

Coal Act, 1943.

6 & 7 GEO. 6. CH. 38.



ARRANGEMENT OF SECTIONS.

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Section.

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CHAPTER 38.

An Act to amend the Coal Act, 1938, and dissolve the Coal Mines National Industrial Board.

[5th August 1943.]

BE it enacted by the King'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:—

PART I.

AMENDMENTS OF PART I OF THE COAL ACT, 1938.

1. Notwithstanding anything in paragraph (b) of subsection (2) of section five of the principal Act (which provides that interests arising under a coal mining lease shall not be retained interests where neither the lessee nor any person claiming under him is a person carrying on the business of coal mining and having a substantial beneficial interest in the exercise of the rights conferred by the lease), interests arising under a coal mining lease, where at the vesting date the lessee or some person claiming under him had a substantial beneficial interest in the exercise of the said rights but was not carrying on the business of coal mining, shall be, and be deemed always to have been, retained interests, if—

Retained interests of persons working minerals other than coal.

- (a) a substantial part of the business of the lessee or the said person, as the case may be, consisted at the vesting date of getting (whether by underground or surface working) and carrying away minerals or substances, other than coal, in or under land; and
- (b) no claim for compensation in respect of the interests so arising has been made under section seven of the principal Act.

PART I.
—cont.
Rents for
underground
wayleaves
not to be
affected by
unification of
ownership.

2.—(1) Where in any lease of or comprising a mine of coal and subsisting on the vesting date there is contained a provision to the effect that—

- (a) rent shall be payable thereunder in respect of coal carried away through the mine after being got from land not comprised in the lease ; or
- (b) the amount of any rent payable thereunder, whether or not in respect of such coal as aforesaid, shall be ascertained wholly or partly by reference to the amount of such coal as aforesaid ;

but being a provision applying only in relation to coal got from land for the time being in a different ownership from the mine, then, as respects coal got after the vesting date, the lease shall have effect as if the provision applied in relation to coal so carried away which has been got from all such land not comprised in the lease as was in a different ownership from the mine immediately before the vesting date.

(2) For the purposes of this section, a provision contained in a document varying or supplementing a lease shall be treated as if it were contained in the lease.

(3) This section shall be deemed to have had effect as from the vesting date.

Costs in con-
nection with
severance of
leases.

3. The proviso to subsection (3) of section eleven of the principal Act (which provides that the arbitrator or the Court may direct that the Commission shall not be liable to pay costs in connection with the severance of a lease incurred by a person who appears to the Court to have been unreasonable or guilty of negligence or default) shall have effect as if for the words “ who appears to the Court ” there were substituted the words “ who appears to the arbitrator or the Court.”

Leases to
former
freeholders.

4.—(1) The following provisions shall have effect in relation to a lease (hereafter in this Act referred to as a “ freeholder’s lease ”) under section thirteen of the principal Act (which entitles persons carrying on the business of coal mining to leases of coal or mines of coal owned by them immediately before the vesting date) :—

- (a) no freeholder’s lease shall be granted except in consideration of the payment to the Commission of an amount equal to the compensation payable under section six of the principal Act for the premises thereby demised ;
- (b) subsection (2) of the said section thirteen shall cease to have effect, and the lease shall—
 - (i) be a lease at a peppercorn rent ;
 - (ii) be granted for such term, commencing on the vesting date, as the person entitled to the lease may

require, not being longer as regards the coal comprised therein than may be reasonably requisite for enabling that coal to be worked out ;

(iii) be subject to such conditions, not inconsistent with the provisions of this subsection, as will, having regard to those provisions, be not more onerous to the lessee than the conditions to which a person not entitled to the benefit of the said section thirteen might reasonably have been expected to agree if taking a lease of the same premises for the same term at the same rent in consideration of a premium representing the capitalized value of the best rent that could reasonably be obtained by the lessor without any fine or premium ;

(c) notwithstanding anything in any enactment—

(i) no person having any interest arising under the lease in the premises thereby demised shall be entitled against the Commission to any statutory right of contribution or indemnity in respect of any statutory liability imposed in respect of the said premises ;

(ii) the lessee for the time being under the lease shall be bound to indemnify the Commission against any statutory liability imposed in respect of the said premises other than a liability for costs under the principal Act ;

and the conditions to which the lease is to be subject under the last foregoing paragraph shall in all cases include a provision conferring on the Commission power to re-enter on the said premises in the event of the failure of the lessee for the time being to indemnify the Commission as required by this paragraph ;

(d) for the purpose of mineral rights duty and royalties welfare levy, the lessee for the time being under the lease shall be deemed to be the proprietor of the premises thereby demised and not to be a lessee of those premises, and the said duty and levy shall be assessed, charged, paid and recovered accordingly ;

(e) the last two foregoing paragraphs shall be deemed to have had effect as from the date of the commencement of the term granted by the lease, and, as respects any period between that date and the date of the granting of the lease, those paragraphs shall apply as if any person working under a licence granted by the Commission coal comprised in the lease, or using under such a licence a mine of coal so comprised, were the lessee for the time being under the lease and accordingly had an interest arising thereunder in the premises thereby demised.

PART I.
—cont.

(2) The reference in paragraph (a) of the foregoing subsection to the compensation payable under section six of the principal Act for the premises demised shall be construed—

(a) in a case where the fee simple in the coal or mine demised by the lease formed part only of a holding which included the fee simple in other coal or in another mine, as a reference to such part of the compensation in respect of the holding as may be agreed, or in default of agreement may be determined by arbitration, to be attributable to interests in the demised coal or mine and in the acquired property and rights annexed thereto ;

(b) in any other case, as a reference to the compensation in respect of the holding constituted by or comprising the fee simple in the demised coal or mine.

(3) Where a freeholder's lease is granted, the amount payable as consideration therefor under paragraph (a) of subsection (1) of this section shall be deemed to have been payable at the date of the commencement of the term granted by the lease, and shall carry interest from that date to the date of payment at the same rate as compensation under section six of the principal Act.

(4) Any application for a freeholder's lease may be withdrawn by the person entitled to the lease by giving to the Commission notice in writing of the withdrawal at any time before the expiration of one month from the date on which the certificate of value relating to the premises to be demised becomes conclusive under paragraph 17 of the Third Schedule to the principal Act.

(5) On the withdrawal of an application for a freeholder's lease as aforesaid—

(a) the provisions of Part I of the First Schedule to this Act shall have effect in a case where a mortgagee of the premises to which the application related (in the said Part I referred to as an "electing mortgagee") has given notice to the Commission under paragraph 2 of the Fifth Schedule to the principal Act that he elects to have, in lieu of any interest in the compensation in respect of those premises, a charge upon the interest of the lessee under the lease ; and

(b) the provisions of Part II of the First Schedule to this Act shall, save as otherwise agreed after the commencement of this Act, have effect in a case where, pending the grant of the lease, a licence (in the said Part II referred to as a "working licence") has been granted by the Commission to work coal to be comprised in the lease or to use for a coal mining purpose a mine of coal to be so comprised ; and in the said Schedule the expression "date of withdrawal" means the date on which notice of withdrawal of the application for the lease is given to the Commission under the last foregoing subsection.

(6) The references to section thirteen of the principal Act contained in paragraphs 3 and 5 of the said Fifth Schedule shall be construed as including references to this section, and section forty of the principal Act (which relates to the persons to act in case of death or incapacity) shall apply in relation to notices under this section and the First Schedule to this Act as it applies in relation to notices under the said Fifth Schedule.

5.—(1) Where—

- (a) any person is entitled as working lessee under two or more leases to any coal or mines of coal; and
- (b) the Coal Commission grant to him or to another person for his benefit, in substitution for the existing leases, a single lease of coal or mines of coal comprised therein (whether or not the single lease comprises also property not comprised in the existing leases, or does not comprise all the property comprised in some of those leases);

Stamp duty on substitutional leases granted by Commission.

the stamp duty on the single lease shall be reduced by such amount as appears to the Commissioners of Inland Revenue to be just, having regard to the duty paid on the existing leases and to the length of the terms thereunder unexpired, and the rights of the working lessee thereunder, at the date when the term under the single lease takes effect:

Provided that no lease which is unstamped or which would, apart from this section, be insufficiently stamped, shall be deemed by virtue of this section to be duly stamped unless it has in accordance with the provisions of section twelve of the Stamp Act, 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it is duly stamped, as the case may be.

54 & 55 Vict. c. 39.

(2) In this section the expression “working lessee” means a person carrying on the business of coal mining who is entitled to work coal, or to use for coal mining purposes a mine of coal, under a coal mining lease held by him or by another for his benefit.

6.—(1) Where, under subsection (3) of section seventeen of the principal Act (which permits the Commission to alienate coal or a mine of coal for purposes other than coal mining or coal of small value), the Commission alienate any coal or mine of coal for a freehold interest, then if the Commission certify that the person to whom the coal or mine is alienated would in their opinion have been entitled, but for the passing of the principal Act, to any interest therein acquired by the Commission under that Act, stamp duty in respect of the alienation shall be chargeable only on the amount, if any, by which the value of the interest for which the coal or mine is alienated appears to the Commissioners of Inland Revenue to exceed the value of the interest specified in the certificate:

Stamp duty on alienation of coal to former owner for purposes other than coal mining.

PART I.
—cont.

Provided that no instrument which is unstamped or which would, apart from this section, be insufficiently stamped, shall be deemed by virtue of this section to be duly stamped unless it has in accordance with the provisions of section twelve of the Stamp Act, 1891, been stamped with a particular stamp denoting that it is not chargeable with any duty or that it is duly stamped, as the case may be.

(2) For the purpose of the foregoing subsection, the value of the interest specified in the certificate shall be taken to be the value which that interest would have had at the date of the alienation, having regard to any dispositions or purported dispositions actually made thereof and of any interests to which it was subject immediately before the vesting date, if none of the said interests had been affected by the principal Act.

(3) This section applies to any such alienation whether made before or after the passing of this Act, and any duty overpaid in respect of any alienation made before the passing of this Act as respects which the Commission give a certificate under this section shall be repaid.

Mines working
facilities.

7.—(1) Subsection (1) of section twenty-two of the principal Act (which restricts the power of the Railway and Canal Commission to grant rights to search for or work coal) shall not apply, and shall be deemed never to have applied, to the granting of a right required by reason of the subsistence either of a retained interest or of any interest arising under a freeholder's lease :

Provided that no application made by virtue of this subsection otherwise than by the Coal Commission shall be referred by the Minister to the Railway and Canal Commission unless the Coal Commission have given notice in writing to the Minister that they approve the application.

(2) The provisions of the foregoing subsection shall have effect in lieu of the provisions of proviso (a) to subsection (1) of the said section twenty-two (which provides that the said subsection (1) shall not apply to the granting of a right required by reason of the subsistence of a retained copyhold interest).

16 & 17 Geo. 5.
c. 28. (3) No application under subsection (2) of section thirteen of the Mining Industry Act, 1926 (which enables the Railway and Canal Commission to grant a right to work coal freed from restrictions or conditions contained in a mining lease or otherwise binding on the person entitled to work it, or to work coal on other terms and conditions), made otherwise than by the Coal Commission shall be referred by the Minister to the Railway and Canal Commission unless the Coal Commission 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.

8.—(1) The Commission may borrow for the purpose of meeting any deficiency at any time arising on the revenue account of the Commission or meeting any extraordinary claim or demand at any time arising against the Commission (being the purposes for which the reserve fund is primarily applicable under subsection (2) of section twenty-four of the principal Act), subject to and in accordance with the following provisions—

PART I.
—cont.
Extension of
borrowing
powers of the
Commission.

- (a) all money so borrowed shall be repaid within one year ;
- (b) no money shall be so borrowed if at the time of borrowing the aggregate of the sums so borrowed and not repaid exceeds, or will with the sum to be borrowed exceed, half the value of the reserve fund as shown in the accounts of the Commission last laid before Parliament under subsection (2) of section thirty of the principal Act ;
- (c) all money so borrowed and the interest thereon shall be charged on the investments and cash of which the reserve fund from time to time consists ;
- (d) so long as the issue of capital in the United Kingdom without the consent of the Treasury is prohibited by Regulations made under the Emergency Powers (Defence) Acts, 1939 and 1940, it shall not be lawful to exercise the powers of borrowing conferred by this subsection without such consent ;
- (e) section twenty-eight of the principal Act (which empowers the Commission to issue stock for the purpose of raising money which they are authorised to borrow) and section twenty-nine of that Act (which empowers the Treasury to guarantee a loan proposed to be raised by the Commission) shall not apply to money borrowed or loans proposed to be raised under this subsection.

(2) The investments and cash of which the reserve fund from time to time consists and the interest thereon shall cease to be included in the property and revenues of the Commission on which money borrowed under section twenty-seven of the principal Act is charged by virtue of subsection (2) thereof or on which stock issued under section twenty-eight of that Act and interest thereon is charged by virtue of subsection (2) of the last mentioned section.

9. The power of the Minister and of the Commission under section thirty-eight of the principal Act to extend the period, or postpone the date, specified in or prescribed under Part I of that Act as the period within which, or the date on or before which, any act or thing is to be done shall be exercisable, and be deemed always to have been exercisable—

Extension of
power to
extend time.

- (a) in relation to any period, notwithstanding that the period has expired ;
- (b) in relation to any date, notwithstanding that the date has passed.

PART I.

—cont.

Tenure of
office of
member of
Commission.

10. So much of paragraph 3 of the First Schedule to the principal Act as provides that the term of appointment of a member of the Commission shall not be less than five years shall not apply to the re-appointment of a retiring or former member for a further term.

Withdrawal of
support where
notice of
approach
required by
retained lease.

11.—(1) Where on the valuation date—

- (a) the fee simple in coal comprised in a coal mining lease then subsisting and the fee simple in land supported thereby were vested in the same person ; and
- (b) there was contained in the lease a provision, intended to protect from subsidence the land or part thereof or buildings or works thereon, to the effect that—
 - (i) the lessee should not work the coal or part thereof without the consent of some other person ; or
 - (ii) some other person might prohibit the lessee from working the coal or part thereof ;

then, if the power of consenting to or prohibiting the working was on that date vested in some person other than the estate owner in respect of the fee simple in the coal (whether or not jointly with that estate owner), or would have become so vested on a severance of the fee simple in the coal from the fee simple in the land, the provisions of the Second Schedule to this Act shall have effect in relation to the restricted coal.

(2) In this section and the said Second Schedule—

- (a) the expression “ restricted coal ” means, in relation to coal comprised in any such lease as aforesaid—
 - (i) any coal to which, during the subsistence of the lease, any such provision as aforesaid therein contained relates or has at any time related ; and
 - (ii) where the buildings or works which the provision is or was intended to protect are or include future buildings or works, any other coal to which the provision would, by reason of the construction of buildings or works after the end of the lease, have related if the lease had been still subsisting ;

but does not include any coal which, under the foregoing provisions of this paragraph, would be restricted coal by reason only of the existence at any time (whether before or after the commencement of this Act) of buildings or works which have since ceased to exist ; and

- (b) the expression “ protected land ” means, in relation to any restricted coal, the land, buildings or works protected by the provision by virtue of which the coal is restricted coal, or which would be so protected if the lease containing that provision were still subsisting.

(3) For the purposes of this section and the said Second Schedule, a provision contained in a document varying or supplementing a lease shall be treated as if it were contained in the lease, and in that Schedule this section is referred to as "the principal section".

PART I.
—cont.

12.—(1) Sub-paragraph (1) (b) of paragraph 4 of the Third Schedule to the principal Act (which provides that a member of a Regional Valuation Board, other than the chairman, must be a person engaged in the management of mineral estates in the region) shall have effect as if the words "in the region" were omitted.

Valuation
Boards and
review of
valuations.

(2) When it appears to the Minister that the Central Valuation Board or a Regional Valuation Board has no further duties to discharge under the principal Act, he may by order dissolve the Board, and thereupon all records and other documents in the possession of the Board shall be transferred to the Commission.

(3) The provisions of paragraph 12 of the Third Schedule to the principal Act (which relates to reviews by referees of valuations of Regional Valuation Boards) shall have effect subject to the provisions of the Third Schedule to this Act; and any reference in the principal Act to the said paragraph 12 or to any provision thereof shall, unless the context otherwise requires, be construed as a reference to that paragraph or provision as amended by this Act.

13. Paragraph 22 of the Third Schedule to the principal Act (which requires the Commission to pay costs reasonably incurred in connection with certain matters by persons having acquired interests or their successors in title) shall extend, and be deemed always to have extended, to costs so incurred by any person, whether he is such a person as aforesaid or not; and accordingly that paragraph shall have effect, and be deemed always to have had effect, as if, in sub-paragraph (1) thereof—

Extension of
Commission's
liability for
costs.

- (a) the words "having an acquired interest that is comprised in a holding or a successor in title of his" were omitted; and
- (b) for the words "the holding", in both places where they occur, there were substituted the words "a holding".

PART II.

MISCELLANEOUS AND GENERAL.

14. The power under section fifty-two of the principal Act of prescribing the fee to be paid by a person interested in land for inspecting plans of workings, and for copies thereof or parts thereof, shall be exercised by the Minister; and in that section the expressions "coal" and "interested" shall have the meanings assigned to them by section forty-four of the principal Act.

Inspection
and copies
of plans.

PART II.

—cont.

Reports &c.
to Minister by
Commission.

15.—(1) Instead of transmitting to the Minister all the certified valuations received from the Regional Valuation Boards, as required by paragraph (a) of section fifty-seven of the principal Act, the Commission shall transmit to the Minister such particulars of those valuations as he may require for the purpose of laying before Parliament the statements required by that paragraph.

(2) The next report after the commencement of this Act to be made by the Commission to the Minister under paragraph (b) of the said section fifty-seven shall be a report as to their proceedings during the fifteen months ending on the thirty-first day of March, nineteen hundred and forty-four; and the annual reports to be made subsequently by the Commission under that paragraph shall be reports as to their proceedings during each period of twelve months ending on the thirty-first day of March.

Dissolution of
Coal Mines
National
Industrial
Board.
20 & 21 Geo. 5.
c. 34.

16. The Coal Mines National Industrial Board shall be dissolved; and accordingly the following provisions of the Coal Mines Act, 1930, are hereby repealed, namely, Part IV, subsection (1) of section sixteen and, in the definition of "coal mine" in subsection (1) of section eighteen, the words "(including for the purposes of Part IV of this Act lignite or brown coal)".

Interpretation.

17. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them—

"the Commission" means the Coal Commission;

"the Minister" means the Minister of Fuel and Power;

"the principal Act" means the Coal Act, 1938, as amended by any subsequent enactment or Order in Council.

1 & 2 Geo. 6.
c. 52.Short title,
citation, con-
struction and
extent.

18.—(1) This Act may be cited as the Coal Act, 1943, and may be cited together with the Coal Acts, 1938 and 1942, as the Coal Acts, 1938 to 1943.

(2) Part I of this Act shall be construed as one with Part I of the principal Act.

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

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.

1ST SCH.
—cont.

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.

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.

(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

2ND SCH.
—cont.

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.

2ND SCH.
—cont.
13 & 14 Geo. 5.
c. 20.

(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.

3RD SCH.
—cont.

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".

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