

SCHEDULES

SECOND SCHEDULE

Sections 4, 6, 43.

PROVISIONS FOR DEFINING PROPERTY AND RIGHTS WITH WHICH, AND MATTERS SUBJECT TO WHICH, COAL IS TO BE ACQUIRED

PART I

General

- 1 The conveyance of any coal or mine of coal to be assumed for the purposes of section four of this Act shall be a conveyance, to which all persons having any interest other than a retained interest in that coal or mine are conveying parties, to a purchaser for money or money's worth with notice of all matters whereof notice is material, containing, in the cases mentioned in paragraph 2 of this Schedule provisions to the effect therein mentioned, but subject as aforesaid not containing any such term or provision as might have limited the application of section sixty-two or sixty-three of the Law of Property Act, 1925, to the conveyance.
- 2 (1) In a case in which any of the conveying parties has, besides the interest in respect of which he is a conveying party, a retained interest in the coal or mine, he shall be deemed not to be a conveying party in respect of his retained interest.
- (2) In a case in which any of the conveying parties has an interest in land that would be adversely affected by a surface servitude that the conveyance might include, or might operate to grant, for any interest, by virtue either—
- (a) of section sixty-two of the Law of Property Act, 1925; or
 - (b) of any rule of law relating to the grant of servitudes as servitudes of necessity;
- the conveyance shall not operate further or otherwise, as regards the inclusion or the grant of that servitude or the interest (if any) for which it is to be included, than it would have operated if none of the conveying parties had had any interest in that land.
- (3) In a case in which any of the conveying parties has an interest in land to which a servitude that adversely affects the coal or mine is annexed, or with which the benefit of a restrictive covenant that adversely affects the coal or mine runs, the conveyance shall reserve that servitude for the greatest interest for which it could be reserved by that party, or shall reserve any right to enforce that covenant which would have subsisted in right of that party's interest in land with which the benefit of that covenant runs if he had not been a conveying party, as the case may be.
- (4) In a case in which any of the conveying parties might, after the conveyance, be subject to any personal liability in respect of a restrictive covenant that adversely affects the coal or mine, the conveyance shall be deemed to contain a covenant entered into by the Commission with that party with the object and intent of affording to him and his successors in title a full and sufficient indemnity, but not further or otherwise, that the Commission will at all times after the vesting date duly perform and observe that restrictive covenant in relation to the coal or mine and will at all

times keep that party and his successors in title effectually indemnified against all actions, proceedings, costs, charges, claims, and demands whatsoever in respect of that restrictive covenant.

- 3 A person having an interest vested in him without power to convey it, or having power to convey an interest with or on some consent, approval or request or on giving some notice, shall be deemed for the purposes of this Schedule to have had that power or to have received that consent, approval or request or to have given that notice, as the case may be.

PART II

Vesting of rights to withdraw support

- 4 The following provisions of this Part of this Schedule shall have effect with respect to the vesting in the cases therein mentioned in the Commission with any coal or mine of coal of a right to withdraw support.

- 5 In a case in which the fee simple in the coal or mine, or the term of years under a coal-mining lease thereof, was vested on the valuation date in a person other than the person in whom the fee simple in land supported thereby was then vested, and any right to withdraw support from that land, other than a right granted by a working facilities order, was then annexed to the coal or mine, there shall vest in the Commission therewith a right to withdraw support from that land similar in all respects, whether as regards terms, conditions, extent, duration (save as in this paragraph provided) or otherwise, to the said right that was then annexed to the coal or mine :

Provided that, where the fee simple in the coal or mine and the fee simple in land supported thereby was vested in the same person but the term of years under a coal-mining lease was subsisting in the coal or mine and a right to withdraw support was annexed thereto, the duration of the right that vests in the Commission shall extend to the whole of the period during which any coal to which the first-mentioned right was annexed remains ungoten.

- 6 (1) In a case in which the fee simple in the coal or mine and the fee simple in land supported thereby was vested on the valuation date in the same person and no coal-mining lease of that coal or mine was then subsisting, there shall vest in the Commission with the coal or mine such a right as is hereinafter mentioned, to the extent to which the existing owners of the coal or mine were competent on the valuation date to grant such a right by virtue of their interests in that land, that is to say, a right to withdraw support from that land so far as may be reasonably requisite for the working of any coal, subject to an obligation either—
- (a) to pay proper compensation for damage arising from such working to that 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;

which obligation shall extend to buildings and works on that land whether constructed before or after the vesting date.

- (2) The Commission shall on the occasion of their first exercising, or granting to a lessee the benefit of, a right vested in them by this paragraph give public notice that they propose so to do by advertisement in the London Gazette and in one or more newspapers circulating in the locality.
- (3) When the construction of any buildings or works is to be begun after the first publication of such a notice as aforesaid on land liable to be damaged by the exercise of the right to which the notice relates, the following provisions of this paragraph shall have effect:—
- (a) before the construction thereof is begun, the person at whose expense they are to be constructed (in this sub-paragraph referred to as " the building owner ") shall notify the Commission of the proposal to construct them, and shall, if so requested by the Commission 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 the design thereof and the proposed materials for and method of construction of the foundations thereof, and shall, if so requested within that period or within seven days after the plans and specifications have been produced as aforesaid, furnish the Commission with copies of any such plans or specifications;
 - (b) at any time within twenty-eight days from the time when any request made by the Commission 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 Commission may make such proposals as to the materials for and 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 Commission's proposals, the obligation to pay compensation or to make good referred to in sub-paragraph (1) of this paragraph shall not extend to any damage that would have been avoided if they had been so constructed;
 - (c) the Commission shall have the right to have the foundations inspected by a person duly authorised by them in that behalf from time to time during the construction thereof as that person may reasonably require, and if it is alleged by the Commission 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 Commission, as the case may be, the Commission shall notify the building owner of the matter alleged to constitute a departure therefrom, and any question arising in relation thereto shall be determined by arbitration;
 - (d) the Commission 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 Commission under this sub-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 Commission's proposals or to any postponement or interruption of the construction thereof consequent upon an allegation on the part of the Commission 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 Commission by virtue of this provision, or as to the amount payable by them in respect of any such liability, shall be determined by arbitration;

(e) if the building owner fails to give notice to the Commission in accordance with this sub-paragraph of the proposal to construct the buildings or works or fails to comply with a request made by the Commission thereunder, the obligation to pay compensation or to make good referred to in sub-paragraph (1) of this paragraph 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.

(4) 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 circumstances due to the subsistence of a right to withdraw support vested in the Commission by this paragraph :

Provided that this sub-paragraph shall not have effect in the case of an application sent to the Board of Trade after the expiration of six months from the date of the first publication in relation to the right in question of the notice required by sub-paragraph (2) of this paragraph.

(5) 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.

7 (1) Any person interested in land damaged by the working of coal in exercise of a right to withdraw support therefrom which vests in the Commission under either of the two preceding paragraphs 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, and the Commission may require the inclusion of such a provision in a lease which they are under obligation by virtue of section thirteen of this Act to grant.

(2) Any question as to the subsistence by virtue of either of the two preceding paragraphs of an obligation to pay proper compensation for or to make good damage to any land, or as to the rights or liabilities of any person in respect of the enforcement of such an obligation so subsisting, shall be determined by arbitration.

PART III

Application to Scotland

- 8 This Schedule shall apply to Scotland, subject to the following modifications:—
- (a) For paragraph 1 the following paragraph shall be substituted—
- “1 The conveyance of any coal or mine of coal to be assumed for the purposes of section four of this Act shall be a conveyance in common form (including a clause of assignation of writs) duly recorded in the appropriate Register of Sasines and granted by all persons having any interest other than a retained interest in that coal or mine (each of such persons being assumed to be of full age and capacity) and conveying all their rights, titles and interests in and to the said coal or mine of coal, to the effect and intent of vesting the said coal or mine of coal absolutely in the Commission freed from all feudal prestations, and rights in security, if any, and subject only to the inherent right of superiority of the Crown :
- Provided that, in the case of any coal or mine of coal which is held on a title comprising other subjects also, the conveyance to be assumed as aforesaid shall be deemed to contain a clause of assignation of writs to the effect only of enabling the Commission to maintain and defend their right to the coal or mine and, for that purpose, an obligation to make the writs forthcoming on a proper receipt and undertaking to redeliver.”
- (b) For sub-paragraph (2) of paragraph 2 the following sub-paragraph shall be substituted :—
- “(2) In a case in which any of the conveying parties has an interest in land that would be adversely affected by a surface servitude that the conveyance might include or might operate to grant for any interest by virtue of any rule of law relating to the grant of implied servitudes or of servitudes of necessity, the conveyance shall not operate as regards the inclusion or the grant of that servitude further or otherwise than it would have operated if none of the conveying parties had had any interest in that land.”
- (c) For any reference to the London Gazette there shall be substituted a reference to the Edinburgh Gazette.