



# Coal Industry Nationalisation Act 1946

## 1946 CHAPTER 59

### *Transfer of assets to the Board.*

#### **5 Transfer of assets generally.**

- (1) The assets described in Part I of the First Schedule to this Act shall vest in the Board, by virtue of this section and without further assurance, on such date as the Minister may by order appoint in that behalf (in this Act referred to as " the primary vesting date ").
- (2) The assets described in Part II of the First Schedule to this Act shall be subject to the following provision, that is to say, the Board and the owner thereof shall each have the option to require that any such assets shall vest in the Board, exercisable by notice in writing given to the other, and any such assets as to which that option is duly exercised shall vest in the Board as aforesaid on the first day of the month next after that in which the notice is given :

Provided that if the notice is given before the primary vesting date, the vesting shall be on that date.

- (3) The assets described in Parts III and IV respectively of the First Schedule to this Act shall be subject to the like provision as is mentioned in the last preceding subsection, except that, if the party to whom the notice is given (whether the owner or the Board) gives to the other a counter-notice in writing objecting, as respects all or any of the assets to which the original notice relates, to the vesting thereof in the Board, the question whether the assets as to which objection is so made or any of them are so to vest shall be determined by arbitration under this Act, and the date of vesting of such of them as under the arbitrator's award are so to vest shall be as it would have been if the original notice had been given on the date of the award.

In considering any question which is to be determined by arbitration under this subsection the arbitrator shall have regard to all the circumstances, and in particular, where the exercise of the option in question is by the Board, to the importance to the Board, for the purposes of any activities which they are required or authorised to carry on, of the assets being vested in them, and, where the exercise of the option is by the owner, to the extent to which the severance of the assets in question from other assets

of his which are vested or to be vested in the Board affects the usefulness to him of the assets in question.

- (4) Regulations shall be made for enabling the Board to obtain information as to the assets described in Parts II to IV respectively of the First Schedule to this Act requisite for their deciding as to the exercise by them of such options as aforesaid or the giving by them of counter-notices of objection, and for prescribing periods within which notices exercising such options as aforesaid, and counter-notices of objection, must be given, and different periods may be prescribed as to the giving thereof in different circumstances or as to assets of different kinds.
- (5) Where an asset vests in the Board by virtue of the exercise of such an option as aforesaid, the owner thereof shall be deemed, as respects the period of his ownership thereof between the primary vesting date and the date of the vesting thereof, to have held it as an agent of the Board, and shall accordingly be liable to account to the Board for all rents, profits and other income for that period arising therefrom or from the use thereof, and be entitled to be indemnified against all expenses, liabilities and other outgoings for that period incident thereto or to the use thereof.
- (6) The vesting of any assets by virtue of this section shall take effect free from any charge or lien for securing money or money's worth to which they are subject.
- (7) The Minister may by regulations make such provision supplementary to or consequential on the provisions of this section and of the First Schedule to this Act as appears to him to be necessary or expedient, and in particular, but without prejudice to the generality of this subsection, provision may be made by regulations made thereunder—
  - (a) for designating, with effect where so prescribed from the date on which the assets in question vest in the Board, easements and other property and rights that are to vest in the Board with any of the assets vesting in them by virtue of this section ;
  - (b) for designating, with effect as aforesaid, easements and other restrictions, rights and liabilities subject to which, or free from which, any of the said assets are to vest in the Board ;
  - (c) for apportionments consequent on the vesting provided for by this section of interests in respect of which periodical payments are accruing at the date of their vesting ;
  - (d) for apportionments and indemnities consequent on the severance of leasehold interests, or of interests held subject to leases, by reason of the vesting provided for by this section ;
  - (e) for the registration of the title of the Board to assets vesting in them by virtue of this section of a kind subject to provision for the registration of title thereto ;
  - (f) for vesting in the Board the property in and the right to possession of documents of such kinds relating to the title to, or to the management of, things interests in which vest in the Board by virtue of this section, as may be specified in the regulations, for conferring on the Board the right to production of any other such documents as aforesaid as may be so specified and to delivery of copies thereof, and for requiring persons having possession or control of any such documents as aforesaid to furnish in writing, to such person or authority as may be specified in the regulations, such information with respect to the documents as may be so specified;

- (g) for the modification of provisions of the Coal Acts, 1938 to 1943, which may be necessary or expedient in consequence of the vesting in the Board by virtue of this section of assets previously in the ownership of the Coal Commission.
- (8) Notwithstanding anything in subsection (1) of this section, the Minister may by order exclude from the operation of that subsection an asset described in Part I of the First Schedule to this Act, if an application in that behalf is made to him by the Board not later than the expiration of one year from the primary vesting date and the owner of the asset in question consents.

Where an order under this subsection is made after the primary vesting date, the asset in question, and any easements, property and rights which would otherwise have been vested in the Board therewith, shall be deemed never to have vested in the Board.

## **6 Transfer of interests in patents and designs.**

- (1) The following assets, namely, proprietary interests of colliery concerns and of class A and class B subsidiaries thereof in patents for inventions intended for use or capable of being used for or in connection with colliery production activities as defined in Part I of the First Schedule to this Act, and in copyrights in registered designs intended for application or capable of being applied to articles adapted for use for or in connection with such activities, shall be subject to the following provision, that is to say, the Board and the owner thereof shall each have the option to require that any such assets shall vest in the Board, exercisable by notice in writing given to the other, and unless the party to whom the notice is given (whether the owner or the Board) gives to the other a counter-notice in writing objecting, as respects all or any of the assets to which the original notice relates, to the vesting thereof in the Board, the assets shall vest in the Board on the first day of the month next after that in which the notice is given :

Provided that if the notice is given before the primary vesting date, the vesting shall be on that date.

- (2) Where a counter-notice is given as mentioned in the preceding subsection, the question whether the assets as to which objection is made, or any of them, are to vest in the Board shall be determined by arbitration under this Act.

In considering any question which is to be determined by arbitration under this subsection, the arbitrator shall have regard to the matters to which he is required by subsection (3) of section five of this Act to have regard in considering a question which is to be determined by arbitration thereunder.

- (3) If, upon a reference under the last preceding subsection where the exercise of the option in question is by the Board, the arbitrator is of opinion with respect to any patent or copyright which is the subject of the reference that the Board ought to be enabled to do all or any of the following things in relation to the invention which is the subject of the patent, namely, to make, use, exercise or vend it, or ought to be enabled to apply the design which is the subject of the copyright, as the case may be, but that the proprietary interest in the patent or copyright ought not to vest in the Board, he shall have power by his award to grant to the Board a licence under the patent or copyright (not being an exclusive licence) on such terms as may be settled by him and specified in the award, being terms appearing to him to be such as would be agreed upon between a willing grantor and a willing grantee.
- (4) An award granting-, a licence under the last preceding subsection shall, without prejudice to any other method of enforcement, operate as if it were embodied in a

deed granting the licence which the owner of the proprietary interest in the patent or copyright and all other parties having any interest therein had executed with full capacity so to do, and the award shall operate to take away from any such party any right in relation thereto the exercise whereof would be inconsistent with the exercise of the licence in accordance with and subject to the terms on which it is granted.

- (5) Where the award of the arbitrator under subsection (2) of this section is that a proprietary interest in a patent or copyright is to vest in the Board, the date of its vesting shall be such as it would have been if the original notice had been given on the date of the award.
- (6) Subsections (1), (2) and (5) of this section shall apply to interests of colliery concerns and of class A and class B subsidiaries thereof in such patents and copyrights as are mentioned in the said subsection (1), being interests subsisting by virtue of licences, as they apply to proprietary interests.
- (7) Subsections (4) to (6) of section five of this Act shall apply with requisite modifications for the purposes of this section as they apply for the purposes of the said section five and of the First Schedule to this Act, and subsection (7) of that section shall so apply subject to the further modification that the power thereby conferred shall extend so as to authorise the making of provision for adapting the terms of licences to changes consequent on the passing of this Act in the circumstances in which they will fall to be exercised after the date of a transfer of interests subsisting by virtue thereof.
- (8) In this section the expression " proprietary interest", in relation to a patent, means the interest of a person whose name is for the time being entered or required to be entered in the register of patents as the grantee or proprietor of the patent or as one of two or more grantees or proprietors thereof, and, in relation to a registered design, means the interest of a person whose name is for the time being entered or required to be entered in the register of designs as the proprietor of the design or as one of two or more proprietors thereof.
- (9) Part V of the First Schedule to this Act shall apply (so far as relevant) for the purposes of this section as it applies for the purposes of that Schedule with the substitution, for references to an option notice date, of references to the date on which a notice exercising an option under subsection (1) of this section is given.
- (10) A patentee shall not be deemed to be precluded from making to the Comptroller General of Patents, Designs and Trade Marks a request under section twenty-four of the Patents and Designs Act, 1907, for a patent to be indorsed with the words " licences of right " by reason of a licence having been granted under the patent under this section.

## **7 Transfer of rights and liabilities under contracts.**

- (1) Subject to the provisions of this section, contracts such as are mentioned in the Second Schedule to this Act shall have effect in favour of and against the Board as therein mentioned and to the extent therein mentioned.
- (2) If in the case of any of the provisions of such a contract as is mentioned in the Second Schedule to this Act, being provisions so entered into as to render that Schedule applicable to them subject to the limitations contained in this section and being provisions which were entered into on or after the first day of August, nineteen hundred and forty-five, or which have been varied after that date, the Board are of opinion that that Schedule ought not to apply thereto, either at all or to any particular extent, on the ground that they were not reasonably necessary for the

purposes mentioned in paragraph 1 of that Schedule, or that they were entered into with unreasonable want of prudence, the Board may, at any time within twelve months from the date as from which the Board would become subject to liabilities thereunder apart from this provision, give notice to the effect that they are of that opinion to each of the parties to the contract, and if the Board give such a notice, the Second Schedule to this Act shall not apply to the provisions to which the notice relates, either at all or to the extent specified in the notice, as the case may be :

Provided that any of the parties to the contract may, within the prescribed period from the date on which the notice is served and subject as mentioned in the next succeeding subsection, refer the matter to arbitration under this Act, and, if the matter is so referred, the arbitrator shall consider whether or not the provisions in question were reasonably necessary as aforesaid, or were entered into as aforesaid, and shall determine whether, and to what extent, the Second Schedule to this Act is to apply to them.

(3) In the case of a provision for the rendering of personal services or for the giving of consideration therefor, being a provision which was entered into on or after the first day of August, nineteen hundred and forty-five, or which has been varied after that date, a reference to arbitration as aforesaid shall not be made unless the Minister consents.

(4) As regards the time of operation of subsection (2) of this section,—

- (a) where the application of the Second Schedule to this Act to a provision of a contract is excluded to any extent by a notice under that subsection without any reference to arbitration as aforesaid, or by the determination of the arbitrator on such a reference, the said Schedule shall be treated as having never applied ;
- (b) where on such a reference it is determined by the arbitrator, contrary to such a notice, that the said Schedule is to apply to any extent to a provision of a contract, the said Schedule shall be treated as having applied continuously, without regard to the service of the notice ;

and any adjustments required in consequence of the provisions of this subsection shall be ascertained by agreement between the parties to the contract and the Board, or, in default of agreement, by arbitration under this Act, and shall be made accordingly.

(5) Where by virtue of subsection (2) of this section the Board do not become subject to a liability under a contract to which they would have become subject under the provisions of the Second Schedule to this Act apart from that subsection, the parties to the contract respectively shall be discharged from that liability and from any liability as respects consideration to be given under the contract attributable to that liability.

## **8 Vesting of rights to use of certain property.**

(1) On the primary vesting date the rights and powers vested in the Coal Commission by section fifteen of the Coal Act, 1938 (which relates to the use as therein mentioned of underground land) shall vest in the Board by virtue of this section and without further assurance, and accordingly, as from that date references in that section to the Coal Commission shall be construed as references to the Board ; and that section shall extend so as to confer on the Board, in relation to minerals other than coal, being minerals interests in which vest in the Board by virtue of section five of this Act or are otherwise acquired by them, the like rights and powers as respects operations for the like purposes as are mentioned in the said section fifteen.

- (2) The Board shall be entitled for the purposes mentioned in paragraph 20 of the First Schedule to this Act to use land appearing to the Board to fall within that paragraph pending their decision as to the extent of the land required for those purposes to be acquired by option under section five of this Act and pending the taking effect of such an option when exercised, but subject to an obligation on the Board to pay proper compensation, of an amount to be determined in case of difference by arbitration under this Act, for such use and for any damage sustained in consequence of such use by the owner of any interest in the land used which is not subsequently vested in the Board pursuant to the exercise of such an option :

Provided that the Board shall have the option to make good any such damage to the reasonable satisfaction of the owner of any such interest in lieu of paying compensation for the damage.

- (3) The Board shall be entitled, for the purposes of colliery production activities within the meaning of the First Schedule to this Act, to make, use and exercise the invention which is the subject of a patent a proprietary or other interest in which appears to them to fall within subsection (1) of section six of this Act or subsection (6) thereof, and to apply a registered design in the copyright in which such an interest appears to them so to fall, pending their decision as to the exercise by them of an option under that section with respect to the interest in question and pending the taking effect of such an option when exercised or (in the case of an option with respect to a proprietary interest) the grant of a licence in lieu of the vesting of the interest in them.

The exercise by the Board in any manner or for any purpose of the right conferred on them by this subsection shall, in a case in which the relevant interest in the patent or copyright is not subsequently vested in them pursuant to the exercise of such an option as aforesaid, be subject to an obligation on them to pay proper compensation, of an amount to be determined in case of difference by arbitration under this Act, to any person entitled during any period during which the right is exercised in that manner or for that purpose to authorise the exercise thereof in that manner or for that purpose.

## **9 Ascertainment of assets, rights and liabilities transferred, and determination of questions as to transfer.**

- (1) Regulations shall be made for ascertaining, verifying and recording particulars (whether relating to subject matter, value, ownership or other matters), as may appear to the Minister to be requisite for the purposes of this Act, of the assets, property and rights that vest in the Board by virtue of section five or six of this Act, or of regulations made thereunder, and of contractual rights and liabilities so far as transferred to the Board by virtue of section seven of this Act.

- (2) All the said assets, property, rights and liabilities are in this Act referred to as the "transferred interests " :

Provided that references to the transferred interests do not include references to assets, property, rights or liabilities of the Coal Commission.

- (3) Any question arising in giving effect to the provisions of this Act—
- (a) as to what is or is not included in the assets described in the First Schedule to this Act or in any Part thereof or in section six of this Act, or otherwise as to the construction or effect, so far as regards the vesting of assets, property or rights in the Board, of section five or six of this Act or of regulations made thereunder, or of that Schedule, or

- (b) as to the existence or extent of any such liability to account or right, to be indemnified as is mentioned in subsection (5) of section five of this Act, or otherwise as to the construction or effect of that subsection, or
- (c) as to whether a contract is such a contract as is mentioned in the Second Schedule to this Act, or otherwise as to the construction or effect, so far as regards the transfer to the Board of rights or liabilities under contracts, of that Schedule,

shall be determined by arbitration under this Act.

(4) Regulations may be made—

- (a) for securing that, when compensation has been made under this Act on the basis that any assets, property, rights or liabilities have vested in or been transferred to the Board or have vested in them free from any charge or lien, restriction, right or liability, or when particulars of transferred interests have been recorded on that basis or other proceedings for the purposes of dealing with transferred interests for compensation have been taken on that basis and the particulars or other proceedings have become conclusive for those purposes, persons shall be estopped from questioning the vesting in or transfer to the Board of the assets property, rights or liabilities, or the vesting thereof in them free from that charge or lien, restriction, right or liability; and
- (b) otherwise for preventing the assertion, as respects matters dealt with for compensation under this Act, of claims of title made on a basis inconsistent with that on which those matters have been dealt with for that purpose.