



Railways Clauses Consolidation (Scotland) Act 1845

1845 CHAPTER 33 8 and 9 Vict

^{XI}*Working of mines [Editorial Note: ss. 70-78 as originally enacted follow]*

Editorial Information

X1 Ss. 70-78 as originally enacted are set out below

And with respect to mines lying under or near the railway, be it enacted as follows:

70 Promoters not to be entitled to minerals.

The company shall not be entitled to any mines of coal, ironstone, slate, or other minerals under any land purchased by them, except any such parts thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless the same shall have been expressly purchased; and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

Modifications etc. (not altering text)

- C1** Ss. 70–76 applied by [Enterprise and New Towns \(Scotland\) Act 1990 \(c. 35, SIF 64\)](#), s. 36(3)
C2 Ss. 70-78 (as originally enacted) incorporated (with modifications) (1.4.2002) by [2002 asp 3](#), s. 46(3)(a); S.S.I 2002/118, art. 2

71 Mines lying near the railway not to be worked if the company willing to purchase them.

If the owner, lessee, or occupier of any mines or minerals lying under the railway, or any of the works connected therewith, or within the prescribed distance, or, where no distance shall be prescribed, forty yards therefrom, be desirous of working the

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same, such owner, lessee, or occupier shall give to the company notice in writing of his intention so to do thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the company to cause such mines to be inspected by any person appointed by them for the purpose; and if it appear to the company that the working of such mines, either wholly or partially, is likely to damage the works of the railway, and if the company be desirous that such mines or any parts thereof should be left unworked, and if they be willing to make compensation for such mines or minerals, or such parts thereof as they desire to be left unworked, they shall give notice to such owner, lessee, or occupier of such their desire, and shall in such notice specify the parts of the mines under the railway or works or within the distance aforesaid which they shall desire to be left unworked, and for which they shall be willing to make compensation; and in such case such owner, lessee, or occupier shall not work or get the mines or minerals comprised in such notice; and the company shall make compensation for the same, and for all loss or damage occasioned by the non-working thereof, to the owner, lessee, and occupier thereof respectively; and if the company, and such owner, lessee, or occupier, do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation.

Modifications etc. (not altering text)

- C3** Ss. 70–76 applied by [Enterprise and New Towns \(Scotland\) Act 1990 \(c. 35, SIF 64\), s. 36\(3\)](#)
Ss. 70-78 (as originally enacted) incorporated (with modifications) (1.4.2002) by [2002 asp 3, s. 46\(3\)](#)
[\(a\)](#) (with [s. 67](#)); [S.S.I. 2002/118, art. 2](#)

72 *If company unwilling to purchase, owner may work the mines.*

If before the expiration of such thirty days the company do not give notice of their desire to have such mines left unworked, and of their willingness to make such compensation as aforesaid, it shall be lawful for such owner, lessee, or occupier to work the said mines, or such parts thereof for which the company shall not have agreed to pay compensation, up to the limits of the mines or minerals for which they shall have agreed to make compensation, in such manner as such owner, lessee, or occupier shall think fit, for the purpose of getting the minerals contained therein; and if any damage or obstruction be occasioned to the railway or works by the working or getting of any such minerals which the company shall so have required to be left unworked, and for which they shall so have agreed to make compensation, the same shall be forthwith repaired or removed, as the case may require, and such damage made good, by the owner, lessee, or occupier of such mines or minerals, and at his own expense; and if such repair or removal be not forthwith done, or, if the company shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the company to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby by action in any competent court.

Modifications etc. (not altering text)

- C4** Ss. 70–76 applied by [Enterprise and New Towns \(Scotland\) Act 1990 \(c. 35, SIF 64\), s. 36\(3\)](#)
Ss. 70-78 (as originally enacted) incorporated (with modifications) (1.4.2002) by [2002 asp 33, s. 46\(3\)](#)
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73 **Mining communications.**

If the working of any such mines or minerals under the railway or works, or within the above-mentioned distance therefrom, be prevented as aforesaid by reason of apprehended injury to the railway, it shall be lawful for the respective owners, lessees, and occupiers of such mines, and whose mines shall extend so as to be on both sides of the railway, to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata, the working whereof shall be so prevented as may be requisite to enable them to ventilate, drain, and work their said mines; but no such airway, headway, gateway, or water level shall be of greater dimensions or section than the prescribed dimensions and sections, and where no dimensions shall be prescribed not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the railway or works, or so as to injure the same, or to impede the passage thereon.

Modifications etc. (not altering text)

- C5** Ss. 70–76 applied by [Enterprise and New Towns \(Scotland\) Act 1990 \(c. 35, SIF 64\), s. 36\(3\)](#)
Ss. 70-78 (as originally enacted) incorporated (with modifications) (1.4.2002) by [2002 asp 33, s. 46\(3\)](#)
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74 **Company to make compensation for injury done to mines;**

The company shall from time to time pay to the owner, lessee, or occupier of any such mines extending so as to be on both sides of the railway all such additional expences and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands lying over such mines by the railway, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the railway, and for any minerals not purchased by the company which cannot be obtained by reason of making and maintaining the railway; and if any dispute or question shall arise between the company, and such owner, lessee, or occupier as aforesaid, touching the amount of such losses or expences, the same shall be settled as in other cases of disputed compensation.

Modifications etc. (not altering text)

- C6** Ss. 70–76 applied by [Enterprise and New Towns \(Scotland\) Act 1990 \(c. 35, SIF 64\), s. 36\(3\)](#)
Ss. 70-78 (as originally enacted) incorporated (with modifications) (1.4.2002) by [2002 asp 33, s. 46\(3\)](#)
[\(a\)](#) (with s. 67); [S.S.I. 2002/118, art. 2](#)

75 **and also for any airway or other work made necessary by the railway.**

If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines the working whereof shall have been so prevented as aforesaid (and not being the owner, lessee, or occupier of such mines), by reason of the making of any such airway or other work as aforesaid, which, or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the company shall make full compensation to such owner or occupier of the surface lands for the loss or damage so sustained by him.

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- C7** Ss. 70–76 applied by [Enterprise and New Towns \(Scotland\) Act 1990 \(c. 35, SIF 64\), s. 36\(3\)](#)
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(a) (with s. 67); [S.S.I. 2002/118, art. 2](#)

76 *Power to company to enter and inspect the working of mines.*

For better ascertaining whether any such mines are being worked or have been worked so as to damage the railway or works, it shall be lawful for the company, after giving twenty-four hours notice in writing to enter upon any lands through or near which the railway passes wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith; and for that purpose it shall be lawful for them to make use of any apparatus or machinery connected with such mines belonging to the owner, lessee, or occupier of such mines upon payment of the reasonable cost of using and working the same, and of any loss thereby occasioned to the working of the mines, or otherwise, and to use all necessary means for discovering the distance from the railway to the parts of such mines which are being worked or about so to be.

Modifications etc. (not altering text)

- C8** Ss. 70–76 applied by [Enterprise and New Towns \(Scotland\) Act 1990 \(c. 35, SIF 64\), s. 36\(3\)](#)
Ss. 70-78 (as originally enacted) incorporated (with modifications) (1.4.2002) by [2002 asp 33, s. 46\(3\)](#)
(a) (with s. 67); [S.S.I. 2002/118, art. 2](#)

77 *Penalty for refusal to allow inspection.*

If any such owner, lessee, or occupier of any such mine shall refuse to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the company a sum not exceeding twenty pounds.

Modifications etc. (not altering text)

- C9** S. 77 applied by [Enterprise and New Towns \(Scotland\) Act 1990 \(c. 35, SIF 64\), s. 36\(3\)](#)
Ss. 70-78 (as originally enacted) incorporated (with modifications) (1.4.2002) by [2002 asp 3, s. 46\(3\)](#)
(a) (with s. 67); [S.S.I. 2002/118, art. 2](#)

78 *If mines improperly worked, supports to be made.*

It it appear that any such mines have been worked contrary to the provisions of this or the special Act, the company may, if they think fit, give notice to the owner, lessee, or occupier thereof to construct such supports or works, and to adopt such means as may be necessary or proper for making safe the railway, and preventing injury thereto; and if after such notice any such owner, lessee, or occupier do not forthwith proceed to construct the works necessary for making safe the railway, the company may themselves construct such works, and recover the expence thereof from such owner, lessee or occupier by action in any competent court.

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- C10** S. 78 applied by [Enterprise and New Towns \(Scotland\) Act 1990 \(c. 35, SIF 64\)](#), [s. 36\(3\)](#)
Ss. 70-78 (as originally enacted) incorporated (with modifications) (1.4.2002) by [2002 asp 33, s. 46\(3\)](#)
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