

SCHEDULES.

ELEVENTH SCHEDULE

PROVISIONS FOR SECURING ALLOWANCE OF REBATES TO SELECTED TRAFFICS CORRESPONDING TO RATE-RELIEF OF CERTAIN COMPANIES.

PART I

Provisions as to Allowance of Rebates and Reimbursement of Companies out of Rate-relief.

- 1 The companies to which this Schedule applies are:
 - (a) every railway company for which a schedule of standard charges has been settled under the Railways Act, 1921, or to which such a schedule is for the time being applied under section thirty-three of that Act, being a company whereof the railway is used for the conveyance of merchandise otherwise than by passenger train or carriage; and
 - (b) every light railway company, being a company whereof the light railway is used as a public railway for the conveyance of merchandise otherwise than by passenger train or carriage;and such companies are in this Schedule referred to as " the companies."
- 2 There shall be established and maintained a fund to be called the " Railway Freight Rebates Fund " (hereinafter referred to as " the fund ") which shall be administered and controlled subject to the provisions of this Schedule by the Railway Clearing House, and as from the first day of October, nineteen hundred and twenty-nine, each of the companies shall, by equal monthly instalments beginning on the fifteenth day of November, nineteen hundred and twenty-nine, pay to the fund in respect of every year sums equal in the aggregate to the estimated rate relief of the company in that year; and as soon as the difference, if any, between the actual rate relief of a company in any year and the estimated rate relief of the company in that year has been ascertained, a sum equal to the difference shall be paid by way of adjustment out of the fund to the company or by the company to the fund, as the case may require.
- 3 The companies shall jointly, on or before the first day of June, nineteen hundred and twenty-nine, prepare and submit to the tribunal a scheme (hereinafter referred to as "the scheme") providing for the allowance by the companies of rebates from the carriage charges made by them in respect of the selected traffics, calculated in manner hereinafter appearing:

Provided that a scheme shall be deemed to have been prepared and submitted to the tribunal by the companies jointly if it has been prepared and so submitted by or on behalf of companies (being companies to which this Schedule applies) of which the aggregate total expenditure on capital account is not less than ninety per cent. of the aggregate total expenditure on capital account of all the companies.

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- 4 If the scheme so provides there shall, in every year, be set aside in the fund for the purpose of meeting any deficiency therein at the end of the year a contingency reserve of such an amount, not exceeding five per cent. of the aggregate of the sums paid and payable into the fund in respect of that year under paragraph 2 of this Part of this Schedule, as the scheme may determine.
- 5 (1) There shall in respect of every year be paid out of the general moneys of the fund—
- (a) in respect of administrative expenses, a sum equal to one-half of one per cent. of the aggregate of the estimated rate relief of the companies in respect of that year or such higher percentage thereof as the tribunal may allow on application in that behalf being made by the companies; and
 - (b) any interest payable on sums borrowed by the Railway Clearing House in accordance with the provisions of this Schedule; and
 - (c) to each of the companies a sum, determined in accordance with the provisions of the scheme, equal to the amount of the rebates allowed by the company under the scheme in respect of selected traffics delivered in that year for conveyance by railway.
- (2) Out of the sum payable under sub-paragraph (1) (a) of this paragraph there shall be allocated and paid to the Railway Clearing House a sum equal to the amount of the administrative expenses incurred by them in that year in giving effect to the provisions of this Schedule and the balance shall be appropriated for the purpose of meeting the expenses of the "companies incurred in that year under or for the purposes of the scheme and shall be apportioned between the companies and paid to them in proportion to the rebates respectively allowed by them under the scheme.
- 6 (1) The rebates provided for by the scheme shall be so calculated, as nearly as may be, that—
- (a) the aggregate of the rebates in respect of the group of selected traffics contained in Part II. of this Schedule will amount annually to a sum equal to one-fifth of the annual net revenue of the fund; and
 - (b) the aggregate of the rebates in respect of the group of selected traffics contained in Part III. of this Schedule will amount annually to a sum equal to seven-tenths of the annual net revenue of the fund; and
 - (c) the aggregate of the rebates in respect of the group of selected traffics contained in Part IV. of this Schedule will amount annually to a sum equal to one-tenth of the annual net revenue of the fund.
- (2) The scheme shall make provision for securing that the rebates in respect of the selected traffics contained in each of the several groups, other than rebates from tolls, will be at a uniform rate and that rebates from any toll in respect of the selected traffics shall be such percentage of the toll as may be determined by the scheme.
- (3) In preparing the scheme—
- (a) the receipts of the companies in respect of the several selected traffics shall, for the purpose of calculating the rebates to be allowed under the scheme, be taken to be those estimated for the year nineteen hundred and twenty-seven; and
 - (b) the rate-relief of the companies in the year beginning on the first day of October, nineteen hundred and twenty-nine, shall be taken to be of such amount as may be estimated by the companies.
- (4) The scheme shall provide for the manner in which the rebates thereby provided for are to be allowed, and for the time at which payments or instalments of payments

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are to be made out of the fund to the companies, and contain such supplemental and consequential provisions as may be necessary for giving effect to the objects of this Schedule, and, in particular, may -make provision for enabling rebates to be allowed in respect of merchandise consigned as being intended to be so used, shipped or delivered as to constitute it a selected traffic, before it has been so used, shipped or delivered, and may contain provisions enabling the Railway Clearing House to remit any repayment due to the fund by any company in respect of any amount allowed in error by the company in excess of the rebates required by the scheme if the Railway Clearing House are satisfied that all proper precautions were taken by the company to avoid such errors and that recovery by the company of the amount allowed in excess is not reasonably practicable.

- (5) The scheme shall make provision for apportioning the rebates to be allowed among the carriage charges made in the following cases:—
- (a) in respect of coal delivered to a washery, coke oven, or patent fuel works, from two or more collieries where the coal is so mixed that it cannot be identified as being consigned from any one colliery and a part only of the coal, or of the resultant coke, or patent fuel is a selected traffic; and
 - (b) in respect of coal shipped coastwise where the coal is so mixed that it cannot be identified as being consigned from any one colliery and a part only thereof is exported;

and may provide for any certificates necessary for such apportionment being obtained by the companies and for the allowance of rebates apportioned upon the basis thereof, subject to occasional verification of the facts thereby certified.

- 7 (1) Printed copies of the scheme as submitted to the tribunal shall be made available by the companies for purchase at such places and at such price as the tribunal may direct, and notice of the places and price at which such copies may be purchased shall be published in the London and Edinburgh Gazettes. Not less than twenty-one days after the publication of the said notices the tribunal shall consider the scheme, and, after hearing any of the companies or any representative body of traders interested which may be desirous of being heard, shall have power to make such modifications therein, if any, as the tribunal think necessary or desirable, and upon receiving a certificate, as respects England from the Minister of Health and as respects Scotland from the Secretary of State, showing the amount estimated by them respectively as being the estimated rate-relief of the companies in the year beginning on the first day of October, nineteen hundred and twenty-nine, shall adopt the estimates shown by the certificates and shall make such modifications in the scheme as may be thereby rendered necessary.

- (2) After making such modifications in the scheme as the tribunal are hereinbefore required to make and any other modifications which they think necessary or desirable, and upon being satisfied that the scheme complies with the requirements of this Schedule, the tribunal shall, not later than the thirty-first day of July, nineteen hundred and twenty-nine, approve the scheme.

- 8 If the companies fail to submit the scheme to the tribunal before the said first day of June, or before such later date as may be allowed by the tribunal, the scheme shall be prepared and made by the tribunal before the said thirty-first day of July, and the companies shall furnish to the tribunal such information as the tribunal may require for that purpose.

- 9 The scheme, as so approved or made by the tribunal under the foregoing provisions of this Schedule, shall come into operation on the first day of October, nineteen

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hundred and twenty-nine, and shall not be revoked, and shall not be altered otherwise than as hereinafter in this Schedule provided, and any person against whom a carriage charge is made by any of the companies in respect of any of the selected traffics delivered on or after that date for conveyance by railway shall be entitled to such rebate therefrom as may be provided for by the scheme.

- 10 (1) The tribunal shall review the operation of the scheme within two months after the end of every year and shall give not less than twenty-one days' notice of the date, time and place of the sitting at which the review will take place, and at any such review the tribunal, after hearing any of the companies or any representative body of traders interested which may be desirous of being heard, and after considering all the circumstances (including the receipts of the companies in respect of the several selected traffics delivered during the year preceding the review for conveyance by railway), shall, subject as hereinafter provided, by order make in the scheme such modifications, if any, as they think necessary or desirable, but so that the provisions thereof shall comply with the requirements of this Schedule:

Provided that—

- (a) the tribunal shall not by any such order alter the rate for the time being in force of any rebate provided for by the scheme unless—
 - (i) a debit balance is brought forward in the fund from the last preceding year; or
 - (ii) the tribunal is of opinion that in the year in which the review takes place the amount of the rate-relief of the companies will be less than the amount thereof estimated for the purpose of calculating the rebates in force, and that, unless such alterations are made, there will be a deficiency in the fund in respect of that year; or
 - (iii) the tribunal is of opinion that, unless such alterations are made, the aggregate of the rebates in respect of any group of selected traffics will, in the year in which the review takes place, fall short of a sum equal to the appropriate proportion of the net revenue of the fund for that year by more than the fixed marginal allowance; and
 - (b) the rates of rebates for the time being in force in respect of any group of selected traffics shall not be reduced by any alteration made under subparagraph (iii) of paragraph (a) of this proviso, unless the tribunal is of opinion that, if such reductions are not made, the aggregate of the rebates in respect of that group will, in the year in which the review takes place, exceed a sum equal to the appropriate proportion of the net revenue of the fund for that year by more than the fixed marginal allowance; and
 - (c) no alteration shall in any case be made in the rates of rebates to be allowed in respect of the selected traffics which would cause the aggregate of the rebates to be allowed in respect of any group of selected traffics to fall short of a sum equal to the appropriate proportion of the net revenue of the fund.
- (2) In this paragraph the following expressions have the meanings hereby respectively assigned to them, that is to say:—
- " Appropriate proportion of the net revenue of the fund " means, as respects any group of selected traffics, the proportion specified in subparagraph (1) of paragraph 6 of this Part of this Schedule in relation to that group:
 - " Fixed marginal allowance " shall in any year be taken to be, in relation to any group of selected traffics, an amount equivalent to one per cent. of the amount estimated by the tribunal as being the aggregate of the carriage

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charges made and to be made by the companies in respect of the traffics contained in that group, delivered in that year for conveyance by railway.

- 11 If it appears to the Minister of Transport that by reason of some exceptional occurrence the net revenue of the fund for any year is or will be abnormally greater or less than the amount which, upon the basis of the rebates for the time being in force, will be required, to pay the sums payable thereout under paragraph five of this Part of this Schedule to the companies in respect of that year, and that there is danger of such instability being thereby occasioned in the rates of the said rebates as to affect prejudicially the operation of the scheme, he shall issue to the tribunal a certificate that in his opinion the rates of the rebates to be allowed in respect of any group of selected traffics specified in the certificate ought to be reviewed, and upon receipt of such a certificate the tribunal shall, notwithstanding anything in this Part of this Schedule, have power to make such alterations in the scheme as they consider desirable for stabilising, so far as practicable, the rates of the rebates to be allowed in respect of that group, and, if they think fit, for securing that any abnormal excess shall be expended, or abnormal deficiency made good, as the case may be, over such period of years as they think proper.
- 12 (1) The tribunal shall have the like powers to make general rules governing their procedure and practice and generally for carrying into effect their functions under this Schedule, and to prescribe a scale of fees for and in connection with proceedings before them, as they have under section twenty-two of the Railways Act, 1921, with respect to their functions under Part III of that Act, but subject to the like approval, consent and limitations as are required or imposed by that section, and rules made under this paragraph may apply, with the necessary adaptations, any of the rules for the time being in force under the said section twenty-two.
- (2) Section twenty-one, subsection (2) of section twenty-two, section twenty-three, section twenty-four except subsection (4) thereof, and section twenty-five (except so far as it relates to appeals) of the said Act, shall apply with respect to the functions of the tribunal under this Schedule as they apply for the purposes of that Act.
- (3) Subsection (1) of section fifty-four of the said Act (which relates to the publication of schedules of standard charges) shall apply with respect to the scheme and to any orders of the tribunal modifying the scheme as it applies to schedules of standard charges, and the Documentary Evidence Act, 1868, as amended by the Documentary Evidence Act, 1882, shall apply with respect to the scheme and with respect to any such orders as if they were documents issued by the Minister of Transport.
- (4) The annual report of their proceedings under the Railways Act, 1921, made by the tribunal to the Minister of Transport under subsection (3) of section twenty-two of that Act and laid before Parliament, shall include a report of their proceedings under this Schedule and of the operation of the scheme.
- 13 The following provisions shall have effect with respect to the fund—
- (a) all moneys of the fund shall be kept separate from all other moneys under the control of the Railway Clearing House, and the Railway Clearing House shall keep separate accounts with respect to all moneys of the fund:
- (b) the Railway Clearing House shall invest in such investments as they think fit such part of the moneys of the fund as they may from time to time consider to be not immediately required, and the interest on any such investments shall be paid into the fund :
- (c) the Railway Clearing House shall have the like powers with respect to the opening and keeping of bank accounts and the making of payments

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thereout, and to the recovery of sums due to the fund, as they have for the purposes of their functions in relation to the Railway Clearing System and to the funds applicable to the expenses of that System :

- (d) the Railway Clearing House may, with the consent of the Minister of Transport and subject to such conditions as he may think fit, borrow moneys on the security of the fund for purposes connected with the scheme :
- (e) the accounts of the fund shall be audited annually by an auditor appointed by the Minister of Transport, and the expenses of any such audit shall be defrayed as part of the administrative expenses of the Railway Clearing House. It shall be the duty of the companies and of the Railway Clearing House to furnish all such information and give all such facilities as may be required by the auditor for the purposes of any such audit:
- (f) abstracts of the accounts of the fund, certified by the auditor, shall be furnished annually to the Minister of Transport at such times and in such form as he may approve :
- (g) if the net revenue of the fund for any year is insufficient to pay the sums determined in accordance with the provisions of sub-paragraph (1)(c) of paragraph 5 of this Part of this Schedule to be due to the companies in respect of that year, the Railway Clearing House shall certify the amount of the deficiency, and one moiety of that amount shall be made good by the companies in manner hereinafter appearing, and the other moiety thereof shall be made good out of any moneys standing to the credit of the contingency reserve account, and if the moneys standing to the credit of that account as at the end of the year are insufficient to make good the said moiety, the balance of the deficiency shall be brought forward as a debit balance in the fund:

Provided that in determining for the purposes of this provision whether there is for any year such a deficiency as aforesaid or the amount of any such deficiency, no account shall be taken of any sum paid in that year by way of adjustment under paragraph 2 of this Part of this Schedule:

- (h) any moneys standing to the credit of the contingency reserve account as at the end of any year, which are not applied under the provisions of the last foregoing sub-paragraph towards making good a deficiency, shall be brought forward as part of the general moneys of the fund:
- (i) any balance standing to the credit of the general account of the fund as at the end of any year shall be brought forward therein.

14 Any amount required in any year under the foregoing provisions of this Schedule to be paid by the companies towards making good any deficiency in the fund shall be apportioned by the Railway Clearing House between the several companies in such proportion as may have been determined before the end of the year by agreement between the companies or by an arbitrator appointed on the application of any company by the Minister of Transport, or, in default of such determination, in the proportions which the receipts of the several companies respectively bear to the total receipts of all the companies, being in each case receipts in respect of the selected traffics delivered in that year for conveyance by railway; and a sum equal to the part of the deficiency so apportioned to any company shall, on the demand of the Railway Clearing House, be paid to the fund by that company.

15 Any sum allowed by a company by way of rebate which may be found not to have been properly allowable (either by reason of the merchandise in respect of which

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the rebate was allowed not having been so used, shipped or delivered as to constitute it a selected traffic, or for any other reason) shall be recoverable by the company as a debt due from the person to whom it was allowed.

16 Any question as to whether any rebate is or was allowable or as to the basis on which any rebate should be or should have been calculated under the scheme may, and in the event of a dispute shall, be determined by the tribunal, and the decision of the tribunal upon any such question shall be final and conclusive.

17 In this Schedule, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :

" Carriage-charges " means such of the charges for the time being in force for the carriage of merchandise by railway or light railway as may be determined by the scheme in relation to any rebate thereby provided for :

" Coke oven " means works consisting of coke ovens wholly or mainly engaged in the production of coke for metallurgical purposes:

" Delivered for conveyance by railway " means delivered to any of the companies for conveyance, whether by that company or by some other of the companies, by railway:

" Estimated rate relief " means in relation to any company in any year the sum taken as being the rate relief of the company in the estimate adopted by the tribunal for the purpose of calculating the rebates to be allowed by the companies under the scheme in that year:

" Exported " in relation to coal, coke or patent fuel, means shipped to places outside the British Islands, or as bunkers for ships proceeding to places outside those islands, or as bunkers for fishing vessels, and " exported coal, coke, or patent fuel " includes coal, coke, and patent fuel shipped coastwise before being exported:

" General moneys of the fund " means, as respects any year, the revenue of the fund for that year, including any balance brought forward therein, but excluding any sums set aside in that year in accordance with the provisions of the scheme as a contingency reserve :

" Iron or steel works " means works which consist wholly or mainly of blast furnaces, puddling furnaces, steel furnaces, or rolling mills, or of hammers or presses which produce all or any of the following articles, that is to say, forgings weighing not less than ten hundredweight, blooms, billets, and bars:

" Net revenue of the fund " means, as respects any year, the revenue of the fund for that year (including any balance brought forward therein, but excluding any sums set aside in that year in accordance with the provisions of the scheme as a contingency reserve and any sums which may be paid to the fund by the companies to meet a deficiency in accordance with the requirements of sub-paragraph (g) of paragraph 13 of this Part of this Schedule), after deducting the sums directed by sub-paragraphs (1)(a) and (b) of paragraph 5 of this Part of this Schedule to be paid out of the fund:

" Railway company, " " light railway company, " " light railway, " " freight transport hereditaments lands and heritages " and " railway transport purposes " have the same meanings respectively as in the Rating and Valuation (Apportionment) Act, 1928:

" Rate-relief, " in relation to any of the companies, means the amount of the difference between the aggregate of the sums paid and payable by the company by way of rates in respect of freight transport hereditaments

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lands and heritages, occupied and used wholly or partly for railway transport purposes as part of the railway or light railway undertaking of the company, whereof the rateable value is ascertained under the provisions of Part V. of this Act or of any corresponding enactment extending to Scotland, and the aggregate of the sums which would have been so paid and payable in respect of those hereditaments lands and heritages, if those provisions had not been passed; and in relation to all the companies, means the aggregate amount of the differences aforesaid:

" Representative body of traders interested " means any association or body of persons which satisfies the tribunal that it represents a substantial number of persons interested in the selected traffics :

" Selected traffics " means the traffics' mentioned in Parts II, III, and IV of this Schedule, but, save as respects milk, does not include any traffics conveyed at passenger train rates; and the selected traffics mentioned in each of the said Parts are collectively referred to in this Schedule as a group of selected traffics :

" Shipped coastwise, " in relation to exported coal, coke, or patent fuel means shipped from a place within the British Islands to another place within those islands :

" Tribunal " means the Railway Rates Tribunal:

" Washery " means works for washing or cleaning coal:

" Year " means a period beginning on the first day of October and ending on the next subsequent thirtieth day of September, and the expression " annually " shall be construed accordingly.

18 (1) If the amount of any moneys provided by Parliament for the purposes of any scheme issued by the Minister of Transport providing for the allowance by any of the companies of rebates in respect of selected traffics delivered between the thirtieth day of November, nineteen hundred and twenty eight, and the first day of October, nineteen hundred and twenty-nine, for conveyance by railway, is more than sufficient for the purposes of that scheme, the balance shall, on or before the first day of January, nineteen hundred and thirty, or such later date as the Minister of Transport may allow, be paid into the fund and brought forward therein, and if the said amount is insufficient for the said purpose, the Railway Clearing House shall certify the amount of the deficiency, and the amount of the deficiency as so certified shall be apportioned by the Railway Clearing House between the several companies to which that scheme applies in such proportion as may have been agreed between those companies or, in default of agreement, in the proportions which the receipts of the several companies to which that scheme applies respectively bear to the total receipts of all the said companies, being in each case receipts in respect of the selected traffics delivered between the dates aforesaid for conveyance by railway; and a sum equal to the part of the deficiency so apportioned to any company shall, on the demand of the Railway Clearing House, be paid to them by that company.

(2) Any sum recoverable by the Railway Clearing House as a debt due to any fund established for the purposes of such a scheme as is mentioned in the last foregoing sub-paragraph but not recovered before the accounts of that fund are closed, shall be recoverable by the Railway Clearing House as a debt due to the fund established under this Schedule.

19 In any proceedings under the Railways Act, 1921, all payments by any of the companies to the fund in accordance with the provisions of this Schedule shall be treated as payments of rates and the tribunal shall not take into account any rebates

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allowable under the scheme or under any arrangements in operation at the passing of this Act having as their object the allowance of rebates from charges in respect of the selected traffics

20 In making any assessment or valuation for rating purposes by reference to the accounts, receipts, or profits of the undertaking carried on by any of the companies, all payments by the company to the fund in accordance with the provisions of this Schedule shall be treated as payments of rates.

21 Where rates are payable by any of the companies in respect of the occupation of any part of a freight transport hereditament let out by the company to a tenant but not so as to be capable of separate assessment, then, for the purposes of computing any sum payable by the tenant to the company under any contract made before the commencement of this Act in respect of the rates so paid, payments to the fund by the company in accordance with the provisions of this Schedule in respect of that part of the hereditament shall be treated as payments of rates.