

SCHEDULES

FIRST SCHEDULE

Section 5.

PROVISIONS APPLICABLE ON WITHDRAWAL OF APPLICATION FOR FREEHOLDER'S LEASE

PART I

MORTGAGEES

- 1 On the withdrawal of an application for a freeholder's lease, the Commission shall forthwith—
- (a) give notice in writing to the electing mortgagee of the withdrawal of the application and of any payment previously made by them of or on account of the compensation in respect of the premises to which the application related ; and
 - (b) give notice in writing of the withdrawal of the application to any person to whom any such payment has been made, not being the person by whom the application was withdrawn.
- 2 Part IV of the Third Schedule to the principal Act (which relates to the payment and disposal of compensation) and paragraph 2 of the Fifth Schedule to that Act shall, as from the date of withdrawal have effect, subject to the next following paragraph, as if the following notices had not been given, namely—
- (a) the electing mortgagee's notice to the Commission under the said paragraph 2 ; and
 - (b) any notice given to the electing mortgagee by the Commission before the date of withdrawal under sub-paragraph (b) of paragraph 18 of the said Third Schedule (which requires the Commission in certain cases to give notice to a mortgagee of an interest comprised in a holding before paying compensation for that holding to some other person).
- 3 Nothing in the last foregoing paragraph shall affect the validity of—
- (a) any payment of or on account of compensation made by the Commission before the date of withdrawal; or
 - (b) any disposal by any person to whom any such payment was made of the sums paid to him, being a disposal effected before the date on which he receives notice of the withdrawal of the application under paragraph 1 of this Part of this Schedule;
- nor shall the electing mortgagee be entitled, by virtue of the last foregoing paragraph, to recover from any person to whom any such payment was made any sums properly retained thereout by him under paragraph 21 of the said Third Schedule.
- 4 In the application of this Part of this Schedule to Scotland, for any reference to sub-paragraph (b) of paragraph 18 of the Third Schedule to the principal Act there shall be substituted a reference to sub-paragraph (c) of the paragraph directed to be substituted for the said paragraph 18 by paragraph 23 of the said Schedule.

Status: This is the original version (as it was originally enacted).

PART II

LICENSEES

- 1 The working licence shall remain in force until the expiration of six months from the date of withdrawal and no longer.
- 2 Where any rent payable under the working licence (or any sum to be allowed in account in lieu of rent thereunder) is to be calculated or adjusted by reference to the rent to be reserved by the freeholder's lease the application for Which is withdrawn, the rent so reserved shall for that purpose be taken to be the aggregate of the following—
- (a) a rent payable on the amount of coal worked under the licence—
 - (i) in a case where the coal was being worked by the proprietor in the financial year ending the thirty-first day of March, nineteen hundred and forty-two, at the same rate as was assumed for the purpose of assessing mineral rights duty on him in that year; or
 - (ii) in any other case, at such rate as may be determined by arbitration to be the rate which would have been so assumed if the coal had been so worked; and
 - (b) a rent payable on the amount of any minerals carried away through any mine to which the licence relates (other than coal worked under the licence) at such rate as may be determined by arbitration to be just.
- 3 Any provision in the working licence that a rent or sum to be calculated or adjusted as aforesaid shall not be paid or allowed in account until the granting of a freeholder's lease shall not have effect.
- 4 The working licence shall be deemed to have been granted subject to the condition that the licensee shall—
- (a) exercise in relation to the premises to which the licence relates such care as is exercised under the ordinary practice of the management of mineral estates by prudent owners in relation to property that is to continue in their ownership ; and
 - (b) deliver up those premises to the Commission in the same state (except for things properly done under the licence) as they were in on the vesting date.

SECOND SCHEDULE

Section 11.

PROVISIONS AS RESPECTS RESTRICTED COAL

- 1 (1) The Commission shall have, annexed to any restricted coal, Such a right as is hereinafter mentioned, to the extent to which the existing owners of the coal were competent on the valuation date to grant such a right, that is to say, a right to withdraw support from the protected land so far as may be reasonably requisite for the working of the restricted coal, subject to an obligation either—
- (a) to pay proper compensation for damage arising from such working to the protected land ; or
 - (b) with the consent (which shall not be unreasonably withheld) of the person who would otherwise be entitled to claim compensation for that damage to make good that damage to the reasonable satisfaction of that-person and without expense to him.

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

- (2) The Commission shall have, annexed to any restricted coal, the same right (if any) to withdraw support from any land, other than the protected land, so far as may be reasonably requisite for the working of the restricted coal, as they would have, in relation to that land, by virtue of paragraph 5 of the Second Schedule to the principal Act if no provision contained in the relevant lease by virtue of which that coal would be restricted coal had been applicable thereto.
- (3) Any person interested in land damaged by the working of restricted coal in exercise of a right to withdraw support therefrom conferred on the Commission by this paragraph subject to an obligation to pay proper compensation for or to make good damage arising from such working and which has been granted by the Commission to a lessee, shall be entitled to enforce against the Commission any liability to pay proper compensation for or to make good that damage pursuant to that obligation which the lessee fails to discharge:

Provided that nothing in this sub-paragraph shall be construed as rendering invalid any provision contained in a lease granted by the Commission requiring the lessee to indemnify the Commission against liability in respect of any such obligation as aforesaid.

- 2 (1) Where any right conferred—
 - (a) by any such provision as is referred to in paragraph (b) of subsection (1) of the principal section contained in any such lease as is therein referred to ; or
 - (b) by any similar provision imported by reference to any such provision as aforesaid into any lease of coal granted by the Commission before the commencement of this Act ;

to give consent to, or impose prohibitions or restrictions on, the working of any restricted coal would, apart from this paragraph, be, or has since the vesting date been, vested in some person other than the Commission (whether or not jointly with the Commission), then, subject to the following provisions of this paragraph, that right and any other rights incidental thereto shall be, and shall be deemed to have been as from the vesting date, vested by virtue of this paragraph in the Commission and not (either alone or jointly with the Commission) in any other person.
- (2) Where by reason of the working of any coal, being coal the working of which the Commission have, or are deemed to have had, power by virtue of this paragraph to withhold consent to or to prohibit or restrict under any such provision as aforesaid, support is or has been withdrawn from any land, then, subject to the following provisions of this paragraph, the Commission shall, unless the coal was worked without their knowledge or consent, be under the like obligation to pay compensation for, or make good damage arising from, the withdrawal of the support as if it had been withdrawn in exercise of a right conferred on the Commission by the foregoing paragraph and granted by them to the lessee of the coal.
- (3) Where, by virtue of a notice given to, or consent given by, some person other than the Commission (whether alone or jointly with the Commission), any person has, before the commencement of this Act, become entitled under any such lease as aforesaid to work restricted coal free from the restrictions imposed by any such provision as aforesaid contained in the lease, nothing in this paragraph shall be taken—
 - (a) to affect that right; or
 - (b) to impose on the Commission any obligation to pay compensation for, or make good damage arising from, the withdrawal of support in the exercise of that right.

- (4) Nothing in this paragraph shall be construed as rendering invalid any provision requiring any person, as a condition of the Commission's consenting to or not prohibiting the working of any coal, to indemnify the Commission against liability in respect of any obligation to pay proper compensation for, or to make good damage arising from, such working.
- (5) Nothing in this paragraph shall be taken to affect any agreement made before the commencement of this Act between the Commission and any person interested in the protected land (otherwise than under a lease of the restricted coal) as to the exercise of their rights under any such provision as aforesaid in relation to the restricted coal.
- 3 Any question as to the subsistence by virtue of the foregoing provisions of this Schedule of an obligation to pay proper compensation or as to the rights or liabilities of any person in respect of the enforcement of an obligation so subsisting, shall be determined by arbitration.
- 4 Nothing in this Schedule shall take away or abridge, as against the Commission or any other person—
- (a) any such right as is referred to in paragraphs (a), (b) or (c) " of subsection (1) of section thirty-four of the principal Act (which relates to certain statutory rights of the Crown, local authorities, statutory undertakers and other persons) ; or
 - (b) any right conferred by a working facilities order;
- or shall, by reason of any reference contained in a lease of coal to any such right as aforesaid, confer any right or impose any liability on the Commission.
- 5 (1) On an application under section eight of the Mines (Working Facilities and Support) Act, 1923 (which provides for the imposition by the Railway and Canal Commission 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 Railway and Canal Commission to be justified by the existence of a right conferred on the Coal Commission by this Schedule.
- (2) Notwithstanding anything in section thirteen of the Mines (Working Facilities and Support) Act, 1923, restrictions, the imposition of which appears to the Railway and Canal Commission to be justified as aforesaid, may be imposed under section eight 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 the said section thirteen, 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.

THIRD SCHEDULE

Section 12.

AMENDMENTS OF PARAGRAPH 12 OF THE THIRD SCHEDULE TO THE PRINCIPAL ACT

- 1 The power under sub-paragraph (2) of paragraph 12 of the Third Schedule to the principal Act of selecting a referee for the purpose of any review shall be

- exercisable, and be deemed always to have been exercisable, by the Minister and not by any other person.
- 2 Where a referee selected by the Minister dies, or appears to the Minister to be incapable, by reason of illness or any other cause, of acting with due dispatch, the Minister shall have power, and be deemed always to have had power, to select another referee to act in his stead.
- 3 Unless the referee otherwise directs, not more than one expert witness shall be called, either by the Regional Valuation Board or by the person or persons claiming the review, to give evidence on the review, whether as to the value of the holding or otherwise; and accordingly sub-paragraph (3) of the said paragraph 12 shall have effect as if the words " as to the value of the holding " were omitted.
- 4 Where a claim for a review of a valuation is made by the claimant and also by a person or two or more persons intervening, the referee may, if he thinks fit, notwithstanding anything in the said sub-paragraph (3), allow different representatives to be heard and different witnesses to be called on behalf of any of them.
- 5 (1) The referee may at any stage of the proceedings on the review, and shall, if so directed by the High Court or a judge thereof, state in the form of a special case for the decision of the Court any question of law arising in the course of the review.
- (2) The decision of the Court on any case stated under this paragraph shall not be subject to any appeal, or be questioned in any further proceedings arising out of the review.
- (3) No provision of the principal Act or this Act as to the payment of costs by or to the Commission or a Regional Valuation Board shall affect any power of the Court or a judge to make orders as to the costs of proceedings under this paragraph.
- 6 The Commission shall pay the costs incurred by the Regional Valuation Board in connection with the review, including any costs ordered by the Court or a judge to be paid by them in connection with any proceedings under the last foregoing paragraph.
- 7 The following provisions shall have effect in lieu of sub-paragraph (5) of the said paragraph 12 (which relates to payment of costs in the case of frivolous or unjustified claims) :—
- (a) in a case in which it appears to the referee that the claim for the review was frivolous, he shall direct that the person claiming the review shall not be entitled to payment of any costs incurred by that person in connection with the review ;
- (b) in a case in which it appears to the referee that the claim for the review, though not frivolous, was not justified by a substantial error or omission in the valuation of the Regional Valuation Board, he may, if he thinks fit, direct that the person claiming the review shall not be entitled to payment of any costs incurred by that person in connection with the review or of such part of those costs as the referee may think fit;
- (c) in either such case as aforesaid the referee may also, if he thinks fit, direct that the person claiming the review shall pay the whole, or such part as the referee may think fit, of the costs incurred by the Regional Valuation Board in connection with the review.
- 8 If default is made in the delivery, within the time provided by any rules of procedure made under paragraph 14 of the Third Schedule to the principal Act, of any

particulars or further and better particulars of the grounds on which a claim for a review of a valuation is made, being particulars required to be delivered by those rules, the claim shall be deemed to have been abandoned, and, unless the referee otherwise directs, shall be treated for the purposes of the last foregoing paragraph as a frivolous claim.

- 9 The Commission shall be entitled to appear and be heard by such representative as they may appoint on any question arising as to costs under the provisions of the last two foregoing paragraphs, and the costs that the person claiming the review may be directed under or by virtue of sub-paragraph (c) of the last but one foregoing paragraph to pay shall include any costs incurred by the Commission in the exercise of the rights conferred on them by this paragraph.
- 10 (1) Where under the foregoing provisions, or under sub-paragraph (6) (c) of paragraph 12 of the Third Schedule to the principal Act, the referee directs the person claiming a review of the valuation of a holding to pay the costs, or any part of the costs, incurred by the Regional Valuation Board or the Commission, the Commission may deduct the amount so payable from the amount of any sums payable to him by them under the principal Act in respect of that holding ; and any amount so deducted in respect of costs incurred by the Regional Valuation Board shall, as between the Board and the person claiming the review, be deemed to have been paid to the Board.
- (2) Without prejudice to any other method of recovery, the amount of any costs directed to be paid as aforesaid, or such part thereof as is not recovered by such deduction as aforesaid, shall be recoverable summarily as a civil debt.
- (3) In any proceedings for the recovery of any costs directed to be paid as aforesaid, a document purporting to be a copy of the referee's decision on the review, and to be certified by him to be a true copy of the decision, shall be evidence of the decision.
- (4) In case of difference as to the amount of any costs directed to be paid as aforesaid, the costs shall be taxed in the Supreme Court, as if the proceedings before the referee had been proceedings in the High Court.
- 11 (1) For the purpose of any proceedings under paragraph 5 of this Schedule, and any proceedings for the taxation or recovery of any costs payable by virtue of this Schedule, it shall be sufficient to describe a Regional Valuation Board by its official name without naming the individual members, and any such proceedings may be begun or carried on notwithstanding any vacancy or change in the membership of the Board.
- (2) The power of the Minister under this Act to dissolve a Regional Valuation Board shall be exercisable notwithstanding any outstanding right or liability of the Board under this Schedule as respects costs, but the dissolution of the Board shall not affect the right or liability and proceedings for the taxation or recovery of the costs may be begun or carried on as if the Board had not been dissolved, the Minister taking the place and acting in the name of the Board.
- 12 In the application of this Schedule to Scotland—
- (a) in paragraph 5 for the word " state " and the words " special case " there shall be respectively substituted the word " submit " and the words " stated case " ;
- (b) in paragraph 10 the word " summarily " in sub-paragraph (2) shall be omitted, and for the words in sub-paragraph (4) " in the Supreme Court " there shall be substituted the words " by the Auditor of the Court of Session "