

## SCHEDULES

### SCHEDULE 10

#### TRANSITIONAL PROVISIONS AND SAVINGS

##### *Restrictions under section 33 of the Coal Act 1938*

- 3 (1) Notwithstanding the repeal by this Act of section 33 of the Coal Act 1938 (consent required for working of coal previously vested in statutory undertakers), where any coal which is vested in the Corporation immediately before the restructuring date is coal which by virtue of that section cannot be worked without the consent of the person in whom any undertaking is vested, the consent of the person in whom that undertaking is for the time being vested shall continue, subject to sub-paragraph (2) below, to be required, on and after that date, for the working of that coal.
- (2) The consent required by virtue of sub-paragraph (1) above for the working of any coal shall, if at any time the undertaking in question is vested in a person having no interest in land supported by that coal, cease from that time to be so required.
- (3) A consent required by virtue of this paragraph shall not be unreasonably withheld.
- (4) Sub-paragraph (3) above does not preclude the right of any person whose consent is sought for the purposes of this paragraph—
- (a) to give consent subject, so far as may be reasonably requisite—
    - (i) to a condition that the working of the coal shall not be such as to let down any land in which that person is interested in respect of the undertaking in question or shall be limited to working in particular places or in a particular manner, or
    - (ii) to other conditions or limitations as regards the working consented to or the payment of proper compensation for, or the making good of, damage arising therefrom;
  - or
  - (b) to require, as a condition of consent, payment of a reasonable sum in respect of any legal or other expenses incurred in connection with the consent.
- (5) Any question arising under sub-paragraph (3) or (4) above shall be referred to and determined by the High Court or, in the case of coal in Scotland, the Court of Session.
- (6) On a reference under sub-paragraph (5) above, the High Court or Court of Session shall have power to dispense with the required consent either without conditions or limitations or subject to any such conditions or limitations as are mentioned in sub-paragraph (4) above.
- (7) In determining any question referred to it under sub-paragraph (5) above the High Court or Court of Session shall have regard primarily to the safety and efficient working of the undertaking in question.
- (8) The requirements of this paragraph—

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

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- (a) shall be enforceable by the persons in whom the undertaking in question is for the time being vested; and
- (b) shall be so enforceable in the same manner, and (subject to any transfer of liabilities in accordance with a restructuring scheme) against the same persons, as by virtue of section 33(6) of the Coal Act 1938, it would have been enforceable immediately before the restructuring date by the persons in whom that undertaking was vested at that time.