

SCHEDULES

SCHEDULE 1

Section 2.

SUPPLEMENTARY PROVISIONS RELATING TO RIGHT TO WITHDRAW SUPPORT

- 1 (1) Subject to paragraph 3 below, the provisions of this paragraph shall apply in any case where the construction of any buildings or works is to be begun on land to which a notice under section 2 of this Act relates, other than a notice which is deemed to have been published by virtue of subsection (5) of that section.
- (2) Before the construction of the buildings or works is begun, the person at whose expense they are to be constructed (in this paragraph referred to as " the building owner ") shall notify the Board of the proposal to construct them, and shall, if so requested by the Board within fourteen days from the receipt by them of the notice, produce for the inspection of a person duly authorised by them in that behalf plans and specifications of the buildings or works showing their design and the proposed materials for and method of construction of their foundations, and shall, if so requested within that period or within seven days after the plans and specifications have been produced in accordance with the preceding provisions of this sub-paragraph, furnish the Board with copies of any such plans or specifications.
- (3) At any time within twenty-eight days from the time when any request made by the Board with respect to the production or furnishing of copies of the plans and specifications has been complied with, or within such further period as the building owner may allow, the Board may make such proposals as to the materials for and the method of construction of the foundations as appear to them to be desirable for minimising damage in the event of subsidence and, if they do so, and the foundations are constructed otherwise than in accordance with the Board's proposals, the obligation to pay compensation or to make good under section 2(4) of this Act shall be limited so as not to extend to any damage that would have been avoided if they had been so constructed.
- (4) The Board shall have the right to have the foundations inspected by a person duly authorised by them in that behalf from time to time during their construction as that person may reasonably require, and if it is alleged by the Board that the foundations are being constructed otherwise than in accordance with any plans or specifications produced or furnished to them, or otherwise than in accordance with any such plans or specifications as modified in accordance with proposals made by the Board (as the case may be), the Board shall notify the building owner of the matter alleged to constitute a departure therefrom, and any question arising in relation to any such allegation shall be determined by arbitration.
- (5) The Board shall pay all costs reasonably incurred by the building owner in the production or furnishing of copies of plans and specifications pursuant to a request made by the Board under this paragraph, and the amount of any addition to the expense incurred by him in constructing the buildings or works which is attributable to giving effect to the Board's proposals or to any postponement or interruption of the construction consequent upon an allegation on the part of the Board of a departure from plans and specifications which is determined not to have been well founded,

and any question as to the subsistence of a liability of the Board by virtue of this provision, or as to the amount payable by them in respect of any such liability shall be determined by the Lands Tribunal or, if the land concerned is in Scotland, the Lands Tribunal for Scotland.

- (6) If the building owner fails to give notice to the Board in accordance with this paragraph of the proposal to construct the buildings or works or fails to comply with a request made by the Board thereunder, the obligation to pay compensation or to make good under section 2(4) of this Act shall be limited to damage which could not have been avoided by reasonable and proper precautions taken in the design and construction of the foundations to minimise damage in the event of subsidence.

2 In any case where—

- (a) immediately before the commencement of this Act the Board had a right to withdraw support from any land by virtue of paragraph 5 of Schedule 2 to the Coal Act 1938, including that paragraph as applied by paragraph 1(2) of Schedule 2 to the Coal Act 1943, and
- (b) after the commencement of this Act that land is damaged by the working of coal in exercise of the right to withdraw support conferred on the Board by section 2 of this Act,

any person interested in that land may claim compensation for the damage in accordance with the terms and conditions relating to compensation which were applicable before the commencement of this Act to the right to withdraw support referred to in sub-paragraph (a) above ; but no person shall be entitled both to receive compensation for any damage under this paragraph and to receive compensation for that damage, or have that damage made good, under section 2(4) of this Act.

3 In any case where—

- (a) before the commencement of this Act, public notice was given in relation to any land under sub-paragraph (2) of paragraph 6 of Schedule 2 to the Coal Act 1938 (in the following provisions of this paragraph referred to as " paragraph 6 "), and
- (b) at any time between the first publication of that notice and the commencement of this Act, the construction began of any buildings or works on land to which the notice applied, and
- (c) immediately before the commencement of this Act, the obligation of the Board under sub-paragraph (1) of paragraph 6 in relation to those buildings or works was limited as mentioned in paragraph (b) or paragraph (e) of sub-paragraph (3) of paragraph 6 (which contained provisions similar to sub-paragraphs (3) and (6) of paragraph 1 above), the obligation of the Board, in relation to those buildings or works, to pay compensation or make good any damage under section 2(4) of this Act shall be limited as mentioned in sub-paragraph (3) or, as the case may require, sub-paragraph (b) of paragraph 1 above.

- 4 (1) Any question as to the subsistence by virtue of section 2 of this Act or of any of the preceding provisions of this Schedule of an obligation to pay proper compensation for or make good any damage or as to the rights or liabilities of any person in respect of the enforcement of any such obligation and any question as to the amount of any compensation payable under section 2(4) of this Act or paragraph 2 above shall be determined by the Lands Tribunal or, if the land concerned is in Scotland, the Lands Tribunal for Scotland.

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- 5 (1) Subject to sub-paragraph (2) below, on an application under section 7 of the Mines (Working Facilities and Support) Act 1966 (imposition 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 court to be justified by the existence of the right to withdraw support conferred on the Board by section 2 of this Act.
- (2) Sub-paragraph (1) above shall not apply in any case falling within subsection (5)(a) of section 2 of this Act and shall not apply in any other case, other than one falling within subsection (5)(b) of that section, unless the application is sent to the Secretary of State before the end of the period of six months beginning with the date of the first publication of a notice under that section relating to the land to which the application relates or, in a case falling within subsection (6) of that section, the first publication of the notice under paragraph 6 of Schedule 2 to the Coal Act 1938 referred to in that subsection.
- (3) Notwithstanding anything in section 12 of the Mines (Working Facilities and Support) Act 1966, restrictions the imposition of which appears to the court to be justified as mentioned in sub-paragraph (1) above may be imposed under section 7 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 section 12 ; 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.

SCHEDULE 2

Section 3.

RETAINED INTERESTS : NOTICES AND COMPENSATION

- 1 The provisions of this Schedule apply where a person (in this Schedule referred to as "the claimant") gives to the Board notice of a retained interest as mentioned in section 3(3)(b) of this Act (in this Schedule referred to as a "retained interest notice").
- 2 (1) Together with a retained interest notice given by him to the Board the claimant shall furnish to the Board adequate proof of his title to the interest at the time the notice is given.
- (2) Within the period of three months beginning on the date on which the Board receive a retained interest notice or within such longer period as may be agreed between the Board and the claimant the Board shall serve on the claimant either—
- (a) a notice in the prescribed form accepting his title to the retained interest and acknowledging the obligation of the Board to pay compensation in respect of it under section 3 of this Act; or
- (b) a notice rejecting the claimant's retained interest notice ;
- and in this Schedule a notice under paragraph (a) above is referred to as an "acceptance notice " and a notice under paragraph (b) above is referred to as a "rejection notice ".
- (3) A rejection notice shall specify the ground or grounds on which the Board reject the claimant's retained interest notice.

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- 3 Subject to paragraph 5 below, as soon as practicable after the Board have served an acceptance notice on a claimant, the Board shall pay to the claimant any reasonable legal expenses incurred by him for the purposes of—
- (a) establishing his ownership of the retained interest to which the acceptance notice relates ; and
 - (b) giving the retained interest notice by virtue of which the acceptance notice came to be served.
- 4 Subject to paragraph 5 below, where, after the receipt of a retained interest notice, the Board have served an acceptance notice in respect of the retained interest concerned, the service of that acceptance notice shall be a valid ground for the service of a rejection notice in respect of any other retained interest notice received by the Board after the first-mentioned notice and relating to any of the land in which subsists the retained interest in respect of which the acceptance notice was served.
- 5 (1) A claimant who—
- (a) has served a retained interest notice relating to any land (in this paragraph referred to as " the relevant land "); and
 - (b) is aggrieved by the service on him of a rejection notice relating to his retained interest notice, other than a rejection notice served pursuant to an order under this paragraph,
- may, within the period of 3 months beginning on the date of service of the rejection notice make an application to the county court for an order directing the Board to withdraw the rejection notice and to serve an acceptance notice in respect of the retained interest which he claims.
- (2) On an application under this paragraph, the court may direct that, in addition to the applicant and the Board, any other person who has given a retained interest notice relating to the whole or part of any of the relevant land shall be made a party to the application unless—
- (a) the Board have already served a rejection notice in respect of that person's retained interest notice ; and
 - (b) the time within which he might have made an application under this paragraph in respect of that rejection notice has expired without such an application having been made.
- (3) On an application under this paragraph the court shall determine whether—
- (a) the applicant, or
 - (b) any other party to the application who contests the applicant's claim, or
 - (c) any other person (whether a party to the application or not) on whom the Board have served an acceptance notice relating to the whole or any part of the relevant land,
- was at the time he gave his retained interest notice entitled to a retained interest in the whole or any part of the relevant land and shall order the Board (so far as they have not already done so) to serve an acceptance notice on that person or, if more than one of them were so entitled to a retained interest in the same piece of land, on that one of them whose retained interest notice was given first.
- (4) An order under sub-paragraph (3) above may contain such provisions as the court considers appropriate to secure—
- (a) that a rejection notice is or has been served on every party to the application (other than the Board) on whom an acceptance notice is not ordered to be or has not been served ; and

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- (b) that, where it appears to the court that an acceptance notice has been served which should not have been served, that notice is cancelled and that the Board bring the cancellation to the notice of the person who, if the notice had not been cancelled, would for the time being have been entitled to receive compensation under section 3(4) of this Act in respect of the interest to which the acceptance notice related.
- (5) If, in accordance with sub-paragraph (4), above, the court orders the cancellation of an acceptance notice, it shall be conclusively presumed for the purposes of section 3 of this Act and of the provisions of this Schedule other than this paragraph—
- (a) that the person on whom the acceptance notice was served did not have a retained interest in the relevant land at the time he served his retained interest notice ; and
- (b) that the Board served a rejection notice in respect of that retained interest notice.
- (6) Nothing in paragraph 3 above shall affect the power of the court on an application under this paragraph (or in any subsequent proceedings) to make such order as to costs as it thinks fit; and any such order may make such modifications, if any, of the Board's obligation under paragraph 3 above as appear to the court to be just in the light of the other provisions as to costs contained in the order.
- 6 The person having the right to receive compensation under section 3(4) of this Act in respect of a retained interest to which an acceptance notice relates shall be the person on whom that notice was served, notwithstanding that he may not own the retained interest at the time when the compensation becomes payable and, accordingly, that right shall devolve on his death and may be assigned in like manner as the right of a creditor under an unsecured debt.
- 7 Notwithstanding anything in paragraph 6 above if, at the time at which compensation becomes payable in respect of a retained interest, the Board pay compensation in good faith to the person who produces the acceptance notice relating to that interest, the surrender of that notice to the Board by way of receipt for the compensation shall constitute an adequate discharge to the Board of their liability to pay that compensation, without any further proof that the person producing the acceptance notice is entitled in accordance with paragraph 6 above to receive the compensation.
- 8 If at any time—
- (a) after the Board have served an acceptance notice in respect of a retained interest, and
- (b) before the date on which compensation becomes payable in respect of that interest,
- the Board enter into an -agreement in that behalf with the person who for the time being has the right to receive any such compensation, then, on payment to that person of such consideration as may be agreed, the Board shall be relieved of any contingent liability under subsection (4) or subsection (6) of section 3 of this Act in respect of that retained interest; and where any such agreement is entered into, paragraph 7 above shall apply in relation to the payment of the consideration agreed as it applies in relation to a payment of compensation at the time referred to in that paragraph.
- 9 Without prejudice to paragraph 8 above, at any time after the Board have served an acceptance notice in respect of a retained interest, they shall cease to be entitled to

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- acquire by agreement that interest or any other retained interest in coal or a mine of coal comprised in or lying under any of the land in which subsists the retained interest to which the acceptance notice relates.
- 10 (1) The Board shall keep, at such places as may be prescribed, a record of—
- (a) all retained interest notices given to the Board and all acceptance notices and rejection notices served by them, and
 - (b) all sums paid by way of compensation under section 3(4) of this Act,
- and that record shall contain a description of the land in which subsists the retained interest (or in the case of a rejection notice, the claimed retained interest) to which each such notice or payment relates sufficient to enable the land to be identified.
- (2) The record kept under this paragraph shall be open to public inspection at all reasonable hours, and different places may be prescribed for the keeping of the record relating to retained interests in different areas.
- 11 Section 55 of the Coal Act 1938 (service of notices, etc.) shall have effect as if the provisions of this Schedule were included in that Act.

SCHEDULE 3

Section 4.

AMENDMENTS OF OPENCAST COAL ACT 1958 CONSEQUENTIAL ON SECTION 4

- 1 In section 4(6) the words " being an opencast site order " shall be omitted.
- 2 In section 5 for the words " an opencast! site order in each place where they occur, there shall be substituted the words " a compulsory rights order ".
- 3 Section 6 shall cease to have effect.
- 4 (1) In section: 7, in subsection (1) the words " or in accordance with subsection (3) of section six of this Act" shall be omitted.
- (2) In subsection (3) of that section the words " In relation to an opencast site order ' shall be omitted.
- (3) In subsection (5) of that section the words from " or of " to the end of the subsection shall be omitted.
- (4) In subsection (6) of that section the words " or section six of this Act" shall be omitted.
- (5) In subsection (7) of that section the words " or in subsection (4) of section six of this Act" shall be omitted.
- 5 (1) In section 8, in subsection (1) the words " (whether it is an opencast site order or a storage site order) " shall be omitted.
- (2) In subsection (3)(b) of that section the words œ or subsection (2) of section six of this Act, as the case may be " shall be omitted.
- 6 In section 9 for the words " an opencast site order ", in each place where they occur, there shall be substituted the* words " a compulsory rights order
- 7 In section 36, in subsection (2) for the words " an opencast site order ", in the first place where they occur, there shall be substituted the words " any compulsory rights order " and the words " opencast site where they occur in the proviso to the subsection, shall be omitted.

- 8 In, section 49, for the proviso to subsection (5) there shall be substituted the following proviso:—
- “Provided that where the period specified in the order is less than twenty years, this subsection shall not prevent the variation of the order by the extension of that period, if the period as extended does not exceed twenty years”.
- 9 In section 51(1) the definitions of "opencast site order" and " storage site order " shall be omitted and in each of the definitions of " period of occupation " and " persons directly concerned " for the words following " assigned to it" there shall be substituted the words " by section 5 of this Act ".
- 10 In paragraph 5(1) of Schedule 2, for the words " an opencast site order " there shall be substituted the words " a compulsory rights order ".
- 11 In Schedule 10, paragraph 12 shall be omitted.

SCHEDULE 4

Section 5.

SUSPENSION OF PUBLIC RIGHTS OF WAY: AMENDMENTS
OF SCHEDULE 1 TO OPENCAST COAL ACT 1958

- 1 At the end of paragraph 2 of the Schedule there shall be added the words “and
- (c) in the case of an application which includes an application for an order under section 15 of this Act, shall indicate, by reference to the map, the right of way to which the application relates and the alternative way (if any) which the Board propose to make available”.
- 2 At the beginning of paragraph 4 of the Schedule there shall be inserted " (1) " and at the end of that paragraph there shall be added the following sub-paragraph:—
- “(2) If the Board propose to include in an application for an authorisation under section 1 of this Act an application for an order under section 15 thereof, sub-paragraph (1) above shall have effect as if—
- (a) any reference therein to the application for the authorisation included a reference to the application for the order under section 15 ;
- (b) the local authorities specified in paragraph (b) thereof included the council of a parish or community and the parish meeting of a parish which does not have a separate parish council; and
- (c) at the end of paragraph (d) thereof there were inserted the following paragraph:—
- “(e) in any case where the application is to include an application for an order under section 15 of this Act suspending a public right of way, cause a copy of the notice referred to in paragraph (b) of this paragraph to be displayed in a prominent position at the ends of the public right of way to which the application relates”.
- 3 (1) Paragraph 7 of the Schedule shall be amended in accordance with the provisions of this paragraph.

- (2) In sub-paragraph (1) of that paragraph for the words from " grant the authorisation" to the end of the sub-paragraph there shall be substituted the words "after considering any Other objections which are duly made and not withdrawn—
- (a) grant the authorisation, and
 - (b) where the application includes an application for an order under section 15 of this Act, make such an order,
- either in accordance with the Board's application or subject to such modifications as he may determine " .
- (3) In sub-paragraph (2) of that paragraph after the words " any objection " there shall be inserted the words " to the grant of the authorisation is " after the words " lessee or occupier " there shall be inserted the word " and " and for the words " the objection " there shall be substituted the words " all objections to the grant of the authorisation which are duly made and not withdrawn " .
- (4) At the end of sub-paragraph (2) of that paragraph there shall be inserted the following sub-paragraphs:—
- “(2A) If, in the case of an application which includes an application for an order under section 15 of this Act, any objection to the making of the order is duly made by the council of any such county or district or, in Scotland, by any such local authority as is mentioned in paragraph 4(1)(b) of this Schedule and is not withdrawn, the Secretary of State shall cause a public local inquiry to be held and shall consider all objections to the making of the order which are duly made and not withdrawn and the report of the person who held the inquiry before determining whether to make the order; and if he determines to make the order, he may do so either in accordance with the Board's application or subject to such modification as he may determine.
- (2B) If, in a case where a public local inquiry is required to be held by virtue of sub-paragraph (2) above, such an inquiry is also required to be held by virtue of sub-paragraph (2A) above the Secretary of State may direct that those inquiries, including, in a case falling within paragraph 6 of this Schedule, any inquiry relating to a compulsory rights order on which proceedings are to be taken concurrently with the proceedings relating to the application for an authorisation, shall be held concurrently.”
- (5) In sub-paragraph (3) of that paragraph for the words " the last preceding sub-paragraph " there shall be substituted the words " sub-paragraphs (2) and (2A) above " ,
- after the word "authorisation " there shall be inserted the words " or, as the case may be, make an order " and for the words " that sub-paragraph " there shall be substituted the words " either or both of those sub-paragraphs " .
- 4 At the beginning of paragraph 8 of the Schedule there shall be inserted " (1) " and at the end of that paragraph there shall be added the following sub-paragraph:—
- “(2) Where an order is made under section 15 of this Act, sub-paragraph (1) above shall have effect in relation to the order as if—
- (a) any reference therein to the authorisation were a reference to the order;

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- (b) any reference therein to the grant of the authorisation were a reference to the making of the order ; and
- (c) any reference to the relevant land were a reference both to the right of way which is suspended by the order and the alternative way which is to be made available as mentioned in section 15(2)(c) of this Act.”

5 In paragraph 11 of the Schedule, for the words " paragraph 5 " there shall be substituted the words " paragraphs 4(2)(b) and 5 ".

SCHEDULE 5

Section 7(4).

ENACTMENTS REPEALED

Chapter	Short Title	Extent of Repeal
1 & 2 Geo. 6. c. 52.	The Coal Act 1938.	In Schedule 2, Part II and, in Part III, paragraph 8(c).
6 & 7 Geo. 6. c. 38.	The Coal Act 1943.	Section 11. Schedule 2.
9 & 10 Geo. 6. c. 49.	The Acquisition of Land (Authorisation Procedure) Act 1946.	In section 3, subsections (2) and (3) so far as not otherwise repealed.
6 & 7 Eliz. 2. c. 69.	The Opencast Coal Act 1958.	In section 4(6) the words " being an opencast site order " ". Section 6. In section 7, in subsection (1), the words " or in accordance with subsection (3) of section six of this Act"; in subsection (3), the words " In relation to an opencast site order"; in subsection (5), the words from " or of" to the end of the subsection; in subsection (6), the words " or section six of this Act"; and in subsection (7), the words " or in subsection (4) of section six of this Act". In section 8, in subsection (1), the words " (whether it is an opencast site order or a storage site order)"; and in subsection (3)(b) the words

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Chapter	Short Title	Extent of Repeal
1968 c. 41.	The Countryside Act 1968.	<p>" or subsection (2) of section six of this Act, as the case may be ".</p> <p>In section 36(2), the words " opencast site ", where they occur in the proviso to the subsection.</p> <p>In section 45, in subsection (3), the words "section three of the Acquisition of Land Act, as applied by"; and subsection (5).</p> <p>In section 51(1) the definitions of " opencast site order " and " storage site order ".</p> <p>In Schedule 10, paragraph 12.</p> <p>In Schedule 3, in Part I, paragraph 3 of the provisions relating to the Acquisition of Land (Authorisation Procedure) Act 1946.</p>
1971 c. 78.	The Town and Country Planning Act 1971.	In Schedule 3, paragraph 8(c).