by means of a pipe) or the ventilation or drainage of the mines,
- (c) a right to use and occupy the surface for the erection of washeries, coke ovens, railways, by-product works or brick making or other works, or of dwellings for persons employed in connection with the working of the minerals or with any such works as aforesaid ;
- (d) a right to obtain a supply of water or other substances in connection with the working of minerals ;
- (e) a right to dispose of water or other liquid matter obtained from mines or any by-product works.

(2) The court in determining whether a right under subsection (1)(a) above should be granted—

- (a) shall have regard to the value of the minerals required for the support of any works or buildings or intended

works or buildings on or below the surface as compared with the value of the buildings or works, and as to whether the support of the works or buildings or intended works or buildings is in the national interest more important than the working of those minerals, or

- (b) if there are no such buildings or works, shall have regard to the extent to which the use of the surface for the purposes for which it is used or is intended to be used will be prejudicially affected by subsidence, and as to whether the support of the surface is in the national interest more important than the working of the minerals required for its support.

(3) So far as required in order that coal may be properly and conveniently worked, and where the surface has been used for the erection—

- (a) of any works for a coal-mining purpose, or

- (b) of dwellings for persons employed in connection with the working of coal, or in connection with any works within paragraph (a) above or subsection (1)(c) above,

the expression “ ancillary right ” shall also include a right to use and occupy the works or dwellings for the purposes for which they were erected.

(4) Where a right within subsection (3) above is to be granted on the termination of a lease, and a right to erect or use the works or dwellings was comprised in that lease, the court, in determining whether any compensation or consideration is to be paid or given in respect of the right to be granted by the court and the amount thereof, if any, shall have regard to the fact that the right comprised in the lease was therein comprised and to the amount of any rent reserved by the lease in respect thereof.

3.—(1) No right shall be granted under section 1 of this Act unless the court is satisfied that the grant is expedient in the national interest.

(2) No right shall be granted under section 1 of this Act unless it is shown that it is not reasonably practicable to obtain the right by private arrangement for any of the following reasons—

- (a) that the persons with power to grant the right are numerous or have conflicting interests ;
- (b) that the persons with power to grant the right, or any of them, cannot be ascertained or cannot be found ;
- (c) that the persons from whom the right must be obtained, or any of them, have not the necessary powers of

disposition, whether by reason of defect in title, legal disability or otherwise ;

- (d) that the person with power to grant the right unreasonably refuses to grant it or demands terms which, having regard to the circumstances, are unreasonable.

4.—(1) An application for the grant of a right under section 1 of this Act shall be sent to the Minister, and the applicant for an ancillary right for the purpose of or in connection with working any minerals may be a person either having or applying for the right to work those minerals. Applications for rights.

(2) The application shall set out the circumstances alleged to justify the grant of the right, and shall be in such form and accompanied by such information verified in such manner as the Minister may direct.

(3) The Minister shall consider the application, and shall, unless after communication with such other parties interested (if any) as he may think fit, he is of opinion that a *prima facie* case is not made out, refer the matter to the court :

Provided that, where it is alleged that the right in question cannot be obtained by reason of any person not having the necessary powers of disposition, or having unreasonably refused to grant it, or having demanded terms which are unreasonable, the Minister shall not refer the application to the court without first having communicated with that person.

(4) Where the application relates to a right to obtain a supply of water, or a right to dispose of water or other liquid matter, or any other right which appears to the Minister to affect any local authority, the Minister before referring the application to the court shall send a copy of the application to the local authority in order to enable them to take such steps as they think fit for placing their views before the court.

(5) No application with respect to the grant of a right under paragraph 3(2) in the Table in section 1 of this Act made otherwise than by the National Coal Board shall be referred by the Minister to the court unless the National Coal Board have given notice in writing to the Minister that they have no power to grant the right, or any of the rights, for which the application is made.

5.—(1) Where a matter is referred to the court under the last foregoing section, the court, if satisfied that the requirements of this Act are complied with in the case of the applicant, may, by order, grant the right on such terms and subject to such conditions, and for such period, as the court may think fit, and upon such an order being made, the right specified in the order References of applications to court.

shall, subject to the following provisions of this Act, vest in the applicant.

(2) Where a right is granted, such compensation or consideration as in default of agreement may be determined by the court shall be paid or given by the applicant in respect of the acquisition of the right to such persons as the court may determine to be entitled thereto.

(3) In determining the duration of any right to be granted the court shall have regard to the time reasonably necessary to enable the minerals to be fully worked, and where the applicant's interest in any minerals is an interest as lessee shall have regard to the duration of the interest.

(4) In determining whether any right should be granted or the conditions upon which any such right should be granted the court shall have regard to all the circumstances of the case, and in particular to the extent to which the retention of any minerals is required for the protection of any mines or other works from flooding, or for any other mining purpose, and (so far as relevant) to the royalties, covenants, and conditions reserved by or contained in the applicant's existing mining lease or leases (if any), or customary in mining leases in the district.

(5) If in the case of an application for the grant of a right under paragraph 1 or paragraph 3(2) in the Table in section 1 of this Act, it is proved to the satisfaction of the court that there is good cause for requiring the applicant to give security for any costs which may be ordered to be paid by him to any person affected by the application, the court shall have power to make an order that all proceedings upon the application shall be stayed until such security for the costs of that person as may be required by the order has been given to the satisfaction of the court, and may order the payment into the Supreme Court (or, in Scotland, the consignation in the Court of Session) of the whole or any part of any sum so required to be paid by way of such security.

6.—(1) Where separate applications are made by two or more persons for the right to work the same minerals and are referred to the court, the court, in addition to the matters aforesaid, shall determine which, if any, of the applicants is to be preferred, or whether the right to work one part of the minerals should be granted to one applicant and the right to work another part should be granted to another applicant; and in arriving at its determination the court shall have regard to the question as to how the minerals can be most conveniently worked, to the respective rights of the applicants in the surface or adjacent minerals, and generally to all the circumstances of the case.

Several applications in respect of the same rights.

(2) This section shall apply to cases of applications by two or more persons for the same ancillary right subject to the necessary modifications, and so that the right may be granted to the applicants, or to any two or more of them, jointly.

Restrictions on working minerals required for support

7.—(1) If any person having an interest in any land is not entitled to support or sufficient support, whether vertical or lateral, for any buildings or works, whether on or below the surface, erected or constructed, or intended to be erected or constructed, on or below the surface, and alleges that it is not reasonably practicable to obtain a right to such support by private arrangement for any of the reasons mentioned in section 3(2) of this Act, he may send to the Minister an application that such restrictions may be imposed on the working of the minerals under that land and the land adjacent thereto as he may consider necessary to secure sufficient support to the buildings or works.

Restrictions on working minerals required for support.

(2) An application under this section shall set out the circumstances alleged to justify the imposition of the restrictions, and shall be in such form, and accompanied by such information verified in such manner, as the Minister may direct.

(3) The Minister shall consider the application, and shall, unless after communication with such other parties interested (if any) as he thinks fit, he is of opinion that a prima facie case is not made out, refer the matter to the court:

Provided that, where it is alleged that the right in question cannot be obtained by reason of any person not having the necessary powers of disposition, or having unreasonably refused to grant it, or having demanded terms which are unreasonable, the Minister shall not so refer the application to the court without first having communicated with that person.

(4) Where any such case is referred to the court the court if satisfied that the requirements of this section are complied with in the case of the applicant, and that it is expedient in the national interest that restrictions should be imposed, may, by order, impose such restrictions, on such terms and subject to such conditions and for such period as the court may think just, and upon such order being made the right to enforce the restrictions imposed by the order shall, subject to the following provisions, vest in the applicant.

(5) Where restrictions are imposed, such compensation or consideration as in default of agreement may be determined by the court shall be paid or given by the applicant in respect of the imposition of the restrictions to such persons as the court may determine to be entitled thereto.

(6) The restrictions may be either on the quantity or position of the minerals to be worked, or on the methods of working or packing, or otherwise such as may be necessary to secure adequate support to the buildings or works or to prevent or minimise damage to them.

(7) In determining whether restrictions should be imposed the court shall have regard to the value of the buildings or works or the cost of repairing damage likely to be caused to them by subsidence, as compared with the value of the minerals, or to the importance in the national interest of the erection or preservation of the buildings or works, as compared with the importance in the national interest of the working of the minerals.

(8) For the purposes of this section, where any building or work is an ancient monument within the meaning of the Ancient Monuments Consolidation and Amendment Act 1913, and is, in pursuance of that Act, or Part II of the Historic Buildings and Ancient Monuments Act 1953, under the guardianship or protection of the Minister of Public Building and Works, or is under the guardianship of a local authority, that Minister or the local authority, as the case may be, shall be deemed to be persons entitled to make an application under this section.

1913 c. 32.

1953 c. 49.

General

Compensation. 8.—(1) Where a right is granted under section 1 of this Act, or any restriction is imposed under section 7 of this Act, the court may determine the amount and nature of compensation or consideration to be paid or given and the persons to whom it is to be paid or given, either at the time when it determines whether the right should be granted or the restrictions imposed or at any subsequent time.

(2) The compensation or consideration in respect of any right, including a right to enforce restrictions, shall be assessed by the court on the basis of what would be fair and reasonable between a willing grantor and a willing grantee, having regard to the conditions subject to which the right is or is to be granted.

(3) The court may, if it thinks fit—

- (a) where the amount of the compensation or consideration has been determined by the court, order the payment into court of the whole or any part of it;
- (b) pending the determination of the amount of the compensation or consideration, order the payment into court of such sum on account as the court thinks fit.

(4) Where the person to whom any compensation or consideration is payable cannot be found or ascertained the compensation or consideration shall be paid into court.

(5) The court may impose as a condition on the grant of any right or the imposition of any restriction that any compensation or consideration payable in respect thereof shall be paid, or that security to the satisfaction of the court for the payment thereof shall be given, before the right is commenced to be exercised, or the restriction is enforced.

(6) References in this section to payment into court are—

(a) in the application of this Act to England and Wales, references to payment into the Supreme Court, and

(b) in the application of this Act to Scotland, references to consignment in the Court of Session.

9. The Minister of Power and any other Government Department and the National Coal Board shall give to the court such assistance as the court may require for the purposes of their duties under this Act, and shall be entitled to appear and be heard at any proceedings on an application before the court under this Act.

Duty of Ministers and National Coal Board to assist the court, and right to appear in court proceedings.

10. A right granted under this Act shall not confer on the person to whom it is granted any greater or other power than if the right had been granted by a person legally entitled to grant the right, or relieve the grantee from any obligation or liability to which he would have been subject had the right been granted by such a person.

Effect of grant of right.

11. An order under this Act may confer rights on a tenant for life or on any person having the statutory powers of a tenant for life, or any trustee, personal representative, or other person in a fiduciary position, and, where any such rights are so conferred upon any such person, the rights shall be deemed to form part of the property subject to the settlement or the estate of the deceased person or the property subject to the trust, as the case may be.

Provisions as to tenants for life, etc.

12.—(1) Nothing in this Act shall prejudicially affect—

(a) the right under the Railways Clauses Consolidation Act 1845, or any Act modifying that Act, including Part II of the Mines (Working Facilities and Support) Act 1923, or any other Act, whether public general, or local

Saving of rights under Railways Clauses Acts, etc.
1845 c. 20,
1923 c. 20.

and private, of any railway or canal company, local authority or other statutory body to acquire minerals for the purposes of support, or

- (b) any rights or interests in minerals which may have been acquired by any such company, authority or body, or
- (c) any right of support from minerals to which any such company, authority or body may be entitled, or
- (d) any right empowering any such company, authority or body to acquire the rights to which they are entitled directly or indirectly under any special Act or order relating to the company, authority or body or any statute incorporated therewith,

or shall confer on any such company, authority or body the right to acquire under this Act any rights to prohibit or restrict the working of minerals.

1947 c. 49.
1962 c. 46. (2) For the purposes of Part II of the Transport Act 1947 and Part II of the Transport Act 1962, this section shall be deemed to have been enacted before those Acts.

1845 c. 20.
1845 c. 33. (3) In the application of this section to Scotland for the reference to the Railways Clauses Consolidation Act 1845 there shall be substituted a reference to the Railways Clauses Consolidation (Scotland) Act 1845.

Transitory provisions. **13.** In the Table in section 1 of this Act paragraph 1(2) and paragraph 2—

- (a) shall apply to the granting of a right required by reason of the subsistence either of a retained interest (as defined by section 5 of the Coal Act 1938) or of any interest arising under a freeholder's lease (as defined by section 4 of the Coal Act 1943),
- (b) shall not apply to minerals within section 3(4)(b) of the Coal Act 1938 (minerals (other than coal) comprised in a coal mining lease subsisting at the valuation date).

Interpretation. **14.**—(1) In this Act, unless the context otherwise requires—
 “ancillary right” has the meaning given by section 2 of this Act;
 “coal” means bituminous coal, cannel coal and anthracite;
 “coal-mining purpose” has the meaning given by section 44(1) of the Coal Act 1938;
 “copyhold land” has the same meaning as in the Law of Property Act 1922;

“ court ”—

(a) in the application of this Act to England and Wales, means the High Court, and

(b) in the application of this Act to Scotland, means the Court of Session ;

“ lease ” includes underlease or other tenancy and a licence, and “ lessor ” and “ lessee ” have corresponding meanings ;

“ minerals ” includes all minerals and substances in or under land obtainable by underground or by surface working, and references to working minerals include references to working, carrying away, treating and converting minerals ;

“ the Minister ” means the Minister of Power ;

“ surface ” in relation to land includes any buildings, works or things erected, constructed or growing thereon, and “ right to let down the surface ” includes a right to let down superincumbent or adjacent strata up to and including the surface.

(2) For the purposes of this Act a person whose concurrence is necessary for the exercise of a right shall be deemed to be a person having power to grant the right, or a person from whom the right must be obtained as the case may be.

(3) References in this Act to a right to work minerals include references to any right granted under paragraph 1 or paragraph 3(2) in the Table in section 1 of this Act.

15.—(1) The Acts mentioned in Schedule 1 to this Act shall be repealed to the extent specified in the third column of that Schedule. Repeal and savings.

(2) Subsection (1) above shall not affect—

(a) any exercise of the court's jurisdiction, or any exercise (before the coming into force of the Railway and Canal Commission (Abolition) Act 1949) of the jurisdiction of the Railway and Canal Commission, 1949 c. 11.

(b) any pending application for the grant of a right or the imposition of restrictions or any pending proceedings in the court, or

(c) any other thing done before the coming into force of the repeals under the enactments repealed by this section,

and any thing done under any of those enactments before their repeal shall have effect as if done under the corresponding enactment in this Act.

1938 c. 52.

(3) The repeal of section 22(1) of the Coal Act 1938 shall not affect the saving in that subsection for the jurisdiction as respects a working facilities order subsisting on the vesting date mentioned in that subsection.

(4) Any enactment or instrument or document referring to any of the enactments repealed by this section shall be construed as referring to the corresponding enactment in this Act.

(5) Without prejudice to the generality of subsection (4) above, the Acts and instruments mentioned in Schedule 2 to this Act shall be amended in accordance with that Schedule.

(6) The mention of particular matters in this section shall be without prejudice to the provisions of section 38 of the Interpretation Act 1889 as regards the effect of repeals.

1889 c. 63.

Short title,
extent and
commence-
ment.

16.—(1) This Act may be cited as the Mines (Working Facilities and Support) Act 1966.

(2) This Act shall not extend to Northern Ireland.

(3) This Act shall come into force at the expiration of a period of one month beginning on the date on which it is passed.

SCHEDULES

SCHEDULE 1

Section 15(1).

REPEALS

Chapter	Short Title	Extent of Repeal
13 & 14 Geo. 5. c. 20.	The Mines (Working Facilities and Support) Act 1923.	Part I.
15 & 16 Geo. 5. c. 91.	The Mines (Working Facilities and Support) Act 1925.	The whole Act.
16 & 17 Geo. 5. c. 28.	The Mining Industry Act 1926.	Section 13. Section 24(3).
24 & 25 Geo. 5. c. 27.	The Mines (Working Facilities) Act 1934.	The whole Act.
1 & 2 Geo. 6. c. 52.	The Coal Act 1938.	Section 22. Section 51.
6 & 7 Geo. 6. c. 38.	The Coal Act 1943.	Section 7.
9 & 10 Geo. 6. c. 59.	The Coal Industry Nationalisation Act 1946.	Section 43.
10 & 11 Eliz. 2. c. 58.	The Pipe-lines Act 1962.	Section 57.
1965 c. 2.	The Administration of Justice Act 1965.	In Schedule 1 the amendments of the Mines (Working Facilities and Support) Act 1923, the Mines (Working Facilities and Support) Act 1925 and the Mining Industry Act 1926.

SCHEDULE 2

Section 15(5).

CONSEQUENTIAL AMENDMENTS

- In section 3 of the Petroleum (Production) Act 1934—
 - the reference to Part I of the Mines (Working Facilities and Support) Act 1923 as amended is a reference to this Act, 1934 c. 36. 1923 c. 20.
 - the reference to subsections (1) and (2) of section 3 of the Act of 1923 is a reference to section 2(1) of this Act.
- In paragraph 6(4)(5) of Schedule 2 to the Coal Act 1938 and paragraph 5 of Schedule 2 to the Coal Act 1943 references to sections 8 and 13 of the Act of 1923 are respectively references to sections 7 and 12 of this Act. 1938 c. 52. 1943 c. 38.
- In section 78(4) of the Town and Country Planning (Scotland) Act 1947, section 198 of the Town and Country Planning Act 1962 and regulations made before the passing of this Act under either of those sections references to the Act of 1923 shall include references to this Act, references to provisions in Part I of that Act being taken as references to the corresponding provisions of this Act. 1947 c. 53. 1962 c. 38.

CH. 4

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Act 1966*

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