

SCHEDULES

SCHEDULE 2

RESTRUCTURING SCHEMES

Compensation

- 8 (1) Where, in consequence of any provisions included in a restructuring scheme for the purposes of any such division as is mentioned in paragraph 2(1) above, the interests, rights or liabilities of a third party are modified as mentioned in sub-paragraph (2) below, the third party shall be entitled to such compensation as may be just in respect of—
- (a) any diminution attributable to that modification in the value of any of his interests or rights; or
 - (b) any increase attributable to that modification in the burden of his liabilities.
- (2) The modifications mentioned in sub-paragraph (1) above are modifications by virtue of which—
- (a) an interest of the third party in any property is transformed into, or replaced by—
 - (i) an interest in only part of that property; or
 - (ii) separate interests in different parts of that property;
 - (b) a right of the third party against the Corporation or any of its wholly-owned subsidiaries is transformed into, or replaced by, two or more rights which do not include a right which, on its own, is equivalent (disregarding the person against whom it is enforceable) to the right against the Corporation or that subsidiary;
 - (c) a liability of the third party to the Corporation or any such subsidiary is transformed into, or replaced by, two or more separate liabilities at least one of which is a liability enforceable by a person other than the Corporation or that subsidiary; or
 - (d) any interests, rights or liabilities of the third party are altered in such other manner as does not either—
 - (i) relate to the identity of the person or persons against whom the third party's interests or rights are enforceable or of the person or persons by whom the liabilities to which he is or may become subject are enforceable; or
 - (ii) effect a modification in relation to which sub-paragraph (3) below would apply but for paragraph (c) of that sub-paragraph.
- (3) Where—
- (a) a third party would, apart from any provisions of a restructuring scheme or paragraph 3(3) above, have become entitled to, or to exercise, any interest or right arising or exercisable—

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- (i) in respect of the transfer or creation in accordance with such a scheme of any property, rights or liabilities, or
- (ii) otherwise in respect of anything done by or under this Act or the British Coal and British Rail (Transfer Proposals) Act 1993,
- (b) the provisions of that scheme or of paragraph 3(3) above have the effect of preventing that person's entitlement to, or to exercise, that interest or right from arising on any occasion in respect of anything mentioned in paragraph (a)(i) or (ii) above, and
- (c) provision is not made by a restructuring scheme for securing that an entitlement to, or to exercise, that interest or right or an equivalent interest or right, is preserved or created so as to arise in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides,

the third party shall be entitled to such compensation as may be just in respect of the extinguishment of the interest or right.

- (4) A liability to pay compensation under this paragraph shall fall on the persons not themselves being third parties who, as the case may be—
- (a) have interests in the whole or any part of the property affected by the modification in question;
 - (b) are subject to the rights of the person to be compensated which are affected by that modification;
 - (c) are entitled to enforce the liabilities of the person to be compensated which are affected by that modification; or
 - (d) benefit from the extinguishment of the entitlement mentioned in sub-paragraph (3) above;

and that liability shall be apportioned between those persons in such manner as may be appropriate having regard to the extent of their respective interests, rights or liabilities or the extent of the benefit they respectively obtain from the extinguishment.

- (5) Where any liability falls by virtue of sub-paragraph (4) above on the Corporation or any of its wholly-owned subsidiaries, that sub-paragraph shall have effect subject to so much of any restructuring scheme (including the one which gives rise to the liability) as makes provision for the transfer of that liability to any other person.
- (6) Any dispute as to whether, or as to the person by whom, any compensation is to be paid under this paragraph, and any dispute as to the amount of any compensation to be paid by any person, shall, according to whether the claimant requires the matter to be determined in England and Wales or in Scotland, be referred to and determined by—
- (a) an arbitrator appointed by the Lord Chancellor; or
 - (b) an arbiter appointed by the Lord President of the Court of Session.
- (7) This paragraph shall have effect in relation to the provisions of any agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 2(1)(g) above, and to any modification agreement, as it has effect in relation to the provisions of a restructuring scheme.
- (8) In this paragraph “third party”, in relation to provisions capable of giving rise to a right to compensation under this paragraph, means any person other than—
- (a) the Corporation or any of its wholly-owned subsidiaries;

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- (b) the Authority or the Secretary of State;
- (c) a company which is wholly owned by the Crown at the time in relation to which those provisions have effect; or
- (d) where the provisions in question are the provisions of a restructuring scheme, any person whose consent to those provisions has been given for the purposes of section 12(4) of this Act or who has agreed to those provisions by virtue of being a party to an agreement under section 13 of this Act or a modification agreement.