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THE
COAL ACT
1938

BY

PETER G. ROBERTS

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PREFACE.



IN this book I have endeavoured to set out the main provisions of the Coal Act, and to point out the difficulties which may confront a practising lawyer dealing with the transfer of coal under the Act. It has not been possible in a book of this size to deal at length with the details of the problems which may arise, but I have aimed at setting out the principles upon which some of such problems may be solved.

It is hoped that this book, with its Index and texts of all the recent important Acts* dealing with the Coal industry, may be a useful book of reference to those engaged in the everyday management of coal mines and coal estates.

I am very grateful both to Mr. H. V. RABAGLIATI, K.C., and to Mr. HUGH MACMASTER, of New Court, Lincoln's Inn, who read the book in manuscript and made many valuable suggestions; and also to Mr. G. HAMILTON SHARP, LL.B. (Lond.), Solicitor, who has compiled the Index.

P. G. R.

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August, 1938.

* While being accurate, the reproduction of these Acts of Parliament does not purport to be published by authority.

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THE COAL ACT, 1938.

EXPLANATION AND INTRODUCTION.

THE Coal Act, 1938, is divided into four parts. Part I. deals with the unification of royalties and comprises sect. 1 up to and including sect. 45. Part II. deals with the reduction in the number of coal-mining undertakings, and comprises sect. 46 up to and including sect. 49. Part III., which is sect. 50, re-enacts certain provisions of Part I. of the Coal Mines Act, 1930, dealing with selling schemes; and Part IV., ending with sect. 58, deals with matters classed as "Miscellaneous and General."

This book deals in detail with the unification of royalties and the procedure set out in the first five Schedules; but it also deals more broadly with powers of the Coal Commission which is created by the Act with reference to both the unification of royalties and amalgamations. Part IV. of this book explains briefly the new procedure set up for the continuation and regulation of the quota and selling schemes.

The text of the Act is set out together with the texts of previous important enactments dealing with coal passed during the last fifteen years, during which period Parliament has compiled a body of statutory law dealing with all phases of the coal industry.

The object of Part I. of the Act is to create a Coal Commission which shall acquire certain rights in coal. The Act deals

frequently with the words "leases of coal and mines of coal," and it is most convenient to set out at the beginning of this commentary the definition given to these words by the Act.

"Lease" is defined as including—

an under-lease, a tenancy and an agreement for a lease, under-lease, or tenancy (but not an option to take a lease, under-lease, or tenancy), and in relation to such an agreement the expressions "term of years" and "estate owner" mean respectively the term agreed to be created and the person entitled to have that term vested in him; "lease" and "under-lease" each include a licence (whether personal or by way of profit à prendre) that confers a right to work and carry away coal or a right to use a mine of coal for a coal-mining purpose, and in relation to a licence the expressions "rent," "reversion," "term of years" and other expressions importing a reference to a lease shall be construed accordingly with the requisite adaptations; neither "lease" nor "under-lease" includes a mortgage.

"Coal"—

- (a) means bituminous coal, cannel coal and anthracite; but
- (b) shall, in a case in which minerals or substances other than bituminous coal, cannel coal or anthracite are comprised in a lease subsisting at the valuation date which confers a right to work and carry away both that coal or anthracite and those other minerals or substances, include those other minerals or substances, so however that the Commission may, by direction given in the prescribed manner before the expiration of six months from the valuation date, exclude any such other minerals or substances from the operation of this paragraph, and, in the case of any such other minerals or substances which in the opinion of the Commission are or would normally

be worked by surface workings and not in association with that coal or anthracite, the Commission shall, if any person interested therein makes application to the Commission in that behalf before the expiration of six months from the valuation date, by direction exclude them from the operation of this paragraph; and

- (c) except in the case of references to the making merchantable or disposing of coal, means coal that is unworked, that is to say, not so severed as to have become a chattel.

“ Mine of coal ” is defined as—

a space which is occupied by coal or which has been excavated underground for a coal-mining purpose, and includes a shaft and an adit made for a coal-mining purpose.

However, for simplicity in the text of this book, unless the context otherwise requires, “ coal ” is used as including both coal and a mine of coal as defined above.

The provisions in the text of the Act as to Crown Lands, the Forest of Dean, and Scotland are not dealt with specifically in this book, but where any difference occurs reference may be made to the text of the appropriate Act at the end of the book.

Part I.

THE COMMISSION, ITS CONSTITUTION AND POWERS.

CHAPTER I.

THE COAL COMMISSION, ITS CONSTITUTION AND POWERS.

SUMMARY.

- Paragraph A.—*The Composition of the Coal Commission.*
- „ B.—*Powers of Management.*
- „ C.—*Financial Provisions.*
- „ D.—*Powers under Part II. dealing with Amalgamation Schemes.*
- „ E.—*Powers under the Coal (Registration of Ownership) Act, 1937.*
- „ F.—*Power to appear before the Railway and Canal Commission.*

A.—The Coal Commission.

The intention of the Coal Act, 1938, is to create a body called the Coal Commission, which will (i) acquire the fee simple of all the holdings of coal in the country, and (ii) deal with it for the benefit of the coal industry. The Coal Commission itself which is set up by sect. 1 of the Act, is a body independent of the Government, although the members are appointed by the Board of Trade.

The Commission is a body corporate with:—

- (a) Perpetual succession.
- (b) Common seal.
- (c) Power to hold land without licence in mortmain. This provision is necessary to avoid the application of the Mortmain and Charitable Uses Act, 1888, Part I., and thus to avoid the possibility of forfeiture to the Crown.

The Commission will consist of five members, including a chairman and deputy-chairman, and three members will constitute a quorum. One member shall be a person of administrative or other practical experience, and one member a person who has been a wage earner in the coal-mining industry.

The terms under which the members are appointed and hold office are somewhat uncertain by reason of the lack of perspicuity of para. 3 of the First Schedule:—

The appointment of a member of the Commission shall, subject to the provisions of this Schedule, be for such term, not being less than five years or more than ten years, as may be determined by the Board of Trade with the approval of the Treasury before his appointment, and shall be subject to such conditions as may be so determined.

The words which may become important are “subject to such conditions as may be so determined”; their strict meaning must be “may be determined by the Board of Trade with the approval of the Treasury before his appointment.” If this is correct then the Board of Trade and the Treasury together can impose any conditions on a Commissioner as to the terms of his office, subject to the provisions as to duration, in consequence of the breach of which he would cease to hold such office. This opens up the possibility of the Commissioners becoming subservient to the Board of Trade and the Treasury, by reason

of the conditions imposed under this paragraph. The only check is that the Commission must act under the provisions and within the scope of this Act.

The disqualifications for holding a post as a Commissioner are:—

- (a) Being a member of the House of Commons.
- (b) Being an employee, directly or indirectly, of the coal mining industry.
- (c) Holding, directly or indirectly, any interest or security in the coal mining industry.
- (d) Absence from meetings of the Commission for a period of over six months, unless permission from the Board of Trade is obtained.

The Commission, subject to provisions as to the use of the Common Seal (a), may regulate their own procedure.

The salaries and expenses of the members of the Commission and their servants will be paid out of the revenues of the Commission. The amount of salary to be paid to the members of the Commission is to be determined by the Board of Trade and the Treasury.

B.—The General Powers and Management of the Commission.

After the vesting in the Commission of the coal and property and rights associated therewith, save for a few immaterial exceptions, the Commission may not alienate the fee simple in such coal. The only methods in which the Commission may deal with the premises are:—

- (1) By granting leases or licences for the carrying on of operations for coal mining purposes; or

(a) Sect. 1 (3), First Schedule, paras 12—14.

- (2) Where premises are not for the time being subject to a coal mining lease they may carry on such operations as may be requisite for the preserving of those premises in good condition.

Otherwise the Commission shall not themselves engage in business of coal mining or carry on any operations for coal mining purposes.

Provision is made by sect. 2 (3) that there shall be a Minister in the House of Commons, who shall be responsible to the House and shall answer questions as to the general functioning of the Commission. Although the composition of the Commission is non-political the members are governed in the general exercise of their functions by directions from the Board of Trade. Since the individual members may not be dismissed, except on grounds of non-compliance with certain rules laid down in the Third Schedule to the Act, a certain degree of continuity of policy is assured.

The general provisions governing the management by the Commission of the coal acquired by them are set out in sect. 2 (1)—

It shall be the duty of the Commission to exercise their functions as owners of the fee simple in coal and mines of coal and of the property and rights to be acquired by them therewith in such manner as they may think best for promoting the interests, efficiency, and better organisation of the coal-mining industry.

And by sect. 25 (3), subject to certain provisions as to the reduction of rent in hard cases, when sufficient funds are available, "the Commission shall not reduce any rent during the currency of the lease by which it is reserved, and in granting new leases the Commission shall reserve the best rent which in their opinion can reasonably be obtained," having regard generally to the provisions of the Act. However, the two sub-sections last

mentioned must be read together, and it then appears that the Commission must obtain the best rent consistent with their duty to promote the interests, efficiency and better organisation of the coal industry. Thus, although the Commission are entitled to assume competition among persons actually engaged in working coal mines, they cannot use, or rather abuse, their position as monopolists to the detriment of the coal-mining industry. It has been pointed out by the Minister of Mines that the Commission are to be "the best possible landlord," and that therefore it is unnecessary to provide machinery for calling in question the decisions made in the exercise of their discretion.

The Board of Trade, through the President of the Board of Trade, is to be responsible for the proper functioning of the Commission to Parliament. This is provided for by sect. 2 (3):—

The Board of Trade may give to the Commission general directions as to the exercise and performance by the Commission of their functions under this Part of this Act in relation to matters appearing to the Board to affect the national interest, including all matters affecting the safety of the working of coal, and the Commission shall give effect to any such directions:

Provided that nothing in this subsection shall be construed as conferring on the Board any power to give a direction inconsistent with any provisions of the Coal Mines Act, 1911, or of any other enactment relating to the control or management of a mine within the meaning of that Act, or of any regulations made under that Act or any such other enactment.

This is intended, as stated above, to give the House of Commons the right to put questions to the President of the Board of Trade in order to give publicity to the manner in which the Commission exercises the rights and discharges the duties conferred and imposed on them by the Act. In order that the Board of Trade, by the directions mentioned above, should not be able to override any of the many statutory enactments dealing with the safety

and management of coal, the proviso dealing with the Coal Mines Act, 1911, or any other enactment is inserted.

It is not intended that the Board of Trade shall be able to override by these directions these statutory enactments which exist relating to the safety and proper running of coal mines, and in particular the provisions relating thereto set out in the Coal Mines Act, 1911.

Thus any provision so laid down must be observed by the Commission, but where any new circumstance arises not covered by any such enactment, then the Board of Trade will have power to issue directions under this section.

C.—Financial Provisions.

The general policy of the Legislature as to the raising of money for the many needs and requirements occasioned by this Act is summed up by sects. 23 to 30. As will be seen in Chapter VII., the interests which are to be acquired by the Commission are divided into two sections: one called principal coal hereditaments, comprising all property and rights in coal, within the ordinary meaning of the word, and the other called subsidiary coal hereditaments, comprising rights adversely affecting the surface of land by reason of the working or existence of coal; together with other minerals worked with or under the same lease of coal.

In the payment of compensation for the acquisition of subsidiary coal hereditaments, the Commission must pay such sum as may be awarded by the Valuation Boards, but as regards the principal coal hereditaments the sum of £66,450,000 has been allocated by the Act, and that sum must be paid by the Commission in some proportion or another to all persons successfully claiming compensation.

This leads to a very unusual position, because it becomes immaterial to the Commission what values are placed on individual

holdings for compensation purposes under the heading of principal coal hereditaments. If one holding is valued too high, that only affects the sums to be received by the other persons claiming compensation—and does not put the Commission as purchaser in any more disadvantageous position. This becomes important when the method of ascertaining such sums comes under discussion. (See p. 66.)

The Commission are entitled to borrow from the public enough money to pay for all such capital expenditure required for the purchase of coal hereditaments and all expenses incurred therein up to the time the Commission become a “going concern,” by reason of the receipt of rents and royalties. The details of these financial provisions (sects. 23 to 30) are as follows:—

(a) The Commission may borrow such sum of money as is necessary to discharge—

- (1) the payment of compensation for the coal hereditaments acquired;
- (2) any expense incurred;
- (3) the interest on such sum for the first year of operation; and
- (4) the cost of any other operation within the powers of the Commission, which ought in the opinion of the Board of Trade to be spread over a term of years.

(b) Such sums may be borrowed on Coal Commission Stock, which shall be a charge on all the property and revenues of the Commission and all dealings in such Stock shall be in accordance with regulations laid down by the Board of Trade with the approval of the Treasury.

(c) The Treasury may guarantee in such manner and on such conditions as they think fit the payment of the principal and interest on any loan proposed to be raised by the Commission, and the liability under any such guarantee shall be a charge upon the Consolidated Fund of the United Kingdom.

(d) The Commission shall create out of the moneys received as income by way of rent and otherwise a Coal Fund. All the

financial transactions of the Commission shall be dealt with through that fund.

(e) The Board of Trade, with the approval of the Treasury, shall in each year certify an amount called "the prescribed appropriation to reserve" which shall be set aside out of the excess of revenue over outgoings in such year. Those amounts shall constitute a Reserve Fund.

(f) The Board of Trade, with the approval of the Treasury, shall then state a "prescribed minimum reserve" to be kept in the Reserve Fund to meet any deficiency or extraordinary claim made on the Commission.

(g) If at any time the Reserve Fund rises over the "prescribed minimum reserve," then that excess may be used in purchasing stock for cancellation.

(h) Where the excess of receipts over liabilities, *i.e.*, the profit for the year, amounts to a sum greater than the "prescribed appropriation to reserve" in any one year, and that profit appears to the Commission likely to be maintained on the average from year to year, they may reduce, so as to use up some portion of that sum, the following rents:—

- (1) Underground wayleaves.
- (2) Excessive rents of particular lessees.
- (3) Average rents in a district where such average rents appear to be higher than in other districts.
- (4) Where all the above have been reduced, then rents may be reduced generally.

Therefore the policy of the Legislature is that eventually the burden of the payment of royalties will be lifted from the coal industry. However, before any money is available for the reduction of excessive or any rents, the following liabilities of the Commission must be discharged, *viz.*:—

- (a) The interest on coal commission stock.
- (b) The expenses of the Commission and their servants and agents.

- (c) Such amounts as may be prescribed as necessary to be put to reserve for contingencies and repayment of capital.

D.—Power under Part II. of the Act dealing with Amalgamation Schemes.

The various industrial troubles in the coal trade after the Great War started a series of enactments passed with the intention of promoting the organisation and efficiency of the coal industry. These enactments have followed two courses: one dealing with the organisation of the sale of coal, and the other dealing with the organisation and amalgamation of the production units. The legislation dealing with selling schemes, and dealt with in a general way in Chapter VIII., has proved itself to be useful and beneficial to the industry. In fact, it has in itself done away with most of the evils which the legislation dealing with amalgamations has aimed at remedying. The general policy of the Legislature with regard to amalgamations has been based on the supposition, that for efficiency of coal production it is necessary to have large producing units.

The first Act dealing with the subject of amalgamation was passed in 1926, giving individual owners power to bring forward amalgamation schemes which would be binding upon a locality, even upon a concern objecting, if such objection was unreasonable. This was found to have some response among the colliery companies generally, and in 1930 the Coal Mines Act gave the Board of Trade certain powers of compelling collieries to amalgamate. The provisions of that Act were shown to be clumsy and almost impracticable by reason of the number of conditions with which any comprehensive scheme had to comply. Only one case was fully tested before the Courts. As it has been found that most of the evils are being overcome by reason of the successful working of the selling schemes, the machinery of the 1930 Act has not been used to any great extent.

In the Coal Act provision is made, as set out below, to make more practical the working of the two previous enactments, but even now the whole structure is based upon the assumption that amalgamations in themselves are conducive to economic coal mining, and it may be in only a limited number of cases, if at all, that this can now be successfully proved.

The schemes which can be submitted to the Board of Trade under Part I. of the Mining Industry Act, 1926, are:—

- (1) Total amalgamation schemes.
- (2) Total absorption schemes.
- (3) Partial amalgamation or absorption schemes.

The Board of Trade was to submit a scheme to the Railway and Canal Commission, who, if they were satisfied that the scheme conformed to the requirements of Part I. of the 1926 Act, and after having taken into consideration any objections to the scheme, were given power to confirm, modify or reject the scheme as they thought fit. The Railway and Canal Commission were bound, however, to confirm the scheme if—

- (a) confirmation of the scheme would be in the national interest; and
- (b) the terms of the scheme were fair and equitable to all persons affected thereby.

As advantage was taken of the provisions of the Act by colliery owners individually, Part II. of the Coal Mines Act, 1930, was enacted. Under that Act the Coal Mines Reorganisation Committee was set up with powers to require collieries to submit schemes, and if those collieries failed so to do, then the Coal Mines Reorganisation Committee was to submit schemes itself. However, by sect. 13 (2) of the 1930 Act, amending sect. 7 of the 1926 Act, the Railway and Canal Commission were not to sanction such schemes unless—

- (1) it would be to the national interest to do so;

- (2) in the case of an amalgamation scheme that scheme—
- (a) would result in lowering the cost of production or disposal of coal; and
 - (b) would not be financially injurious to any of the undertakings proposed to be amalgamated unless the scheme contained provisions for the purchase at a price to be fixed in default of agreement, by arbitration, of any such undertaking; and
- (3) that the terms of the scheme were fair and equitable to all persons affected thereby.

In 1935 the application for partial amalgamation of coal mines in West Yorkshire was brought before the Railway and Canal Commission (Times Law Reports, Vol. 51, 1934—35, p. 462). The Commission held in that case that they were not satisfied that the requirements of national interest, lowering of costs, no financial injury, or equity of the provisions were proved. It has been the general opinion since then that to frame a scheme to bring every detail within the provisions of the Act would be impracticable, but nevertheless many schemes have been made without recourse to the Railway and Canal Commission under sect. 13 (7) of the Act of 1930.

Now the provisions of Part II. of the Coal Act, 1938, once again alter the jurisdiction of the Railway and Canal Commission in these matters, as—

- (a) The functions of the Coal Mines Reorganisation Committee are transferred to the Coal Commission, and the Coal Mines Reorganisation Committee ceases to exist.
- (b) The question of national interest is taken out of the hands of the Railway and Canal Commission and made a matter for the decision of Parliament.
- (c) By sect. 47 (1) of the Coal Act—

Where in the opinion of the Commission the number of separate undertakings consisting of or comprising coal mines (hereinafter referred to as “coal-mining

undertakings") to which the coal in any area is leased is so great as to be detrimental to the economical and efficient working, treating or disposing thereof, it shall be the duty of the Commission, to endeavour to effect a reduction in the number of such undertakings.

Thus it is the duty of the Commission to encourage individual collieries to promote for themselves amalgamation schemes. In no case shall any scheme be submitted to the Board of Trade before the 31st of December, 1939, and the Commission shall not exercise their powers of submitting such a scheme to the Railway and Canal Commission under Part I. of the 1926 Act except in pursuance of the provisions set out in the Coal Act. Those provisions may be summarised as follows:—

- (1) The Commission may, if they are of the opinion that adequate progress in the reduction of the number of coal mining undertakings cannot otherwise be made, make a report to the Board of Trade containing the proposals of the Commission and the advantages which are expected to follow therefrom.
- (2) After receiving the report, the Board of Trade may lay it before Parliament and then make a provisional order declaring that it is expedient in the national interest that the number of coal mining undertakings should be reduced in the area with respect to which the recommendation was made.
- (3) The order shall show clearly what colliery undertakings are involved and shall be freely published in the press.
- (4) By using the provisional order procedure, the Legislature ensure that where such an order is opposed the parties will have an opportunity of arguing their case and calling evidence before a committee set up by Parliament for that purpose. For the full procedure under a Provisional Order, see Erskine May's Parliamentary Practice, 12th ed., p. 788.

- (5) The order shall be of no effect unless Parliament pass an Act confirming such order, with any alterations thereto that may be necessary. Such an Act shall not come into force before the 1st of January, 1940.

Such an order having been confirmed, the scheme shall then be brought before the Railway and Canal Commission to decide whether or not it falls within the provisions laid down by the 1926 and 1930 Acts, as amended by the Coal Act.

In order to widen the scope of the provisions within which such a scheme may be brought before the Railway and Canal Commission, the second paragraph set out in the Sixth Schedule to the 1938 Act is to be substituted for sect. 13 (2) of the 1930 Act (which is in its turn to be inserted in the Act of 1926). In order to see the full text of the three Acts relating to this provision as now amended, see p. 284.

The result of those amendments is that now the Railway and Canal Commission—

- (1) may make such alterations as they see fit to render the scheme fair and equitable upon all parties;
- (2) after making such alterations (if any) and after giving notice thereof, shall confirm the scheme, except that
- (3) they may only refuse to confirm this scheme if it does not conform in its structure to the provisions set out in the 1926 Act, as amended by the 1930 Act, as amended by the Coal Act.

The Coal Act then provides, in sects. 48 and 49, for the powers of the Commission as to obtaining information for purposes of Part II. and for exemption from stamp duty in respect of amalgamations or absorptions schemes executed thereunder.

E.—Powers of the Commission under the Coal (Registration of Ownership) Act, 1937.

The Commission is to take over the functions of the Board of Trade under the Registration Act, except so far as the Board of Trade shall retain its right to make Rules under the Act.

All expenses incurred by the Board of Trade under the Registration Act shall be paid by the Commission to the Board of Trade, and the sum so paid is to be included in the amount which the Commission may raise under their powers to borrow contained in sect. 28.

The Registration Act therefore continues in existence, and under provisions set out in the Coal Act the latest date for registration thereunder shall be six months from the 1st of January, 1939, the valuation date.

F.—Power to appear before the Railway and Canal Commission.

One other power is given to the Commission which must be mentioned here, and that is the power, under sect. 22 (5), to appear and be heard at any hearing on an application before the Railway and Canal Commission. This privilege has long been enjoyed by the Board of Trade, but has not frequently been exercised.

Part II.**THE VESTING IN THE COMMISSION OF COAL AND OTHER RIGHTS.****INTRODUCTION.**

THE machinery set in motion by the Act as to the vesting of the interests therein set out, covers a period of nearly four years, and is divided into two important periods. Part II. of this book takes these periods chronologically and sets out the provisions affecting coal in relation to the relevant dates.

The first period is from the passing of the Act on 29th July, 1938, until the valuation date, on the 1st January, 1939, during which time any person having an interest in coal is to hold that interest in a fiduciary capacity as trustee, for-giving effect to the provisions of the Act. All dealings during this period are subject to this trust.

The second period, called in the Act the "interim period," is from the valuation date until the vesting date, which is the 1st of July, 1942. During that period any person who owns any interest which is to be acquired by the Commission is deemed to hold that interest under a notional contract for sale of such interest to the Commission, and all dealings during that period are subject to that restriction.

For the purposes of valuation, the interests for which compensation are to be payable are those interests which are existing on the valuation date. The proceedings of such valuation are to take place during the interim period. It is the

intention of the Legislature that all such proceedings shall be finished by the vesting date, but having regard to the thousands of interests with which the Commission and the various valuation bodies have to deal, it is doubtful whether they will be finished by that date.

It is the intention of the Legislature that the Commission shall acquire all the interests of the landlord or person receiving rent or royalty, but to leave undisturbed all persons actually working coal. The interests which the Commission are thus to acquire are "acquired interests," and the interests which they are not to disturb are "retained interests." (See p. 36 *et seqq.*)

TIME TABLE OF IMPORTANT DATES FIXED BY THE
ACT.

- 29th July, 1938 ... THE PASSING OF THE ACT.
For general provisions taking effect on this date, see Chapter II.
- 29th Aug., 1938 ... Notification of particulars of leases must be completed and sent to the Commission by all lessees of coal.
- 1st Jan., 1939 ... VALUATION DATE.
For general provisions taking effect on this date, see Chapter III.
After this date persons registering coal holdings must pay their own costs.
- 1st July, 1939 ... The end of the six month period in which:—
- (1) a person having an acquired interest may—
 - (a) register a coal holding;
 - (b) put in a notice of claim;
 - (2) a person intervening may give notice of an error or omission in particulars registered.

- 1st Jan., 1940 ... After this date the Board of Trade may make an order as to an Amalgamation Scheme. This is the earliest date on which the Commission may make payments on account of compensation without the consent of the person entitled.
- 1st July, 1941 ... The date from which a person entitled under sect. 10 may require the Commission to take an assignment of rent.
- 1st July, 1942 ... VESTING DATE.
For general provisions taking effect on this date, see Chapter IV.
After this date persons having acquired interests may in certain circumstances demand of the Commission part payment.
- [31st Dec., 1942 ... End of period in which Part I. of the Coal Mines Act, 1930, as amended, shall continue in force, unless renewed.]

Note sect. 38.—"Where any period or date is specified in this Part of this Act or prescribed thereunder as the period within which or the date on or before which any act or thing is to be done by any person other than the Commission, the Commission shall have power, on application being made to them in that behalf, to extend that period or to fix a later date for the doing of that act or thing:

Provided that this section shall have effect, in relation to an act or thing to be done to or before the Board of Trade, with the substitution for the reference to the Commission of a reference to the Board."

CHAPTER II.

PROVISIONS TO TAKE EFFECT ON THE PASSING OF THE ACT.

SUMMARY.

- Paragraph A.—*Persons having an Interest in Coal to hold that Interest in a Fiduciary Capacity until the Valuation Date.*
- „ B.—*Duty of Lessees to give Notice of their Leases.*
- „ C.—*Restriction on Powers to acquire Coal under Schemes for the Compulsory Acquisition of Land.*
-

A.—Persons having an Interest in Coal to hold that Interest in a Fiduciary Capacity until the Valuation Date.

The right to deal with property and interests in coal are restricted, as from the passing of the Act, by sect. 18:—

As from the date of the passing of this Act until the valuation date, all persons interested in coal or a mine of coal shall be treated as holding their respective interests in a fiduciary capacity for giving effect to the provisions of this Part of this Act, and as being subject accordingly to an obligation to refrain from any dealing therewith (not being a disposition or other dealing which might reasonably have been effected in the ordinary course of business if this Act had not been passed) calculated to give a factitious or artificial value to a holding or to prejudice the interests or powers to be acquired by the Commission under this Part of this Act (a).

(a) It must be noticed that before the valuation date all persons "having any interest in coal" are trustees of the coal concerned, while only persons having "acquired interests" are bound by the contract for sale of the acquired interests, which, as will be seen in the next chapter, covers the period between the valuation and the vesting date.

However, this section leaves open a number of points of difficulty.

- (a) What is a factitious or artificial value? The word "factitious" seems redundant. It means artificial. However, the use of the term artificial value must assume the existence of a natural value which can be made artificial; such a natural value will be that value agreed between a willing purchaser and a willing seller (*b*). But although dealings may alter this natural value one way or another, it is difficult to see how that value can be made artificial. The only way would be to impose some restraint that would make it impossible for a willing buyer and willing seller to agree. It is clear, however, that the intention of the Legislature is to cover any dealing which is artificial in its nature.
- (b) "Any dealing calculated to prejudice the interest or powers to be acquired by the Commission under this Part of this Act." The interests or powers to be acquired by the Commission do not crystallise until the valuation date, when the notional contract for sale comes into operation. It is therefore impossible to tell what those interests are, until that date. Thus, strictly, any dealing may be effected provided that the effect of the transaction is exhausted before the valuation date and such a dealing would not be a breach of the fiduciary duty.
- (c) Dealings may be effected which are in the ordinary course of business. Whether a particular dealing comes within this exception will depend upon the facts of each case, but it is not made clear whether "the ordinary course of business" referred to in the section is that of a particular pit or locality or of the country generally. Customs of industry differ widely according to the district of operation, so that the question may be one of some importance. The test is probably subjective—

(b) Sect. 7 (4): see p. 114.

a dealing being regarded as one in the ordinary course of business if a dealing of that kind would have been a common occurrence as regards those parties before the passing of the Act.

If, therefore, a dealing is effected which the Courts hold to be in breach of this fiduciary duty, the party dealing will have to pay to the Commission such sum in damages equal to the amount that the Commission may have lost by way of rents, royalties or otherwise.

In any event the section is ambiguous and difficult to explain, and the doubt which exists as to its true meaning should be sufficient to prevent a person of ordinary caution from participating in any but the most usual dealings in coal between the passing of the Act and the valuation date.

B.—Duty of Lessees to Give Notice of their Holdings within One Month of the passing of the Act.

In order to facilitate the acquiring of information by the Commission, by sect. 14, notice in writing of the existence of any lease together with particulars as to the date of, parties to, and premises contained in, any such lease must be given to the Commission by the lessee. If the lease is in existence on the passing of the Act, then notice must be given and particulars supplied within one month of the passing of the Act. If the lease is granted between the passing of the Act and the valuation date notice must be given or particulars supplied within one month of the granting of such lease. The commission may by notice require a copy, or, if the lease is by parol, full particulars, of the lease, to be delivered at the expense of the Commission within one month of such notice. (Sect. 14 (1).)

Any person who makes default in compliance with the said provisions as to the giving of notice or supplying of copies or

particulars is liable on summary conviction to a fine not exceeding £50 and to a further fine not exceeding £10 for every day during which he is in default. (Sect. 14 (5).)

C.—Restriction on Powers to Acquire Coal under Schemes for the Compulsory Acquisition of Land.

In certain circumstances a restriction on the transfer of coal after the passing of the Act is laid down in sect. 17—

(1) A power to acquire land compulsorily conferred by or under any enactment (including, unless the contrary intention appears therein, an enactment passed after the date of the passing of this Act) shall not be exercisable on or after the date of the passing of this Act in respect of any coal or mine of coal, other than coal that is necessary to be dug or carried away in the course of operations for the purposes of which the power is conferred or a mine that is necessary to be used in the course of such operations.

The result of this section is that where a person could have acquired land under statutory powers, which land would have included coal or minerals worked with coal, that person is prohibited from acquiring such coal or minerals (*c*).

A small exception is made where coal must be dug and carried away in the exercise by that person (which in these cases will usually be a statutory undertaker) of his statutory duties. (Sect. 17 (1).) (*d*).

(*c*) This does not, of course, affect any right of support or any other rights adversely affecting such coal, as, for example, rights of railways under sect. 15 of the Mines (Working Facilities and Support) Act, 1923.

(*d*) See p. 127.

CHAPTER III.

PROVISIONS TAKING EFFECT ON THE VALUATION DATE.

SUMMARY.

- Paragraph A.—*The Notional Contracts for Sale.*
„ B.—*Provisions as to the Creation or Variation of Leases during the Interim Period.*
„ C.—*Provisions as to the Assigning of Rents.*
„ D.—*The Position of the Freeholder before the Vesting Date.*
-

A.—The Notional Contracts for Sale.

For the purpose of limiting dealings with interests in coal before the vesting date, by sect. 3 (2), persons holding such interests are deemed to hold their interests subject to a notional contract for the sale thereof to the Commission, completion to take place on the vesting date.

By sect. 4 (1) the premises comprised in the notional contracts for sale are defined as including all property and rights which vest in the Commission on the vesting date. (See p. 110.)

This device is adopted, as it is found convenient to apply the well-known rules (subject to some exceptions, to provide for fundamental differences) governing the relation of vendor and purchaser to the acquisition by the Commission of the interests in coal which are to be vested in them by the Act.

The vesting of the interests are governed by the rules of law with regard to a conveyance as are set out in the Law of Property Act, 1925.

By sect. 8—

The rules of law and equity that regulate rights and obligations in relation to land that is the subject of a contract for sale in respect of the period between the date of the contract and the date fixed for completion thereof shall have effect in relation to the premises that are to vest in the Commission by virtue of this Part of this Act in respect of the interim period.

Then are set out three modifications providing for the fact that—

- (1) as the vesting is not in conformity with an actual contract for sale and, as in fact no sale takes place, the vesting will be different from an ordinary conveyance;
- (2) the premises to be acquired are coal and mines of coal, and not ordinary real estate; in this regard a stipulation is included that no person shall be required to exercise any greater measure of care in relation to the premises than that 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”;
- (3) the premises are a wasting asset; and that coal is being worked during the interim period. The royalty owner is to receive the rents and profits therefrom, and is not accountable therefor to the Commission, as he commonly might be if he were selling a business in the ordinary way.

B.—Provisions as to the Creation or Variation of Leases during the Interim Period.

The Commission are to provide facilities for working lessees to re-arrange their interests or to acquire new interests before the vesting date, despite the notional contract for sale, provided

that the dispositions conform with the provisions set out in the Act, and such dispositions will continue to be effective after the vesting date.

1. *Interim Leases* (sect. 9).

Where it is proposed to make, vary, or renew a lease during the period between the valuation date and the vesting date, a draft of the proposed lease or other instrument *must* be delivered to the Commission at least two months before the date on which such lease or other instrument is to be executed.

Where any disposition, other than a lease, or the renewal, or the variation of an existing lease affecting any coal-mining premises is proposed, then notice of that disposition *may* be given to the Commission (sect. 9 (2)).

These two provisions, as to giving notice of dealings in coal during the interim period, give the Commission an opportunity to consider whether any contemplated transaction is in conformity with the rules referred to in sect. 8 governing dealings with coal held subject to the notional contract for sale. The Commission may within two months before the lease or other instrument is to be executed, institute proceedings in the High Court, and the Court is given jurisdiction to decide whether or no the contemplated transaction is in conformity with such rules. If the Commission do not institute proceedings within the prescribed period they are estopped from contending at a subsequent date that the lease or disposition is not in conformity with such rules.

Where, however, any lease variation or renewal is effected without the prescribed notice being given or where any such other disposition contravenes the said rules of law and equity, then in either case, with certain exceptions the transaction is void as against the Commission, and the Commission may sue at any time for damages which they may have suffered by reason of the transaction.

2. *A Lease Consolidation Scheme* (sect. 12).

By a lease consolidation scheme the Commission may give a working lessee the opportunity of working under one lease the whole of his "take" or colliery area during the interim period, and any such scheme will continue in force after the vesting date. The advantages of this procedure to the lessee will depend upon the circumstances of each case.

(1) As to royalties, an average of the royalties payable before the passing of the Act may be worked out, and that average figure may be the new royalty applicable to the whole area covered by the scheme. It may be that where a colliery is anxious to work more intensively an area of coal in respect of which a high royalty is payable, a scheme under the Act would be advantageous, as under its provisions the royalty affecting the area desired to be worked would be reduced to the average royalty.

(2) As to minimum rents, there may in certain cases be advantages to collieries who have contracted to pay minimum rents for coal, which they now find they cannot work, or have paid in minimum rent already a greater sum than can be recovered as "shorts" by working. The provisions of a new scheme would start from the date of its execution, and an average minimum rent might be reserved over the whole "take," equal to the aggregate amount of minimum rent which that colliery was paying before. All old obligations to pay minimum rent for unproductive coal would cease. As an example: a colliery has four areas in lease from different landlords, each area has a minimum rent of £500 per year, making £2,000 in all. Each lease has been running for three years and has seventeen years to run. One area it is found is insulated by a fault and cannot be worked for ten more years. That colliery would, if the Act had not been passed, have had to pay in any event £10,000 in minimum rent on that one area, which it might be impossible to get back by way of "shorts." Under a lease

consolidation scheme the colliery would avoid their liability to pay this sum, by cutting their losses on the £1,500 already paid, and taking a minimum rent over the whole area at the same amount of £2,000, which can easily be covered by workings in the other three areas, thereby saving all the minimum rents they would have had to pay on the insulated area.

By this transaction the Commission must pay the former landlord of the faulty area his £500 minimum rent, until the vesting date, after which he will have no more interest. It cannot affect compensation of the former landlord, as that is determined by his holding on the valuation date, which will have passed before such a scheme can come into force.

There would have to be some agreement with the Commission that the colliery would pay the minimum rent on the insulated area until the vesting date, as otherwise the Commission would be out of pocket that amount.

(3) After the vesting date the Commission, except in special circumstances, have no power to alter existing terms of any lease, and so far as rents are concerned it is doubtful whether an application may be made to the Railway and Canal Commission for alteration of financial terms. (See p. 53.) Thus a lease consolidation scheme may be the only opportunity that a colliery owner will have to obtain an adjustment of any rents or royalties affecting his holding before the normal expiry of the working lease.

The details of the scheme, as set out in sect. 12 and the Fourth Schedule, are as follows: Where it appears expedient to the Commission that arrangements should be made during the interim period for working coal held by one lessee under a number of separate leases, each comprising a distinct holding, from different landlords, the Commission in agreement with that lessee may execute a lease consolidation scheme. By sect. 12 (2)—

A single lease to be granted pursuant to a lease consoli-

dation scheme that relates to any colliery area must comprise all the coal and mines of coal in that colliery area.

The words "colliery area" attempt to define a "take," and from the wording of the Fourth Schedule the Commission will only deal in such schemes with the coal in such a "take." By para. 1 (2) of the Fourth Schedule the scheme may comprise: (1) any other premises that are to vest in the Commission and are comprised in any of the subsisting working leases of the lessee under the scheme. This contemplates the case of a colliery which has taken in lease areas of coal outside a "take" to ensure a future supply of coal. The lease consolidation scheme may therefore include the "take and the new area." The scheme may also comprise: (2) any other premises, so long as the person competent to grant a lease thereof consents thereto, whether the premises are to vest in the Commission or not. This contemplates the case of (*inter alia*) freehold parcels of coal or surface lands being within a colliery take, but not yet in lease to the colliery.

Provisions are laid down in sect. 12 (4) and (5), and in the Fourth Schedule, to ensure that the royalty owners shall be in no different position as regards royalty or rent until the vesting date. They are to receive from the Commission such a sum, called the standard amount of rent, as to make the rent received up to the amount they would have received if there has been no scheme (a); or they are to pay back to the Commission any excess that they may receive over the standard amount.

The costs of such scheme shall be paid by the parties incurring them, except that the Commission shall pay the costs reasonably incurred of persons other than the lessee under the consolidation scheme.

(a) In case of dispute between the Commission and royalty owner as to the standard amount of rent, that dispute shall be settled by arbitration. (See p. 203.)

C.—Provisions as to the Assigning of Rents.

By sect. 10, the Commission *may* take over an assignment of any debt due from a lessee in respect of rent payable before the vesting date for premises that are to vest or have vested in the Commission. This is to protect the landlord who is owed rent, but by this Act loses his right to distrain. Theoretically, this provision could be applied before the valuation date, but it would, for practical reasons, be unwise, as acquired interests and the owners of them are not settled until the valuation date.

There is a further provision in this section which provides that where rent becomes payable within twelve months next before the vesting date, the Commission *must*, when required so to do by the person entitled, take an assignment of that rent. The price to be paid by the Commission is, in default of agreement, to be settled by arbitration.

D.—The Position of the Freeholder before the Vesting Date.

It is the intention of the Legislature that a fee simple owner working his own coal shall not be deprived of the right to continue working after the vesting date, and with this in view it is provided that the Commission shall grant leases to freehold owners working their own coal. The terms of such leases shall, as far as possible, be reasonable and equitable to the former owners. (Sect. 13.) With regard to persons owning the freehold before the 10th of November, 1937, the terms are to be such that, as when taken together with the terms of the compensation payable for the loss of his interests, the owner is to be in no better and no worse financial position with regard to the working of the coal than he was before the granting of the lease.

In order to obtain the benefits accorded to freehold owners of coal working their own coal, conferred by sect. 13, the freehold owner must make an application to the Commission in writing before the vesting date, stating clearly the coal and mines of coal to which he is entitled. The Commission is bound

to grant a lease, commencing on the vesting date, to such freehold owner, subject to the condition that the owner shall have complied with all the rules laid down for the ascertainment of compensation. If he has not complied with such rules (as may well be the case if the valuation proceedings (b) are protracted over the vesting date), he will, presumably, after that date be permitted to work under a licence from the Commission. The lease, when it is executed, will take effect as from the vesting date.

The conditions of the lease to be granted under sect. 13 are set out in sub-sect. (2) thereof.

- (1) The lease is to start on the vesting date.
- (2) It is to be no longer than is reasonably requisite for the working out of the coal comprised in the holding.
- (3) In any event the conditions must not be more onerous than is customary in the district, or if there are no customs applicable, then the conditions in the lease must be reasonable.
- (4) Where the fee simple was acquired before the 10th of November, 1937, the conditions must assure that the financial position of the owner in respect of his business of working coal shall not be adversely affected or improved by reason of the following facts, viz., (a) that in lieu of his remaining entitled to the fee-simple, he becomes entitled to compensation, but at the same time becomes liable to pay rent, and (b) that he ceases to be liable to a payment for Mineral Rights Duty and Royalties Welfare Levy.

It is therefore intended that he shall receive such a sum by way of compensation and pay such a rent that by the time the coal is worked out that sum, together with interest on it, shall have been paid back to the Commission.

(b) It is the intention of the Legislature that such proceedings shall be finished by the vesting date, but the number of holdings may be so great as to necessitate an extension of time.

The greatest difficulties likely to arise under this section will be—

- (1) The actual forecasting of the length of time it will take to work out the particular area of coal. This will be a question of evidence in each case.
- (2) Whether the person entitled to the lease may shut down any part of the pit as he would have been entitled to do if he were still the freehold owner. As the policy of the Act is to put the freehold owner in no worse financial position with regard to working coal, it must be borne in mind when drawing up such lease that one of the great advantages of a freehold worker of coal is that he can work in one seam, and if he find it unprofitable, switch to another with little financial loss. But a lessee working under terms of minimum rents, will have to obtain a lease of a seam before such seam is proved, and usually will have to pay minimum rent. The lessee therefore will be saddled with that liability to pay minimum rent whether he subsequently works it or not. Thus this provision should insure that where a freehold owner takes a lease under this section he will not be burdened by the payment of any but a nominal minimum rent.
- (3) The rate of interest which the owner shall receive on the compensation sum paid to and invested by him. This will be decided by the Board of Trade or the Courts, and as it is a matter of principle it is not possible to lay down hard and fast rules without any authoritative decisions. But it is probable that the rates will be those expected from ordinary trustee securities, and those investments referred to in para. 21 (5) of the Third Schedule to the Act, tends to show that the rate will be about 4 per cent.

This section is in fact a legacy of disputes for the future, as no one will be able to forecast whether or not the terms will be

inequitable until near the date of exhaustion of either the coal in question or the sum paid by way of compensation. By the Third Schedule, Part III., para. 17 (3), a certificate finally settled in accordance with the Act as to the amount of compensation payable to a former freehold owner is conclusive as to the amount of compensation due to him, and the right of the Commission to make payment of such compensation cannot be questioned by any legal proceedings whatsoever. And as the only remedy a freeholder owner who feels such conditions to be inequitable may have under sect. 13 is by way of arbitration and case stated, which will settle the matter finally, it appears that when these disputes crystallise in the future there will be no remedy open to an aggrieved party. (See Chapter V., p. 65.)

The procedure under this section is set out in the Fifth Schedule. Where an application has been made under the section the Commission shall prepare a draft of the lease they propose to grant, and shall deliver a copy to the applicant. Within six weeks of such delivery, the owner may give notice that he objects to any one or more of the terms contained in the draft, and the draft may thereupon be amended or modified by agreement. If no agreement is reached, then the terms are to be settled by an arbitrator (e). The costs of proceedings under the section as to the drawing up of the documents and any dispute before an arbitrator are, if reasonably incurred, to be paid by the Commission (f).

By the Fifth Schedule provisions are enacted for the security of mortgagees having a fixed charge on the freehold coal.

By sect. 13 (4)—

No stamp duty shall be chargeable upon a lease granted and expressed to be granted under this section, or upon a substituted security, or an instrument making provision

(e) 5th Sched., 1 (3).

(f) *Ibid.* 1 (6).

for the variation of a subsisting security, made and expressed to be made pursuant to the provisions of the Fifth Schedule to this Act.

By sect. 34 (2), where the freehold is held immediately before the vesting date by a Committee under a drainage scheme under the Mining Industry Act, 1920, the Commission shall, on application, grant to such Committee a lease at a peppercorn rent, upon such terms and upon such conditions as the Committee may reasonably require.

CHAPTER IV.

PROVISIONS TAKING EFFECT ON THE VESTING DATE.

SUMMARY.

- Paragraph A.—*The Vesting of the Coal and other Rights in the Commission.*
- „ B.—*The Rights to Vest in the Commission supplemental to the Acquired Rights.*
- „ C.—*Documents to Vest in the Commission.*
- „ D.—*Rights which the Commission may by Agreement Acquire.*
- „ E.—*Provisions as to Compensation.*
- „ F.—*Commission not to Alienate the Fee-Simple.*
- „ G.—*Position as to Freehold Owners working their own Coal before the Vesting Date.*
- „ H.—*Apportionment of Rent.*
- „ I.—*The Effects of this Act upon former Legislation relating to Working Facility Orders.*
- „ J.—*Granting of Leases by the Commission.*

A.—**The Vesting of the Coal and other Rights in the Commission.**I.—**ACQUIRED INTERESTS.**

(a) *Fee-Simple.*—Subject to the provision set out below, the Commission on the vesting date shall acquire the fee-simple in all coal and mines of coal. “Coal” is defined in the Act (a) as “bituminous coal, cannel coal and anthracite,” but the definition

is enlarged to include minerals and substances which are worked or to be worked together with coal under a coal-mining lease subsisting on the valuation date. For example, in certain areas in South Wales clay is obtained in the same operation as the getting of the coal, and nearly all leases of coal in those areas include clay. By sect. 42, gold and silver and their ores are expressly excepted from this definition. The Commission, however, have the right to give notice (b) before six months from the valuation date excluding any associated minerals or substances from the holding they are to acquire. Moreover, if any person interested, on giving notice before six months from the valuation date, can satisfy the Commission that the minerals or substances would normally be worked from the surface, he may obtain a direction from the Commission excluding such minerals or substances from the holding to be acquired by them. This latter provision covers (*inter alia*) the position of a surface quarry of clay which is worked under a coal-mining lease, but is really an independent venture; the obligation is upon the person interested to make application to the Commission for its exclusion. The lessee of the minerals or substances may make application, as he is a person "interested" for the purposes of this provision.

(b) *Associated property and rights.*—The Commission also acquire certain property and rights enjoyed in association with a holding of coal or mine of coal.

The property and rights that pass are divided into two classes by sect. 4 (3):—

(i) All property and rights, other than rights to withdraw support, or rights created by working facilities orders (c), that would pass with that coal or mine of coal under a conveyance thereof such as is specified in Part I. of the Second Schedule to this Act, taking effect on the vesting date.

(b) Sect. 3 (4) (b).

(c) See p. 43, and 2nd Sched., Pt. I.

Part I. of the Second Schedule, para. 1, provides as follows:—

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 the 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 to the Law of Property Act, 1925, to the conveyance.

Sects. 62 and 63 of the Law of Property Act deal with property and rights which pass under conveyances in normal circumstances, in default of the expression of any intention to the contrary. The sections, in effect, operate to imply the old "general words" and "whole estate clause" into the conveyance.

The words "where notice is material" may be important in cases of restrictive covenants over coal or mines of coal. For notice would not be material in the case of such a restrictive covenant, which by the Land Charges Act, 1925, s. 10, must be registered. For restrictive covenants made after that Act are not binding on a purchaser for value, whether he has notice or not, if that restrictive covenant has not been registered in the Land Registry in London.

Therefore, if such covenant is not registered before the vesting date, then the Commission will take free from it (*d*). An example of such a covenant (a right of support is excepted (see p. 40)) would be a restriction on the owner of a mine not to interfere with the free flow of water through his mine.

(*d*) Except in the cases contemplated by para. 2 (3) of the 2nd Sched.

Para. 2 of the Second Schedule then excludes or restricts certain rights that would otherwise pass under such an assumed conveyance, in order to comply with the intention of the legislature with regard to the acquiring by the Commission of rights in coal and mines of coal. These provisions may be summed up as follows:—

- (1) Retained interests are excluded (see p. 42).
- (2) Quasi-easements. In normal circumstances, when an owner of two adjoining properties (divided either vertically or horizontally) conveys one of them to a purchaser, the conveyance operates to pass to the purchaser certain rights over the property retained, which rights had previously been enjoyed in connection with the property conveyed, by reason of the fact that the conveying party was then the owner of both properties. These rights pass either as an easement of necessity or by virtue of sect. 62 of the Law of Property Act, 1925.

Sub-para. (2) of para. 2 is inserted to ensure that the Commission shall not be in the position of an ordinary purchaser in this regard. The Commission do not acquire any interest over the land retained by a person having an acquired interest (*i.e.*, the surface) which they would not have acquired under an ordinary conveyance, where the conveying party was not also owner of that surface. As an example, the Commission do not acquire a right to use a railway over the surface merely because the previous owner of the coal or mine was also the owner of the surface and was accustomed to use such a railway for the purpose of carrying away coal worked from his mine.

- (3) Servitudes or restrictive covenants annexed to or running with other land of any of the parties to the assumed conveyance, are not affected.
- (4) The Commission is bound to indemnify any of the parties to the assumed conveyance, who might after the con-

veyance be subject to any personal liability in respect of any restrictive covenant that adversely affects the coal or mine.

(ii) Rights to withdraw support which are acquired by the Commission are dealt with by special provisions laid down in Part II. of the Second Schedule. They can best be explained by reference to illustrations; the general principle being that the Commission shall not acquire any right to let down the surface, where the surface and the minerals are in different ownership, and there is no right to let down existing on the valuation date.

1. Where the fee-simple of the surface and of the minerals is in the same person, and he has granted a lease with rights to let down the surface, then the Commission take the minerals together with those rights to let down. But the Commission acquire those rights, not for the term of the lease, but for such time is necessary to get the minerals.

2. Where the ownership is as above, but there is no right to let down, then the Commission take the minerals, together with the right to let down, subject to the following rules: (a) to pay such proper compensation for damage to the surface arising from the working of the coal; or (b) with the consent (which shall not unreasonably be 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.

3. Where the fee-simple of the surface is in different ownership to the fee-simple of the minerals, and there is a right to let down the surface, other than under a working facilities order (e) existing on the valuation date in the owner of the minerals,

(e) Any right to withdraw support or any other right granted under a working facilities order under the Mining (Works Facilities and Support) Act, 1923, or the Coal Mines Act, 1926, shall not in any event be acquired by the Commission (these being retained interests).

then that right shall in every respect and for the same term vest in the Commission.

4. Where the fee-simple in the land is in different ownership from the fee-simple in the minerals and there is no right to let down the surface, then the Commission acquire no right.

Where the Commission grant a lease containing such a right as is acquired by virtue of example No. 2, above, dealing with letting down the surface on payment of compensation, they shall freely advertise such fact in the *London Gazette* and in the locality concerned.

Where any building is to be constructed after such advertisement the Commission are to have the right, at their own expense, to make such alterations to the materials, plans, foundations and specifications as may seem necessary to them to minimise subsequent damage by underground workings. Refusal by the building owner to comply with such orders shall exonerate the Commission from liability to pay compensation under example No. 2, except in so far as damage would have still resulted if their orders had been carried out.

Whether or not this will result in the Commission finding themselves paying for the foundations of such buildings will remain to be seen. But as now worded the Commission may be faced with the position of having to rebuild indefinitely "jerry-built" houses damaged by subsidence, or to build firm foundations under those houses, the benefit of which will go to the building owner; as any building owner, in view of this provision, will be reluctant himself to provide such foundations when he knows that the Commission may do this for him.

However, although the Commission acquires the fee-simple in coal and certain ancillary rights, the Commission does not acquire those rights which are defined by the Act as retained interests. The rights which the Commission are to acquire are those vested in

a reversioner, and do not include the rights of a person who is actually working the coal, unless that person is also the freeholder, and for this purpose the term reversioner includes, of course, a leasehold reversioner, *i.e.*, a person who has created a term out of a leasehold interest vested in him.

II.—RETAINED INTERESTS.

Retained interests may be classed for the purposes of the Act as follows:—

1. The rights of working lessees.—These are defined in sect. 5 of the Act—

Sect. 5.—(1) Except as provided by subsection (2) of this section, interests in coal or a mine of coal that arise under a coal-mining lease shall be retained interests.

By sub-section (2) of this section unless they otherwise direct the Commission acquire two classes of interests which otherwise will be retained interests, namely:

- (1) Leasehold reversion—*i.e.*, where a lessee has sub-leased an area of coal consisting partly or wholly of coal which he already holds in lease from a superior landlord.
- (2) where neither a lessee nor any person claiming under him is interested in coal mining.

In respect of this provision relating to lessees having no interest in coal-mining, an exception is made by sect. 34 (2), which permits a lease made to a committee appointed for the purposes of a drainage scheme under the Mining Industry Act, 1920, to be a retained interest.

The Commission may by notice give directions that any such interest may be a retained interest, but such notice must be given not later than six months after the valuation date, or from such time as the Commission receive notice of such interest.

The Commission must, if they give such notice, give notice both to the freehold reversioner and the leasehold reversioner.

These retained interests may broadly be summed up as those interests (not being freehold interests) which are vested in a person carrying on a colliery business, and which give such person the immediate right of actual possession of the coal.

2. Rights under a working facilities order.—These rights, granted by the Railway and Canal Commission under the Acts of 1923 and 1926, are to be retained interests, as in practice they are similar to leases granted to working lessees.

The function of the Railway and Canal Commission, as regards the administering of such orders and the right to vary and renew such orders will continue in existence after the vesting date. While the right to make new orders is restricted by this Act (see Chapter IV., p. 50), applications may still be made for ancillary rights. (As to which, see p. 51.)

3. Rights of former copyholders.—These are preserved to the tenant, except where the tenant has the right to work the coal without the licence of the lord of the manor. (Sect. 5 (6).)

The right of the tenant to work without licence from the lord is rare. The usual right of the tenant, in the absence of special custom, was no more than a right to restrict the working of minerals by the lord without the tenant's consent. This right is often called the "possessory right" and arose from the possessory estate of the tenant in the whole land, which entitled him to maintain trespass if the space in which the minerals were, was entered by the lord, even where damage was only of nominal amount. It has yet to be decided whether this possessory right of the former copyholder is an interest in coal or a mine which is preserved by para. 12 of the Third Schedule to the Law of Property Act, 1922. If it is such an interest, it is a "retained interest" by virtue of sect. 5 (6) of the Coal Act, notwithstanding that it is not a right to work. If so it differs in all essentials from the other retained interests created by the statute. It is however, to be noted that, by sect. 15 of the Coal Act, the Commission, in respect of underground land not vested in the

Commission, is given power to enter, &c. any such land, and to do in relation thereto any other such acts as are requisite for coal-mining purposes; and this, notwithstanding that any such act would otherwise have been actionable as a trespass or a nuisance, provided that the damage done is of a purely nominal amount.

4. By sect. 34 certain statutory rights are not disturbed by the Commission and are therefore analogous to retained interests—

- (a) Certain rights vested in railway companies and in undertakers within the Water Works Clauses Acts dealing with rights of support and of acquiring support. These rights are consolidated in Part II. of the Mines (Working Facilities and Support) Act, 1923.
- (b) Any right vested in a local authority by virtue of the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883.
- (c) Any right to prevent or restrict the working of coal vested in the Crown or local authority, highway authority, or statutory undertaker by virtue of any enactment or any order having effect with or without confirmation by Parliament under any enactment.

5. Sect. 33 imposes a restriction on the power of the Commission to permit the working of coal without the consent of certain interested parties. The right to withhold consent is not strictly a retained interest, but is analogous thereto.

The section provides that where the fee-simple in coal is vested in any local authority, company or other body, or person authorised by or under any Act of Parliament to construct or carry on a railway, canal, harbour, tramway, gas, electricity, water, sewage disposal or other public undertaking, the coal shall vest in the Commission, but the coal cannot be worked without the consent of the said statutory undertaker, except where—

- (a) the undertaker has no interest in the surface; or

- (b) there was a lease of the coal in existence on the passing of the Act.

The consent to work shall not be unreasonably withheld; and if any dispute arises as to whether consent has been unreasonably withheld, then it shall be decided by an application to the Railway and Canal Commission, who shall look primarily to the safety and efficient working of the undertaking in question (*f*).

B.—Rights to Vest in the Commission Supplemental to Acquired Rights.

The Commission acquire rights of working vested in the owners of coal only, and do not acquire any rights enjoyed in connection with coal which are vested in the owners of land as distinct from owners of coal. Those rights referred to in past legislation as ancillary rights could, and will still be obtainable on application to the Railway and Canal Commission in a proper case. However, in order to save a working lessee from having to make such application in respect of matters for which no compensation would be granted to the owner thereof by the Railway and Canal Commission, the Coal Commission, by sect. 15, acquire compulsorily the free licence to exercise those rights, provided that—

neither the Commission nor a person to whom a licence has been granted under this section shall be entitled by virtue of this section or of the licence—

- (a) to interfere with the carrying on of underground operations carried on for a purpose other than a coal-mining purpose;
- (b) to interfere with the surface of any land;
- (c) to withdraw support from any land;

(*f*) By sect. 33 (7) an exception is made in this case to the rule that when valuing the interest in coal no account shall be taken of the fact that the Act has been passed. (See p. 140.) For valuers are to take into account the fact that consent may be withheld by such statutory undertaking.

- (d) to do any other act in respect of any land which, if this section had not been enacted, would be actionable by virtue of any servitude, restrictive covenant, or statutory prohibition or restriction adversely affecting that land; or
- (e) to do any other act which, if this section had not been enacted, would be actionable as a trespass or as a nuisance and which, if done, would be likely to cause actual damage other than of a purely nominal amount.

An example of such a right acquired under this section would be a right of way through land between two seams of coal, the exercise of which would, if not exercised under a grant or licence, constitute a trespass against the owner of the land concerned, but such a trespass as would entitle the plaintiff to recover damages of a purely nominal amount.

C.—The Documents to Vest in the Commission.

In addition to the rights and interests set out in the paragraph above, certain documents are also to vest in the Commission, to enable them conveniently to supervise the holdings acquired by them. It is not the intention of the Commission to collect all documents which may have some connection with the coal, but they obtain a right of inspection and to be served with copies of such documents if they so require.

Thus, by sect. 14 (2)—

On the vesting date the property in and the right to possession of the following documents relating solely to the management of coal or a mine of coal shall vest in the Commission, that is to say all plans, sections, records of survey, and other similar documents, that belonged immediately before the vesting date to a person interested in coal or a mine of coal, other than:—

- (a) Documents that belonged to a person having a

- retained interest, and that relate to the premises in which that interest subsists;
- (b) Documents that belonged to a person who has duly made application under sect. 13 (lease to a freehold owner) for a grant from the Commission of a lease of any premises, and that relate to those premises.
 - (c) Documents which, whilst relating solely to the management of coal or a mine of coal, relate to matters of management that touch or concern other land in which the person to whom the documents belonged is interested at the vesting date.

Although the ownership of these documents vests in the Commission, the Commission may permit certain documents to remain in the possession of the former owner. But any person who retains possession of such document does so subject to this section and shall be liable, if he has without reasonable excuse failed to produce such document on notice having been served on him so to do by the Commission, to a fine not exceeding £50 and a further fine not exceeding £10 for every day in which he is in default.

By sect. 52 in Part IV. of the Act—

Any person who satisfies the Commission that he is interested in land that is supported by coal, or that was before the working thereof supported thereby, or in land situate below, adjoining, or near to coal, shall be entitled, upon making an application to the Commission and payment of such reasonable fee as may be prescribed in that behalf, to inspect at any time during usual office hours all plans of workings of that coal in the possession of the Commission, and to be furnished by them with a copy of, or of any part of, any such plan.

D.—Rights which the Commission may Acquire by Agreement.

By sect. 32 provision is made for the Commission to have competence to acquire by agreement the following further rights to those set out above:—

- (1) A retained copyhold interest in coal or a mine of coal.
- (2) Any interest in minerals associated with coal and which can be economically worked therewith.
- (3) The benefit of any right to be exercised in respect of any land for a coal-mining purpose: *e.g.*, rights of way, heap-room, &c., over the surface.

The reason for the insertion of these provisions is to give the Commission power to acquire such rights as supplemental to the rights compulsorily acquired under the Act. They are inserted for the convenience of all parties concerned so that, if such parties are agreeable, the Commission may collect all the rights relating to coal and land affected by coal-mining under one ownership.

E.—Provisions as to Compensation.

(See Chapter VI., Part III.)

F.—The Commission not to Alienate the Fee-Simple.

By sect. 17 (3) the Commission shall not alienate for any freehold interest any coal or mine of coal. There are two exceptions to this rule:—

- (a) Where coal is to be dug incidentally to some other operation the fee-simple of that coal so to be obtained shall pass. For example, where foundations are to be dug in ground where coal is near the surface, the fee-simple of any coal dug in the ordinary process of excavating such foundations may be alienated.

- (b) Where coal is present in small quantities, together with other minerals, that coal may be alienated if the coal is worked in the process of getting such other minerals.

The only way in which the Commission may deal with coal is laid down by sect. 2, where power is conferred to grant leases or to renew existing leases for the purpose of coal mining.

G.—Position as to Freehold Owners Working their Own Coal before the Vesting Date.

As has been seen in the preceding Chapter, all the necessary preliminaries incidental to leases to be granted to former freehold owners should, if possible, be completed before the vesting date.

After the execution of such a lease the former freehold owner will be in the same position, *vis-à-vis* the Commission as an ordinary lessee.

H.—The Apportionment of Rent.

Originally the intention of the Legislature was that the Commission should grant new leases in cases where an existing lease contained both premises which vested in the Commission, and premises which remained in the ownership of the former landlord, *e.g.*, a lease of the surface, as well as of the subjacent coal. Now, however, by sect. 11, there is to be no separation of leases, but only an apportionment of the rent payable by the lessee after the vesting date. This apportionment, if not already made in the lease itself, is to be made by agreement between all the parties concerned, or failing such an agreement by an arbitrator. The arbitrator is to take into account, but is not to be bound by, any valuation of the premises to be acquired by the Commission made by the Regional Valuation Board. And provision (g) is made whereby a record shall be made of

(g) Sect. 11 (4).

proceedings before the Regional Valuation Boards, which record shall be evidence before the arbitrator as to the amount of such valuation.

The arbitrator's jurisdiction relates only to the actual amount of the rent to be paid to each of the parties concerned. Any dispute as to the rights or liabilities of any person under the lease arising in consequence of an apportionment under this section are to be determined upon application thereto by the High Court.

I.—The Effects of this Act upon former Legislation Relating to Working Facility Orders.

On the vesting date the powers of the Railway and Canal Commission as to the making of Working Facilities Orders under sect. 1 of the Mines (Working Facilities and Support) Act, 1923, and sect. 13 (1) of the Mining Industry Act, 1926, in respect of rights to search for and work coal as defined by this Act cease to exist. The jurisdiction of the Railway and Canal Commission to deal with ancillary rights for the more efficient working of coal is preserved. The extent to which former legislation on this topic will remain in force after the vesting date is as follows.

1. As to rights of working coal the position is entirely governed by this Act, and no application to the Railway and Canal Commission may be made. Minerals and substances, other than coal, and those mineral ores referred to in the Schedule to the Mines (Working Facilities) Act, 1934, will still be governed by the Act of 1923 (*h*). The mineral ores mentioned in the 1934 Act, in so far as they are not affected by the provisions of the Coal Act, as being associated minerals worked with coal, are covered by the wider provisions of the Act of 1926 (*i*).

(*h*) For the full effect of these sections, see the revised legislation at the end of this book.

(*i*) These mineral ores are included in the provisions of the Act of 1926: see pp. 295, 37.

2. With regard to ancillary rights to the working of coal—

(a) The Commission, although they have the right to search and bore for coal (see p. 54), may make application for any ancillary rights necessary in the exercise of such rights to search and bore (such as a right of entry). If such rights are refused unreasonably they may be acquired by application to the Railway and Canal Commission.

(b) Working lessees may make application for ancillary rights under sect. 3 of the 1923 Act—

(1) Where any facility, right, or privilege is required in order that minerals may be properly and conveniently worked by the person entitled to work the same, and the proper and efficient working of the minerals is unduly hampered by the inability or failure of that person to obtain such right, facility, or privilege (hereinafter referred to as an ancillary right), such ancillary right may be conferred in the manner and subject to the provisions hereinafter appearing on the person having the right to work the minerals who is working or desirous of working them either by himself or through his lessees.

(2) In particular, but without prejudice to the generality of the foregoing provision, such ancillary rights shall include—

- (a) A right to let down the surface;
- (b) A right of air-way, shaft-way, or surface or underground wayleave, or other right for the purpose of access to or conveyance of minerals or the ventilation or drainage of the mines;
- (c) A right to use and occupy the surface for the erection of washeries, coke ovens, railways, by-product works, or brick making or other works, or of dwellings for persons employed in connection with the working of the minerals or with any such works as aforesaid;

- (d) A right to obtain a supply of water or other substances in connection with the working of minerals;
- (e) A right to dispose of water or other liquid matter obtained from mines or any by-product works.

To which is added by sect. 22 of the Coal Act—

- (f) In a case in which the surface has been used for the erection of any works for a coal-mining purpose within the meaning of Part I. of the Coal Act, 1938, or of dwellings for persons employed in connection with the working of coal within the meaning of that Part of that Act, or with any such works as aforesaid or as are mentioned in paragraph (c) of this subsection, a right to use and occupy the works or dwellings for the purposes for which they were erected.

(4) Where such a right as is specified in the last preceding subsection is to be granted on the termination of a lease, and a right to erect or use the works or dwellings was comprised in that lease, the Railway and Canal Commission, in determining whether any compensation or consideration is to be paid or given in respect of the right to be granted by them and the amount thereof, if any, shall have regard to the fact that the right comprised in the lease was therein comprised and to the amount of any rent reserved by the lease in respect thereof.

The working lessees may also apply under sect. 13 (2) and (3) of the 1926 Act—

(2) Where the working of any coal, or the working of any coal in the most efficient and economical manner, is impeded by any restrictions terms or conditions contained in a mining lease, or otherwise binding on the person entitled to work the coal, a right to work the coal freed wholly or partially from such restrictions or conditions, or to work the

coal on other terms and conditions, may, on an application for the purpose being made and referred to the Railway and Canal Commission under the principal Act, be granted by the Commission in any case where the Commission consider that it is expedient in the national interest that the right applied for should be granted to the applicant.

(3) An ancillary right may be granted to a person to whom a right of working coal is granted in pursuance of this Part of this Act at the time when such last-mentioned right is granted or at any subsequent time.

But underground ancillary rights the exercise of which causes merely nominal damage are, by virtue of sect. 15 (see p. 126), compulsorily acquired by the Commission.

(c) As regards rights to withdraw support, the working lessee may make application in all cases where such right is not vested in the Commission by this Act. (See p. 40.)

(d) As regards any application for alteration or variation of rent or royalty under a lease existing before the passing of the Coal Act, the position is somewhat complicated by reason of the conflicting decisions in the two cases of *Hope Morley and Others v. The Carron Co.*, 16th December, 1930, and *Consett Iron Co. v. The Clavering Trustees*, [1935] 2 K. B. 42.

It was decided in *Consett Iron Co. v. The Clavering Trustees* (by the Court of Appeal; Greer, L.J., dissenting) that the word "terms" in sect. 3 of the 1923 Act, and in particular sect. 13 (2) of the 1926 Act, did not include "financial terms," and that therefore the Railway and Canal Commission had no jurisdiction to vary the provisions contained in a lease as to rent and royalty. However, in the case of *Carron Co.*, in the Scottish Court of the Railway and Canal Commission, it was held that the word "terms" did include "financial terms." The position as regards England is therefore different from that

as regards Scotland. If a lessee of English coal, holding of the Commission wishes to dispute onerous terms or conditions (other than those as to rent and royalty) imposed by his lease, he may do so by application to the Railway and Canal Commission. As regards any dispute as to rents or royalties until a decision is given to the opposite effect by the House of Lords, the Railway and Canal Commission in England, and Court of Appeal, will be bound by the decision in the *Consett Case*; but until a decision to the opposite effect is given by the Inner House in Scotland, the case of *Carron Co.* might be followed by the Railway and Canal Commission in Scotland.

It is unfortunate that this position was not cleared up by the Coal Act.

3. As regards rights to search and bore for coal, these are vested exclusively in the Commission by sect. 16—

On and after the vesting date it shall not be lawful for any person, other than the Commission or a person authorised by them so to do or a person having the right so to do by virtue of a retained interest subject to which the coal in question is vested in the Commission, to search or bore for coal.

And by sect. 22 (6)—

Any right which under the Mines (Working Facilities and Support) Act, 1923, or under section thirteen of the Mining Industry Act, 1926, may be granted to a person having the right to work coal may be granted to the Commission where required by them for the purpose of searching and boring for coal.

Therefore, before obtaining any ancillary right necessary for searching and boring for coal, the Commission will have to satisfy the Railway and Canal Commission that such an applica-

tion is in the national interest, and that the rights applied for cannot be obtained by private arrangement for the reasons set in sect. 4 of the 1923 Act, the most important of which in all probability will be that the person with power to grant the right unreasonably refuses to grant it or demands terms which, having regard to the circumstances, are unreasonable.

By sect. 22 (5) the Commission are given the right to appear and be heard at any application before the Railway and Canal Commission. This right may be exercised any time after the passing of the Act, so that it may be invoked to enable the Commission to appear on an application heard after the passing of the Act, but which was originally instituted before that date.

J.—The Granting of Leases by the Commission.

There was a suggestion during the passage of the Coal Bill through Parliament of inserting a provision that the Commission should not demand unreasonable terms on the renewal of a lease, and that the question of such unreasonableness should be referred to an arbitrator. This, however, was not accepted by the House of Commons, with the result that there is no check on the terms which the Commission may demand when granting or renewing a lease.

The Commission must, of course, act within the provisions of the Acts governing their procedure, and any dealings which were outside such provisions can be reviewed under a writ of *certiorari*. (See *The King v. Minister of Health, Ex parte Yaffé*, [1930] 2 K. B. 98.)

It has been seen in the preceding paragraph that once a lease is executed by the Commission after the valuation date, the lessee, if he feels aggrieved, may then make application to the Railway and Canal Commission under the provisions of the previous Acts, as regards any but financial terms.

By sect. 20—

On and after the valuation date, a clause shall be included in all leases of coal or mines granted by the Commission providing for arbitration in the case of any dispute between the Commission and the lessee in respect of any provision of the lease or any matter arising therefrom.

This section deals merely with disputes arising under the lease as it actually exists (*e.g.*, disputes as to construction or implied terms, &c.), and does not refer to any questions of variation such as are discussed above.

By sect. 19, after the vesting date, no sub-lease or assignment may be made by any lessee of coal without first obtaining the written consent of the Commission.

This written consent may be withheld at the sole discretion of the Commission without any reason given. There is to be implied into every lease held of the Commission a covenant to that effect.

Under the Landlord and Tenant Act, 1927, by sect. 19 (1) (a), provision is laid down that where a landlord has imposed a covenant in a lease not to assign or sub-let without his consent, such consent shall not unreasonably be withheld. This provision has been abrogated by this section of the Coal Act, in so far as the Commission may withhold consent "without reason given," and at their sole discretion.

However, this prohibition does not apply to:—

- (a) mortgages.
- (b) a lease consolidation scheme.
- (c) a subsidiary coal hereditament (a).

(a) See p. 9.

Part III.

—◆—
INTRODUCTION.

THE procedure to be followed in regard to claims for compensation is set out in the Third Schedule to the Act. The Board of Trade have general powers to regulate and formulate rules, notices and form of the proceedings set out therein.

By para. 14 of the First Schedule the Commission (subject to the powers of the Board of Trade) have power to regulate their own procedure; and by para. 14 of the Third Schedule the Central Valuation Board (with the approval of the Board of Trade) have power to make rules as to the procedure to be followed in proceedings before themselves and other valuation bodies.

By Sect. 38 the Commission and Board of Trade have general power to extend time limits.

CHAPTER V.

THE CONSTITUTION OF THE VALUATION BODIES.

SUMMARY.

- Paragraph A.—*The Coal Commission.*
 „ B.—*The Central Valuation Board.*
 „ C.—*The Regional Valuation Boards.*
 „ D.—*The Panel of Referees.*
 „ E.—*General Powers of Valuation Bodies appointed under the Act.*
 „ F.—*Provisions as to Arbitration.*

A.—The Coal Commission.

The procedure as to all matters concerning the Coal Commission is set out in Chapter I.

B.—The Central Valuation Board.

The ascertaining of the compensation payable to persons having acquired interests is delegated by the Act to a Central Valuation Board, who are to co-ordinate the Regional Valuations compiled by the Regional Valuation Boards. The matter in respect of which compensation is payable is divided into—

- (a) principal coal hereditaments, which consist of all acquired interests, property and rights in coal, cannel coal, and anthracite, together with the right to work and to withdraw support; and

(b) subsidiary coal hereditaments, which consist of—

(1) All acquired interests, property and rights in any other minerals worked with coal.

(2) Surface servitudes, which are defined as any servitude annexed to coal or a mine of coal, in so far as it adversely affects the surface of any land (with the exception of the right to withdraw support).

The total amount to be paid for all principal coal hereditaments is the sum of £66,450,000, which sum is referred to in the Act as “the global figure.” The amount of compensation to be paid in respect of subsidiary coal hereditaments shall be the amounts certified as so payable by the Regional Valuation Boards. It is therefore immaterial to the Commission what aggregate value is put upon principal coal hereditaments collectively; as in any event they must distribute the global figure among all the persons who can successfully sustain claims for compensation in respect of the interests of which they are expropriated. (See p. 84.)

Under the Third Schedule, para. 3, the Central Valuation Board shall consist of—

- (1) A chairman, who is an independent person, being a member of the legal profession, appointed after consultation with the Lord Chancellor.
- (2) Two other independent persons.

An independent person is defined as a person who is not—

at the date of his appointment, and has not recently been, engaged in or connected with the management of mineral estates and is not a member, or an officer or servant, of an organisation of employers or of workpeople in the coal-mining industry, a practising mining engineer, or in any other manner directly connected with that industry (a).

(a) This is a wide definition and will depend on the interpretation given to the word “directly.”

- (3) In respect of each valuation region, one person, who is at the date of his appointment engaged in the management of minerals in that region, and who has knowledge of coal-mining and experience in the valuation of minerals.

Those persons appointed under sub-paras. (2) and (3) are to be appointed by the Board of Trade after consultation with the chairman of the Mineral Owners Joint Committee and the president of the Chartered Surveyors Institute.

The Central Valuation Board shall, with the approval of the Board of Trade and upon a draft thereof being approved by a resolution passed by each House of Parliament—

- (1) Prescribe the rules and regulations governing the procedure before the valuation boards (b), and

- (2) By sect. 6 (4):—

The Central Valuation Board established under the Third Schedule to this Act shall prepare and deposit with the Board of Trade a map showing a division of the whole of Great Britain into regions (in this Act referred to as “valuation regions”), and shall allocate to each valuation region a part (in this Act referred to as a “regional allocation”) of the said sum of sixty-six million four hundred and fifty thousand pounds, being a part bearing the same proportion to the whole of that sum as they may estimate the value of all principal coal hereditaments in the region to bear to the value of all principal coal hereditaments in Great Britain.

It will be noticed with regard to this allocation that the only guide which exists to help the Central Valuation Board to form their estimate of the value of the coal within the different regions

(b) This is provided for in 3rd Sched., 14, but is qualified by 5 (7) of that Schedule.

will be the particulars of holdings already registered under the Registration Act (c). These particulars do not deal with values, but only with the extent of the separate holdings and their associated rights. Therefore, although great care may be taken over details before Regional Valuation Boards this original and most important division of the global figure, despite the fact that it is only an "estimate," is binding in all subsequent proceedings.

- (3) For the purpose only of making this original division of the global figure the Central Valuation Board will consist of the chairman, the two other independent members and such number of other members being persons engaged in the management of mineral estates as the Board of Trade may determine (d).

C.—The Regional Valuation Boards.

There will be a Valuation Board appointed for each valuation region (e), consisting of the following members—

- (a) an independent person, being a member of the legal profession, appointed to act as chairman of the Board; and
- (b) such number of other members, being persons engaged in the management of mineral estates in the region and having a knowledge of coal-mining and experience in the valuation of minerals, as the Board of Trade may determine.

These persons will be appointed by the Board of Trade in the same way as persons appointed to the Central Valuation Board.

The procedure and rules relating to documents before the Regional Valuation Board are not set out in detail in the Third

(c) See p. 19.

(d) 3rd Sched., 3 (1) (c).

(e) The number of valuation regions will depend upon the decision of the Central Valuation Board.

Schedule, but are left to be prescribed by either the Board of Trade or the Central Valuation Board.

D.—The Panel of Referees.

Persons claiming a review of an award of a Regional Valuation Board may have their case reviewed by a referee (*g*). The referee will be selected by the Board of Trade from a panel of referees appointed by the Board of Trade.

This panel of referees may include all, or any members other than the independent members, of the Central Valuation Board, or of any Regional Valuation Board (*h*). The panel will include, at least, two persons who are not members of any of the Boards mentioned above. The referee selected in any particular case shall not be a member of the Regional Valuation Board, whose valuation is to be reviewed.

The proceeding on a reference will be held in public (*i*).

E.—General Powers of Valuation Bodies Appointed under the Act.

All persons having an acquired interest must, on request, give all the relevant information required of him. Such information must be verified by a statutory declaration, or in some other way reasonably required by the body from whom the request came (*j*).

By para. 6 (6) of the Third Schedule—

The provisions of the Arbitration Acts, 1889 to 1934, with respect to—

It will be the administration of oaths and the taking of affirmations; the guidance which they give; their estimate of the correction of mistakes and errors in awards; and

(*b*) This is provided (1).
Schedule.

(*h*) *Ibid.* (2).
(*j*) *Ibid.* 5 (5).

(c) the summoning, attendance and examination of witnesses and the production of documents; shall apply in respect of proceedings before the Central Valuation Board, or a referee appointed under this Schedule, or a Regional Valuation Board, but save as aforesaid the said Acts shall not apply to or at any such proceedings.

These provisions of the Arbitration Act, 1889, may be summed up as follows:—

- (1) The body may administer oaths to or take the affirmations of persons having acquired interests, and witnesses appearing before them.
- (2) It is not compulsory for the body to take evidence on oath.
- (3) By the Perjury Act, 1911, s. 1 (1), “if any person lawfully sworn as a witness in judicial proceedings wilfully makes a statement material in that proceeding which he knows to be false, or does not believe to be true, he shall be guilty of perjury.” Proceedings before a valuation body will be for this purpose a “judicial proceedings.”
- (4) The body may correct in an award any clerical mistake or error arising from any accidental slip or omission.
- (5) Any party to a submission may sue out a writ of *subpœna ad testificandum*, or a writ of *subpœna duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

F.—Provisions as to Arbitration.

The proceedings for hearing disputes which may arise under the Act are kept as simple and as cheap as possible. Three forms of hearing have been utilised: the High Court for questions of law; the valuation bodies for the assessment of compensation;

and arbitrations to settle questions of terms or allocation of certain monies (*k*).

In the Act the words: Court, High Court, and Supreme Court are all used. (In the case of payments of compensation into Court by the Commission (*l*) sums under £500 may be paid into the County Court.) However, any such proceedings will commence in the High Court in either the Chancery or King's Bench Division, and on appeal therefrom to the Court of Appeal.

The procedure governing the valuation bodies has been dealt with in the preceding paragraphs.

The arbitration provisions in the Act are inserted to provide a cheaper way of hearing disputes than proceedings before the High Court, and they deal mainly with questions of fact. The following are the more important instances where parties under the Act may resort to arbitration:—

- (1) Under sect. 10. Where a person having an acquired interest requires the Commission to take an assignment of rent becoming due to him within the twelve months next before the vesting date in respect of such acquired interest, the amount of compensation payable in respect of such assignment in default of agreement is to be settled by arbitration (*m*).
- (2) Under sect. 11. When the Commission are to apportion the rent as between themselves, as owners of coal, and a landlord, as owner of land, occupied under the same lease, in default of an agreement between the parties, the apportionment shall be settled by an arbitrator.
- (3) Under sect. 20. In every lease granted by the Commission after the valuation date, a provision is to be inserted providing for arbitration in the case of any dispute

(*k*) See p. 62. As to costs, see Chapter viii, p. 93.

(*l*) See *infra*.

(*m*) See p. 118.

between the Commission and the lessee in respect of any provision in or arising from the lease.

In these three cases the arbitrator is undefined, and no provision is made in the case of the parties not agreeing to a nomination. In practice it may be that the arbitrator will be appointed by the Board of Trade, in which event, by sect. 56, the Board of Trade Arbitration, &c. Act, 1874, shall apply with regard to costs, and security for costs payable to the Board of Trade.

- (4) Under sect. 13. Where a dispute arises between the Commission and a freehold owner working his own coal before the passing of the Act, as to the terms of the lease to be granted under this section, or where there is a dispute between the Commission and a mortgagee under this section and the Fifth Schedule, as to the efficacy of a security substituted for his former charge upon the holding, such disputes shall be determined by arbitration.
- (5) Under a lease consolidation scheme, Schedule IV., para. 5. Where there is a dispute between the Commission and a person entitled to receive rents and royalties up to the vesting date on coal to be included in such a scheme, as to the standard amount of rent which he would have received over that period, then that dispute shall be determined by arbitration.

In the two last mentioned cases the arbitrator is to be selected, in default of agreement between the parties, by the Lord Chancellor in the case of England, and the Lord President of the Court of Session in the case of Scotland.

In any of these classes of arbitrations there will be no appeal on questions of fact, but following the usual rule in such cases on questions of law the arbitrator may state a case to the High Court. If the arbitrator does not state a case, then, except on the grounds of misconduct, &c., for instance, showing bias, the matter is finally settled.

CHAPTER VI.

PROCEDURE AND METHOD OF ASCERTAINING COMPENSATION.

SUMMARY.

- Paragraph A.—*General Principles.*
- „ B.—*Registration of Particulars.*
- „ C.—*Claims for Compensation.*
- „ D.—*Notice of Registration of Particulars to be given by the Commission to the Regional Valuation Boards.*
- „ E.—*Draft Valuation of Regional Valuation Boards.*
- „ F.—*Notice of Draft Valuation.*
- „ G.—*Notice of Settled Valuation.*
- „ H.—*Claim for Review of Settled Valuation.*
- „ I.—*The Reference.*
- „ J.—*The Certificate.*
- „ K.—*Application to the High Court.*

A.—General Principles.

The Coal (Registration of Ownership) Act, 1937, was passed in November of that year in order to accelerate the work of ascertaining the interests subsisting in all the coal within Great Britain.

In order to encourage the persons concerned to expedite their applications for registration under that Act, costs reasonably incurred in preparing and carrying through their applications are to be paid by the Commission, provided the applications are

lodged before the valuation date (a), which is December 31st, 1938. (Coal Act, s. 37.)

In the normal case the application under the Registration Act will have been lodged and the particulars settled by the valuation date. The machinery for the notification of claims for compensation by the owners of acquired interest commences on that date (see p. 70), and such claims must be made within the following six months. However, a complication arises in that the date for making application for registration under the Registration Act has been extended six months from the valuation date to cover cases where a holding has been newly created or overlooked or indeed where the applicant has been dilatory. Thus, it must be borne in mind that after the valuation date the machinery for the making of applications for the registration of particulars and claims for compensation run side by side for the six months next after the valuation date. After the lapse of this time, *i.e.*, on July 1st, 1939, neither an application for registration of particulars or a claim for compensation may be made.

The Act refers to "acquired interests," "holdings," "units for compensation purposes," and in order to comprehend the procedure it is necessary to understand the meaning given by the Act to these terms.

(a) "Acquired interests" are interests (other than retained interests) that subsist at the valuation date in coal mines of coal and property and rights to be compulsorily acquired by the Commission. (See Chapter IV.)

(b) "A holding," which is for practical purposes the same as a unit for compensation purposes, is defined by Part I. of the Third Schedule as—

(a) each freehold reversion (that is to say, in the case of all the coal and mines of coal that are on the valuation date

(a) Provision is made that where a holding comes into existence after the valuation date, then the costs of registration of such holding will be paid by the Commission. (Sect. 37.)

- comprised in a coal-mining lease derived immediately out of the fee simple and in the case of acquired property and rights annexed to any such coal or mine, the interest therein of the estate owner in respect of the fee simple in the coal and mines together with the interests therein of all persons claiming under him);
- (b) each acquired leasehold reversion (that is to say, in the case of all the coal and mines of coal that are on the valuation date comprised in a coal-mining lease being an underlease and in the case of acquired property and rights annexed to any such coal or mine, the interest therein of the estate owner in respect of the term created by the lease out of which that underlease was immediately derived together with the interests therein of all persons claiming under him with the exception of any such interest that is a retained interest by virtue of a direction under subsection (2) of section five of this Act);
- (c) each freehold in possession in any valuation region (that is to say, in the case of all the coal and mines of coal in any valuation region that are not on the valuation date comprised in any coal-mining lease, and are in the legal ownership as respects the fee simple of the same estate owner, and in the case of acquired property and rights annexed to any such coal or mine, the interest therein of the estate owner in respect of the fee simple in the coal and mines together with the interests therein of all persons claiming under him).

Thus, a number of acquired interests may co-exist in the same coal, *e.g.*, a freehold and a leasehold reversion.

The general principles underlying the procedure laid down in the Schedules to the Act is to facilitate the ascertainment of—

- (a) the particulars as to the nature and extent of the holdings of persons having acquired interests; and
- (b) the value of such holdings once they have been ascertained.

Sect. 55 sets out the method in which any notice, application or other document required or authorised to be served, may be served. (See p. 161.)

B.—Registration of Particulars.

1. Applications for registration of particulars of holdings are to be sent to the Commission before (at the latest) six months after the valuation date, together with such statutory declarations or other documents as the Commission may deem necessary (*b*).

2. Draft particulars are settled by the Commission and returned to the person making the application; and to any person who seems to the Commission affected by the application (*c*).

Before drafting these particulars the Commission may obtain a ruling of the High Court on any matter of title which may to them seem doubtful (*d*).

3. Any person objecting to such draft particulars may within one month from the receipt thereof apply to the Court for a ruling on the matter in dispute. If nothing is done within one month the particulars will be finally settled as drafted, or, if the Court makes an order, will be settled in accordance with that order (*e*).

4. Procedure is provided for rectification of the register after the particulars have been finally settled (*f*). Any person having an acquired interest in a holding or the claimant for compensation for a holding, who wishes to draw the attention of the Commission to any error or omission, may do so by notice (*g*), and the Commission are given power to make any alteration in the particulars as settled, to give effect to the claim contained in the notice.

(*b*) See p. 178.

(*d*) See p. 306.

(*f*) *Ibid.* (2).

(*c*) See p. 179.

(*e*) 3rd Sched., § (1).

(*g*) As to time, *ibid.*

If after such notice that person gets no satisfaction from the Commission, he may make an application to the Court for rectification of the particulars (*f*). Any such person giving such a notice is one of the class referred to in the Act as "persons intervening" (*g*). It is doubtful whether a person who was unsuccessful in an application to the Court to alter the draft particulars would be able successfully to raise the same point in an application to rectify an error. This would depend upon the circumstances of the case, but it is likely that it would by then be *res judicata*.

C.—Claims for Compensation.

Having thus provided the machinery for the registration of particulars as to the nature and extent of separate holdings, the Act then deals with the method of assessing the values of such holdings. A notice of claim for compensation is to be served on the Commission within the period of six months next after the valuation date (*h*). Such notice may be served—

- (1) By a person who has an acquired interest which constitutes or is comprised in a holding.
- (2) By the Ecclesiastical Commissioners in cases where the holding is a reversion on a lease granted under the Ecclesiastical Leasing Acts.
- (3) By a person concerned in the administration of a holding such as a trustee under the Settled Land Acts.
- (4) By a person having any other grounds that may appear to the Commission to be sufficient.

The notice of claim must be in the form prescribed by the Board of Trade, and the following provisions are to be observed:—

1. If an application for registration of particulars has been made before the valuation date (which will be the normal case) the

(*f*) 3rd Sched., 8 (3).

(*h*) *Ibid.* 9 (1).

(*g*) *Ibid.* 10 (2)

notice of claim must include a statement, verified by a statutory declaration, or in any other way reasonably required by the Commission, to the effect that the claimant has examined the particulars (which are open to inspection) and made such investigation of the circumstances of the holding as is reasonably necessary to discover any error therein (i). Where a notice has been given under the provisions for rectification of particulars, then that notice must accompany the notice of claim.

2. In any event, whether an application for registration has been made or not, the notice of claim must include a statement in the form prescribed by the Board of Trade and verified by a statutory declaration or as otherwise ordered of all the circumstances of the holding relevant to the ascertainment of the person entitled to the compensation (k).

The Commission are entitled to such further information upon such notice of claim as they may reasonably require (l).

D.—Notice of Registration of Particulars to be given by the Commission to the Regional Valuation Board.

After both the application for registration of particulars and notice of claim in respect of any holding have been served on the Commission, and the rules laid down as to registration and the supplying of information have been satisfied, the Commission will (m)—

- (1) Give notice of registration of the particulars of the holding to the Regional Valuation Board concerned. However, in order to give effect to the rules whereby notice of error may be given up to six months after the valuation date, no notice will be given by the Commission to the Regional Valuation Board until the expiration of that time, or until such particulars are settled to the

(i) 3rd Sched., 9 (3).

(l) *Ibid.* 9 (4).

(k) *Ibid.*

(m) *Ibid.* 10 (2).

satisfaction of the Commission, whichever may be the later.

- (2) Give notice to the claimant that such notice of registration has been given to the Regional Valuation Board.
- (3) Give notice to any other person who has made an application for registration of particulars of that holding.
- (4) Give notice to any person who has served a notice in the prescribed form upon the Commission requesting that he be notified of the registration of the particulars.
- (5) Give notice to any person who has served a notice under para. 8 of the Third Schedule as to an error or omission in the particulars of registration.

The persons referred to in (3), (4) and (5) above, comprise the class called in the Act "persons intervening."

All subsequent valuation proceedings are to be based on the particulars as so registered on the date on which notice of such registration is given by the Commission to the Regional Valuation Board. (See p. 182.) The Regional Valuation Board has power to report an error in the particulars after that date, but rectification can only take place under the general procedure laid down for rectification before notice of registration is given to the Valuation Board (*m*).

For the purposes of valuing the holding the particulars as registered on the date of notice to the Regional Valuation Board, or as subsequently altered (if at all) are conclusively presumed to be correct and complete (*n*).

It must be remembered, however, that any person who disagrees with the particulars has full opportunity of making objection before the 1st of July, 1939, and all parties concerned may be heard in Court if an application is made thereto. (See p. 69.)

(*m*) See p. 69, *ante*.

(*n*) 3rd Sched., 10 (3), 10 (4).

The provisions therefore make the extent of each holding certain, and the particulars registered in the Coal Holding Register after that date cannot be altered (*p*). Such particulars form the basis for compensation.

After the vesting date no estate owner in respect of a holding for which compensation has been paid, or any person claiming under him shall be able to claim any right adversely affecting that holding, or premises, unless full information had been given.

This provision (para. 10 (5), 3rd Sched.) is inserted to prevent a person entitled to participate in compensation and entitled (but for this provision) immediately after the vesting date to enforce a restrictive covenant or a servitude against the holding, in respect of which such compensation is payable, from enforcing such restrictive covenant or servitude, unless notice thereof appeared in the particulars registered under the Registration Act. Such a case may well arise by reason of para. 2 (3) of the 2nd Sched. (See p. 166.) The result being that no person may claim the benefit of a restrictive covenant under para. 2 (3) of the 2nd Sched. unless notice of the restrictive covenant that he claims to enforce appeared in the particulars registered.

Para. 10 (5) of the 3rd Sched. in its ordinary meaning goes even further and operates to deprive a person who had an acquired interest in a holding on the vesting date and who afterwards acquired other land to which the benefit of a restrictive covenant or a servitude adversely affecting that holding was annexed from enforcing such restrictive covenant or servitude against such holding unless notice of such restrictive covenant or servitude was given when the particulars were registered.

As an example, suppose that A. is the fee-simple owner of a holding, X., which is adversely affected by a restrictive covenant (duly registered under the Land Charges Act, 1925) the benefit

(*p*) Save by the Valuation Board, 3rd Sched., 10 (3).

of which runs with certain land, Y.; and notice thereof does not appear in the particulars registered. Immediately after the vesting date the owner of the land Y. is entitled to enforce the covenant against the Commission as the owners of the holding X. A. then acquires the land Y. A. is not entitled to enforce the covenant against the Commission; and this is so whether A. was aware of the existence of the covenant or not, at the time that the particulars were registered. It remains to be seen whether the Courts will enforce this sub-para. to this wide extent, or will endeavour to put such a construction upon it as will avoid this anomaly.

When the matter comes before the Valuation Board proceedings are to be as simple as possible, and it may be that accuracy will be sacrificed to simplicity. However, only the claimant and the Commission may be heard before the Regional Valuation Board, and only one person on behalf of the royalty owners, and one person on behalf of the Commission before a referee.

The rules which regulate the ascertainment of the amount to be paid for any particular holding are specified as follows:—

1. By sect. 7 (4)—

The value of a holding shall be taken to be the amount which the holding might have been expected to realise if this Act had not been passed and the holding had been sold on the valuation date in the open market by the existing owners thereof, selling as willing vendors to a willing purchaser, under a contract providing for completion thereof on the vesting date.

Then follow special provisions as to the valuation of a right to withdraw support. (See p. 114.)

2. By para. 13 of the Third Schedule—

(a) no allowance shall be made on account of the compulsory

acquisition by the Commission of the premises in which the holding subsisted; and

- (b) the state in which the said premises were at the valuation date shall be taken into consideration;

3. Such rules as may be prescribed by the Central Valuation Board for securing uniformity of valuations.

E.—Draft Valuation of Regional Valuation Boards.

The next step in the procedure is for the Regional Valuation Board to settle a draft valuation. In order to do this they must have before them the particulars registered in the Coal Holdings Register and the estimate of the value of the holding as delivered by the claimant.

The method of the giving of notice of registration has been dealt with above (p. 71).

The estimate of value must be (g):—

- (1) In the form prescribed by the Central Valuation Board.
- (2) Accompanied by a certificate signed by the person by whom the estimate is made to the effect that such estimate was made on the basis of the rules laid down by sect. 7 (4), as set out in the preceding paragraph.

[In so far as the rights to withdraw support are treated slightly differently from other rights, those rights of withdrawal of support, which are to vest in the Commission, are to be valued separately. (See p. 40.)]

- (3) Accompanied by such plans and other documents as may be prescribed by the Central Valuation Board.

This estimate may be delivered to the Regional Valuation Board any time after the notice of claim has been served on the Commission.

But if the sending of the estimate is delayed until after the Commission have notified the Regional Valuation Board as to the registration of particulars, the Regional Valuation Board may after such notification, demand that such estimate be delivered to them by the claimant. When the Regional Valuation Board make such a demand on the claimant, the time for delivery of the estimate can be prescribed by the Board, but in any event they must allow one month to elapse between the notice and the date of delivery (*r*). Where the claimant fails to comply with such notice the Regional Valuation Board may proceed without such estimate (*s*). The Regional Valuation Board, having thus obtained these two sources of information, will make such enquiries and inspections as seem necessary, and after reviewing the estimate, they will settle a draft of their valuation of the holding.

F.—Notice of Draft Valuation.

Notice of such a draft valuation will be given to (*t*):—

- (1) The claimant.
- (2) The Commission, in the following cases:—
 - (a) If a subsidiary coal hereditament is involved.
 - (b) A consolidated lease scheme.

The notice will state that the claimant has a right to be heard before the Board, either in person or by someone experienced in the valuation of minerals, and that he will be so heard (*u*). The Commission have a right to be heard if the matter comes under

(*r*) 3rd Sched., 11 (2).

(*t*) *Ibid.* 11 (4).

(*s*) *Ibid.*

(*u*) *Ibid.*

case (a) or (b) above, in which case the claimant shall have an opportunity of appearing also.

This hearing is merely by way of assisting the Board, and is in no way controversial.

G.—Notice of Settled Valuation.

Having given such notice of draft valuation, and hearing any person entitled (if any), the Board will then settle the valuation (x), and give notice thereof to the claimant, the Commission (in the two cases (a) and (b) referred to above) and any person intervening. However only one person may appear for both the claimant and the person intervening.

H.—Claim for Review for Settled Valuation.

Where notice of the settled valuation has been given to them, the claimant or a person intervening may give notice (in the manner prescribed by the Central Valuation Board) to the Board of Trade that he claims to have the valuation reviewed (y). Both a claimant and a person intervening may not separately give notice, as notice must be given only by one or the other.

I.—The Referee.

The Board of Trade shall appoint a referee from the panel of referees (z).

The procedure and jurisdiction of the referee is perhaps the most important phase in the valuation proceedings. When it is remembered that the total amount of capital available for payment of principal coal hereditaments is fixed, it will be seen that the only material question with regard to such a valuation

(x) 3rd Shed., 11 (5).
(z) *Ibid.* 12 (2).

(y) *Ibid.* 12 (1).

is not the amount certified but the proportion that that amount bears to the sum allocated to the Valuation Region. Thus, it is impossible to know whether one individual valuation is correct unless the following points are also known:—

- (1) What is the total actual value of all the acquired interests in the district ?
- (2) What is the total actual value of the acquired interest under review ?
- (3) What is the total assessed value of all the acquired interests in the district ?
- (4) Does the assessed value of the interest under review bear the same proportion to the total assessed value, as the the actual value of the interest under review bears to the total actual value ? To give an exaggerated example (assuming the Regional allocation equals the actual value of all the acquired interests in the Region), A.'s acquired interest has an actual value of £10,000, that interest is assessed at £20,000 by the Board. The question whether he should claim a review depends on at what the other acquired interests are assessed; for if B., a neighbour, has an actual value also of £10,000, but is assessed at £40,000, and that is the general average of assessment throughout the Region, then A. should claim a review. The reason being that he will receive in cash about £5,000 when the final division of the global figure takes place.

It might well be that persons not realising this principle would be content to pass a valuation, which on the face of it was fair or even extravagant. But until he knows whether the other acquired interests have been valued on the same basis or not he cannot draw an accurate conclusion. The reason this is so important is that if the Valuation Boards subconsciously tend to be lavish in their valuation in order to avoid trouble, expense or delay, or to reduce the number of persons likely to claim a review,

there is no check on the uniformity of valuation, until all the valuations have been settled.

The procedure governing the reference is as follows (a):—

- (1) The reference must be brought within the time prescribed by the Central Valuation Board.
- (2) The reference will be held in public.
- (3) The claimant and the person intervening (if any) will be represented by the same person, and will be entitled to call one expert witness only (b).
- (4) The Regional Valuation Board may also appear and will be entitled to call one expert witness.
- (5) The referee will have power to direct the Regional Valuation Board to alter their valuation in any case in which an alteration therein appears to him to be requisite, and the Board shall give effect to any such alteration.
- (6) As to costs, see p. 94.

The fact that only one person can appear for a claimant and a person or persons intervening will not be a hardship. Persons intervening and the claimant all have acquired interests in the same holding, and therefore have a common object in obtaining as high a valuation of the holding as possible.

J.—The Certificates.

After all the proceedings before the Regional Valuation Board and referees are over, then the Regional Valuation Board will certify to the Commission the respective amounts ascertained by those valuations (c). The Valuation Board will certify in respect of each holding in their Region the amount attributable to—

- (1) Principal coal hereditaments.
- (2) Subsidiary coal hereditaments.

(a) 3rd Sched., 12.

(b) This is to ensure cheapness and speed.

(c) The procedure governing the giving of certificates is set out in 3rd Sched., 16,

The Board will send the claimant a copy of such certificate, and also a notification of the aggregate sum certified by them in respect of principal coal hereditaments in the district.

The Commission will then publish in one or more newspapers circulating in the district of the Valuation Region, a notice stating that copies of certificates have been sent, and stating where such copies can be inspected by any one with an acquired interest during ordinary business hours. It is therefore only at this stage that a person having a holding will be able to calculate whether or not he will be receiving a fair price for his interests.]

If any person aggrieved by such notices desires to question the validity of any certificate issued by the Commission, or the omission to send any certificate, he may make an application to the High Court.

K.—The Application to the High Court.

The grounds for such application are as follows (g):—

- (1) That any requirement of the Act has not been complied with; or
- (2) That any requirements of the Registration Act has not been complied with; or
- (3) Any of the rules made under either of those two Acts have not been complied with.

Such application must be made within six weeks of the first publication of the notice by the Commission (h).

The rules and provisions, as to the ascertainment of compensation set out in the Act, refer to the amount certified as being the value as between willing seller and willing purchaser, and do not refer to the actual amount to be paid by the Commission.

(g) 3rd Sched., 17.

(h) *Ibid.*

Therefore, any application as to the validity of a valuation will be on the value certified. It may be that a particular certificate is too high in proportion to others, and a number of persons may wish to reduce the amount of that certificate, so as to liberate a larger amount of the total allocated to the region for distribution among the other claimants. An action before the High Court, based on this contention, would be difficult to sustain by such persons, as (*inter alia*) they would have no right to any information or documents necessary to prove such an over-valuation, save those obtained by question and answer in Court.

The Court may order the Commission by an interim injunction to suspend payment of compensation on the basis of certificates, pending a decision on the dispute before the Court.

If the Court feels that the interests of the applicants are being substantially prejudiced, the Court may quash the certificate of any holding that may be affected, and give directions for remedying the default and for enabling the giving of valid certificates in respect of the whole valuation region (*k*).

This power gives the Court the right to open up any matter, and to give such directions as seem to them to be requisite.

The position may be then summed up as follows:—

- (a) The claimant makes his estimate of compensation.
- (b) This is reviewed by the Regional Valuation Board, who may ask for such assistance by way of information or otherwise, as may seem to them necessary.
- (c) The Regional Valuation Board then settles a draft valuation, and before the Board finally settle the valuation, the claimant may appear in person to help with or explain any point that may not be clear to the Board.

(*k*) Thus the Court itself cannot give a valid certificate.

- (d) After the Regional Valuation Board have settled the valuation, the remedy of an aggrieved claimant lies in a review by the referee. This review is only as to the value of the holding.
- (e) The referee shall give such directions to the Board as to him seem necessary.
- (f) The Commission will issue the final certificates and the proportion of that amount which will be paid by way of compensation out of the regional allocation.
- (g) The validity of such a certificate may be reviewed by the High Court.

After the expiry of the six weeks from publication of the certificates (during which period the application to the Court, as set out above, may be made), or after the final directions of the Court, as to the validity of the certificates, have been complied with, the Commission will have the right to make payments to the persons claiming compensation (l). Such right of the Commission to make payments on the basis of such certificates, shall not be questioned by prohibition, *certiorari* or any other legal proceedings (m).

(l) Sect. 7 (7).

(m) 3rd Sched. 17 (3)

CHAPTER VII.

THE PAYMENT AND DISPOSAL OF COMPENSATION.

SUMMARY.

Paragraph A.—*Payments on Account.*

„ B.—*The Payment of the Full Compensation.*

„ C.—*The Disposal of Compensation.*

A.—Payments on Account.

By para. 19 of the Third Schedule, where the Commission are satisfied that the compensation under any certificate shall not be less than a particular amount, they may pay (after January 1st, 1940) such sum as they think fit on account of such compensation provided that they give three months' notice of their intention to make such payment.

A further provision has been added in para. 20, which deals with the position where a person having an acquired interest, who must lose his rights after the vesting date to the rents and royalties therefrom, fails to receive compensation immediately. It may be that such a person has been dependent upon such royalties for his livelihood. By this paragraph in order to protect himself he may demand of the Commission after the vesting date some payment on account to be a substitute for the royalties he would have received, until such time as the full compensation is paid to him.

Thus, by para. 20, a claimant or person intervening may require and the Commission shall pay a certain sum each quarter as

payment in advance under para. 19. Such sum shall be equal to the amount which would be payable as interest on three-quarters of the amount set out in the draft valuation for that holding; if a certificate has been issued but no payment has been made in respect of it, then on three-quarters of such sum so certified.

B.—The Payment of Compensation.

By sect. 7 (7), when all certificates have been validly given, the Commission shall pay in respect of each holding in any Valuation Region for which compensation is payable—

- (a) a sum bearing to the amount certified in respect thereof as attributable to principal coal hereditaments the same proportion as the amount of the regional allocation for that valuation region bears to the aggregate of the amounts so certified in respect of all such holdings in that valuation region; and
- (b) a sum equal to any amount certified in respect thereof as attributable to subsidiary coal hereditaments.

The sums to be paid shall be a debt due from the Commission payable on the vesting date, and shall carry interest at a rate to be decided by the Treasury from that date to the date of actual payment thereof (a).

The final result as to such sums by way of compensation depends, therefore, mainly on the following points:—

- (1) All question as to title must be finally decided on or before the 1st of July, 1939, and thereafter no question of any error in such title may be raised.
- (2) All questions of valuation will be decided by the Valuation Boards or the referee, but the assessed values will have little meaning at the time when a reference can be

(a) Sect. 7 (8).

claimed as the general assessment figure for the region will not be published.

- (3) Any application to the Court after the certificates have been published will be mainly useful for rectification of matters of procedure (b), but will not without great difficulty and expense be able to effect much in the way of alterations to valuations, unless a particular valuation is obviously incorrect.
- (4) The justice of this method of assessing compensation payable will depend upon the standard of uniformity which can be attained in the Valuation Region concerned, and the correctness and exactitude of the Central Valuation Board in the almost impossible task of allocating, the global figure in proportionate amounts to the Valuation Regions before details of any valuations are available.

C.—Disposal of Compensation.

The Commission are bound to see that they pay such compensation to the person or persons entitled thereto. This raises a number of difficulties which are dealt with in Part IV. of the Third Schedule. The main difficulties are first to ascertain the proper person who can give a valid discharge for the compensation payable, and, secondly, where coal was held before the vesting date in trust for two or more beneficiaries, how that compensation sum is to be allocated, and in what way invested so as to leave those beneficiaries as far as possible in the same position as before.

Para. 18 deals with the first point as to ascertainment of persons entitled to the compensation sum. That person shall be ascertained as follows:—

- (a) If the holding could at the valuation date have been sold and conveyed to a purchaser in such manner as to bind or over-

(b) See p. 188.

reach all acquired interests comprised in the holding (either in the actual circumstances or if any requisite consent, approval, request or notice had been received or given) either—

- (1) a person in whom the whole beneficial interest was vested;
- (2) under the powers conferred by the Settled Land Act, 1925, or under any additional powers conferred by a settlement;
- (3) by trustees for sale;
- (4) by a personal representative in the exercise of his paramount powers;
- (5) Under powers conferred by any other enactment;

then that person who could have given a valid discharge for the purchase money arising on such a sale if paid on the date in question shall be the person entitled to receive the compensation sum.

It will be convenient to set out here examples of each of the five cases mentioned above:—

(1) This explains itself.

(2) Under the Settled Land Acts the purchase money must be paid to the trustees of the settlement, who are thus the persons entitled to receive compensation. In this case there must be at least two trustees, and this may necessitate in a number of cases the appointment of a new trustee, where only one now exists (c). It is interesting to note that if the Commission fail to observe the provision of the Settled Land Act, 1925, as to payment of purchase-money to the persons therein stipulated, then the Commission may be liable for any loss that may result to such beneficiaries.

(3) Trusts for Sale. Here again trustees have the power to receive and give a valid discharge for the purchase money, and

(c) N.B., infancy.

are therefore the persons entitled to receive the purchase money under this paragraph. There must be at least two trustees or a trust corporation, and this fact may necessitate the appointment of an additional trustee where only one now exists. (Cf. (2) above.)

(4) Personal Representative. By the Administration of Estates Act, 1925, provision is made that the purchaser is not bound to inquire whether the Personal Representative needs to sell the property in question for purposes of administration. If at the time that compensation comes to be paid coal is vested in a Personal Representative, such Personal Representative could sell and give a valid discharge for such purchase money. Therefore, such personal Representative is the person entitled to receive compensation under the paragraph.

If however the Personal Representative has executed an assent in respect of coal, the case will then fall into some other category of para. 18.

(5) The cases under this heading are too numerous to be set out here in detail. However, examples are:—the Ecclesiastical Leasing Acts, the Parsonages Measure, the Universities and Colleges Estates Act, 1925.

(b) In the case of a holding being subject to a mortgage not being capable of being overreached, then where the mortgagee is not in possession or in receipt of the income, on notice being given by the Commission, and within one month no objection being taken by the mortgagee, the Commission shall pay the compensation sum to the person entitled as if there had been no such mortgage. Where the mortgagee is in possession, or in receipt of the rent, then the Commission shall pay such sum to the mortgagee.

(c) In any case for any special reason, for instance, where the mortgagee not in possession objects to payment under para. (b)

above, the Commission may pay such sum into Court, or where that sum does not exceed £500, into the County Court, or to trustees appointed by the Commission. The officer of such Court or the trustees, as the case may be, will be the proper person to accept such sum.

Para. 21 deals with disposal of compensation as between beneficial interests. This raises the question of how such sum shall be allocated as between, for instance, the tenant for life and other persons interested under a settlement; and of how the capital sum shall be invested. The general rule laid down, subject to what follows hereafter, is that the beneficial interests of existing owners shall remain the same as far as possible as if the premises subject to those interests had not been acquired by the Commission.

Sub-para. (2) of para. 21 deals with settlements under the Settled Land Act, 1925, and trusts for sale the proceeds of which are subject to a settlement by way of succession:—

In the case of a holding that consists of or comprises an estate or other interest subject to a settlement within the meaning of the Settled Land Act, 1925, or to a trust for sale the proceeds whereof are subject to a settlement by way of succession, the trustees of the settlement or any Court having jurisdiction in relation to the execution of the trusts of the settlement, and in the case of the Court on the application of any beneficiary under the settlement may require and cause the compensation, or the part thereof attributable to that estate or other interest, as the case may be, to be laid out, invested, accumulated, and paid in such manner as, in the judgment of the trustees or of the Court, as the case may be, will give to the beneficiaries under the settlement the like benefit therefrom as they might lawfully have had from that estate or other interest, or as near thereto as may be, regard being had to the terms of the settlement

and to all relevant circumstances affecting the premises in which the holding subsisted including:—

- (a) the terms of any subsisting coal-mining lease and the operation of any provision therein contained as to undergettings, short workings, and other like matters;
- (b) the period within which coal being worked might have been expected to be worked out or coal not being worked might have been expected to come into working and to be worked out; and
- (c) the extent to which, having regard to those circumstances, the premises ought to be regarded as property of a wasting character.

By this provision the burden of making such allocation is put upon the trustees of the settlement or the Court.

The trustee must, of course, act in their fiduciary capacity as trustees, and any breach of such duty can, if necessary, be tested in the Courts. The difficulty which arises under this Act is not usually met with under the ordinary duties of trustees of land; as it is unusual except in cases of coal or timber, that they have to deal with a wasting asset. The provisions of the Settled Land Act may be noticed in this connection. Sect. 41 gives a tenant for life power to grant a mining lease for a term not exceeding 100 years. By sect. 45 the rent and royalties reserved by such a lease may be made to vary according to the average worked or to the quantity of minerals gotten. But in view of the wasting nature of the premises, sect. 47 provides that where a tenant for life is impeachable for waste, three-quarters of the rent and royalties are to be set aside as capital monies under the settlement and the tenant for life is entitled absolutely to the remaining quarter, if however, the tenant for life is unimpeachable for waste he is entitled to three-quarters of the rent and royalties and only one-quarter is capitalised.

Trustees for sale by sect. 28 of the Law of Property Act, 1925, have all the powers of management of land, subject to the trust as are conferred by the Settled Land Act, 1925, on the tenant for life and the trustees of a settlement in respect of the settled land, including those powers of management which are exercisable during the minority of a tenant for life. Trustees for sale may, therefore grant mining leases for terms not exceeding 100 years and may work mines. In such cases the rules as to apportionment as between capital and income, indicated above, apply.

In making the allocation of the compensation received under the Coal Act, 1938, it would seem that the course to be adopted by the trustees should be as follows.

The expectation of life of the tenant for life should be estimated. Next, the average income from the premises of the tenant for life for his life, should be assessed taking into account any necessary apportionments. Factors in making this assessment will include the rate of the working the coal, the amount of coal remaining unworked, the term unexpired of existing leases and the rent and royalty which might reasonably have been expected in respect of any new lease which might have been granted during the lifetime of the tenant for life. So far as technical knowledge is necessary in making an assessment of the average income the trustees should, of course, avail themselves of expert assistance. When the expectation of life and the average income is estimated the value of the respective interests in the coal of the tenant for life and the remainderman can be calculated actuarially.

The trustees should then notionally divide the compensation received into two parts in the same proportion as the value of the interest of the tenant for life in the coal calculated as indicated above, bears to the value of the interest of the remainderman similarly calculated.

The tenant for life shall from the vesting date be entitled to an income equal to the amount of the annuity which could be

purchased for him for a sum equal to that part of the compensation which was notionally set aside for him as indicated above.

This method of calculation is somewhat complicated but it is submitted that if it is followed complete justice will be done as between the tenant for life and the remainderman.

In cases where the tenant for life under a settlement is impeachable for waste it is probable that rough justice will be done if the whole of the compensation is treated as capital money arising under the settlement and the tenant for life takes merely the income arising therefrom.

Provision is also made in cases, where payment is made on account by the Commission. Such payments will in general constitute part payment in respect of compensation and also interest on the amount of compensation unpaid, up to the date of such payment.

Trustees of a settlement must, of course, apportion any such payments on account as between capital and income.

Sub-para. (3) of para. 21 deals with monies paid on a holding, subject to a mortgage, which sum shall be disposed of—

- (1) In payment of any costs of the mortgagee, not already paid by the Commission.
- (2) In discharge of the mortgage debt.
- (3) The residue is to be paid to the person formerly entitled and capable of giving a valid discharge to the mortgaged property.

Sub-para. (4) for para. 21 deals with powers under the Ecclesiastical Leasing Acts. (See p. 195.)

Sub-para. (5) of para. 21 deals with the question of the rate of interest which may be obtained on the monies invested by the

trustees. The principle is that, notwithstanding anything in the trust instrument as to trustee securities, the trustees, Court, or whoever may be interested, as the case may be, may invest such monies, not only in securities authorised by law or by the trust instrument, but also in—

- (1) stocks or other securities of any local authority in the United Kingdom;
- (2) stocks, shares or other security of statutory undertakers within the meaning of sect. 33 of this Act, which are such undertakings as gas, water or electricity undertakings authorised by Parliament;
- (3) debentures or debenture stock, or the preference stock or shares, wholly or partially guaranteed, of any company incorporated by a special Act of, or provisional order, confirmed by, or under a public general Act of the Parliament of the United Kingdom, or incorporated by Royal Charter, being a company which has paid dividends at the rate of at least 3 per cent. on its ordinary capital for at least five years before the date of investment;
- (4) the ordinary or other stock or shares of any company incorporated as aforesaid, being a company which has paid dividends upon its ordinary capital at the rate of at least 4 per cent. for at least ten years next before the date of investment.

In no case shall any security be permissible which is a security to bearer, or subject to any calls or other payments. Power to invest in the securities mentioned in sub-para (5), is subject to any consent that would have been requisite if the money had been proposed to be invested as authorised by law, or by the trust instrument.

CHAPTER VIII.

COSTS.

SUMMARY.

- Paragraph A.—*Costs of Registration.*
,, B.—*Costs of Valuation Proceedings.*
,, C.—*Miscellaneous Costs.*
,, D.—*Costs of Payment and Disposal of Compensation.*
,, E.—*Costs before the High Court.*
,, F.—*Costs of Disputes before the Arbitrator.*
-

A.—Costs of Registration.

UNDER Part II. of the Coal (Registration of Ownership) Act, 1937, the Board of Trade is to pay the costs incurred by reason of that Act in certain circumstances. However, by the Coal Act, all such expenses are to be taken over by the Commission, and any sums paid by the Board under this Act are to be repaid to them by the Commission (a). In this chapter, costs under the Registration Act are referred to as being payable by the Commission.

The Commission will pay the costs of registration reasonably incurred by the person by whom an application for the registration of particulars in respect of a holding is duly given before the valuation date, or if the holding did not come into existence until after the valuation date (b), then within six months of that date.

(a) Sect. 35 (2).

(b) Sect. 37.

If two or more applications are made in relation to the same holding, the costs payable by the Commission shall be the amount payable if only a single application has been made, unless such double application was justified in the eyes of the Commission (*c*).

The Commission shall pay the costs of furnishing any additional information demanded by them.

In any event the Commission shall not pay costs where it appears to them that there is no reasonable ground for believing that any coal hereditaments subsisting in a holding have any market value (*d*).

Any dispute as to costs will, if either party require it, be referred to the High Court, and such costs shall be taxed, and any apportionment made that shall be necessary (*e*).

B.—Costs of Valuation Proceedings.

The Commission are to pay all costs of valuation proceedings reasonably incurred; except that where a dispute is taken before a referee, then the referee shall have power to direct that the party claiming the reference shall pay such costs as the referee thinks fit (*f*).

This general liability is modified by para. 15 of the Third Schedule as follows:—

(2) If two or more notices of claim are served in relation to the same holding, the liability of the Commission under this paragraph shall be limited to such a sum as would have been payable by them if a single notice only had been served,

(*c*) Coal (Registration of Ownership) Act, 1937, 2nd Sched. 5 (1), p. 308.

(*d*) Sect. 37.

(*e*) See p. 310.

(*f*) 3rd Sched. 12 (5).

so, however, that the Commission may pay costs in excess of that sum in any case in which it appears to them that the service of more than one notice was justified having regard to any special circumstances.

(3) The Commission shall not be liable under this paragraph to pay any costs in a case in which the holding in question is ultimately certified to have no value.

(4) The Commission shall not be liable to pay any costs under this paragraph incurred by a person who has neglected to comply at the due time with any of the preceding provisions of this Schedule that impose upon him a duty in connection with the valuation of the holding in question, whether with respect to the delivery of an estimate of the value of the holding, to the furnishing of information with relation thereto or to any other matter.

(5) The Commission shall not be liable to pay any costs under this paragraph incurred by a person intervening in respect of any intervention on his part which was not reasonably requisite for the proper valuation of the holding in question.

(6) The High Court shall have power, on the application of a person aggrieved by a denial on the part of the Commission by virtue of any of the four preceding sub-paragraphs of liability to pay any such costs as aforesaid, to give such directions as to the matter in question as appear to the Court to be just.

(7) The Commission shall have power to enter into undertakings to pay, and to pay, any costs other than those aforesaid reasonably incurred by any person in connection with the valuation of a holding.

(8) The amount of any costs that the Commission are liable under or by virtue of this paragraph to pay shall be determined by reference to a scale to be prescribed by the Treasury.

Where there is any difference of opinion as to how the costs incurred shall be taxed or apportioned, then the Board of Trade will direct in what manner they shall be so taxed or apportioned (*g*)

C.—Miscellaneous Costs.

Costs will be paid by the Commission (subject to the proviso above dealing with delays) in respect of—

- (i) a lease consolidation scheme, not as between the Commission and the lessee, but as between the Commission and any other party (*h*);
- (ii) a lease to a former freehold owner working his own coal, to any person reasonably incurring such costs (*i*);
- (iii) copies and information given by lessees within the first month after the passing of the Act (*l*).

D.—Costs of Payment and Disposal of Compensation.

By para. 22 of the Third Schedule, the Commission will pay the costs reasonably incurred by any person having an acquired interest that is comprised in a holding in connection with—

- (a) The ascertainment of the person entitled to compensation.
- (b) The investing and re-investing of sums paid by way of compensation, which sums are paid into Court under para. 18 (c) of the Third Schedule (see p. 88) (*m*).
- (c) The ascertaining by application to the High Court of how sums paid by way of compensation shall be held and disposed of (*n*).

The Commission will not be liable to pay any costs under these headings if they can show to the High Court (if necessary)

(*g*) See p. 187.
 (*h*) 4th Sched. 9.
 (*i*) 5th Sched. 6.
 (*l*) Sect. 14 (1).
 (*m*) See p. 190.
 (*n*) 3rd Sched. 22.

that the person claiming such costs has neglected to furnish information reasonably required by the Commission (*y*).

The Court shall tax such costs as are incurred by reason of application to the Court, but otherwise all costs will be taxed by the Board of Trade (*z*).

E.—Costs of Proceedings before the High Court.

The costs of proceedings before the High Court shall be paid in the manner directed by the Court, except that the Commission shall pay the costs reasonably incurred—

- (a) When deciding a question of title to enable a scheme for the apportionment of rent to be drawn up (*a*).
- (b) When deciding questions of title generally, as between adverse claimants, if such costs were incurred before the passing of the Act (*b*).

F.—Costs of Disputes before the Arbitrator.

In disputes before an arbitrator dealing with—

- (a) unreasonableness of terms in a lease granted by the Commission, and sum to be fixed on the assignment of a debt to the Commission, and generally, the arbitrator shall have discretion as to costs (*c*);
- (b) in arbitrations as to—
 - (1) apportionment of rent (*d*);
 - (2) terms under a consolidated lease (*e*);

(*y*) 3rd Sched., 22 (2).

(*z*) *Ibid.* 22 (3).

(*a*) Sect. 11 (3).

(*b*) Sect. 39.

(*c*) See p. 65.

(*d*) Sect. 11 (3).

(*e*) 4th Sched. 9 (3).

(3) terms under a lease granted to a former freehold owner working his own coal (*f*);

(4) terms as to substituted security with regard to holdings formerly held in mortgage (*g*);

costs shall be paid by the Commission, unless the arbitrator is of the opinion that the other party has behaved unreasonably.

(*f*) 5th Sched., 6.

(*g*) Sect. 11 (3).

Part IV.

CHAPTER IX.

AMENDMENT AND CONTINUANCE OF PART I. OF THE COAL
MINES ACT, 1930.

SUMMARY.

Paragraph A.—*The Extension of Part I. of the Coal Mines Act, 1930.*

„ B.—*Position before the passing of the Coal Act.*

„ C.—*Effect of the Amendments made by Part III. of the Coal Act.*

A.—The Extension of Part I. of the Coal Mines Act, 1930.

Part I. of the Coal Mines Act, 1930, which set up the machinery and procedure of the restriction and selling schemes, was to remain in force until the end of 1932. Parliament passed an Act in 1932 extending it until the end of 1937, and an Act in 1937, extending it until 31st of August, 1938. By sect. 50, Part I., of the 1930 Act, with the modifications and amendments alluded to in this chapter, shall now continue in force until 31st of December, 1942, and no longer, unless Parliament otherwise determines.

B.—The Position before the Passing of the Coal Act.

Sect. 1 of the Act of 1930 set up a central scheme and twenty-one district schemes. Since the formation of the Midland (Amalgamated) district scheme, the number of separate schemes has been reduced to seventeen.

Sects. 2 and 3 of that Act set out the matters for which these schemes are to provide, including the quota system. These schemes cannot take effect until they have had the approval of the Board of Trade, and they may be amended with the same approval.

The Act itself, however, provides that on a draft order laid before Parliament, the schemes may be made to provide for other matters in addition to and in substitution for those referred to in sects. 2 and 3; and under this procedure the statutory basis of the schemes has been altered from time to time, and that in a manner which differs as between one district and another. The main bodies set up by the schemes are the Central Council, the Executive Boards, and in order to safeguard the consumer, Committees of Investigation.

Of the additional or substituted provisions, the most important concern the selling schemes. These selling schemes vary from district to district. In South Wales sales of coal may be made only by permit issued by an officer of the Executive Board. In Lancashire the sale of all coal is by the Executive Board itself. In the Midland (Amalgamated) District groups of collieries combine to make each a separate selling agency.

Provisions were set up to provide methods of review under these schemes:—

- (a) Arbitration between persons or bodies set up by the schemes and individual coal-mining companies, as to any dispute arising out of the operation of the Scheme.
- (b) A review of standard tonnage on appeal from the Executive Board to an arbitrator.
- (c) An investigation before one of the committees of investigation. These committees of investigation were appointed by the Board of Trade, to represent in various proportions the interests of the consumers, mine owners and workers.

The powers of the committees were limited to—

- (1) making recommendations when they thought fit to the Board of Trade as to the amendment of any scheme;
- (2) making recommendations to the body or person responsible, if they considered that some act or omission necessitated it, for rectification of such act or omission.

The committees had no powers of enforcing any such recommendation, but if the committee made a recommendation under procedure (1) above to amend the scheme, then there were various provisions dealing with inquiries and further recommendations, with a final appeal by a complaining party to the Railway and Canal Commission. If, under procedure (2) above, such body or person did not follow the recommendation, then the committee and the body concerned, or, failing agreement, the Board of Trade, might appoint an independent arbitrator. If the committee did not submit the dispute to the arbitrator, the complainant might go to the Railway and Canal Commission.

It will be noticed that the procedure was both lengthy and cumbrous, but under the new Act the procedure numbered (1) above remains substantially unaltered.

C.—The Effect of Amendments made by Part III. of the Coal Act.

The full effect of these amendments will be seen by reference to the text of the Act as amended at p. 276 hereof. These amendments relate mainly to the procedure numbered (2) in para. B. above, but in all cases the chairman of a Committee of Investigation must be a member of the legal profession, appointed by the Board of Trade after consultation with the Lord Chancellor. There is also set up a new tribunal, called the Central Appeal Tribunal, also with a legal chairman, appointed by the Board of Trade in like manner, which will take the place, in matters arising under procedure (2), of the arbitrator. The appeal to the Railway and Canal Commission is abolished.

The position may now be summarised as follows:—

- (1) A recommendation of the committee of investigation under procedure (2) is now a binding recommendation on the body concerned.
- (2) The body concerned, or the complainant, if the committee refuse to make a recommendation, may appeal to the Central Appeal Tribunal, which consists of two independent persons in addition to the legal chairman.

It must be noticed, however, that the Central Appeal Tribunal has no power to amend a scheme, although the Board of Trade may do so if it thinks an amendment necessary to give effect to the recommendation.

This method of safeguarding the consumers' interest is not so complicated as the old procedure, and in practice it may be less expensive and more speedy.

Part V.

THE COAL ACT, 1938.

(1 & 2 GEO. 6, c. 52.)

ARRANGEMENT OF SECTIONS.

PART I.

UNIFICATION OF COAL MINING ROYALTIES.

The Coal Commission.

Section.

1. Constitution of Coal Commission.
2. General provisions as to functions of the Commission under Part I.

Unification of ownership of coal in the hands of the Commission.

3. Commission to acquire fee simple in coal.
4. Property and rights with which, and matters subject to which, coal is to be acquired.
5. Retention of leasehold, &c. interests carrying right to work.

Compensation of existing owners.

6. Compensation payable in respect of acquisition as a whole.
7. Ascertainment and distribution of compensation.

Transitional provisions.

8. Rights and obligations arising from contract for sale to have effect in respect of interim period.

Section.

9. Notice to the Commission, and effect, of dispositions made during interim period.
10. Acquisition by the Commission of right to arrears of rent.
11. Apportionment of rent and determination of questions on severance of subsisting leases.
12. Powers of the Commission for consolidation of leases before the vesting date.
13. Right of freeholder in possession of coal to lease thereof.
14. Provisions as to obtaining information for purposes of Part I.

Provisions supplemental to, and consequential on, unification.

15. Powers of the Commission in relation to underground land other than coal.
16. Commission to have exclusive right to search and bore for coal.
17. Coal not to be alienated from the Commission.
18. Coal not to be dealt with to the prejudice of the Commission after passing of this Act.
19. Restriction on certain dispositions by lessees of coal.
20. Provisions as to arbitration.
21. Power of the Court to appoint receiver and manager on the application of the Commission.
22. Amendments of working facilities enactments.

Financial Provisions.

23. Receipts of, and payments by, the Commission.
24. Reserve fund.
25. Reduction by the Commission of rents.
26. Power of the Commission to borrow.
27. Purposes for which the Commission may borrow.
28. Power of the Commission to issue stock.
29. Power of Treasury to guarantee loans raised by the Commission.
30. Accounts and audit.

Miscellaneous.

Section.

31. Commission not to be exempt from taxation, &c.
32. Competence of the Commission to acquire associated minerals and rights.
33. Restriction on working of coal vested in statutory undertakers.
34. Saving for certain statutory rights.
35. Execution of Registration Act and amendment as to inspection of the register.
36. Limitation as to information required to be given under the Registration Act.
37. Extension of time limit on applications for registration in respect of which costs are to be payable.
38. General power to extend time limits.
39. Limitation of costs payable in case of disputes between adverse claimants.
40. Persons to act for purposes of valuations, &c. in case of death or incapacity.
41. Application of Part I. to registered land.
42. Application of Part I. to Crown and Duchy of Cornwall.
43. Application of Part I. to Forest of Dean.
44. Interpretation of Part I.
45. Application of Part I. to Scotland.

PART II.

REDUCTION IN NUMBER OF COAL-MINING UNDERTAKINGS.

46. Transfer to the Commission of functions of the Coal Mines Reorganisation Commission.
47. Duty of the Commission to reduce number of coal-mining undertakings where necessary in interests of efficiency.
48. Powers of the Commission as to obtaining information for purposes of Part II.
49. Exemption from stamp duty in respect of amalgamation or absorption schemes and instruments executed thereunder.

PART III.

AMENDMENT AND CONTINUANCE OF PART I. OF THE
COAL MINES ACT. 1930.

Section.

50. Amendment and continuance of Part I. of 20 & 21 Geo. 5,
c. 34.

PART IV.

MISCELLANEOUS AND GENERAL.

Section.

51. Acquisition of sites for pithead baths, &c.
52. Right to inspection and copies of Commission's plans of
working.
53. Prevention of disclosure of information.
54. Liability of directors, &c. of bodies corporate for offences.
55. Service of notices, &c.
56. Powers as to inquiries, &c.
57. Reports to Board of Trade.
58. Short title and extent.

SCHEDULES.

- First Schedule—Constitution and procedure of the Coal Commission.
Second Schedule—Provisions for defining property and rights with which, and matters subject to which, coal is to be acquired.
Third Schedule—Provisions as to compensation payable under section six of this Act.
Fourth Schedule—Lease consolidation schemes.
Fifth Schedule—Grant of leases to freeholders in possession of coal immediately before the vesting date.
Sixth Schedule—Amendments of 20 & 21 Geo. 5, c. 34, s. 13.
Seventh Schedule—Amendments of 20 & 21 Geo. 5, c. 34, ss. 5 and 8.

THE COAL ACT, 1938. (1 & 2 GEO. 6, c. 52.)

An Act to make provision for the acquisition of the property in all unworked coal and mines of coal and in certain associated minerals, and of certain associated property and rights in land, by a Commission with power of management thereover; for amending the enactments relating to facilities for the working of minerals; for empowering the Commission to promote a reduction in the number of coal-mining undertakings; for continuing Part I. of the Coal Mines Act, 1930, and for amending the provisions thereof with respect to committees of investigation; for enabling land to be acquired compulsorily for the purposes of the miners welfare committee; and for purposes connected with the matters aforesaid.

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.

UNIFICATION OF COAL MINING ROYALTIES

The Coal Commission.

1. *Constitution of Coal Commission.*—(1) There shall be a Coal Commission (in this Act called “the Commission”) to exercise and perform the powers and duties set out in this Act.

(2) The Commission shall be a body corporate by the name of “the Coal Commission,” with perpetual succession and a common seal, and with power to hold land without licence in mortmain.

(3) The provisions of the First Schedule to this Act shall have effect with respect to the constitution and procedure of the Commission.

2. *General provisions as to functions of the Commission under Part I.*—(1) It shall be the duty of the Commission to exercise

their functions as owners of the fee simple in coal and mines of coal and of the property and rights to be acquired by them therewith in such manner as they may think best for promoting the interests, efficiency, and better organisation of the coal-mining industry.

(2) The Commission shall not themselves engage in the business of coal-mining or carry on any operations for coal-mining purposes, other than searching and boring for coal, but shall grant leases for those purposes:

Provided that the Commission may carry on any operations for those purposes which may be requisite for preserving in good order premises that are not for the time being subject to a coal-mining lease.

(3) The Board of Trade may give to the Commission general directions as to the exercise and performance by the Commission of their functions under this Part of this Act in relation to matters appearing to the Board to affect the national interest, including all matters affecting the safety of the working of coal, and the Commission shall give effect to any such directions:

Provided that nothing in this subsection shall be construed as conferring on the Board any power to give a direction inconsistent with any provisions of the Coal Mines Act 1911, or of any other enactment relating to the control or management of a mine within the meaning of that Act, or of any regulations made under that Act or any such other enactment.

Unification of ownership of coal in the hands of the Commission.

3. Commission to acquire fee simple in coal.—(1) The Commission shall acquire in accordance with the provisions of this Part of this Act the fee simple in all coal and mines of coal together with such property and rights annexed thereto and such rights to withdraw support as are hereinafter mentioned, subjects to such servitudes, restrictive covenants and other matter adversely affecting any of the said coal or mines as are hereinafter mentioned, and subject to the provisions of this Part of this Act

with respect to the retention of interests arising under coal-mining leases and of certain other interests.

(2) During the period between the first day of January, nineteen hundred and thirty-nine (in this Act referred to as the "valuation date") and the first day of July, nineteen hundred and forty-two (in this Act referred to as the "vesting date") all coal and mines of coal shall be held as if all the existing owners thereof had, in respect of all their interests therein other than retained interests and with full capacity so to do, entered into a contract on the valuation date for the sale thereof to the Commission, at a price to be ascertained by valuation, with provision for completion of the contract on the vesting date.

(3) On the vesting date all coal and mines of coal as existing at that date shall vest in the Commission for a title comprising all interests then subsisting in any such coal or mine other than retained interests.

(4) In this Part of this Act the expression "coal"—

(a) means bituminous coal, cannel coal and anthracite; but

(b) shall, in a case in which minerals or substances other than bituminous coal, cannel coal or anthracite are comprised in a lease subsisting at the valuation date which confers a right to work and carry away both that coal or anthracite and those other minerals or substances, include those other minerals or substances, so however that the Commission may, by direction given in the prescribed manner before the expiration of six months from the valuation date, exclude any such other minerals or substances from the operation of this paragraph, and, in the case of any such other minerals or substances which in the opinion of the Commission are or would normally be worked by surface workings and not in association with that coal or anthracite, the Commission shall, if any person interested therein makes application to the Commission in that behalf before the expiration

of six months from the valuation date, by direction exclude them from the operation of this paragraph; and

- (c) except in the case of references to the making merchantable or disposing of coal, means coal that is unworked, that is to say, not so severed as to have become a chattel.

4. Property and rights with which, and matters subject to which, coal is to be acquired.—(1) The premises comprised in the contract relating to any coal or mine referred to in subsection (2) of the last preceding section shall be deemed to include all property and rights, other than rights to withdraw support or rights created by working facilities orders, that would pass with that coal or mine under a conveyance thereof such as is specified in Part I. of the Second Schedule to this Act taking effect on the valuation date, and all such property and rights (in this Act referred to as “acquired property and rights”) shall be held during the interim period accordingly.

(2) The said contract shall be deemed to have been for a sale subject to all matters subject to which the premises comprised therein would pass on such a conveyance as aforesaid.

(3) On the vesting date there shall vest in the Commission with any coal or mine of coal—

- (a) all property and rights, other than rights to withdraw support or rights created by working facilities orders, that would pass with that coal or mine under a conveyance thereof such as is specified in Part I. of the Second Schedule to this Act taking effect on the vesting date; and
- (b) such right, if any, to withdraw support as is under the provisions of Part II. of the Second Schedule to this Act to vest therewith.

(4) The vesting of any coal, mine of coal, property or rights in the Commission shall take effect subject to all matters subject

to which those premises would pass on such a conveyance as is mentioned in the last preceding subsection.

5. *Retention of leasehold, &c. interests carrying right to work.*—

(1) Except as provided by subsection (2) of this section, interests in coal or a mine of coal that arise under a coal-mining lease shall be retained interests.

(2) The following interests, that is to say—

(a) interests arising under a coal-mining lease in coal or a mine of coal which is subdemised by a coal-mining lease derived out of that lease, or which is, by virtue of any other form of disposition taking effect directly or indirectly out of that lease, held in like manner as if it had been so subdemised; and

(b) interests arising under a coal-mining lease 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;

shall not be retained interests unless the Commission so direct.

(3) Any direction to be given for the purposes of the last preceding subsection shall be given by means of a notice in writing served on the lessee under the lease under which the interests in question arise, and must be given not later than the expiration of six months from the valuation date, or, if later, from the time when the Commission have received notice of the subsistence of that lease and also, in a case to which paragraph (a) of that subsection applies, of the subdemise or other disposition.

Where a direction might be given both as respects interests arising under a lease and as respects interests arising under a lease derived out of that lease, a direction shall not be given as respects the former unless a direction has been given or is to be given as respects the latter also.

(4) A right to work granted by a working facilities order shall,

in so far as it creates an interest in any coal or mine of coal, be a retained interest.

(5) Where coal or a mine of coal comprised in a coal-mining lease is subject to a right to work that coal or to use that mine for a coal-mining purpose, as the case may be, granted by a working facilities order to a person other than the person in whom the corresponding right arising under the lease is vested, this section shall have effect in relation to interests in that coal or mine arising under the lease in like manner as if that coal or mine had been subdemised by a coal-mining lease derived out of that lease.

(6) Interests in coal or a mine of coal in or under land formerly copyhold which were preserved to the tenant on the enfranchisement thereof shall be retained interests, except in a case in which the tenant has, by custom or otherwise (except by virtue of a coal-mining lease), the right to work coal in or under the land without the licence of the lord.

(7) In this Part of this Act—

- (a) references to an interest arising under a lease shall be construed as references to the interest of the lessee thereunder as such lessee and any interest held by a person claiming under him as so claiming but shall not include any option to acquire, or any right of pre-emption over, an interest in coal or a mine of coal, that may be conferred by the lease;
- (b) references to retained interests shall be construed, in relation to any coal or mine of coal, as references to interests therein that are retained interests by virtue of this section or of section thirty-five of this Act, and, in relation to any property or rights annexed to that coal or mine, as references to the corresponding interests therein;
- (c) references to a retained copyhold interest shall be construed as references to an interest that is a

retained interest by virtue of subsection (6) of this section.

Compensation of existing owners.

6. Compensation payable in respect of acquisition as a whole.—

(1) The Commission shall pay, as compensation to existing owners for the acquisition of their interests, sums ascertained in accordance with the provisions of this and the next succeeding section in respect of all coal and mines of coal, of all acquired property and rights, and of all rights to withdraw support that are to vest in the Commission under Part II. of the Second Schedule to this Act.

(2) The compensation shall be ascertained separately in accordance with the next succeeding section in respect of—

(a) all the said matters in respect of which compensation is to be payable, with the exception of—

(i) minerals or substances other than bituminous coal, cannel coal or anthracite, and property and rights annexed to any such minerals or substances and not to any such coal or anthracite or to a mine thereof, and

(ii) surface servitudes,

which matters are in this Act referred to as “principal coal hereditaments”;

(b) the matters within the exception aforesaid, in this Act referred to as “subsidiary coal hereditaments.”

(3) The aggregate amount of the compensation payable in respect of all principal coal hereditaments shall be the sum of sixty-six million, four hundred and fifty thousand pounds.

(4) The Central Valuation Board established under the Third Schedule to this Act shall prepare and deposit with the Board of Trade a map showing a division of the whole of Great Britain into regions (in this Act referred to as “valuation regions”), and shall allocate to each valuation region a part (in this Act referred to as a “regional allocation”) of the said sum of sixty-six million four hundred and fifty thousand pounds, being a part

bearing the same proportion to the whole of that sum as they may estimate the value of all principal coal hereditaments in the region to bear to the value of all principal coal hereditaments in Great Britain.

7. Ascertainment and distribution of compensation.—(1) The sums to be paid for compensation as aforesaid shall be ascertained by valuation, in accordance with the provisions of this section, of the interests, other than retained interests, that subsist at the valuation date in coal, mines of coal and acquired property and rights (in this Act referred to as “acquired interests”).

(2) The subject of each valuation shall be a unit (in this Act referred to as “a holding”) consisting of an acquired interest, or of a group of such interests, that is under the provisions of the Third Schedule to this Act to constitute a unit for compensation purposes.

(3) In order for compensation to be payable in respect of any holding the requirements of the Third Schedule to this Act as to—

(a) the registration of particulars under the Coal (Registration of Ownership) Act, 1937 (in this Act referred to as the “Registration Act”); and

(b) the making of claims for compensation;

must be satisfied within the limits of time specified in that Schedule.

(4) The value of a holding shall be taken to be the amount which the holding might have been expected to realise if this Act had not been passed and the holding had been sold on the valuation date in the open market by the existing owners thereof, selling as willing vendors to a willing purchaser, under a contract providing for completion thereof on the vesting date, so however that, where a right to withdraw support is to vest in the Commission with coal or a mine of coal in which a holding subsisted, it shall be valued as if each of the existing owners thereof, having power to grant that right to the purchaser for an

interest corresponding to the existing owner's interest in the coal or mine, had agreed so to grant it in addition to any acquired rights in which the holding subsisted.

(5) The said amount shall be ascertained, subject to the provisions of the Third Schedule to this Act, by the Regional Valuation Board established under the Third Schedule to this Act, and where the premises in which a holding subsisted include subsidiary coal hereditaments, the Regional Valuation Board shall also ascertain the parts of that amount that are attributable to principal and to subsidiary coal hereditaments respectively.

(6) The Regional Valuation Board shall certify to the Commission the amounts ascertained by them under the preceding subsection in respect of each holding in their region for which compensation is payable, indicating which of those amounts are amounts attributable to principal and to subsidiary coal hereditaments respectively.

(7) There shall be paid in respect of each holding in any valuation region for which compensation is payable—

- (a) a sum bearing to the amount certified in respect thereof as attributable to principal coal hereditaments the same proportion as the amount of the regional allocation for that valuation region bears to the aggregate of the amounts so certified in respect of all such holdings in that valuation region; and
- (b) a sum equal to any amount certified in respect thereof as attributable to subsidiary coal hereditaments.

(8) The sum or sums to be paid in respect of any holding shall be a debt due from the Commission to the person entitled in accordance with the provisions of the Third Schedule to this Act to the compensation for the holding, payable on the vesting date, and the said sum or sums, or, where any payment on account thereof is made, the part thereof for the time being remaining due, shall carry interest from the vesting date to the date of actual payment thereof at the rate per cent. equivalent to the average yield (as ascertained by the Treasury) as on the vesting date of

the Government securities prescribed by the Treasury in accordance with the provisions of Part II. of the Land Settlement (Facilities) Act, 1919.

(9) Subject as aforesaid, the compensation payable under section six of this Act shall be ascertained and paid subject to and in accordance with the provisions of the Third Schedule to this Act.

Transitional provisions.

8. *Rights and obligations arising from contract for sale to have effect in respect of interim period.*—The rules of law and equity that regulate rights and obligations in relation to land that is the subject of a contract for sale in respect of the period between the date of the contract and the date fixed for completion thereof shall have effect in relation to the premises that are to vest in the Commission by virtue of this Part of this Act in respect of the interim period, subject to and in accordance with the following provisions, that is to say:—

- (a) the said rules shall have effect subject to such modifications as are requisite by virtue of the fact that the said premises are to vest by virtue of this Part of this Act in lieu of being conveyed;
- (b) full regard shall be had to the nature of the said premises in all respects and, in particular, in determining whether any act or omission involves a breach of the obligation imposed on a vendor by the said rules to take due care of land that is the subject of a contract for sale, no person shall be treated as under obligation to exercise any greater measure of care in relation to any of the said premises than 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
- (c) the contract for sale to be assumed for the purposes of the said rules shall be a contract providing expressly that the vendor should be entitled to the possession and

enjoyment of the property until the date fixed for completion and to the benefit of the rents and profits thereof accruing up to that date, and that rents and profits accruing, or coal worked, before that date from a mine of coal that is opened after the date of the contract should be treated in like manner as if the mine had been open at the date thereof.

9. Notice to the Commission, and effect, of dispositions made during interim period.—(1) Where it is proposed to grant during the interim period (otherwise than in accordance with the provisions of section twelve of this Act) a coal-mining lease of or comprising any premises that are to vest in the Commission by virtue of this Part of this Act, or to vary or renew such a lease, a draft of the proposed lease or other instrument must be delivered to the Commission at least two months before the date on which it is to be executed.

(2) Where it is proposed to make during the interim period any other disposition of or affecting any of the said premises, notice in writing of the proposal may be delivered to the Commission.

(3) A lease, variation, renewal or other disposition granted or effected pursuant to a proposal notified to the Commission under either of the preceding subsections shall be deemed to have been granted or effected in conformity in all respects with the rules mentioned in the last preceding section unless, in proceedings commenced by the Commission within two months from the date on which they have been notified of the proposal, the Court makes a declaration that the proposal is not in conformity therewith.

(4) If—

(a) any such lease, variation or renewal as is mentioned in subsection (1) of this section is granted or effected during the interim period otherwise than pursuant to a proposal notified to the Commission as required by that subsection; or

- (b) any such lease, variation or renewal as aforesaid, or any other disposition of or affecting any premises that are to vest in the Commission by virtue of this Part of this Act, is granted or effected during the interim period in such manner as to contravene any of the said rules;

then, unless it is so granted or effected with the consent of the Commission or is saved by the provisions of the last preceding subsection, it shall, so far as regards the title for which the premises in question vest in the Commission, be void, and any right accruing to the Commission to sue for damages in respect of any act or omission that contravenes any of the said rules may be enforced as well after as before the vesting date, notwithstanding that the Commission became aware thereof before that date.

10. Acquisition by the Commission of right to arrears of rent.— It shall be within the competence of the Commission to take from the person entitled thereto an assignment of any debt due from a lessee in respect of rent payable before the vesting date for premises that are to vest or have vested in the Commission, and, in the case of such rent becoming payable at any time within the twelve months next before the vesting date, the Commission shall, on being required so to do by notice in writing served on them by the person entitled thereto at any time before the expiration of twelve months from the vesting date, take an assignment of any debt due from the lessee in respect thereof at a price to be determined by agreement between that person and the Commission or, in default of agreement, by arbitration.

11. Apportionment of rent and determination of questions on severance of subsisting leases.—(1) In the case of every coal-mining lease subsisting on the vesting date in the case of which either—

- (a) a severance of the reversion immediately expectant on the lease is effected, by the vesting in the Commission

by virtue of this Part of this Act of that reversion as regards a part only of the premises which are comprised in the lease; or

- (b) a severance of the interests arising under the lease is effected, by the vesting in the Commission by virtue of this Part of this Act of those interests as regards a part only of the premises which are comprised in the lease and the immediate reversion in which is vested in the Commission;

and the lease does not reserve separate rents for the several parts of the premises, the rent reserved by the lease shall be apportioned, and the parts of that rent to be apportioned to the several parts of the premises shall, in default of agreement between the Commission and any other person entitled in reversion immediately expectant on the lease and the lessee, be determined by an arbitrator selected by agreement between the parties or, in default of agreement, by the Lord Chancellor in the case of England or the Lord President of the Court of Session in the case of Scotland.

(2) Where an apportionment of the rent reserved by a lease has been made for the purposes of a valuation of a part of the premises under the Third Schedule to this Act, an arbitrator shall have regard to that apportionment for the purposes of a determination under the preceding subsection.

(3) In the case of every coal-mining lease subsisting on the valuation date in the case of which such a severance as aforesaid is effected as aforesaid, the Commission shall pay the costs reasonably incurred by any person in connection with a reference to arbitration under subsection (1) of this section or with an application to the Court that may be requisite for the purpose of determining any question as to the rights or liabilities of any person under the lease that arises in consequence of the severance:

Provided that the arbitrator or the Court, as the case may be, may direct that the Commission shall not be liable to pay any

such costs as aforesaid incurred by a person who appears to the Court to have made a reference or application or prosecuted proceedings thereon unreasonably, or to have been guilty of any such unreasonable failure to agree with the Commission or with any other party, or of any such negligence or default, as to disentitle him to payment of those costs, and, if it appears to the Court that the necessity for the determination of the question raised on an application arose in part only in consequence of such a severance as aforesaid, the Court may direct that the Commission shall be liable to pay a proportionate part only of such costs as aforesaid.

(4) A Regional Valuation Board shall cause proper records to be kept of apportionments of rent made by them for the purposes of valuations made by them and of any alteration of any such apportionment made by a referee on a review of a valuation made by them, and any entry in any book or other document kept for the purposes of this subsection, or a copy thereof upon which is endorsed a certificate purporting to be signed by a person authorised in that behalf by the Board stating that the copy is a true copy, shall in all legal proceedings be evidence of the entry and of the apportionment referred to.

12. Powers of Commission for consolidation of leases before the vesting date.—(1) Where rights to work a number of parcels of coal are subsisting under a number of coal-mining leases in the same working lessee and it appears to the Commission that it is expedient that arrangements should be made during the interim period for the working of that coal as a whole under a single lease, the Commission may make, in agreement with the working lessee, a scheme for the purposes of this section (in this section and in the Fourth Schedule to this Act referred to as a "lease consolidation scheme").

(2) A single lease to be granted pursuant to a lease consolidation scheme that relates to any colliery area must comprise all the coal and mines of coal in that colliery area.

(3) The provisions of the Fourth Schedule to this Act shall

have effect as to the procedure for making, and as to the operation of, a lease consolidation scheme.

(4) In connection with each lease consolidation scheme provision shall be made in the manner specified in the Fourth Schedule to this Act for ascertaining an amount (in this section and in that Schedule referred to as the "standard amount of rent") representing the amount of rent which, after deduction of income tax, mineral rights duty and royalties welfare levy, might reasonably have been expected to become receivable, if the scheme had not been made, in right of each reversion (whether immediate or superior) on a subsisting working lease in premises that are to be comprised in the single lease, for each half year (or other period in respect of which rent is to be receivable under the single lease) between the coming into operation of the scheme and the vesting date.

(5) If the amount of the rent receivable, after such deduction as aforesaid, under the single lease, in respect of the premises comprised therein, being premises that were comprised in any of the subsisting working leases, for any period for which standard amounts of rent are fixed in connection with the scheme, is less than the aggregate of those standard amounts, the Commission shall pay to the person entitled to recover that rent such a sum as after deduction of income tax will yield an amount equal to the deficiency, and any sum so paid for any period shall be deemed to be income for that period of the respective persons entitled beneficially to that rent.

(6) If the amount of the rent receivable as aforesaid is greater than the aggregate aforesaid, the person entitled to recover that rent shall pay to the Commission an amount equal to the excess.

(7) In this section and in the Fourth Schedule to this Act—

- (a) the expression "colliery area" means an area comprising all parcels of coal which are capable of being conveniently and economically worked to the shafts of a single colliery, and in respect of which the same person is working lessee;

- (b) the expression "working lessee" means, in relation to any parcels of coal, a person carrying on the business of coal-mining who has rights to work those parcels by virtue of a number of coal-mining leases held by him in possession (that is to say not subject to any under-lease) or so held by another for his benefit; and
- (c) the expression "subsisting working lease" means a coal-mining lease which comprises any coal in a colliery area to which a lease consolidation scheme relates which is held as aforesaid by or for the benefit of the working lessee.

13. *Right of freeholder in possession of coal to lease thereof.*—

(1) A person carrying on the business of coal-mining immediately before the vesting date, who is then beneficially entitled (whether or not subject to a mortgage) to the entire fee simple in coal or a mine of coal that is not subject at that date to any coal-mining lease, shall have the right, if he has made an application in writing in that behalf to the Commission before the vesting date, to a grant from the Commission of a coal-mining lease comprising any coal or mine of coal specified in his application to which he is so entitled and any property and rights that vest in the Commission therewith:

Provided that—

- (a) the right under this section to a grant of a lease of any coal or mine shall be conditional upon the applicant's satisfying the requirements of the Third Schedule to this Act as to the registration of particulars thereof under the Registration Act and the making of a claim for compensation for the fee simple therein, and to his complying with the provisions of that Schedule that impose upon him any duty in connection with the valuation of the fee simple therein; and
- (b) a person shall not be entitled under this section to a lease the grant of which would interfere with the

exercise of a right granted by a working facilities order, or with the use or exercise under a coal-mining lease of any property or right comprised therein.

(2) A lease granted under this section shall be granted for such a 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, and subject to conditions with respect to rent and otherwise which shall not in any case be more onerous to the lessee than the conditions customary in the district or, where there are no customary conditions or the customary conditions are not applicable, than the conditions to which a person not entitled to the benefit of this section might reasonably have been expected to agree, and the conditions of the lease shall, where the person entitled thereto acquired the fee simple in the coal before the tenth day of November nineteen hundred and thirty-seven, be so framed as to secure that his financial position in respect of his business of working the coal shall neither be adversely affected nor improved by the fact that, in lieu of his remaining entitled to the fee simple in the coal, compensation of the amount ascertained under section seven of this Act becomes payable in respect thereof, and he becomes liable to a periodical payment of rent of an amount fixed by reference to the time requisite for enabling the coal to be worked out, and ceases to be liable as proprietor thereof for the payment of mineral rights duty and royalties welfare levy.

(3) The provisions of the Fifth Schedule to this Act shall have effect with respect to the granting of leases under this section, and the substitution or variation of securities in the case of premises that were subject to a mortgage.

(4) No stamp duty shall be chargeable upon a lease granted and expressed to be granted under this section, or upon a substituted security, or an instrument making provision for the variation of a subsisting security, made and expressed to be made pursuant to the provisions of the Fifth Schedule to this Act.

14. Provisions as to obtaining information for purposes of Part I.

—(1) The lessee under every coal-mining lease subsisting at the date of the passing of this Act, or granted between that date and the valuation date, shall within one month from the date of the passing of this Act or of the grant of the lease, as the case may be, deliver to the Commission notice in writing of the subsistence of the lease stating the date thereof and the parties thereto and indicating generally the situation of the premises comprised therein, and, if required by the Commission so to do, shall deliver to the Commission within one month after being so required a copy of the lease or, if the lease is by parole, a statement in writing setting out all the terms of the lease.

A person required by this subsection to deliver a copy of a lease or a statement shall be entitled to be paid by the Commission all costs reasonably incurred by him in the preparation and delivery thereof.

(2) On the vesting date the property in, and the right to possession of, the following documents relating solely to the management of coal or a mine of coal shall vest in the Commission, that is to say, all plans, sections, records of survey and other similar documents, that belonged immediately before the vesting date to a person interested in coal or a mine of coal, other than—

- (a) documents that belonged to a person having a retained interest and that relate to the premises in which that interest subsists;
- (b) documents that belonged to a person who has duly made application under section thirteen of this Act for a grant from the Commission of a lease of any premises and that relate to those premises; and
- (c) documents which, whilst relating solely to the management that touch or concern other land in which the person to whom the documents belonged is interested at the vesting date.

(3) Where after the vesting date a person retains possession of any document relating to the title to, or to the management

of, coal or a mine of coal, he shall be deemed to have given to the Commission an acknowledgment in writing of the right of the Commission to production of that document and to delivery of copies thereof, and section sixty-four of the Law of Property Act, 1925, shall have effect accordingly, and on the basis that the acknowledgment did not contain any such expression of contrary intention as is mentioned in that section.

(4) Any person authorised in writing by the Commission, by the Central Valuation Board or by a Regional Valuation Board, a referee appointed under the Third Schedule to this Act and any person authorised in writing by such a referee, shall be entitled, on production in the case of a person authorised as aforesaid of his authority if so required, with or without workmen or other assistants at all reasonable times to enter upon, inspect and examine any premises where operations for coal-mining purposes or purposes connected therewith are carried on and to take plans and measurements of workings therein and to inspect all or any plans, sections, or particulars of such premises or workings, and to use free of charge all machinery and other facilities therein requisite or convenient for the exercise of any of the powers aforesaid, and it shall be the duty of all persons competent in that behalf to refrain from any act which might obstruct, and to give all assistance requisite for, the exercise of the powers conferred by this subsection.

(5) Any person who makes default in compliance with the provisions of subsection (1) of this section, or who, on being duly required by virtue of the provisions of subsection (3) or (4) of this section to produce any document or to do or refrain from doing any other act, makes default without reasonable cause or excuse in complying with the requirement, shall be guilty of an offence under this section and shall be liable on summary conviction to a fine not exceeding fifty pounds, and to a further fine, not exceeding ten pounds, for every day on which he is in default.

Provisions supplemental to, and consequential on, unification.

15. *Powers of the Commission in relation to underground land other than coal.*—In respect of any underground land not vested in them by virtue of this Part of this Act, the Commission shall themselves have the right, and shall have power to grant a licence to any person, to do any of the following acts in the course of operations carried on for coal-mining purposes on or after the vesting date, that is to say, to enter upon, remove, execute works in, pass through and occupy any such land and to do all such other acts in relation to any such land as are requisite or convenient for the purposes of any such operations:

Provided that neither the Commission nor a person to whom a licence has been granted under this section shall be entitled by virtue of this section or of the licence—

- (a) to interfere with the carrying on of underground operations carried on for a purpose other than a coal-mining purpose;
- (b) to interfere with the surface of any land;
- (c) to withdraw support from any land;
- (d) to do any other act in respect of any land which, if this section had not been enacted, would be actionable by virtue of any servitude, restrictive covenant, or statutory prohibition or restriction adversely affecting that land; or
- (e) to do any other act which, if this section had not been enacted, would be actionable as a trespass or as a nuisance and which, if done, would be likely to cause actual damage other than of a purely nominal amount.

16. *Commission to have exclusive right to search and bore for coal.*—On and after the vesting date it shall not be lawful for any person, other than the Commission or a person authorised by them so to do or a person having the right so to do by virtue of a retained interest subject to which the coal in question is vested in the Commission, to search or bore for coal.

17. *Coal not to be alienated from the Commission.*—(1) A power to acquire land compulsorily conferred by or under any enactment (including, unless the contrary intention appears therein, an enactment passed after the date of the passing of this Act) shall not be exercisable on or after the date of the passing of this Act in respect of any coal or mine of coal, other than coal that is necessary to be dug or carried away in the course of operations for the purposes of which the power is conferred or a mine that is necessary to be used in the course of such operations.

(2) No right adverse to the title to any coal or mine of coal vested in the Commission by virtue of this Part of this Act shall be capable of being acquired under the Real Property Limitation Acts, 1833, 1837, and 1874, or any of them or under any enactment (including, unless the contrary intention appears therein, an enactment passed after the date of the passing of this Act) that amends, or repeals and re-enacts any of those Acts.

(3) The Commission shall not alienate for any freehold interest any coal or mine of coal, other than coal that is necessary to be dug or carried away in the course of operations for purposes other than coal-mining or a mine that is necessary to be used in the course of such operations, or coal present among other minerals that is of so small value that the working thereof is unlikely to be undertaken except as an operation subsidiary to the working of those other minerals, or a mine used primarily for purposes other than coal-mining.

(4) In this section references to coal shall not be construed as including references to minerals or substances that are subsidiary coal hereditaments within the meaning of section six of this Act.

(5) Nothing in the foregoing provisions of this section shall affect the acquisition or granting of a servitude adversely affecting coal or a mine of coal, or the acquisition or granting under any enactment of any liberty, privilege, easement, right or advantage, adversely affecting coal or a mine of coal.

18. *Coal not to be dealt with to the prejudice of the Commission after passing of this Act.*—As from the date of the passing of this

Act until the valuation date, all persons interested in coal or a mine of coal shall be treated as holding their respective interests in a fiduciary capacity for giving effect to the provisions of this Part of this Act, and as being subject accordingly to an obligation to refrain from any dealing therewith (not being a disposition or other dealing which might reasonably have been effected in the ordinary course of business if this Act had not been passed) calculated to give a factitious or artificial value to a holding or to prejudice the interests or powers to be acquired by the Commission under this Part of this Act.

19. *Restriction on certain dispositions by lessees of coal.*—(1) Or and after the valuation date no term of years in coal or a mine of coal shall be capable of being created either at law or in equity by way of under-lease out of a term of years therein:

Provided that this subsection shall not apply to the creation as aforesaid of a term of years by way of mortgage or pursuant to a lease consolidation scheme made under section eleven of this Act, or to minerals or substances that are subsidiary coal hereditaments within the meaning of section six of this Act or to a mine thereof.

(2) In every lease granted by the Commission there shall be implied, and every coal-mining lease the immediate reversion whereon is vested in the Commission by virtue of this Part of this Act, either as to the whole or as to part of the premises comprised therein, shall have effect as from the vesting date as if it had contained, a covenant on the part of the lessee or of the lessees jointly and severally, as the case may be, not to assign or to part with the possession of any coal or mine of coal comprised therein without first obtaining the written consent of the Commission (which may be withheld without reason given and at the sole discretion of the Commission), and a condition of re-entry in the event of a breach of the said covenant:

Provided that, where such a lease as aforesaid comprises premises the immediate reversion wherein is vested in the

Commission and other premises, the condition of re-entry shall extend only to the first-mentioned premises.

(3) The covenant mentioned in the last preceding subsection shall have effect as a covenant to which section seventy-nine of the Law of Property Act, 1925, applies and which does not contain any such expression of contrary intention as is therein mentioned.

20. On and after the valuation date, a clause shall be included in all leases of coal or mines granted by the Commission providing for arbitration in the case of any dispute between the Commission and the lessee in respect of any provision of the lease or any matter arising therefrom.

21. *Power of Court to appoint receiver and manager on the application of the Commission.*—In any proceedings in which the Commission claim to recover possession of premises vested in them from a lessee thereof, or other relief in respect of a breach by the lessee of his obligations under the lease, the Court in which the proceedings are pending may, on the application of the Commission, make such order as it thinks fit for the purpose of enabling operations for coal-mining purposes to be carried on on the premises, or for the preservation thereof, during the continuance of the lease and during any period that may elapse between a determination thereof and the granting of a new lease, and the provision to be made by any such order may include the appointment of a receiver of the rents and profits of the premises, with liberty, subject to such terms and conditions as the Court may think fit to impose, to manage the undertaking, to use for the purposes of the order any fixed or movable plant or machinery of the lessee in or upon the premises, and to do all such other acts and things as may be or become requisite for those purposes.

22. *Amendments of working facilities enactments.*—(1) Section one of the Mines (Working Facilities and Support) Act, 1923, and subsection (1) of section thirteen of the Mining Industry Act,

1926 (which relate to the granting by the Railway and Canal Commission of rights to search for or work minerals), shall, on the vesting date, cease to have effect as respects coal within the meaning of this Part of this Act:

Provided that—

- (a) this subsection shall not apply to the granting of a right required by reason of the subsistence of a retained copyhold interest; and
- (b) this subsection shall not affect the power conferred on the Railway and Canal Commission by section eighteen of the Railway and Canal Traffic Act, 1888, to review and rescind or vary a working facilities order subsisting on the vesting date.

(2) No order shall be made under section two of the Mines (Working Facilities and Support) Act, 1923 (which relates to the granting of rights in the case of a failure or refusal of lessors of mines to concur in an adjustment of boundaries) on the ground of any failure or refusal on the part of the Commission.

(3) To the rights specified in paragraphs (a) to (e) of subsection (2) of section three of the Mines (Working Facilities and Support) Act, 1923 (which specifies certain ancillary rights that may be conferred where required in order that minerals may be properly and conveniently worked) there shall be added the following right, so far as it may be required in order that coal within the meaning of this Part of this Act may be properly and conveniently worked, that is to say—

“(f) In a case in which the surface has been used for the erection of any works for a coal-mining purpose within the meaning of Part I. of the Coal Act, 1938, or of dwellings for persons employed in connection with the working of coal within the meaning of that Part of that Act, or with any such works as aforesaid or as are mentioned in paragraph (c) of this subsection, a right to use and occupy the works or dwellings for the purposes for which they were erected.”

(4) Where such a right as is specified in the last preceding subsection is to be granted on the termination of a lease, and a right to erect or use the works or dwellings was comprised in that lease, the Railway and Canal Commission, in determining whether any compensation or consideration is to be paid or given in respect of the right to be granted by them and the amount thereof, if any, shall have regard to the fact that the right comprised in the lease was therein comprised and to the amount of any rent reserved by the lease in respect thereof.

(5) In subsection (2) of section ten of the Mines (Working Facilities and Support) Act, 1923, there shall be inserted, after the words "The Board of Trade and any other Government Department," the words "and the Coal Commission."

(6) Any right which under the Mines (Working Facilities and Support) Act, 1923, or under section thirteen of the Mining Industry Act, 1926, may be granted to a person having the right to work coal may be granted to the Commission where required by them for the purpose of searching and boring for coal.

Financial provisions.

23. *Receipts of, and payments by, the Commission.*—All sums received by the Commission shall be paid into a separate fund, to be called "the Coal Fund," and all payments by the Commission shall be made out of that fund.

24. *Reserve fund.*—(1) The Commission shall establish a reserve fund, and shall carry to the credit of that fund, immediately after their accounts for each financial year have been made up, an amount equal to any excess of their revenues for that year over their liabilities for that year properly chargeable to revenue account, whether in respect of salaries, allowances, remuneration, pensions, gratuities or expenses payable under the First or Third Schedule to this Act or of other administrative expenses, of interest on any loan raised or stock issued by them, of any sums which by the terms of the raising or issue of any

such loan or stock they are bound to set aside towards the repayment of the principal thereof, or of any other matter involving a liability properly so chargeable (which excess is in this and the next succeeding section referred to as the Commission's "annual surplus").

(2) The reserve fund shall be applicable primarily for the purposes of meeting any deficiency at any time arising on the revenue account of the Commission and of meeting any extraordinary claim or demand at any time arising against the Commission, and the Board of Trade shall from time to time, with the approval of the Treasury, by regulation prescribe—

(a) an amount, in this and the next succeeding section referred to as "the prescribed minimum reserve," being such an amount as may be required by the Board with the approval of the Treasury to be held for the time being to the credit of the reserve fund for answering those purposes; and

(b) an amount, in this and the next succeeding section referred to as "the prescribed appropriation to reserve," being such an amount as may be required by the Board with the approval of the Treasury to be made available for carrying to the credit of the reserve fund at the end of each financial year of the Commission whilst the regulation remains in force.

(3) At any time at which the value of the reserve fund is greater than the prescribed minimum reserve, the Commission may apply a part thereof, not exceeding in value the amount of the excess, in purchasing for cancellation stock issued by them under this Part of this Act or otherwise for the redemption of debt.

(4) Sums credited to the reserve fund shall be invested from time to time in such securities of the Government of the United Kingdom as the Commission may, with the approval of the Board of Trade, think fit, and references in this and the next succeeding section to the value of the reserve fund or of any part

thereof shall be construed as references to the value of the investments and cash of which the reserve fund or that part thereof consists, as determined by the Treasury.

(5) If any question arises as to whether any liability of the Commission ought to be treated as properly chargeable to revenue account, or any claim or demand arising against the Commission ought to be treated as of an extraordinary character, it shall be referred to the Board of Trade whose decision shall be conclusive.

25. *Reduction by the Commission of rents.*—(1) If at any time, on an estimate made by the Commission, it appears to them that their annual surplus for future financial years is likely on the average to exceed the amount which is at that time the prescribed appropriation to reserve, they may reduce any such rents within their control as are specified in the next succeeding subsection by amounts not exceeding in the aggregate one-half, or if the value of the reserve fund is then greater than the prescribed minimum reserve the whole, of the estimated excess of their annual surplus over the prescribed appropriation to reserve.

(2) The rents which may be reduced under the preceding subsection shall be any of the following at the discretion of the Commission, that is to say,—

- (a) rents payable in respect of underground way-leaves, whether expressly reserved in respect thereof or not;
- (b) rents payable by particular lessees working coal in any district or part of a district which are, having regard to all the circumstances, more onerous than the average of the rents payable by lessees working coal under similar conditions in that district or part of a district; and
- (c) rents payable by lessees generally working coal in any district or part of a district which are, having regard to all the circumstances, more onerous than the average of the rents payable by lessees generally working coal under similar conditions in other districts or in another part of that district:

Provided that, if at any time the Commission report to the Board of Trade that such reduction of rents as they have power to effect under the foregoing provisions of this subsection has been substantially completed, the Board of Trade may make and lay before Parliament an order making provision to the effect that the preceding subsection shall apply to rents within the control of the Commission generally or to any class of such rents, and, if each House of Parliament resolves that the order be approved, the order shall have effect from such date as the Board of Trade may appoint.

(3) Subject as aforesaid the Commission shall not reduce any rent during the currency of the lease by which it is reserved, and in granting leases the Commission shall reserve the best rent which in their opinion can reasonably be obtained, regard being had to any power to reduce rents for the time being exercisable by them in accordance with the preceding provisions of this section, to any money laid out or to be laid out by the lessee and generally to the circumstances of the case:

Provided that—

- (a) this subsection shall have effect without prejudice to the right of the Commission, in a case in which it appears to them requisite for the proper discharge of their duty under section two of this Act so to do, to grant relief to a lessee from payment of particular instalments of rent reserved by a lease; and
- (b) the Commission may reduce the rent reserved by a lease, or may grant a lease reserving a rent less than the best rent, if they are satisfied that other provision made by the lease in consideration of their so doing affords a financial advantage substantially equivalent in value to the amount of the reduction or to the amount by which the rent is less than the best rent, as the case may be.

(4) In this section the expression "district" means the area for the time being treated under the Coal Mines (Minimum Wage) Act, 1912, as a district for the purposes of the minimum rate.

26. *Power of the Commission to borrow.*—(1) For the purposes hereinafter mentioned the Commission may, in accordance with regulations made by the Board of Trade with the approval of the Treasury, borrow money in such manner and subject to such provisions as to the repayment thereof and as to re-borrowing for the purpose of paying off a loan previously raised as may be prescribed by the regulations.

(2) The regulations may empower the Commission to borrow temporarily from bankers or otherwise, and may apply with or without modifications any enactment relating to borrowing by any local authority.

(3) Except in the case of a temporary borrowing from bankers or otherwise for the purpose of defraying, pending the raising of a loan, expenses intended to be defrayed by means of the loan, the consent of the Board of Trade shall be requisite as respects the times at which the Commission are to exercise the powers of borrowing conferred on them by this Part of this Act.

27. *Purposes for which the Commission may borrow.*—(1) Subject to the provisions of this section, the Commission may borrow for all or any of the following purposes:—

- (a) the payment of the principal sums payable by way of compensation under section six of this Act and of the interest on those sums;
- (b) the payment of the sums payable by the Commission under the Registration Act, or this Part of, or the Third, Fourth or Fifth Schedule to, this Act, in respect of costs;
- (c) the payment of the sum payable by the Commission under this Act to the Board of Trade in respect of the expenses incurred by the Board under the Registration Act;
- (d) the payment of the sums payable by the Commission under paragraph 5 of the Third Schedule to this Act in respect of remuneration and expenses;

- (e) the payment of interest accrued up to the first anniversary of the vesting date on money borrowed by the Commission, of the administrative expenses of the Commission incurred before the said first anniversary, and of any other expenditure properly incurred by the Commission before the said first anniversary on revenue account;
 - (f) any purpose within the powers of the Commission the cost of which ought in the opinion of the Board of Trade to be spread over a term of years.
- (2) Any money borrowed under this section and the interest thereon shall be charged on all the property and revenues of the Commission.
- (3) The Commission shall not have power to borrow under subsection (1) of this section more than the aggregate of amounts sufficient to raise seventy-six million, four hundred and fifty thousand pounds.
- (4) The Commission may borrow for the purpose of paying off moneys previously borrowed by them under subsection (1) of this section or under this subsection which are intended to be repaid, so far as provision has not been made for the repayment of those moneys under the regulations in accordance with which they were borrowed.

28. *Power of the Commission to issue stock.*—(1) The Commission may, for the purpose of raising money which they are authorised to borrow under this Part of this Act, create and issue stock to be called Coal Commission Stock.

(2) Any stock issued by the Commission and the interest thereon shall be charged on all the property and revenues of the Commission.

(3) Subject to the provisions of this Act, any stock created by the Commission shall be issued, transferred, dealt with and redeemed in accordance with regulations made by the Board of Trade with the approval of the Treasury.

(4) Any such regulations may apply for the purposes of this section, with or without modifications, any provisions of the Local Loans Act, 1875, or of any enactment relating to stock issued by any local authority.

29. Power of Treasury to guarantee loans raised by the Commission.—(1) The Treasury may guarantee in such manner and on such conditions as they think fit the payment of the principal and interest on any loan proposed to be raised by the Commission.

(2) Any sums required by the Treasury for fulfilling any guarantee given under this section shall be charged on and issued out of the Consolidated Fund of the United Kingdom or the growing produce thereof, and any sums received by way of repayment of any sums so issued or of interest thereon shall be paid into the Exchequer.

(3) All the property and revenues of the Commission shall be charged with the repayment of any sums so issued out of the Consolidated Fund, including interest thereon at such rates as the Treasury may determine, next after the principal and interest of any loan guaranteed by them under this section and any sums which by the terms of the raising or issue of any such loan the Commission are bound to set aside towards the repayment of the principal thereof, and in priority to any other charge not existing at the date on which the loan in respect of which such issue has been made from the Consolidated Fund was raised.

(4) The Treasury shall, so long as any such guarantee is in force, lay before both Houses of Parliament within one month after each thirty-first day of March a statement of the guarantees, if any, given during the last preceding year ending on that date, and an account of the total sums, if any, which have up to that date been either issued out of the Consolidated Fund under this section or received by way of repayment of any sums so issued.

30. Accounts and audit.—(1) The Commission shall prepare accounts of their transactions in respect of the period between

the date of the passing of this Act and the thirty-first day of March next following and of each subsequent period of twelve months (each of which periods shall be deemed to be a financial year of the Commission) in such form and manner as the Board of Trade, with the approval of the Treasury, may direct, and shall transmit the accounts to the Board of Trade at such time as the Board, with the approval of the Treasury, may direct.

(2) The Board shall, on or before the thirtieth day of November in each year transmit to the Comptroller and Auditor General the accounts prepared by the Commission under the preceding subsection for their financial year last ended, and the Comptroller and Auditor General shall examine and certify them and lay copies thereof, together with his report thereon, before both Houses of Parliament.

Miscellaneous

31. Commission not to be exempt from taxation, &c.—Nothing in this Act shall be deemed to exempt the Commission from liability for any tax, duty, rate, royalties welfare levy, or other charge whatsoever, whether general or local.

32. Competence of the Commission to acquire associated minerals and rights.—(1) It shall be within the competence of the Commission to acquire—

- (a) a retained copyhold interest in coal or a mine of coal;
- (b) the fee simple or a term of years or other interest in any any minerals or substances other than coal that are capable of being economically gotten in association with the working of coal that is being, or is proposed to be, worked; and
- (c) the benefit of any right to be exercised in respect of any land for a coal-mining purpose.

(2) The provisions of section seventeen of this Act shall have effect in relation to minerals acquired by the Commission under this section as if the references therein to operations for coal-

mining purposes included references to operations for the like purposes as regards those minerals.

33. Restriction on working of coal vested in statutory undertakers.—(1) Subject to the provisions of this section, coal the fee simple in which is at the commencement of this Act vested in statutory undertakers (that is to say, a local authority, company or other body or person authorised by or under an Act of Parliament, or an order having the force of an Act of Parliament, to construct, work, or carry on a railway, canal, inland navigation, dock, harbour, tramway, gas, electricity, water, sewage disposal, or other public undertaking), having been acquired, under powers in that behalf conferred by any such Act or order as aforesaid, for the purposes of their undertaking, shall vest in the Commission subject, in addition to the matters mentioned in subsection (4) of section four of this Act, to the restriction that the coal shall not be worked without the previous consent in writing of the persons in whom the undertaking is for the time being vested.

(2) The foregoing subsection shall not apply to any such coal as aforesaid in a case in which the undertakers are not at the commencement of this Act interested in any land supported thereby, and, where any such coal as aforesaid vests in the Commission subject to the restriction aforesaid, the restriction shall have effect so long only as the persons in whom the undertaking is for the time being vested are interested in land supported thereby.

(3) Subsection (1) of this section shall not apply to any such coal as aforesaid which is subject at the commencement of this Act to a coal-mining lease.

(4) A restriction imposed by this section shall not have effect in relation to working carried on in exercise of a right subject to which the coal in question vests in the Commission by virtue of this Part of this Act.

(5) A consent in relation to a restriction imposed by this section shall not be unreasonably withheld, but this provision

does not preclude the right of undertakers whose consent is sought—

- (a) to give consent subject, as far as may be reasonably requisite, to a condition that working shall not be such as to let down any land in which the undertakers are interested, or shall be limited to working in particular places or in a particular manner, or to other conditions or limitations as regards the working consented to or the making good, or paying proper compensation for, damage arising therefrom; or
- (b) to require, as a condition of consent, payment of a reasonable sum in respect of any legal or other expenses incurred in connection with the consent.

Any question arising under this subsection shall be referred to and determined by the Railway and Canal Commission, who shall have power to dispense with consent either without conditions or limitations or subject to any such conditions or limitations as aforesaid. In determining any such question the Railway and Canal Commission shall have regard primarily to the safety and efficient working of the undertaking in question.

(6) A restriction imposed by this section shall be enforceable by the persons in whom the undertaking is for the time being vested in the like manner, and against the like persons, as if it had been imposed by a covenant entered into by the Commission on the vesting date.

(7) A holding subsisting in coal that is to vest in the Commission subject to a registration imposed by this section shall (notwithstanding the provisions of section seven of this Act which require the value of a holding to be ascertained by reference to the amount which it might have been expected to realise if this Act had not been passed) be valued as if provision had been made before the valuation date for that restriction to take effect on the vesting date.

34. *Saving for certain statutory rights.*—(1) The matters subject to which by virtue of section four of this Act the vesting in the

Commission of any coal, mine of coal, property or rights is to take effect, and the contract referred to in that section for the sale of any coal, mine of coal, property or rights is to be deemed to have been made, shall include the following rights, that is to say:—

- (a) any right vested in a railway company by virtue of the provisions substituted by Part II. of the Mines (Working Facilities and Support) Act, 1923, for sections seventy-eight to eighty-five of the Railways Clauses Consolidation Act, 1845, or by virtue of those sections as originally enacted, any right vested in undertakers by virtue of sections twenty-two to twenty-six of the Waterworks Clauses Act, 1847, and any right vested by virtue of those provisions or of those sections respectively in any other person in a capacity corresponding to that of the company or undertakers thereunder;
- (b) any right vested in a local authority by virtue of the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883; and
- (c) any right to prevent or restrict the working of coal vested in the Crown or in any local authority, highway authority or statutory undertakers by virtue of any enactment or of any order having effect, with or without confirmation by Parliament, under any enactment;

and those rights shall not be treated for the purposes of this Part of this Act as constituting or conferring any interest in the coal or mine in respect of which they are exercisable.

(2) An interest in coal or a mine of coal that arises under a coal-mining lease, the lessee whereunder is a Committee appointed for the purposes of a drainage scheme made under section eighteen of the Mining Industry Act, 1920, shall be a retained interest, and any such Committee that is immediately before the vesting date entitled to the fee simple in any coal or mine of coal held by them for the purposes of such a scheme as aforesaid shall have the right, on making application in writing in that behalf to the Commission, to a grant from the Commission of a

coal-mining lease thereof at a peppercorn rent for such term and on such conditions as they may reasonably require.

35. Execution of Registration Act and amendment as to inspection of the register.—(1) The functions of the Board of Trade under the Registration Act, other than any power thereby conferred on the Board to make rules, are hereby transferred to, and shall be performed by, the Commission, and the Registration Act shall accordingly have effect with the substitution for references to the Board of references to the Commission.

(2) The Commission shall pay to the Board a sum equal to the expenses incurred by the Board under the Registration Act, and section two of that Act shall cease to have effect.

Any difference arising between the Commission and the Board as to the amount payable under this section by the Commission shall be determined by the Treasury, and any sum so payable shall be recoverable as a debt due from the Commission to the Crown and, when received by the Board, shall be paid into the Exchequer.

(3) As from the vesting date the particulars registered in respect of a holding in the case of which notice of the registration has been duly given to the Regional Valuation Board under the Third Schedule to this Act shall be open to the inspection of the public at all convenient times, subject to such regulations as may be prescribed, and subsection (7) of section one of the Registration Act shall have effect subject to this provision.

(4) The obligation of the Commission under subsection (2) of section one of the Registration Act to receive an application made under that Act in respect of any holding shall cease at the expiration of the period within which such an application is required by the Third Schedule to this Act to be made in order for compensation to be payable in respect of the holding.

36. Limitation as to information required to be given under the Registration Act.—(1) Where it appears to a person who is required to give information for the purposes of the Registration

Act of the circumstances of a holding relevant to any matter particulars whereof may be registered under that Act, that complete information thereof would include information of no material importance for valuation purposes as to rights annexed to coal or a mine that affect adversely numerous small parcels of land, or would include any other information of no material importance for valuation purposes, he shall be deemed to have complied with the requirements of that Act as to the information to be given with respect to that matter if he gives with respect thereto such information as the Commission indicate to be in their opinion of material importance for valuation purposes, notwithstanding that the information does not extend to all the circumstances of the holding relevant to that matter.

(2) The preceding subsection shall have effect in a case in which a person gives or has given with respect to any such matter as aforesaid such information as the Board of Trade have, before the commencement of this Act, indicated to be in their opinion of material importance.

(3) Registered particulars, or draft particulars settled by the Commission, shall not be open to objection as being incomplete, or as omitting relevant particulars, by reason of their not recording any circumstances of a holding being circumstances information whereof is of no material importance for valuation purposes.

(4) Regard shall be had to the foregoing provisions of this section in determining whether any costs the payment whereof is claimed under the Registration Act were reasonably incurred.

37. *Extension of time limit on applications for registration in respect of which costs are to be payable.*—The period specified in sub-paragraph (3) of paragraph 5 of the Second Schedule to the Registration Act as the period within which applications for registration of particulars in respect of a holding must be made in order for such costs as are therein mentioned to be payable shall be extended so as to terminate (without prejudice

to the provisions of that sub-paragraph as to cases in which sufficient cause is shown for no application having been made within the specified period) on the valuation date, or, in the case of a holding coming into existence within six months before that date, at the expiration of six months from its coming into existence, or, in the case of a holding constituted by virtue of rules made under paragraph 2 of the Third Schedule to this Act, on such later date as may be prescribed:

Provided that this section shall not have effect in relation to a holding that is ultimately certified to have no value.

38. *General power to extend time limits.*—Where any period or date is specified in this Part of this Act or prescribed thereunder as the period within which or the date on or before which any act or thing is to be done by any person other than the Commission, the Commission shall have power, on application being made to them in that behalf, to extend that period or to fix a later date for the doing of that act or thing:

Provided that this section shall have effect, in relation to an act or thing to be done to or before the Board of Trade, with the substitution for the reference to the Commission of a reference to the Board.

39. *Limitation of costs payable in case of disputes between adverse claimants.*—The provisions of this Part of this Act and the provisions of the Registration Act with respect to the payment of costs by the Commission (other than the provisions of section eleven of this Act) shall have effect subject to the following limitation, namely, that their liability shall not extend to costs incurred after the date of the passing of this Act that are occasioned by any proceedings for the determination of disputes between adverse claimants and in giving effect to the provisions of this section regard shall be had so far as practicable to the principles observed in giving effect to the corresponding provisions of section eighty of the Lands Clauses Consolidation Act, 1845.

40. *Persons to act for purposes of valuations, &c., in case of death or incapacity.*—In the application of the provisions of this Part of this Act and of the Third to Fifth Schedules to this Act that relate to the valuation of holdings, to registration or rectification of the register under the Registration Act, or to the preparation of leases or other instruments or of lease consolidation schemes, to a case in which a person, by or to whom any notice is required or authorised to be given, information furnished, or other act or thing done for the purposes of proceedings under those provisions, dies or is or becomes otherwise unable to act, references in those provisions to that person shall be construed as including references to a person substituted for that person in accordance with rules made by the Board of Trade.

41. *Application of Part I. to registered land.*—This Part of this Act shall have effect in relation to premises that are registered land within the meaning of the Land Registration Act, 1925, as if they had not been registered land, and all rights and title conferred on the Commission by this Part of this Act shall be overriding interests within the meaning of that Act.

42. *Application of Part I. to Crown and Duchy of Cornwall.*—
(1) This Part of this Act binds the Crown and shall accordingly apply to land belonging to His Majesty or forming part of the possessions of the Duchy of Cornwall, or belonging to a Government Department or held in trust for His Majesty for the purposes of a Government department:

Provided that paragraph (b) of subsection (4) of section three of this Act shall not bind the Crown as regards gold, gold ore, silver or silver ore, and accordingly the expression “coal” in this Part of this Act shall not in any case include those minerals or substances.

(2) In the application of the provisions of the Third Schedule to this Act that relate to the payment and disposal of compensation payable under section six of this Act to holdings that consist

of or comprise interests in land specified in the preceding subsection, those provisions shall have effect subject to the following modifications, that is to say, that the persons entitled to the compensation for such holdings shall be the persons specified in the second column of the Table set out at the end of that Schedule in the case of holdings consisting of or comprising interests in the lands respectively specified in the first column of that Table, and those persons shall, notwithstanding anything in any other enactment, dispose of the principal sums and interest attributable to such interests in the manner specified in the third column of that Table.

(3) In this section and in the said Table, "possessions of the Duchy of Cornwall" has the meaning assigned to it by section thirty-seven of the Duchy of Cornwall Management Act, 1863, and "private estates of His Majesty" has the meaning assigned to it by section one of the Crown Private Estates Act, 1862.

43. Application of Part I to Forest of Dean.—(1) This Part of this Act shall have effect in its application to land in the Forest of Dean or in any other part of the Hundred of Saint Briavels in the county of Gloucester, being land in respect of which the privileges of free miners are exercisable, subject to the following modifications.

(2) The provisions of subsections (1) to (3) of section three, and sections four and five, of this Act, and the Second Schedule to this Act, shall not have effect, but this Part of this Act shall have effect as if for the said provisions there had been substituted the following provisions, that is to say, on the vesting date the interest of the Forestry Commissioners in the coal and mines of coal comprised in the said land shall vest in the Commission, subject to and in accordance with the provisions of the Dean Forest (Mines) Act, 1838, and of any other enactment relating to the said land (in this section referred to as "the Dean Forest enactments") and to all interests subsisting or to be created under or by virtue thereof.

(3) In the application of sections six and seven of this Act, and of the Third Schedule to this Act, to the coal and mines of coal comprised in the said land, the interest therein subsisting in the Forestry Commissioners at the valuation date, and no other interest, shall be treated as an acquired interest, and provision shall be made by rules made by the Board of Trade under the power in that behalf conferred upon them by the Third Schedule to this Act for treating the said interest as constituting a unit for compensation purposes and (in substitution for the provisions of that Schedule relating to registration under the Registration Act and the notification to the Regional Valuation Board of such registration) for the notification to that Board by the Forestry Commissioners of particulars thereof, and the Forestry Commissioners shall be the persons entitled to the compensation therefor.

(4) Sections eight to thirteen, subsections (1) to (3) of section sixteen and section twenty-one of this Act, and the Fourth and Fifth Schedules to this Act, shall not have effect.

(5) References to coal shall not be construed as including references to minerals or substances that are subsidiary coal hereditaments within the meaning of section six of this Act.

(6) All powers conferred by the Dean Forest enactments that were vested in the Forestry Commissioners immediately before the vesting date shall continue to be exercisable by them notwithstanding the vesting in the Commission of the said interest and accordingly—

- (a) rent attributable to the said interest shall continue to be recoverable by the Forestry Commissioners until other provisions in that behalf is made under the next succeeding subsection, but they shall pay to the Commission all such rent recovered by them that accrues after the vesting date; and
- (b) the Commission shall pay to the Forestry Commissioners sums equal to such part of the expenses incurred by them in exercising the said powers after the vesting

date as are attributable to the management of the said interest.

Any difference arising between the Commission and the Forestry Commissioners as to the amount of the rent, or of the expenses, to be paid under this subsection shall be determined by the Treasury.

(7) His Majesty may by Order in Council make provision for vesting in the Commission any of the powers conferred by the Dean Forest enactments that were vested in the Forestry Commissioners immediately before the vesting date in so far as they relate to coal or mines of coal, and any such order may make provision for any requisite modification of the Dean Forest enactments.

The Board of Trade shall lay before Parliament the draft of any Order which it is proposed to recommend His Majesty in Council to make under this subsection, and no further proceedings shall be taken in relation thereto except in pursuance of an Address presented to His Majesty by both Houses of Parliament praying that the Order may be made in the terms of the draft.

44. Interpretation of Part I.—(1) In this Part of this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

“Acquired interest” has the meaning assigned to it by subsection (1) of section seven of this Act;

“Acquired property and rights” has the meaning assigned to it by subsection (1) of section four of this Act;

“Claiming under” shall be construed, in relation to a person referred to as claiming under the estate owner in respect of the fee simple, or under the estate owner in respect of a term of years, in any land, as referring to any person interested in that land in respect of—

(a) any equitable interest enforceable against that estate owner (other than an equitable term of years under

a coal-mining lease or an interest created out of such a term of years);

(b) a legal mortgage, or charge by way of legal mortgage, of that fee simple or of that term of years, as the case may be;

(c) a rentcharge in possession which confers a right to take the income incident to that fee simple or to that term of years, as the case may be; or

(d) a term of years under a lease, other than a coal-mining lease, which is derived out of that fee simple or of that term of years, as the case may be (either immediately or by way of under-lease derived out of a lease other than a coal-mining lease), or an interest created out of such a term of years;

“Coal” has the meaning assigned to it by subsection (4) of section three of this Act;

“Coal-mining lease” means in relation to any coal a lease that confers a right to work and carry away that coal, and means in relation to any mine of coal a lease that confers a right to use it for a coal-mining purpose;

“Coal-mining purpose” means searching and boring for, winning, working, getting, carrying away, making merchantable or disposing of, coal;

“Existing owners” means, in relation to any coal or mine of coal, all persons who have at the valuation date an acquired interest therein;

“Interested” shall be construed, in relation to a person referred to as interested in any coal or mine of coal, or in any other land, as referring to any person entitled to, or to exercise, or interested in, or in the exercise of, any estate, interest, charge or power (including an option or right of pre-emption and including a contingent executory or future interest or a possibility coupled with an interest, whether or not the object of the gift or limitation of such interest or possibility be ascertained) in, on or over that

coal or mine or that other land, as the case may be, or in, on or over the rents and profits thereof, otherwise than in respect only of the benefit of a servitude or restrictive covenant adversely affecting that coal or mine or that other land, as the case may be, and "interest" has a corresponding meaning;

"Interim period" means the period between the valuation date and the vesting date;

"Lease" includes an under-lease, a tenancy and an agreement for a lease, under-lease, or tenancy (but not an option to take a lease, under-lease, or tenancy), and in relation to such an agreement the expressions "term of years" and "estate owner" mean respectively the term agreed to be created and the person entitled to have that term vested in him; "lease" and "under-lease" each include a licence (whether personal or by way of profit à prendre) that confers a right to work and carry away coal or a right to use a mine of coal for a coal-mining purpose, and in relation to a licence the expressions "rent," "reversion," "term of years" and other expressions importing a reference to a lease shall be construed accordingly with the requisite adaptations; neither "lease" nor "under-lease" includes a mortgage;

"Mine of coal" means a space which is occupied by coal or which has been excavated underground for a coal-mining purpose, and includes a shaft and an adit made for a coal-mining purpose;

"Mortgage" includes any charge or lien on any property for securing money or money's worth;

"Prescribed" means prescribed by rules made by the Board of Trade;

"Registration Act" means the Coal (Registration of Ownership) Act, 1937;

"Rent" includes yearly or other rent, and toll, duty, royalty, or annual or periodical payment in the nature of rent,

whether payable in money or money's worth or otherwise, but does not include mortgage interest;

“ Retained interest ” has the meaning assigned to it by section five of this Act;

“ Servitude ” means any liberty, privilege, easement, right or advantage annexed to any land and adversely affecting other land; “ surface servitude ” means any servitude annexed to coal or a mine of coal in so far as it adversely affects the surface of any land (with the exception of a right to withdraw support); and “ annexed to ” means, in relation to any coal or mine of coal, or to any other land, appertaining or reputed to appertain thereto or to any part thereof, or demised, occupied, or enjoyed therewith or with any part thereof, or reputed or known as part or parcel thereof or appurtenant thereto or to any part thereof;

“ Working facilities order ” means an order of the Railway and Canal Commission under the Mines (Working Facilities and Support) Act, 1923, either as originally enacted or as extended by section thirteen of the Mining Industry Act, 1926.

(2) For the purposes of this Part of this Act a person shall not be deemed to be carrying on the business of coal mining unless a substantial part of his business consists of working, getting, and carrying away coal.

(3) Unless the context otherwise requires, references in this Part of this Act to any enactment shall be construed as references to that enactment as amended by any subsequent enactment, including this Act.

45. *Application of Part I. to Scotland.*—(1) The provisions of this section shall have effect for the purpose of the application of this Part of this Act to Scotland.

(2) “ Covenant ” means agreement or stipulation and “ restrictive covenant ” shall be construed accordingly and shall include

a real burden *ad factum præstandum*; "fee simple" and "freehold interest" mean the estate or interest of the proprietor of the *dominium utile*; "demised" means let; "sub-demised" means sub-let; "under-lease" and "sub-demise" mean sub-lease; any reference to a lease or an under-lease derived out of another lease shall be construed as a reference to a sub-lease granted by a superior lessee; "mortgage" means a heritable security and "mortgagee" and "mortgagor" respectively mean the creditor and the debtor in a heritable security; "chattel" means corporeal moveable; "condition of re-entry" means power to bring a lease to an end or to resume possession; "leasehold interest" means the interest of the lessee in premises subject to a lease; any reference to a term of years shall be construed as a reference to the lessee's interest under a lease; references to a reversion or a reversionary interest or an immediate reversion or a reversion expectant on a lease shall be construed as references to the interest of the landlord in property subject to a lease, and the expression "reversioner" shall be construed accordingly; "freehold reversion" means the interest of the proprietor of the *dominium utile* in property subject to a lease, and "leasehold reversion" means the interest of a lessee of property who is the landlord under a sub-lease thereof; any reference to rent reserved under a lease shall be construed as a reference to rent payable under or stipulated for in a lease; any reference to a charge or power in, on or over any subjects shall include a reference to a heritable security affecting such subjects and any reference to a lease by parole shall be construed as a reference to a verbal lease.

(3) The definition in section forty-five of this Act of the expression "claiming under" shall not apply and the expression "person claiming under" shall have the meaning assigned thereto by paragraph 3 of the First Schedule to the Registration Act.

(4) "Heritable creditor" means the creditor in a heritable security, and "heritable security" means a heritable security within the meaning of the Conveyancing (Scotland) Act, 1924,

exclusive of a real burden *ad factum præstandum* but inclusive of a security constituted by *ex facie* absolute disposition; "superior" includes the Crown (without prejudice to the Crown's inherent right of superiority over all land in Scotland) and a subject superior or mid-superior.

(5) In this Act and in the Registration Act, any reference to the proprietor of the *dominium utile* shall as regards any coal or mine of coal in the undivided ownership of the Crown, be construed as a reference to the Crown.

(6) For references to the Lands Clauses Consolidation Act, 1845, and to section eighty thereof there shall be substituted respectively references to the Lands Clauses Consolidation (Scotland) Act, 1845, and to section seventy-nine thereof; for references to the Railways Clauses Consolidation Act, 1845, and to sections seventy-eight to eighty-five thereof there shall be substituted respectively references to the Railways Clauses Consolidation (Scotland) Act, 1845, and to sections seventy-one to seventy-eight thereof; for any reference to the High Court there shall be substituted a reference to the Court of Session and for any reference to a receiver of the rents and profits of premises there shall be substituted a reference to a judicial factor.

(7) Any question which is required in pursuance of this Act to be referred to arbitration shall be referred to a single arbiter agreed on by the parties or appointed in default of agreement by the Lord President of the Court of Session.

(8) In any arbitration in pursuance of this Act, the arbiter may, and, if so directed by the Court of Session, shall, state a case for the opinion of that Court on any question of law arising in the arbitration.

(9) Subsection (1) of section three of this Act shall have effect as if the words "the fee simple in" were omitted, and subsection (2) of that section shall have effect as if after the words "completion of the contract on" the words "and entry at" were inserted.

(10) For subsection (3) of section three of this Act the following subsection shall be substituted:—

“(3) On the vesting date all interests then subsisting in any coal or mine of coal other than retained interests shall vest in the Commission subject only to the inherent right of superiority of the Crown.”

(11) Subsection (4) of section nine of this Act shall have effect as if for the words “so far as regards the title for which the premises in question vest in the Commission” there were substituted the words “so far as conflicting with the title of the Commission.”

(12) Subsection (3) of section sixteen of this Act shall have effect as if all the words occurring after the words “copies thereof” were omitted.

(13) Subsection (2) of section nineteen of this Act shall not apply, but no right adverse to the title to any coal or mine of coal given to the Commission by the vesting thereof in them by this Act shall be capable of being acquired by prescriptive possession.

(14) For subsection (1) of section nineteen of this Act the following subsection shall be substituted:—

“(1) On and after the valuation date it shall not be competent to grant a sub-lease of coal or a mine of coal:

Provided that this subsection shall not apply to the grant of a sub-lease pursuant to a lease consolidation scheme made under section twelve of this Act or to minerals or substances that are subsidiary coal hereditaments within the meaning of section six of this Act.”

(15) Subsection (3) of section nineteen of this Act shall not apply.

(16) The aggregate of the values of (a) any coal or mine of coal and any property and rights vested in the Commission by virtue of this Act, and (b) any erections or structural improvements used exclusively for the purpose of working or cleaning

such coal, entered in any Valuation Roll or Supplementary Valuation Roll for any period ending after the vesting date, shall not exceed the value or values at which such coal, mine of coal, property and rights and such erections or improvements would have been so entered if this Act had not passed, and, notwithstanding anything contained in section six of the Lands Valuation (Scotland) Act, 1854, as amended by any subsequent enactment, no entry shall be made in any such roll in respect of erections or structural improvements used exclusively for the purpose of working or cleaning coal by reason only of the fact, that in consequence of the vesting of the coal in the Commission under this Act, the land on which the said erections or structural improvements are situated is not included in the lease of the coal.

PART II.

REDUCTION IN NUMBER OF COAL-MINING UNDERTAKINGS.

46. *Transfer to the Commission of functions of the Coal Mines Reorganisation Commission.*—(1) The functions of the Coal Mines Reorganisation Commission constituted by Part II. of the Coal Mines Act, 1930, are hereby transferred to and shall be performed by the Commission and the Coal Mines Reorganisation Commission shall cease to exist and accordingly the said Part II. shall have effect with the substitution, for references therein to the Coal Mines Reorganisation Commission, of references to the Commission.

(2) Such expenses of the Commission in connection with the preparation, submission and carrying out of schemes under Part I. of the Mining Industry Act, 1926, as the Board of Trade may, with the approval of the Treasury, determine shall be paid to the Commission by the Board, and any expenses of the Board under this subsection shall be defrayed out of moneys provided by Parliament.

(3) Section eleven of the Coal Mines Act, 1930, is hereby repealed.

47. *Duty of the Commission to reduce number of coal-mining undertakings where necessary in interests of efficiency.*—(1) Where in the opinion of the Commission the number of separate undertakings consisting of or comprising coal mines (hereinafter referred to as “coal-mining undertakings”) to which the coal in any area is leased is so great as to be detrimental to the economical and efficient working, treating or disposing thereof, it shall be the duty of the Commission, to endeavour to effect a reduction in the number of such undertakings:

Provided that the Commission shall not, under the powers conferred by section thirteen of the Coal Mines Act, 1930, submit to the Board of Trade any scheme under Part I. of the Mining Industry Act, 1926, until after the thirty-first day of December nineteen hundred and thirty-nine, nor shall they thereafter exercise the powers of submitting such a scheme except in pursuance of an order made under this section.

(2) The Commission may, at any time, if they are of opinion that adequate progress in the reduction of the number of coal-mining undertakings is not being made, make a report to the Board of Trade recommending that the powers of the Commission under the said section thirteen of submitting amalgamation and absorption schemes should become exercisable in any area specified in the report as an area in which such progress has in the opinion of the Commission been inadequate, and such report shall set forth the proposals of the Commission in regard to that area and the advantages which are expected to follow therefrom.

(3) After receiving any such recommendation from the Commission, the Board of Trade may lay before Parliament the report in which the recommendation was contained and may then make a provisional order declaring that it is expedient in the national interest that the number of coal-mining undertakings should be reduced in the area with respect to which the recommendation was made and directing that the said powers of the Commission shall become exercisable in that area in manner proposed by such report with such modifications (if any) as the

said Board may think fit and within such period as may be prescribed by such provisional order:

Provided that any such provisional order shall so define the area in which the said powers are to become exercisable as to show so far as practicable what undertakings are likely to be affected by their exercise, and the order when made shall be published in the London Gazette (or, in the case of an order relating to an area in Scotland, in the Edinburgh Gazette) and in at least one newspaper circulating in the area to which the order relates.

(4) A provisional order made under this section shall be of no effect unless it is confirmed by Parliament, but if the order is so confirmed, either without modifications or with modifications as to the area with respect to which the order is to have effect, it shall come into force on the date of the passing of the Act confirming the order or on the first day of January nineteen hundred and forty, whichever is the later date.

(5) The said section thirteen shall have effect subject to the amendments specified in the Sixth Schedule to this Act.

48. Powers of the Commission as to obtaining information for purposes of Part II.—(1) Where information is required by the Commission for the discharge of the functions to be performed by them by virtue of this Part of this Act and the Commission consider it necessary for the purpose of obtaining such information to cause an inspection to be made at any premises used in connection with the carrying on of a coal-mining undertaking, the Commission may, after serving upon the persons carrying on the undertaking a notice showing the general nature of the information required, authorise in writing any member or officer of, or technical or professional agent appointed by, the Commission, to make inquiries on their behalf as to the coal-mining undertaking specified in the authority, and any person so authorised may, so far as is reasonably necessary for the purpose of obtaining such information, enter any premises used in connection with the carrying on of that undertaking, and may inspect any such

premises and may measure or weigh any stocks, and may take copies or extracts of any accounts, books, plans, or other documents, and may require copies or extracts of any such accounts, books, plans or other documents to be delivered to the Commission.

(2) The Commission may require the owner of any coal-mining undertaking in an area in which their powers under section thirteen of the Coal Mines Act, 1930, of submitting schemes are exercisable, to prepare such accounts, plans, or other documents, relating to the undertaking and such valuations of the property and liabilities of the undertaking as are reasonably necessary for the discharge of the functions aforesaid, and may require copies thereof to be delivered to the Commission.

(3) Any member or officer of, or technical or professional agent appointed by, the Commission, before exercising his powers under subsection (1) of this section shall, if required to do so, produce his written authority to make inquiries on behalf of the Commission as to the coal-mining undertaking with respect to which the powers are exercised; and any person required under this section to deliver any copies or extracts to the Commission shall be entitled to be paid by the Commission all costs reasonably incurred by him in the preparation and delivery thereof.

(4) Any person who, after having had produced to him the written authority of any such member, officer or agent as aforesaid, obstructs him in the exercise of his powers under this section or refuses or neglects when required to produce any accounts, books, plans or other documents under his control, any person who refuses or neglects when required to deliver to the Commission any copy or extract of such accounts, books, plans or other documents, and any owner of a coal-mining undertaking who makes default in complying with any requirement made under subsection (2) of this section, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding fifty pounds or, in the case of a person convicted of a second or subsequent offence under this section, to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding three months or to both such imprisonment and fine.

49. *Exemption from stamp duty in respect of amalgamation or absorption schemes and instruments executed thereunder.—*

(1) No stamp duty shall be payable—

- (a) in respect of any amalgamation or absorption scheme confirmed under Part I of the Mining Industry Act, 1926, or
- (b) in respect of any amalgamation scheme framed in accordance with the provisions of Part I of that Act by the owners of two or more coal-mining undertakings, if the Board of Trade are satisfied, on the recommendation of the Commission that the scheme is in the national interest, and, on the recommendation of the owners by whom the scheme was framed that it is necessary for the purpose of giving effect to the scheme that it should be referred to and confirmed by the Railway and Canal Commission under that Act; or
- (c) in respect of any share or loan capital issued, or any conveyance agreement assignment or transfer made, or document executed, or thing done, in pursuance of any scheme exempt from stamp duty under the foregoing provisions of this section, or in pursuance of any arrangements for combining the financial interests in coal-mining undertakings by the formation of holding companies or otherwise, being arrangements approved on the recommendation of the Commission by the Board of Trade as being in the national interests, if in either case the Board certify that the issue, making, execution or the doing thereof is reasonably required for the purpose of such a scheme, or of such arrangements, and of conducing to the more economical and efficient working or disposing of coal.

(2) Subsection (2) of section five of the Mining Industry Act, 1926, and subsection (7) of thirteen of the Coal Mines Act, 1930, are hereby repealed.

PART III.

AMENDMENT AND CONTINUANCE OF PART I. OF THE COAL MINES ACT, 1930.

50. *Amendment and continuance of Part I. of 20 & 21 Geo. 5, c. 34.*—Sections five and eight of the Coal Mines Act, 1930, shall have effect subject to the amendments specified in the Seventh Schedule to this Act, and Part I. of that Act (which, as continued by subsequent enactments, is limited to expire on the thirty-first day of August nineteen hundred and thirty-eight) shall, as amended by this Act, continue in force until the thirty-first day of December, nineteen hundred and forty-two, and no longer unless Parliament otherwise determines.

PART IV.

MISCELLANEOUS AND GENERAL.

51. *Acquisition of sites for pithead baths, &c.*—The powers of the Railway and Canal Commission under the Mines (Working Facilities and Support) Act, 1923, in relation to the grant of ancillary rights shall include power to make orders under that Act with a view to assisting the miners' welfare committee in the performance of their duty under section seventeen of the Mining Industry Act, 1926 or under subsection (1) of section three of the Mining Industry (Welfare Fund) Act, 1934 (which relate respectively to the provision of accommodation and facilities for workmen taking baths and drying clothes and of accommodation and facilities which can be conveniently and properly combined therewith) by conferring rights to use and occupy land for buildings, or any other right in respect of any land, upon trustees for the benefit of workpeople employed in or about coal mines.

52. *Right to inspection and copies of Commission's plans of working.*—Any person who satisfies the Commission that he is interested in land that is supported by coal, or that was before

the working thereof supported thereby, or in land situate below, adjoining, or near to coal, shall be entitled, upon making an application to the Commission and payment of such reasonable fee as may be prescribed in that behalf, to inspect at any time during usual office hours all plans of workings of that coal in the possession of the Commission, and to be furnished by them with a copy of, or of any part of, any such plan.

53. *Prevention of disclosure of information*—Any person who discloses any information obtained by him in the exercise of powers conferred upon him by section fourteen or section forty-eight of this Act shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds or to both such imprisonment and fine:

Provided that nothing in this section shall apply to the disclosure of any information in so far as it is required to be published or disclosed for the purposes of the performance of functions to be performed under or by virtue of this Act by the Board of Trade, the Commission, the Central Valuation Board, a referee appointed under the Third Schedule to this Act, or a Regional Valuation Board, or for the purposes of any legal proceedings (including arbitrations), or in so far as it may be contained in any scheme submitted under section thirteen of the Coal Mines Act, 1930.

54. *Liability of directors, &c. of bodies corporate for offences*.—Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any negligence on the part of, any director, manager, secretary or other officer of the body corporate he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

55. *Service of notices, &c.*—Any notice, application in writing or other document required or authorised to be served, made or

delivered under this Act may be served, made or delivered either—

- (a) by delivering it to the person on whom it is to be served, or to whom it is to be made or delivered; or
- (b) by leaving it at the usual or last known place of abode of that person; or
- (c) by sending it in a prepaid registered letter addressed to that person at his usual or last known place of abode; or
- (d) in the case of an incorporated company or body, the Central Valuation Board or a Regional Valuation Board, by delivering it to the secretary or clerk of the company, body or Board at their registered or principal office or sending it in a prepaid registered letter addressed to the secretary or clerk of the company, body or Board at that office; or
- (e) if it is not practicable after reasonable inquiry to ascertain the name or address of a person on whom it should be served, or to whom it should be made or delivered, as being a person having any interest in land, by addressing it to him by the description of the person having that interest in the premises (naming them) to which it relates, and delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, affixing it, or a copy of it, to some conspicuous part of the premises.

56. Powers as to inquiries, &c.—The Board of Trade Arbitrations, &c. Act, 1874 (which relates to the powers of the Board of Trade with respect to inquiries, appointments and other matters under special Acts) shall apply as if this Act were a special Act within the meaning of the first mentioned Act.

57. Reports to Board of Trade.—The Commission shall—

- (a) after receiving the certified valuations from the respective Regional Valuation Boards under subsection (6) of

section seven of this Act forthwith transmit the same to the Board of Trade, and the Board shall as soon as may be lay before Parliament statements showing the total amounts of the certified valuations in each region in respect of principal and subsidiary coal hereditaments respectively, and

- (b) annually, at such date and in such form as the Board of Trade may direct, make to the Board a report as to their proceedings under this Act during the preceding year, and the Board shall lay every such report before Parliament, and the Commission shall also, if at any time they are directed by the Board so to do, make to the Board a report as to any matter relating to their functions specified in the direction.

58. Short title and extent.—(1) This Act may be cited as the Coal Act, 1938.

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

SCHEDULES.

FIRST SCHEDULE.

CONSTITUTION AND PROCEDURE OF THE COAL COMMISSION.

1. The Commission shall consist of a chairman and four other members appointed by the Board of Trade. The Board of Trade shall nominate one of the members of the Commission other than the chairman to act as deputy chairman.

2. At least two of the members of the Commission shall be persons who have had administrative or other practical experience in the coal-mining industry, and one of those two members shall be a person who has been a wage-earner in the coal-mining industry.

3. The appointment of a member of the Commission shall, subject to the provisions of this Schedule, be for such term, not being less than five years or more than ten years, as may be

determined by the Board of Trade with the approval of the Treasury before his appointment, and shall be subject to such conditions as may be so determined.

4. A person shall be disqualified for being appointed or being a member of the Commission so long as he is a member of the Commons House of Parliament.

5. A person shall be disqualified for being appointed or being a member of the Commission so long as he is an officer or servant of an organisation of employers or of workpeople in the coal-mining industry, a practising mining engineer, or in any other manner directly connected with that industry. For the purposes of this paragraph membership of such an organisation as aforesaid shall not of itself be treated as constituting a direct connection with the coal-mining industry.

6. A member of the Commission shall, within three months after his appointment, sell or dispose of any interest or securities which he may hold in his own name or in the name of a nominee for his benefit in any undertaking carrying on the business of coal-mining or supplying or selling coal, or the manufacture or sale of by-products of coal.

7. It shall not be lawful for a member of the Commission while he holds office to acquire, directly or indirectly, for his own benefit any interest or securities in any such undertaking as aforesaid, and if a member of the Commission becomes entitled for his own benefit under any will or succession or otherwise to any interest or securities in any such undertaking he shall sell or dispose of it or them within three months after he has so become entitled thereto.

8. If a member of the Commission becomes disqualified for holding office, or is absent from meetings of the Commission for more than six months consecutively except for some reason approved by the Board of Trade, or fails to comply with either of the two last preceding paragraphs, the Board shall forthwith declare his office to be vacant and shall notify the fact in such manner as they think fit, and thereupon his office shall become vacant.

9. The Commission shall appoint a secretary and such other officers, agents and servants as the Commission may determine.

10. There shall be paid out of the revenues of the Commission—
(a) to the members of the Commission, or to any of them,

such salaries and allowances for expenses as the Board of Trade with the approval of the Treasury may determine; and

- (b) to the secretary, officers, agents and servants of the Commission such salaries and remuneration, and, on the retirement or death of any of them, to them or their personal representatives or to their dependants such pensions and gratuities, as the Commission may determine.

11. The Commission may act notwithstanding a vacancy in their number, but a quorum of the Commission shall be not less than three.

12. The seal of the Commission shall be authenticated by the signature of the chairman of the Commission or some other member of the Commission authorised by the Commission to act in that behalf, and of the secretary or some other person authorised by the Commission so to act.

13. Every document purporting to be an order or other instrument issued by the Commission, and to be sealed with the seal of the Commission authenticated in the manner provided by this Schedule, or to be signed by the secretary or any person authorised to act in that behalf, shall be received in evidence and be deemed to be such an order or instrument without further proof unless the contrary is shown.

14. Subject to the provisions of this Schedule, the Commission shall have power to regulate their own procedure.

15. In this Schedule the expression "securities" includes shares, stock, debentures and debenture stock.

SECOND SCHEDULE

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 restriction 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 withdrawn support.

4. The following provisions 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 ungotten.

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 the 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 subparagraph 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 have not 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 forth coming 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.

THIRD SCHEDULE.

PROVISIONS AS TO COMPENSATION PAYABLE UNDER SECTION SIX OF THIS ACT.

PART I.—PRELIMINARY.

Units for Compensation Purposes.

1. Subject to the provisions of paragraph 2 of this Schedule, each of the following acquired interests, or groups of such interests, in coal, mines of coal, and acquired property and rights, shall constitute a unit for compensation purposes,—

- (a) each freehold reversion (that is to say, in the case of all the coal and mines of coal that are on the valuation date comprised in a coal-mining lease derived immediately out of the fee simple and in the case of acquired property and rights annexed to any such coal or mine, the interest therein of the estate owner in respect of the fee simple in the coal and mines together with the interest therein of all persons claiming under him);

- (b) each acquired leasehold reversion (that is to say, in the case of all the coal and mines of coal that are on the valuation date comprised in a coal-mining lease being an underlease and in the case of acquired property and rights annexed to any such coal or mine, the interest therein of the estate owner in respect of the term created by the lease out of which that underlease was immediately derived together with the interests therein of all persons claiming under him with the exception of any such interest that is a retained interest by virtue of a direction under subsection (2) of section five of this Act);
- (c) each freehold in possession in any valuation region (that is to say, in the case of all the coal and mines of coal in any valuation region that are not on the valuation date comprised in any coal-mining lease, and are in the legal ownership as respects the fee simple of the same estate owner, and in the case of acquired property and rights annexed to any such coal or mine, the interest therein of the estate owner in respect of the fee simple in the coal and mines together with the interests therein of all persons claiming under him).

2.—(1) If the estate owner in respect of a unit for compensation purposes as ascertained under paragraph 1 of this Schedule, or a person claiming under him, makes application in writing in that behalf to the Commission not later than the expiration of six months from the valuation date and satisfies them that, by reason of the subsistence of different interests in different parcels of coal or different mines in the ownership of the estate owner, the interests in those parcels or mines respectively and in acquired property and rights annexed thereto ought to be treated as constituting separate units for compensation purposes, they shall be so treated.

(2) Provision may be made by rules made by the Board of Trade for the consolidation of two or more units for compensation purposes as ascertained under the preceding provisions of this Schedule, or for the division of a unit as so ascertained into two or more units, or for treating as included in any unit as so ascertained, or as constituting a separate unit for compensation purposes, any acquired interest or interests, and for the manner in which the compensation for units to which the rules relate

is to be ascertained and paid having regard to the special circumstances of such units.

Constitution of Valuation Boards.

3.—(1) There shall be a Central Valuation Board consisting of the following members, that is to say—

- (a) an independent person, being a member of the legal profession or a person who has had experience in the management of land or with business experience, appointed to act as chairman of the Board;
- (b) two other independent persons; and
- (c) in respect of each valuation region one person who is at the date of his appointment engaged in the management of mineral estates in that region and who has a knowledge of coal-mining and experience in the valuation of minerals:

Provided that for the purpose of the exercise by the Board of their duty under subsection (4) of section six of this Act to divide Great Britain into valuation regions, the Board shall consist of the chairman, the two other independent members, and such number of other members, being persons engaged in the management of mineral estates and having such knowledge and experience as aforesaid, as the Board of Trade may determine.

(2) The appointments aforesaid shall be made by the Board of Trade after consultation, in the case of the chairman of the Board, with the Lord Chancellor, and, in the case of the other members thereof, with the chairman of the Mineral Owners' Joint Committee and the president of the Chartered Surveyors Institution.

(3) The Board of Trade may, after such consultation as aforesaid, make a temporary appointment of a person to act as chairman or other member of the Board at any time when the chairman or another member is temporarily absent or unable to act.

(4) The quorum of the Board shall be such number of the members of the Board as may be prescribed.

(5) A determination of the Board shall be taken by the votes of the members of the Board present and voting, or, in case of difference between them, of the majority, and in the case of an equality of votes the chairman shall be entitled to a second or casting vote.

(6) In this and the next succeeding paragraph the expression "independent person" means a person who is not at the date of his appointment, and has not recently been, engaged in or

connected with the management of mineral estates and is not a member, or an officer or servant, of an organisation of employers or of workpeople in the coal-mining industry, a practising mining engineer, or in any other manner directly connected with that industry.

4.—(1) There shall be a Regional Valuation Board for each valuation region, consisting of the following members, that is to say—

- (a) an independent person, being a member of the legal profession, appointed to act as chairman of the Board; and
- (b) such number of other members, being persons engaged in the management of mineral estates in the region and having a knowledge of coal-mining and experience in the valuation of minerals, as the Board of Trade may determine.

(2) The appointments aforesaid shall be made by the Board of Trade after consultation, in the case of the chairman of the Board, with the Lord Chancellor, and, in the case of the other members thereof, with the chairman of the Mineral Owners' Joint Committee and the president of the Chartered Surveyors Institution.

(3) The Board of Trade may, after such consultation as aforesaid, make a temporary appointment of a person to act as chairman of the Board at any time when he is temporarily absent or unable to act.

(4) The quorum of the Board shall be such number of the members of the Board as may be prescribed, and the rules may prescribe different numbers as respects different Regional Valuation Boards.

(5) A determination of the Board shall be taken by the votes of the members of the Board present and voting, or, in case of difference between them, of the majority, and in the case of an equality of votes the chairman shall be entitled to a second or casting vote.

(6) In this Act references to the Regional Valuation Board mean in relation to any holding the Regional Valuation Board for the valuation region in which the holding is. A holding shall be deemed to be in the valuation region that comprises the premises in which the holding subsisted or the greater part thereof, and if any question arises as to which of two or more

valuation regions a holding is in, the question shall be referred to the Central Valuation Board whose decision shall be conclusive.

5.—(1) The Board of Trade shall, after consultation with the Central Valuation Board or the Regional Valuation Board, as the case may be, appoint a person to act as clerk to each of the said Boards, and such number of persons as the Board of Trade think fit to act as officers and servants of each of the said Boards.

(2) The Commission shall pay to the chairman and to the members of each of the said Boards and to the officers and servants of each of the said Boards and to a referee appointed under this Schedule, such remuneration, and such allowances for expenses properly incurred by any of them as the Board of Trade may determine, and the Commission shall pay such other expenses of the Central Valuation Board and of a Regional Valuation Board and of a referee appointed under this Schedule as the Board of Trade may determine.

(3) No person who has an acquired interest, or who has acted in any capacity in connection with the valuation under this Schedule of a holding on behalf of a person having an acquired interest, shall be appointed to be the chairman or an independent member of the Central Valuation Board or of a Regional Valuation Board, and neither the chairman nor an independent member of any such Board shall act as aforesaid. None of the other members of any such Board shall vote on the taking of any determination of the Board as to the value of a holding in respect of which he has acted as aforesaid or, if he has any acquired interest, of a holding that comprises that interest.

Any person who contravenes the provisions of this paragraph shall be liable on summary conviction to a fine not exceeding ten pounds in respect of every day on which he acts in contravention thereof.

(4) The Central Valuation Board and a Regional Valuation Board may cause any inquiry or inspection required to be made by them to be made on their behalf by one or more of the members or officers or servants of the Board.

(5) It shall be the duty of each person having an acquired interest that is comprised in a holding to furnish to the Central Valuation Board, or a referee appointed under this Schedule, or the Regional Valuation Board, on being requested so to do by the Board or the referee, all such information with respect to any

matter relevant to the valuation of the holding as the Board or the referee may reasonably require, and the Board or the referee may require any such person to verify any information given by him in such manner by statutory declaration or otherwise as may be reasonably requisite.

(6) The provisions of the Arbitration Acts, 1889 to 1934, with respect to—

- (a) the administration of oaths and the taking of affirmations;
- (b) the correction of mistakes and errors in awards; and
- (c) the summoning, attendance and examination of witnesses and the production of documents;

shall apply in respect of proceedings before the Central Valuation Board, or a referee appointed under this Schedule, or a Regional Valuation Board, but save as aforesaid the said Acts shall not apply to or at any such proceedings.

(7) Subject to the provisions of this Schedule and of rules made thereunder, the Central Valuation Board, a referee appointed under this Schedule, and a Regional Valuation Board shall have power to regulate their own procedure.

PART II.—PROVISIONS AS TO REGISTRATION UNDER THE REGISTRATION ACT.

6. In order for compensation to be payable under section six of this Act in respect of a holding, an application for the registration under the Registration Act of particulars in respect thereof must have been made before the valuation date, or, if not so made, must be made within the period of six months beginning on that date.

7. For the purposes of proceedings for registration taken under the Registration Act on or after the valuation date and for the purposes of the operation on or after that date of the provisions of that Act relating to the rectification of the register—

- (a) references in that Act to property and rights held in association with coal or a mine of coal shall be construed as references to acquired property and rights, references in that Act to matters subject to which coal hereditaments are held shall be construed as references to the matters specified in subsection (2) of section four of

this Act, and references in that Act to a proprietary interest shall be construed as references to an acquired interest;

- (b) the information to be furnished in relation to an application for registration shall extend to the circumstances of the holding relevant to the ascertainment of the right, if any, to withdraw support that is to vest in the Commission under Part II of the Second Schedule to this Act with any coal or mine in which the holding subsisted, and those circumstances shall be included in the matters particulars whereof may be registered;
- (c) information given to the Commission which is by that Act required to be related to the circumstances as existing at the date when the information is given shall be related to the circumstances as existing on the valuation date; and
- (d) references in that Act to particulars being incorrect shall include references to the omission of any relevant particulars.

8.—(1) In the case of a holding in respect of which an application for the registration of particulars has been duly made under the Registration Act before the valuation date, the person by whom the application for registration was made, or any person having an acquired interest that is comprised in the holding, may, at any time during the period of six months beginning on the valuation date, give notice in the prescribed form to the Commission of any matter in respect of which—

- (a) if registration has been effected before the notice is given the registered particulars; or
- (b) if registration has not then been effected but a draft of the particulars to be registered has been settled and any copy thereof sent, the draft particulars; or
- (c) if no copy of the draft particulars has then been sent, the particulars contained in the statement and other information furnished;

appear to him to be incorrect or incomplete having regard to the circumstances of the holding subsisting on the valuation date and to the provisions of this Act.

(2) Where a notice is given to the Commission under this paragraph in a case in which registration has been effected, the

provisions of the Registration Act with respect to rectification of the register shall have effect, so, however, that, if it appears to the Commission that no alteration of the particulars registered is required, they shall notify the person by whom the notice was given of their decision not to make any such alteration, and he shall be entitled to make an application to the Court for a direction to the Commission to make therein the alterations appearing to him to be requisite at any time within one month from the service of the Commission's notice on him.

(3) Where a notice is given to the Commission under this paragraph in a case in which registration has not been effected but a draft of the particulars has been settled and any copy thereof sent, the Commission may settle a substituted draft thereof and—

(a) if they do so, the provisions of the Registration Act with respect to draft particulars shall have effect in relation to the substituted draft to the exclusion of the original draft, without prejudice, however, to any right in respect of costs incurred in relation to the original draft;

(b) if they do not do so, they shall notify the person by whom the notice was given of their decision not to do so, and he shall be entitled to make an application to the Court for the variation of the original draft at any time within one month from the service of the Commission's notice on him.

(4) An application to the Court made under this paragraph shall be deemed for the purposes of the Registration Act to be made under Part I of the Second Schedule thereto.

(5) Where a notice is given to the Commission under this paragraph by a person other than the person by whom the application for registration of particulars in respect of the holding to which the notice relates was made or a person to whom the application has been notified under sub-paragraph (2) (a) of paragraph 2 of the Second Schedule to the Registration Act, the person by whom the notice was given shall have the like rights under the Registration Act in connection with the settling of the particulars to be registered, the payment of costs and all other matters, and the like duties thereunder, as a person entitled under that sub-paragraph to be notified of the application.

PART III.—VALUATION.

Claims and Valuation Proceedings.

9.—(1) In order for compensation to be payable under section six of this Act in respect of a holding, a notice of claim for compensation to be paid in respect thereof must be served on the Commission within the period of six months beginning on the valuation date.

(2) A notice of claim for compensation must be in the prescribed form and must be served by a person who has an acquired interest that constitutes or is comprised in the holding:

Provided that in the case of a holding belonging to an ecclesiastical corporation to which the Ecclesiastical Leasing Acts apply, a notice must be served by the Ecclesiastical Commissioners, and in any other case the Commission may receive a notice served by a person who has not such an interest as aforesaid if they are satisfied that, by reason of that person being concerned in the administration of the holding or on other grounds appearing to the Commission to be sufficient, it is convenient that the notice should be served by him.

(3) A notice of claim for compensation for a holding in respect of which an application for the registration of particulars has been made before the valuation date must, if the person by whom the notice is served (in this Schedule referred to as "the claimant") is aware of any error or omission in such particulars relating to the registration as are mentioned in paragraph 8 of this Schedule, be accompanied by such a notice as is therein mentioned given by him, and must in any event include a statement, verified in such manner by statutory declaration or otherwise as the Commission may reasonably require, to the effect that the claimant has examined the said particulars and has made such investigation of the circumstances of the holding as is reasonably requisite for discovering any error or omission therein and is not aware of any matter, or of any other matter, as the case may be, in respect of which such a notice may be given:

Provided that, in the application of this sub-paragraph to a matter with respect to which the Commission or the Board of Trade have given such an indication as to the information material in their opinion for valuation purposes as is mentioned in section

thirty-six of this Act, the omission from the particulars of matter outside the scope of the indication given may be disregarded.

(4) A notice for claim for compensation must be accompanied by a statement in the prescribed form, and verified as aforesaid, of all the circumstances of the holding relevant to the ascertainment of the person entitled to the compensation for the holding and known to the claimant at the time when the notice is served, and the claimant shall, on being requested by the Commission so to do, give to them such further information as to the circumstances relevant to the ascertainment of that person as the Commission may reasonably require.

10.—(1) In the case of each holding in respect of which an application for the registration of particulars has been duly made under the Registration Act and a notice of claim for compensation has been duly served, the Commission shall, as soon as may be after the registration of particulars in respect thereof has been effected, give notice thereof to the Regional Valuation Board:

Provided that—

- (a) in a case in which registration in respect of a holding has been effected before the expiration of the period during which notice may be given under paragraph 8 of this Schedule, the Commission shall not give notice of the registration under this paragraph until that period has expired or, where any notice is given under that paragraph, until the proceedings consequent thereon have been completed; and
- (b) the Commission shall not in the case of any holding give notice of registration under this paragraph if it appears to the Commission that there is any error or omission that renders the particulars registered in respect thereof open to objection, or that any such error or omission is likely to appear from proceedings still to be taken in connection with the registration of particulars in respect of another holding.

(2) When the Commission give notice of registration under this paragraph in relation to any holding, they shall serve a copy of the notice on the claimant, and also on the following persons, that is to say, the person, if other than the claimant, by whom the application for registration was made, any person entitled under sub-paragraph (2) (a) of paragraph 2 of the Second Schedule to the Registration Act to be notified of the application,

and any other person by whom a notice has been given to the Commission under paragraph 8 of this Schedule (who are hereinafter in this Schedule referred to as "persons intervening").

(3) The valuation of a holding shall be made on the basis of the particulars registered in respect thereof on the date on which notice of registration is given to the Regional Valuation Board in relation thereto under this paragraph, and as from the date the provisions of the Registration Act with respect to the rectification of the register shall cease to have effect in relation to the holding:

Provided that, if from any information in the possession of the Regional Valuation Board it appears to them that there is in the particulars so registered as aforesaid an error or omission of material importance for valuation purposes, they may, at any time before they have settled their draft valuation of the holding, notify the Commission that they are of that opinion and thereupon the said provisions shall again come into effect, and, if any alteration is made thereunder in the particulars so registered as aforesaid, the valuation shall be made on the basis of the particulars as altered.

(4) The particulars registered in respect of a holding on the date on which notice of registration is given to the Regional Valuation Board in relation thereto under this paragraph, or, in the case of particulars that are altered after that date under the proviso to the last preceding sub-paragraph, those particulars as so altered, shall be assumed conclusively to be correct and complete for the purposes of the valuation of the holding, and shall also, as against the estate owner in respect of the holding and all persons claiming under him and their successors in title respectively be assumed prima facie to be correct and complete for the purpose of ascertaining the premises that vest in the Commission on the vesting date and the title for which they so vest, but the inclusion therein, or the omission therefrom, of any matter shall not be treated as affecting any right to liability, or as binding on any person, for any other purpose.

(5) The estate owner in respect of a holding, in respect of which the payment of compensation under this Act is claimed, and all persons claiming under him and their successors in title respectively shall be estopped from asserting after the vesting date any matter adversely affecting the premises in which the holding subsisted, unless it is shown that there was furnished for

the purposes of the Registration Act information of all the circumstances of the holding relevant to that matter, or, if it was a matter with respect to which the Commission or the Board of Trade gave such an indication as to the information material in their opinion for valuation purposes as is mentioned in section thirty-six of this Act, such information with respect to that matter as was thereby indicated.

11.—(1) The claimant in respect of a holding must deliver to the Regional Valuation Board an estimate of the value of the holding in such form, and accompanied by such plans and other documents, as may be prescribed, together with a certificate signed by the person by whom the estimate was made to the effect that it was made on the basis on which holdings are, under the provisions of subsection (4) of section seven of this Act and of this Schedule, required to be valued.

(2) The said estimate may be delivered at any time after the date on which the notice of claim was served, and, if it has not been delivered at the date on which notice of the registration of particulars in respect of the holding is given to the Regional Valuation Board, it must be delivered within such period as the Board may specify by notice requiring delivery thereof served on the claimant after that date, so however that the period specified shall not be less than one month from the service of the notice requiring delivery thereof.

(3) As soon as may be after notice of the registration of particulars in respect of a holding has been given to the Regional Valuation Board and an estimate of the value thereof has been delivered to them, they shall, after making such inquiries and inspections and taking such other steps as they think requisite, review the estimate and settle a draft of their valuation of the holding:

Provided that, if default is made in the delivery of an estimate, the Regional Valuation Board shall settle a draft of their valuation in such manner as they think fit as soon as may be after the notice of registration has been given and the time for the delivery of the estimate has expired.

(4) When the Regional Valuation Board have settled a draft of their valuation of a holding, they shall give notice thereof in the prescribed form to the claimant, and, if the valuation related to subsidiary coal hereditments within the meaning of section six of this Act or to coal or a mine of which a person is

entitled to require a lease to be granted to him under section thirteen of this Act, to the Commission, and, if the claimant, or, in either of the cases aforesaid, the Commission, so require in the prescribed manner and within the prescribed period, the Board shall give him or them an opportunity of being heard by a person experienced in the valuation of minerals or in the management of mineral estates, or in the case of a claimant, in person, and where in either of the cases aforesaid a hearing is required either by the Commission or the claimant, the Board shall give to the other of them also an opportunity of being heard as aforesaid. The said notice to the claimant shall contain an intimation of his right to be so heard.

(5) As soon as may be after giving effect to the preceding provisions of this paragraph in the case of any holding, the Board shall settle their valuation thereof and shall give notice of their valuation in the prescribed form to the claimant and to each of the persons intervening if any, and in either of the cases aforesaid, to the Commission. The said notice to the claimant or any person intervening shall contain an intimation of the right of the person to whom it is given to have the valuation reviewed under the provisions of paragraph 12 of this Schedule.

12.—(1) Within the prescribed period after service upon him by the Regional Valuation Board of notice of their valuation of a holding, the claimant or any person intervening may give notice in the prescribed manner to the Board of Trade that he claims to have the valuation reviewed under this paragraph.

(2) Where a claim for review is made to the Board of Trade under the preceding sub-paragraph, they shall cause the valuation to be reviewed by a referee selected from a panel of referees to be appointed by them. The panel may include all or any of the members, other than the independent members, of the Central Valuation Board or of any Regional Valuation Board, but shall include at least two persons who are not members of any of those Boards, and the referee selected in any particular case shall not be a member of the Regional Valuation Board whose valuation is to be reviewed.

(3) The proceedings on a reference under this paragraph shall be held in public, and the Regional Valuation Board and the person by whom the reference was claimed shall be entitled, if the Board or that person, as the case may be, so desire, to appear thereat and to be heard by such representative as the Board or

that person, as the case may be, may appoint, or, in the case of the person claiming the reference, to be heard in person, and the Board and that person shall each of them be entitled to call one (and, unless the referee otherwise directs, not more than one) expert witness to give evidence as to the value of the holding.

Where a claim for review of the valuation of a holding is made by the claimant and also by a person intervening, or by two or more persons intervening, one person only shall be entitled to be heard on behalf of all of them and the single expert witness shall be called on behalf of all of them. In the event of difference between the persons aforesaid as to the person to be heard, or to be called as an expert witness, the difference shall be determined by the referee.

(4) A referee shall have power to direct the Regional Valuation Board to alter their valuation in any case in which an alteration therein appears to him to be requisite, and the Board shall give effect to any such direction.

(5) In any case in which it appears to a referee that a claim for a reference was frivolous or was not justified by a substantial error or omission in the valuation of the Regional Valuation Board, he shall direct that the person claiming the reference shall not be entitled to payment of any costs incurred by that person in connection with the reference, or of such part of those costs as the referee may think fit, and may, if he thinks fit, direct that that person 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 reference.

(6) In the case of a valuation that relates to subsidiary coal hereditaments within the meaning of section six of this Act or to coal or a mine of which a person is entitled to require a lease to be granted to him under section thirteen of this Act, the foregoing provisions of this paragraph shall have effect subject to the following modifications, that is to say,—

- (a) the Commission may give notice as specified in sub-paragraph (1) of this paragraph of a claim for review thereof;
- (b) on a reference made at the instance of the Commission, the claimant in respect of the holding, and, on a reference made at the instance of the claimant or of a person intervening, the Commission, shall be entitled to the like rights as are conferred by sub-paragraph (3) of this paragraph on the person by whom a reference is claimed; and

- (c) the costs that the person claiming the reference, whether the Commission or another, may be directed under sub-paragraph (5) of this paragraph to pay shall include the costs incurred by the claimant in respect of the holding or of the Commission, as the case may be, in the exercise of the rights conferred on him or them by head (b) of this sub-paragraph.

13. In the valuation of a holding regard shall be had to the following rules, that is to say—

- (a) no allowance shall be made on account of the compulsory acquisition by the Commission of the premises in which the holding subsisted; and
 (b) the state in which the said premises were at the valuation date shall be taken into consideration;

and also to such rules as may be prescribed for securing uniformity of valuation.

14. The Central Valuation Board shall have power to make, with the approval of the Board of Trade, rules as to the procedure to be followed in giving effect to the three last preceding paragraphs and for prescribing anything that is therein directed to be prescribed, and in those paragraphs the expression "prescribed" means prescribed by rules made under this paragraph;

Provided that rules under this paragraph shall not be made until a draft thereof has been approved by a resolution passed by each House of Parliament.

Costs of Valuation Proceedings.

15.—(1) Subject to the provisions of this paragraph and of sub-paragraph (5) of paragraph 12 of this Schedule, the Commission shall pay the costs reasonably incurred by the claimant, or a person intervening, in respect of any holding in giving effect in relation to that holding to the preceding provisions of this Part of this Schedule, or of the rules made thereunder, relating to his rights and duties in relation to the valuation of the holding.

(2) If two or more notices of claim are served in relation to the same holding, the liability of the Commission under this paragraph shall be limited to such a sum as would have been payable by them if a single notice only had been served, so however, that the Commission may pay costs in excess of that sum in any case in which it appears to them that the service of

more than one notice was justified having regard to any special circumstances.

(3) The Commission shall not be liable under this paragraph to pay any costs in a case in which the holding in question is ultimately certified to have no value.

(4) The Commission shall not be liable to pay any costs under this paragraph incurred by a person who has neglected to comply at the due time with any of the preceding provisions of this Schedule that impose upon him a duty in connection with the valuation of the holding in question, whether with respect to the delivery of an estimate of the value of the holding, to the furnishing of information with relation thereto or any to other matter.

(5) The Commission shall not be liable to pay any costs under this paragraph incurred by a person intervening in respect of any intervention on this part which was not reasonably requisite for the proper valuation of the holding in question.

(6) The High Court shall have power, on the application of a person aggrieved by a denial on the part of the Commission by virtue of any of the four preceding sub-paragraphs of liability to pay any such costs as aforesaid, to give such directions as to the matter in question as appear to the Court to be just.

(7) The Commission shall have power to enter into undertakings to pay, and to pay, any other than those aforesaid reasonably incurred by any person in connection with the valuation of a holding.

(8) The amount of any costs that the Commission are liable under or by virtue of this paragraph to pay shall be determined by reference to a scale to be prescribed by the Treasury.

(9) In case of difference as to the amount of any costs that the Commission are liable under or by virtue of this paragraph to pay, or as to an apportionment required to be made for the purposes of sub-paragraph (2) of this paragraph, the Board of Trade may direct in what manner those costs are to be taxed, or the apportionment is to be settled, as the case may be.

Certification of values for purposes of payment of compensation.

16.—(1) When a Regional Valuation Board have settled the valuations of all the holdings in their region for which compensation is payable, and the proceedings on all claims for reference under paragraph 12 of this Schedule relating to any such holdings

have been completed, and the time within which any other claim for such reference may be made has expired, the Board shall certify the amounts ascertained by those valuations respectively to the Commission in accordance with subsection (6) of section seven of this Act, and the Commission shall send to the claimant in respect of each such holding a copy of the certificate that relates to that holding, together with a statement of the aggregate of the amounts certified in respect of all such holdings as attributable to principal coal hereditaments.

(2) The provisions of this paragraph and of the preceding paragraphs of this Schedule, that relate to the notification of an amount ascertained by a valuation, whether in draft, settled, revised, or certified, shall extend to the notification of a nil valuation.

17.—(1) So soon as may be after the Commission have received from a Regional Valuation Board certificates sent by them under the last preceding paragraph, the Commission shall publish in one or more newspapers circulating in the valuation region a notice to the effect that certificates relating to that region have been sent to them under that paragraph, and naming a place where the certificates may be seen at all reasonable hours by any person having an acquired interest comprised in a holding in that region or a successor in title of any such person.

(2) If any person aggrieved desires to question the validity of any certificate relating to a valuation region in respect of which a notice has been published by the Commission under the preceding sub-paragraph, or the propriety of the omission from the certificates sent in relation to that region of a certificate relating to any holding, on the ground that any requirement of this Act or of the Registration Act or of any rules made under either of them has not been complied with, he may, within six weeks after the first publication of the notice, make an application for the purpose to the High Court, and, where any such application is duly made, the Court—

- (a) may by interim order direct the Commission to suspend the payment of compensation on the basis of the certificates sent; and
- (b) if satisfied upon the hearing of the application that the interests of the applicant have been substantially prejudiced by any such requirement as aforesaid not having being complied with, may quash a certificate

relating to any holding that appears to the Court to be affected, and give such directions as appear to the Court to be requisite for remedying the default and enabling the giving of valid certificates as respects all holdings in the valuation region for which compensation is payable to be completed.

(3) Subject as aforesaid the amounts specified in certificates relating to a valuation region in respect of which such a notice as aforesaid has been published shall be deemed to have been properly certified for the purposes of subsection (7) of section seven of this Act, and the holdings to which the certificates relate shall be deemed for those purposes to be the holdings on that region for which compensation is payable, and the right of the Commission to make payments on the basis of such certificates shall not, after the expiration of the said period of six weeks, be questioned by prohibition or certiorari or in any other legal proceedings whatsoever.

PART IV.—PAYMENT AND DISPOSAL OF COMPENSATION.

Ascertainment of person entitled.

18. For the purposes of any provision of this Act under which a payment is to be made at any date to the person entitled to the compensation for a holding, that person shall be ascertained as follows:—

- (a) if the holding could at the valuation date have been sold and conveyed to a purchaser in such manner as to bind or over-reach all acquired interests comprised in the holding (either in the actual circumstances or if any requisite consent, approval, request or notice had been received or given) either—
 - (i) by, or by the direction of, a single person in whom the whole beneficial interest comprised in the holding was vested,
 - (ii) under the powers conferred by the Settled Land Act, 1925, or under any additional powers conferred by a settlement, or
 - (iii) by trustees for sale, or
 - (iv) by a personal representative in the exercise of his paramount powers, or
 - (v) under powers conferred by any other enactment, the person who could have given a valid discharge for

the purchase money arising on such a sale if paid on the date in question shall be the person entitled;

- (b) in a case in which the preceding sub-paragraph would have applied but for the subsistence at the valuation date of a mortgage not capable of being over-reached as therein mentioned, then, if the mortgage has been discharged before the date in question, the person who would have been entitled if the preceding sub-paragraph had applied shall be the person entitled, and, if the mortgage is still subsisting at that date, then—

(i) except in a case in which at the valuation date the mortgagee or a receiver appointed by him was in possession, or in receipt of the income, of the mortgaged premises, the Commission may serve notice in writing on the mortgagee that they propose to act under this provision, and, if within one month after service of the notice, the mortgagee does not give notice in writing to the Commission that he objects to their so acting, the person who would have been entitled if the preceding sub-paragraph had applied shall be the person entitled;

(ii) in the excepted case aforesaid, and in the case in which the Commission do not think fit to serve notice as aforesaid or a mortgagee served with such a notice gives notice of objection as aforesaid, the mortgagee shall be the person entitled;

- (c) in any other case, and also in any such case as aforesaid if the Commission consider it expedient in order to avoid expense or delay or for any special reason, the Commission may make payment to the proper officer of the Supreme Court or, in a case where the sum to be paid does not exceed five hundred pounds, of the county court, in accordance with rules of court, or to trustees appointed by the Commission, and that officer or the trustees, as the case may be, shall be the person entitled.

Payments on account.

19.—(1) At any time before the vesting date, or after that date but before the relevant certificates have become conclusive under paragraph 17 of this Schedule, the Commission, if they are satisfied that the compensation for any holding, or the aggregate of the compensation for a number of holdings to which

the same person is entitled, will be not less than a particular amount, may make payment of such sum not exceeding that amount as they may think fit on account of the compensation for the holding or holdings:

Provided that no payment on account shall be made under this paragraph, except with the consent of the person entitled, either—

- (a) before the first day of January nineteen hundred and forty; or
- (b) unless the Commission have given to the person entitled not less than three months' notice in writing of their intention to make the payment.

(2) A payment on account made under this paragraph to the person entitled to the compensation for more than one holding shall be deemed to have been paid on account of the compensation for such of those holdings as the Commission may direct when making the payment, or, if no such direction is given, on account of the compensation for each of them rateably in proportion to the amount thereof.

(3) A payment on account made under this paragraph before the vesting date, together with interest thereon for the period between the date on which the payment is made and the vesting date at the rate of three pounds per cent. per annum less income tax at the standard rate, shall be treated in account as a payment on account of the capital of the compensation made on the vesting date, and the said interest shall be deemed for the purposes of the Income Tax Acts to be paid on each anniversary of the date of the payment on account that occurs before the vesting date and on the vesting date and accordingly shall be treated as a proper deduction from income.

(4) A payment on account made under this paragraph after the vesting date shall be treated in account as a payment made primarily in or towards discharge of any interest on the compensation that is due at the date of the payment, and the residue thereof, if any, shall be treated in account as a payment on account of the capital of the compensation.

20.—(1) If in the case of any valuation region the relevant certificates have not become conclusive under paragraph 17 of this Schedule at the vesting date, the claimant or any person intervening in respect of a holding in the region for which compensation is to be payable may require the Commission to make, at the expiration of each quarter thereafter until the certificates

become conclusive, a payment on account under the last preceding paragraph of an amount not less than that specified in this paragraph, and, as from the date of any such requirement, the Commission shall be liable to make payments to the person entitled to the compensation for the holding accordingly.

(2) The amount of a quarterly payment that may be required as aforesaid shall be an amount equal to interest for three months at the rate mentioned in subsection (8) of section seven of this Act on three-quarters of either—

- (a) the draft valuation of the holding settled under subparagraph (3) of paragraph 11 of this Schedule, if at the date of the payment that draft has been settled but the certificate relating to the holding has not been sent to the Commission; or
- (b) the amount certified, if the certificate has been so sent at that date:

Provided that, if before the beginning of any quarter at the expiration of which a quarterly payment becomes due any payment on account has been made in respect of the holding under the last preceding paragraph otherwise than by way of quarterly payment required as aforesaid, the amount of the quarterly payment shall be reduced by an amount equal to interest for three months at the rate aforesaid on the amount of the said payment on account.

(3) In the case of a holding consisting of a reversion, if at a date on which a quarterly payment becomes due the draft valuation of the holding has not been settled, the amount of that payment shall be an amount equal to one-eighth of—

- (a) the rent which became payable to the person entitled to the reversion immediately expectant on the lease, in respect of coal, mines of coal and acquires property and rights comprised therein, during the year ending on the vesting date (or, in the case of a lease that has expired before the vesting date, during the last year of its subsistence), less
- (b) the mineral rights duty and royalties welfare levy payable or allowable by that person in respect of that rent;

so however that that amount shall be subject to the reduction mentioned in the proviso to the last preceding subparagraph in the case therein mentioned:

Provided that, in a case in which there is reasonable ground

for apprehending that, if a payment of the amount so ascertained were made, the aggregate of that payment and of any other payment on account theretofore made might exceed the aggregate of the compensation for the holding and the interest thereon, the Commission may withhold that payment.

(4) In a case in which the proviso to the last preceding sub-paragraph has effect and in a case of a holding other than a reversion, if at a date on which a quarterly payment becomes due the draft valuation of the holding has not been settled, that payment shall be deferred until the draft has been settled and the amount thereof shall be ascertained under sub-paragraph (2) of this paragraph.

(5) In this paragraph—

- (a) the expression “quarter” means a period of three months beginning on the first day of July, October, January or April;
- (b) the references to rent payable to the person entitled to a reversion and to mineral rights duty and royalties welfare levy payable or allowable by that person shall, in their application to a leasehold reversion, be construed as references respectively to the rent which that person was entitled to receive from his lessee less the rent which he was liable to pay to his lessor, and to the duty and levy which he was liable to pay or allow less so much thereof as he was entitled to deduct from the rent payable to his lessor.

Disposal of compensation as between beneficial interests.

21.—(1) The compensation for a holding when paid by the Commission to the person entitled to receive it from them, including any sum paid on account thereof under paragraph 19 or 20 of this Schedule, and the income thereof, shall, in order to its being applied as compensation to the persons whose interests are comprised in the holding, be held and disposed of for the benefit of those persons, or their personal representatives or assigns, in accordance with the succeeding provisions of this paragraph.

(2) In the case of a holding that consists of or comprises an estate or other interest subject to a settlement within the meaning of the Settled Land Act, 1925, or to a trust for sale the proceeds whereof are subject to a settlement by way of succession, the

trustees of the settlement or any Court having jurisdiction in relation to the execution of the trusts of the settlement, and in the case of the Court on the application of any beneficiary under the settlement, may require and cause the compensation, or the part thereof attributable to that estate or other interest, as the case may be, to be laid out, invested, accumulated, and paid in such manner as, in the judgment of the trustees or of the Court, as the case may be, will give to the beneficiaries under the settlement the like benefit therefrom as they might lawfully have had from that estate or other interest, or as near thereto as may be, regard being had to the terms of the settlement and to all relevant circumstances affecting the premises in which the holding subsisted, including—

- (a) the terms of any subsisting coal-mining lease and the operation of any provision therein contained as to undergettings, short workings, and other like matters;
- (b) the period within which coal being worked might have been expected to be worked out or coal not being worked might have been expected to come into workings and to be worked out; and
- (c) the extent to which, having regard to those circumstances, the premises ought to be regarded as property of a wasting character:

Provided that—

- (i) where a payment on account of the compensation for the holding has been made under paragraph 19 of this Schedule before the vesting date, the net income accruing to the trustees before the vesting date from the investment of the sum paid, up to an amount sufficient to make good to the capital of the settlement the interest on that sum brought into account under paragraph 19 of this Schedule against the capital of the compensation, shall be set aside as capital of the settlement;
 - (ii) subject as aforesaid no part of the income of the compensation shall be required or caused by virtue of this sub-paragraph to be set aside as capital of the settlement.
- (3) In the case of a holding that comprises an estate or other interest subject to a mortgage, the compensation (other than any part thereof that is attributable to an estate or other interest not subject to the mortgage) shall be held and disposed of in like

manner as if it had been money arising under a power of sale conferred by the mortgage.

(4) In the case of a holding that could have been sold as mentioned in sub-paragraph (a) of paragraph eighteen of this Schedule under powers conferred by the Ecclesiastical Leasing Acts, the compensation paid in respect thereof and the income thereof shall be held and disposed of, and the said Acts shall have effect, in like manner as if the compensation had been money paid to the Ecclesiastical Commissioners upon a sale under the said Acts of the premises in which the holding subsisted:

Provided that—

- (a) if the holding was a reversion and the rent reserved by the lease was subject, by virtue of a scheme in force under the said Acts, to a direction for the payment thereof to the Ecclesiastical Commissioners for the benefit of their common fund, the direction shall have effect in relation to the income of the compensation as it had effect in relation to the rent; and
- (b) where a payment on account of the compensation for the holding has been made under paragraph 19 of this Schedule before the vesting date, the net income accruing before the vesting date from the investment of the sum paid shall be set aside as capital of the compensation.

(5) Money representing compensation attributable to an estate or other interest subject to such a settlement or trust for sale as is mentioned in sub-paragraph (2) of this paragraph, or vested in trustees on or for charitable, ecclesiastical or public trusts or purposes, may, notwithstanding anything in the relevant trust instrument, be invested not only as authorised by law or by the trust instrument but also in or on—

- (a) the stock or other securities of any local authority in the United Kingdom, or
- (b) the stock, shares or other securities of any statutory undertakers within the meaning of section thirty-three of this Act, or
- (c) the debentures or debenture stock or the preference or wholly or partially guaranteed stock or shares of any company incorporated by a special Act of, or provisional order confirmed by, or by or under a public general Act

of, the Parliament of the United Kingdom, or incorporated by Royal Charter, being a company which has paid dividends upon its ordinary capital at the rate of at least three per cent. per annum for at least the five years next before the time of investment (of which fact a letter purporting to be signed by the secretary of the company or by a banker or member of a firm of bankers or by the secretary or manager of a joint stock bank or of any branch thereof shall be sufficient evidence), or

- (d) the ordinary or other stock or shares of any company incorporated as aforesaid, being a company which has paid dividends upon its capital ordinary at the rate of at least four per cent. per annum for at least the ten years next before the time of investment (of which fact such a letter as aforesaid shall be sufficient evidence):

Provided that the power conferred by this sub-paragraph—

- (i) shall not extend to any stocks shares or securities to bearer or subject to any liability for calls or other payments; and
 (ii) shall be exercisable subject to any consent that would have been requisite if the money had been proposed to be invested as authorised by law or by the trust instrument.

(6) Subject as aforesaid the compensation for a holding and the income thereof shall be held and disposed of in such manner as to confer on the existing owners whose interests are comprised in the holding, their personal representatives or assigns, the like benefits so far as may be, as they would have had from their respective interests in the premises in which the holding subsisted if those premises had not been acquired by the Commission.

Costs of payment and disposal.

22.—(1) Subject to the provisions of this paragraph and of section thirty-nine of this Act, the Commission shall pay the costs reasonably incurred by any person having an acquired interest that is comprised in a holding or a successor in title of his—

- (a) in connection with the ascertainment of the person entitled to the compensation for the holding; and
 (b) in a case in which the compensation for the holding is paid into court under sub-paragraph (c) of paragraph 18 of this Schedule, in connection with the investment and

re-investment of the sums paid and of obtaining orders for that purpose, of obtaining orders for the payment of the interest on the investments made, and of obtaining orders for the payment out of court of the sums paid or of the investments thereof; or

- (c) in a case in which the compensation is paid otherwise than as aforesaid, in connection with any application to the Court that may be requisite for the purpose of determining the manner in which the compensation ought to be held and disposed of.

(2) The Commission shall not be liable to pay under this paragraph any costs incurred by a person who or whose predecessor in title has neglected to furnish to the Commission information, relevant to the ascertainment of the person entitled to the compensation for the holding, that he is required by this Schedule, or has been reasonably required by the Commission, to furnish to them. The High Court shall have power, on the application of a person aggrieved by a denial on the part of the Commission by virtue of this sub-paragraph of liability to pay any such costs as aforesaid, to give such directions as to the matter in question as appear to the Court to be just.

(3) In case of difference as to the amount of any costs, other than costs of Court proceedings, that the Commission are liable under this paragraph to pay, the Board of Trade may direct in what manner they are to be taxed.

PART V.—APPLICATION TO SCOTLAND.

23. The foregoing provisions of this Schedule shall apply to Scotland, subject to the following modifications:—

- (i) For heads (a), (b) and (c) of paragraph 1 the following shall be substituted:—

“ (a) in the case of all the coal and mines of coal that are on the valuation date comprised in a coal-mining lease granted by the proprietor of the dominium utile and in the case of acquired property and rights annexed to any such coal or mine, the interest therein of such proprietor (hereinafter referred to as the estate owner) together with the interests therein of all persons claiming under him;

(b) in the case of all the coal and mines of coal that are on the valuation date comprised in coal-mining

lease that is a sub-lease and in the case of acquired property and rights annexed to any such coal or mine, the interest therein of the lessee who is the landlord under the sub-lease (hereinafter referred to as the estate owner), together with the interests of all persons claiming under him with the exception of any such interest that is a retained interest by virtue of a direction under subsection (2) of section five of this Act;

(c) in the case of all the coal and mines of coal in any valuation area that are not on the valuation date comprised in any coal-mining lease, and are in the ownership of the same person, as proprietor of the dominium utile (hereinafter referred to as the estate owner), and in the case of acquired property and rights annexed to any such coal or mine the interest therein of that person, together with the interests therein of all persons claiming under him."

- (ii) In the application of paragraph 4 to a valuation region in Scotland, a reference to the Lord Advocate shall be substituted for the reference to the Lord Chancellor.
- (iii) For sub-paragraph (6) of paragraph 5 the following sub-paragraph shall be substituted:—

"(6) The Court of Session or the sheriff court shall in respect of proceedings before the Central Valuation Board, or a referee appointed under this Schedule, or a Regional Valuation Board have the like powers to grant warrant to enforce the attendance of witnesses or the production of documents as in any arbitration, and it shall be competent in any such proceedings to examine witnesses on oath or affirmation."

- (iv) For paragraph 18 the following paragraph shall be substituted:—

"18. For the purposes of any provision of this Act under which a payment is to be made at any date to the person entitled to the compensation for a holding, that person shall be ascertained as follows—

- (a) where the whole interests comprised in one holding were vested immediately before the valuation date in a single person, he shall be the person entitled;
- (b) if the holding could, immediately before the

valuation date have been sold and conveyed to a purchaser—

(i) by any person holding the same in a fiduciary capacity, or

(ii) by the heir at law duly served of a deceased owner, or

(iii) under powers conferred by any enactment in such manner as to give the purchaser a valid title free from all feudal prestations and subject only to the inherent right of superiority of the Crown, the person who could have given a valid discharge for the purchase money arising on such a sale if paid on the date on which the compensation is paid shall be the person entitled;

(c) in a case in which either of the preceding subparagraphs would have applied but for the existence of the rights of a superior or the subsistence of a heritable security—

(i) except in a case in which immediately before the valuation date the creditor in a heritable security was in possession or in receipt of the income of the premises in which the holding subsisted, the Commission may serve notice in writing on the superior or the creditor or both, as the case may be, that they propose to act under this provision, and if within one month after the service of the notice no superior or creditor gives notice in writing to the Commission that he objects to their so acting, the person who would have been entitled if sub-paragraph (a) or (b), as the case may be, of this paragraph had applied shall be the person entitled;

(ii) in the excepted case aforesaid the Commission may serve notice on the superior or superiors, if any, that they propose to act under this provision and if within one month after the service of the notice no superior gives notice in writing, to the Commission that he objects to their so acting, the creditor in the heritable security shall be the person entitled;

(d) in any other case and also in any such case as aforesaid if the Commission consider it expedient in order to avoid expense or delay or for any special reason, the Commission may consign or deposit the compensation in a bank subject to the orders of the Court of Session or, where such compensation does not exceed five hundred pounds, of the sheriff court, and the compensation shall thereafter be paid in such proportions to such persons as the Court of Session or sheriff court, as the case may be, shall determine:

Provided that, in the case of any person under disability or holding under a limited title, the Court of Session or the sheriff court, as the case may be, may direct that any compensation in which such person may have an interest shall be invested, distributed or otherwise applied in such manner as the Court of Session or the sheriff court may deem just."

(v) Paragraph 21 shall have effect as if for any reference to an estate or other interest subject to a settlement within the meaning of the Settled Land Act, 1925, there were substituted a reference to an estate, or other interest subject to a trust within the meaning of the Trusts (Scotland) Act, 1921, or to an entail or to a liferent and any reference to the trustees of the settlement shall be construed accordingly.

(vi) After paragraph 21 the following paragraph shall be inserted:—

"21A. Where any coal or mine of coal or acquired property or rights vested in the Commission by virtue of this Act shall, immediately prior to the valuation date, be subject to a feu-duty or a heritable security which effects also other property not so vested, and compensation is paid to the person entitled to such feu-duty or the creditor in such heritable security, such person or creditor shall be bound to execute a discharge or deed of restriction to such extent and on such conditions as may, failing agreement, be determined by the sheriff. The Commission shall be liable to pay the costs incurred in connection with the preparation,

execution, stamping and recording in the Register of Sasines of any such discharge or deed of restriction as the same may be taxed by the auditor of the sheriff court."

- (vii) In this Schedule references to a freehold in possession, shall be construed as references to the whole interests specified in head (c) of paragraph 1 of this Schedule as modified by this paragraph, and references to payment into Court under sub-paragraph (c) of paragraph 18 shall be construed as references to consignment or deposit in bank under sub-paragraph (d) of the paragraph directed by the foregoing provisions to be substituted for paragraph 18.

TABLE.

Person entitled to, and disposal of, compensation for Crown lands.

Land.	Person entitled.	Manner of disposal of principal and interest.
Land under the management of the Commissioners of Crown Lands.	The Commissioners of Crown Lands.	As capital and income respectively of the land revenues of the Crown.
Land held by His Majesty in right of the Duchy of Lancaster.	The person to whom the purchase money for land sold under the Duchy of Lancaster Lands Act, 1855, is payable.	As sums representing such purchase money and sums representing interest thereon respectively.
Land held by His Majesty in right of His private estates.	Such person as may be nominated under His Majesty's royal sign manual.	In such manner as His Majesty may be pleased to direct.
Land forming part of the possessions of the Duchy of Cornwall.	The person to whom gross sums of money receivable in respect of a sale of any of the said possessions under the Duchy of Cornwall Management Acts, 1863 to 1893, are payable.	As such gross sums and sums representing interest thereon respectively.
Land belonging to a Government department or held in trust for His Majesty for the purposes of a Government department.	Such person as that department may direct.	In such manner as the Treasury may direct.

FOURTH SCHEDULE.

LEASE CONSOLIDATION SCHEMES.

1.—(1) A lease consolidation scheme, and the single lease to be granted pursuant thereto, shall be prepared by the Commission in agreement with the working lessee.

(2) The said lease may comprise, in addition to the coal and mines of coal in the colliery area, any other premises that are to vest in the Commission by virtue of Part I of this Act and are comprised in any of the subsisting working leases, and may, if the person competent to grant a lease thereof consents to the inclusion thereof but not otherwise, comprise also any premises that are so to vest but are not comprised in any of the subsisting working leases and any premises that are not so to vest.

(3) The said lease shall not (except with his consent) impose upon any person any liability not being a liability to which he would have been subject by virtue of a subsisting working lease, or render more onerous whether as regards extent, duration, terms, conditions or otherwise, any liability to which any person would have been so subject, or deprive him of the benefit of any covenant, condition or provision of a subsisting working lease affecting or relating to any premises other than coal or a mine of coal.

2.—(1) The said lease shall be a lease granted, in the case of any premises to be comprised therein, being premises comprised in any of the subsisting working leases, out of the freehold reversion in those premises, or, if two or more coal-mining leases thereof by way of lease and under-lease are subsisting, out of the leasehold reversion in those premises immediately expectant on the subsisting working lease, and accordingly the term to be granted in the case of premises that are so subject to two or more leases shall not be longer than the residue of the term for which that immediate reversion is held.

(2) The said lease shall, notwithstanding anything in subsection (2) of section twelve of this Act, not include any premises that are comprised in a subsisting working lease being an under-lease in a case in which interests in those premises arising under a superior lease are to be retained by virtue of a direction under subsection (2) of section five of this Act.

3. A lease consolidation scheme must—

- (a) specify a date on which it is to take effect;
- (b) specify the subsisting working leases and any superior

lease out of which any of the subsisting working leases is derived; and

- (c) contain provisions for rendering the rent reserved by the single lease to be granted pursuant thereto and the benefit of every covenant or provision contained in that lease having reference to the subject matter thereof and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, capable of being recovered received, enforced and taken advantage of during the period between the date on which the scheme takes effect and the vesting date, by a person acting as agent or in trust for all the persons interested in reversion expectant on that lease during that period.

4. At least six months before the date specified in a lease consolidation scheme for its coming into effect, a copy of the scheme shall be delivered to the person for the time being entitled to recover the rent attributable to the reversion immediately expectant on each of the leases specified therein.

5.—(1) The standard amount of rent in respect of any reversion may be determined by agreement between the Commission and the person for the time being entitled to recover the rent attributable to that reversion, or, in default of agreement either the Commission or that person may refer it for determination to an arbitrator selected by agreement between them, or in default of agreement, by the Lord Chancellor in the case of England or the Lord President of the Court of Session in the case of Scotland.

(2) In the case of a reversion that is a leasehold reversion, the standard amount of rent in respect thereof shall be determined on the basis of the net rent, that is to say the amount which the reversioner would have been entitled to receive, less the amount that he would have been liable to pay, by way of rent in respect of premises that are to be comprised in the single lease to be granted pursuant to the scheme.

6. If any person upon whom a copy of a lease consolidation scheme is required to be served objects to any of the provisions included in the scheme under sub-paragraph (c) of paragraph 3 of this Schedule, he may require those provisions to be determined by an arbitrator selected by agreement between the Commission and all the persons upon whom a copy of the scheme is required to be served, or, in default of agreement by the Lord Chancellor

in the case of England or the Lord President of the Court of Session in the case of Scotland.

7.—(1) It shall be the duty of each person whose grant or concurrence is requisite to the taking effect of a lease prepared by the Commission under paragraph 1 of this Schedule as respects any premises comprised therein and of the lessee thereunder, to execute the lease on being required by the Commission so to do at any time after the date of the taking effect of the scheme.

If any person makes default in the performance of the duty imposed upon him by this paragraph, the Commission may execute the lease in his name and on his behalf.

(2) A lease executed under this paragraph shall be deemed to have taken effect on the date of the taking effect of the scheme, and as from that date the subsisting working leases shall be deemed to have been determined so far as regards the premises comprised in the lease so executed.

(3) The provisions of section eleven of this Act shall have effect in relation to a severance effected by the determination of a subsisting working lease under the last preceding sub-paragraph as regards a part of the premises comprised therein, as they have effect in relation to such a severance as is mentioned in that section of the Act on a lease subsisting on the vesting date, so however that the apportionment of the rent reserved by the subsisting working lease shall be made on the basis of the apportionment made for the purpose of the determination under this Schedule of the standard amount of rent.

8.—(1) The person entitled by virtue of the provisions inserted in a lease consolidation scheme under sub-paragraph (c) of paragraph 3 of this Schedule to recover the rent reserved by the single lease granted pursuant thereto shall be deemed to be the immediate lessor for the purposes of the provisions of section twenty-four of the Finance (1909-10) Act, 1910, that relate (as originally enacted and as applied by Part III of the Mining Industry Act, 1926) to the assessment, collection and recovery of mineral rights duty and royalties welfare levy, in respect of the period between the date on which the lease takes effect and the vesting date.

(2) The powers conferred by the provisions inserted as aforesaid shall be exercisable during the period aforesaid as regards the matters to which those provisions relate, as statutory powers,

to the exclusion of any other power that might otherwise have been exercisable as regards those matters.

(3) The said person shall—

- (a) if the amount of the rent receivable by him for any period in respect of premises that were comprised in any of the subsisting working leases, after deduction of income tax, mineral rights duty and royalties welfare levy, is less than the aggregate of the standard amounts of rent determined under this Schedule for that period, distribute that rent, together with the amount of the deficiency payable by the Commission under subsection (5) of section twelve of this Act, among the persons entitled in reversion (whether immediate or superior) expectant on that lease in proportion to the said standard amounts of rent; or
- (b) if the amount of that rent, after such deduction as aforesaid, is greater than the said standard amounts, distribute that rent, after deducting the sum payable to the Commission under subsection (6) of section twelve of this Act, among the persons and in the proportions aforesaid.

(4) A superior reversioner who is entitled to a payment under the preceding sub-paragraph in respect of any premises for any period shall not be entitled to recover from his immediate lessee any rent in respect of those premises for that period.

9.—(1) The costs reasonably incurred in giving effect to the provisions of this Schedule by any person other than the Commission or working lessee shall be paid by the Commission, under and subject to the provisions of this paragraph:

Provided that, in relation to costs payable by virtue of sub-paragraph (3) of paragraph 7 of this Schedule, the provisions of section eleven of this Act shall have effect to the exclusion of the provisions of this paragraph.

(2) In case of difference as to the amount of the costs other than costs of a reference or reward, to be paid under this paragraph, the Board of Trade may direct in what manner they are to be taxed.

(3) An arbitrator may direct that the Commission shall not be liable to pay any such costs as aforesaid, being costs of a reference or reward incurred by a party to a reference who appears to the arbitrator to have been guilty of any such unreasonable

failure to agree with the Commission or any other party, or of any such negligence or default, as to disentitle him to payment thereof.

FIFTH SCHEDULE.

GRANT OF LEASES TO FREEHOLDERS OF COAL CARRYING ON COAL-MINING BUSINESS.

1. Where application has been duly made to the Commission for the grant of a lease under section thirteen of this Act, the Commission shall prepare a draft of the proposed lease and deliver a copy thereof to the person entitled to the grant of the lease (in this Schedule referred to as "the lessee").

2.—(1) Where the premises to be demised are at the date of the application subject to a mortgage otherwise than by way of floating charge, the Commission shall give notice in writing to the mortgagee of the fact of the application having been made, and the mortgagee may, at any time before the compensation in respect of the premises is paid, give notice in writing to the Commission that he elects to have, in lieu of any interest in such compensation a charge upon the interest of the lessee under the lease.

(2) Where notice is duly given by a mortgagee under the preceding sub-paragraph, the provisions of the Third Schedule to this Act relating to the person entitled to the compensation shall have effect as if the premises had not been subject to the mortgage, and the Commission shall prepare a draft of such instrument, whether being a substituted security or an instrument making provision for the variation of a subsisting security, as may be requisite for preserving so far as may be the rights and liabilities of the mortgagee and of the lessee and deliver a copy thereof to each of them.

3. A person to whom a copy of a draft has been delivered under either of the two last preceding paragraphs may within six weeks after the delivery thereof serve notice on the Commission of his objection to the terms thereof on the ground that the proposed lease does not comply with the provisions of section thirteen of this Act, or that the proposed substituted security or other instrument does not comply with the provisions of the last preceding paragraph, as the case may be, and where notice

is so served, the terms of the draft may be modified by agreement between the parties concerned, and in default of agreement the terms thereof shall be settled by an arbitrator selected by agreement between the parties or, in default of agreement, by the Lord Chancellor in the case of England or the Lord President of the Court of Session in the case of Scotland.

4. Subject to any agreement between the parties named in the draft of a lease, substituted security or other instrument settled under this Schedule, it shall be the duty of each of those parties, on being required by any other of them so to do, to execute a lease, security or other instrument in the terms of the draft.

5. Subject as aforesaid the procedure for giving effect to the provisions of section thirteen of this Act shall be such as may be prescribed.

6. The costs reasonably incurred in giving effect to the provisions of this Schedule by a person other than the Commission shall be paid by the Commission, and sub-paragraphs (2) and (3) of paragraph 9 of the Fourth Schedule to this Act shall have effect in relation to such costs.

SIXTH SCHEDULE.

AMENDMENTS OF 20 & 21 GEO. 5. C. 34, s. 13.

1. In section thirteen, after subsection (1) thereof, there shall be inserted the following subsection:—

“(1A) The following provisions shall have effect with respect to any scheme submitted to the Board of Trade by the Coal Commission—

- (a) the scheme shall provide for the consideration to be given to each of the constituent companies from which property is to be transferred (hereinafter referred to as a transferor company) being given out of the securities of the new company or of the constituent company to which that property is transferred, as the case may be (hereinafter referred to as the transferee company) and, except in so far as may be otherwise agreed between all the transferor companies and the transferee company, only out of such securities, and for the amount of the

consideration being determined upon the basis of the value at the date of transfer of the property and liabilities of each transferor company transferred by the scheme; the value of the property being assessed at what would have been the value thereof at the date of transfer as between a willing buyer and a willing seller;

- (b) the scheme shall determine the classes of securities of the transferee company which are to be given to the transferor companies in respect of the different classes of property transferred to it, and shall make provision for the determination of the amount of the consideration to be given to each of the transferor companies out of those securities, in so far as it is not determined by the terms of the scheme, being finally determined upon principles specified therein, by arbitration or otherwise, after the scheme has come into operation;
- (c) the scheme may provide for any property of a transferor company thereby transferred to a transferee company being so transferred either subject to, or freed from, all liabilities for the repayment of money lent which immediately before the date of transfer were secured on that property, but if a scheme provides for the transfer of any property freed from all such liabilities, the scheme shall make provision for entitling all persons who immediately before the date of transfer had, by way of security for such repayment, an interest in that property, to participate in the consideration to be received by the transferor company by means of a charge on that consideration or any part thereof, and with the like priorities between each other as existed before the coming into force of the scheme;
- (d) the scheme may make provision for making in any trust affecting property or liabilities transferred to the transferee company, including any compensation trust created in accordance with the provisions of the Workmen's Compensation (Coal Mines) Act, 1934, such modifications as may be consequential upon the amalgamation or absorption to be effected by the scheme."

2. For subsection (2) of the said section thirteen there shall be substituted the following subsection:—

“(2) In relation to any scheme submitted to the Board of Trade under this section by the Coal Commission, the Act of 1926 shall have effect as if for the proviso to subsection (2) of section seven thereof and section eight thereof (which both relate to the consideration of schemes by the Railway and Canal Commission) there were substituted the following proviso, that is to say:—

Provided that the Railway and Canal Commission—

- (a) shall hear such persons, whether in support of or against the scheme, as they think fit, including representatives of persons employed in any undertakings affected by the scheme; and
- (b) shall not have power to make, or require to be made, in the scheme modifications inconsistent with the enactments relating to the matters which are required to be provided for by schemes submitted to the Board of Trade by the Coal Commission but subject as aforesaid may make such modifications, if any, as they consider necessary for enabling the amalgamation or absorption affected by the scheme to be carried out upon terms and conditions that are fair and equitable to all persons affected by the scheme, and are calculated to avoid financial injury to any of the constituent companies and to enable the undertaking of the transferee company to be efficiently carried on; and
- (c) shall (after giving notice of any modifications proposed to be made by them not only to the Commission but also to the constituent companies in like manner as they would have been required by section ten of the Act of 1926 to do if the scheme had been submitted by those companies) confirm the scheme if they are satisfied that it conforms to the enactments relating thereto and, consistently with those enactments, that the amalgamation or absorption affected by the scheme will be carried out upon such terms and conditions as aforesaid.”

3. Subsection (4) of the said section thirteen is hereby repealed.

SEVENTH SCHEDULE.

AMENDMENTS OF 20 & 21 GEO. 5. C. 34, SS. 5 AND 8.

1. After subsection (1) of section five there shall be inserted the following new subsection:—

“(1A) If it appears to the Board of Trade to be expedient that more than one district committee of investigation should be constituted for any district with a view to the investigation of complaints relating to different matters or to different localities by different committees, two or more such committees may be constituted therefor and shall be charged respectively with the duty of investigating any complaint with respect to the operation of the district scheme for that district made in relation to such matters or to such localities as the Board may direct.”

2. In subsection (2) of section five, after the words “Board of Trade,” there shall be inserted the words following—“the person to be appointed as chairman shall be a member of the legal profession,”.

3. For subsection (3) of section five there shall be substituted the following subsections:—

“(3) A committee of investigation may act notwithstanding any vacancy in their number.

(3A) The Board of Trade shall cause to be constituted a panel of persons suitable to exercise the functions of the chairman of any committee of investigation in the event of the chairman of any such committee being unable to act on the investigation of any complaint, and in such an event a person shall, in such manner as the Board may direct, be selected from the panel to act as the chairman, and a person so selected for the investigation of any complaint shall, in relation to that investigation, be deemed to be the chairman of the committee, and references in this section to ‘the chairman’ shall be construed accordingly.

(3B) Upon the occasion of the appointment of a member of a committee of investigation as a representative of any interest, the Board shall, after consultation with such bodies as appear to them to represent that interest, appoint two persons, one of whom shall, in the event of that member being unable to act on the investigation of any complaint, be selected in such manner as the Board may direct to act

as the member of the committee representative of that interest and a person so selected for the investigation of any complaint shall, in relation to that investigation, be deemed to be the member of the committee representative of that interest, and references in this section to 'the members' shall be construed accordingly.

(3C) The chairman shall be present at every meeting of a committee of investigation. Any such committee may take evidence on oath, and for that purpose the chairman shall have power to administer an oath. Any evidence taken by a committee shall, except in so far as it relates to any particular business or undertaking or unless the committee for any special reason otherwise decide, be taken in public, and the decision of the committee upon every complaint shall be delivered in public. Subject to the foregoing provisions of this subsection, the meetings and procedure of every committee of investigation shall be regulated in accordance with rules made by the Board of Trade for the purpose."

4. At the end of subsection (5) of section five the following words shall be added:—

"and the complainant also shall furnish the committee with such returns, accounts and other information as the committee considers relevant to the investigation."

5. In subsection (7) of section five the words "subject as hereinafter provided" and the proviso to that subsection are hereby repealed.

6. In subsection (8) of section five for the words from "make representations with respect thereto" to the end of the subsection there shall be substituted the words following—"make to the persons having power under the scheme to rectify the matter such representations as the committee think desirable for that purpose, and those persons shall exercise their functions under the scheme in conformity with the representations."

7. After subsection (8) of section five there shall be inserted the following new subsections:—

"(8A) Where a committee of investigation has given a decision under the last foregoing subsection upon a complaint made with respect to the operation of a scheme, any person aggrieved by the decision, or the executive board charged with the duty of administering the scheme, or the central

council, as the case may be, may within fourteen days from the date upon which the decision was given (or within such longer period as the Central Appeal Tribunal may in any particular case allow) refer the matter for arbitration by the Central Appeal Tribunal to be constituted as hereinafter provided.

(8B) The Central Appeal Tribunal shall consist of a chairman and two other members appointed by the Board of Trade, and the Board shall appoint as chairman a member of the legal profession and as the other members persons who appear to the Board to be substantially independent of the coal industry or of any other industry in which large quantities of coal are used, and who are not members, or officers or servants, of an organisation of employers or workpeople in the coal-mining industry, practising mining engineers, or in any other manner directly connected with that industry.

(8C) The Board of Trade shall appoint persons having the same qualifications respectively as are requisite in the case of the chairman and other members of the Central Appeal Tribunal to exercise the functions of the chairman and members of the Tribunal in the event of the chairman or any other member being unable to act on any arbitration, and a person so appointed shall, in relation to any arbitration as respects which he is exercising such functions, be deemed to be the chairman or a member, as the case may be, of the Central Appeal Tribunal, and references in this section to 'the chairman' and to 'the members' shall be construed accordingly.

(8D) The Central Appeal Tribunal shall not have power to act except in the presence of the chairman and both members thereof. Such of the provisions of subsection (3C) of this section as relate to the power to take, and the taking of, evidence by committees of investigation shall apply with respect to the Central Appeal Tribunal as they apply with respect to such committees. Subject to the preceding provisions of this subsection, the procedure of the Central Appeal Tribunal shall be regulated in accordance with rules made by the Board of Trade for the purpose.

(8E) Upon the hearing of any arbitration by the Central Appeal Tribunal, the council or executive board charged with the duty of administering the relevant scheme shall furnish to the Tribunal such returns, accounts and other information

relating to the scheme as the Tribunal considers relevant for the purposes of the arbitration.

(8F) The powers of the Board of Trade under subsection (4) of this section shall extend to the Central Appeal Tribunal in like manner as they extend to committees of investigation, but shall include power to pay such remuneration to the members, as well as to the chairman, of the Central Appeal Tribunal as the Board may, with the approval of their Treasury, determine."

8. In subsection (9) of section five for the words from the beginning of the subsection to the words "foregoing subsection" there shall be substituted the following words—"After a decision of the committee of investigation or of the Central Appeal Tribunal as to any complaint has become binding, the committee or the Central Appeal Tribunal, as the case may be,"; the words "the arbitrators' decision and" shall be omitted; paragraph (b) of subsection (10) and subsection (11) are hereby repealed.

9. At the end of section five the following subsection shall be inserted:—

"(11) Any appointment to be made by the Board of Trade under this section of a person who is thereby required to be a member of the legal profession shall be made after consultation with the Lord Chancellor, or where the appointment is of the chairman of a district committee of investigation for a district in Scotland, after consultation with the Lord Advocate."

10. In section eight after the words "executive board" where those words first occur there shall be inserted the words "the Central Appeal Tribunal"; after the words "conferred upon any such committee" there shall be inserted the words "or upon the Central Appeal Tribunal"; in the proviso to the said section there shall be inserted after the words "the central council" the words "the Central Appeal Tribunal"; and at the end of the said section there shall be added the words following:—" ; and any such information published or disclosed to the Board of Trade or to the Central Appeal Tribunal or to any committee of investigation which is relevant to the proceedings upon any inquiry or arbitration or investigation held by them may be published or disclosed by them to any person being a party to or otherwise directly concerned in those proceedings, but only in such form as does not disclose information relating to any particular business or undertaking."

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MINES (WORKING FACILITIES AND SUPPORT) ACT, 1923. (13 & 14 GEO. 5, c. 20.)

ARRANGEMENT OF SECTIONS.

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RIGHTS OF WORKING MINERALS AND RIGHTS ANCILLARY THERETO AND OF SUPPORT.

Rights of working and rights ancillary to the working of Minerals.
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SCHEDULES.

MINES (WORKING FACILITIES AND SUPPORT) ACT, 1923.
(13 & 14 GEO. 5, c. 20.)

An Act to make provisions for facilitating the working of minerals and for imposing restrictions on the working of minerals required for the support of Railways, buildings, and works.

(18th July, 1923.)

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.

RIGHTS OF WORKING MINERALS AND RIGHTS ANCILLARY THERETO
AND OF SUPPORT.

Rights of working and rights ancillary to the working of Minerals.

*1. *Power to grant right to work minerals which would otherwise be unworkable.—(1) Where there is danger of minerals being left permanently unworked—*

(a) *by reason of the minerals being comprised in or lying under land which is or has been copyhold land, or land subject to a lease exception reservation restriction covenant or condition, or otherwise not being capable of being worked without the concurrence of two or more persons;*

(b) *by reason of the minerals being owned in such small parcels that they cannot be properly or conveniently worked by themselves;*

a right to work the minerals may be conferred in the manner and subject to the provisions hereinafter appearing on any person having an interest in them, or, in the case of minerals owned in small parcels, in minerals adjacent to them, who is desirous of working them either by himself or through his lessees.

* This section ceases to have effect as respects coal within the meaning of the Coal Act (see p. 50). As to other minerals and substances, see p. 37.

(2) *For the purposes of this Part of this Act, references to working minerals shall include references to working, carrying away, treating, and converting minerals.*

2. Power to grant right to work minerals where adjustment of boundaries between two mines agreed.—Where the persons working two adjoining mines have agreed on an adjustment of boundaries between the mines with a view to reducing the amount of minerals to be left unworked between the mines, or to enabling the minerals to be worked more efficiently or more economically, and effect cannot be given to the agreement by reason of the failure or refusal of the lessors of the mines* or the owners of the surface, or any of them, to concur, a right to work the minerals in accordance with such adjusted boundaries may be conferred in the manner and subject to the provisions hereinafter appearing on the persons working the mines respectively.

3. Power to grant ancillary rights for facilitating the working of minerals.—(1) Where any facility, right, or privilege is required in order that minerals may be properly and conveniently worked by the person entitled to work the same, and the proper and efficient working of the minerals is unduly hampered by the inability or failure of that person to obtain such right, facility, or privilege (hereinafter referred to as an ancillary right), such ancillary right may be conferred in the manner and subject to the provisions hereinafter appearing on the person having the right to work the minerals who is working or desirous of working them either by himself or through his lessees.

(2) In particular, but without prejudice to the generality of the foregoing provision, such ancillary rights shall include—

- (a) A right to let down the surface;
- (b) A right of air-way, shaft-way, or surface or underground wayleave, or other right for the purpose of access to or conveyance of minerals or the ventilation or drainage of the mines;
- (c) A right to use and occupy the surface for the erection of wash-eries, coke ovens, railways, by-product works, or brick

* The words "lessors of the mines" shall not refer to the Coal Commission.

making or other works, or of dwellings for persons employed in connection with the working of the minerals or with any such works as aforesaid;

(d) A right to obtain a supply of water or other substances in connection with the working of minerals;

(e) A right to dispose of water or other liquid matter obtained from mines or any by-product works.

*“(f) In a case in which the surface has been used for the erection of any works for a coalmining purpose within the meaning of Part I of the Coal Act, 1938, or of dwellings for persons employed in connection with the working of coal within the meaning of that Part of that Act, or with any such works as aforesaid or as are mentioned in paragraph (c) of this subsection, a right to use and occupy the works or dwellings for the purposes for which they were erected.”

(3) An ancillary right may be granted to a person to whom a right of working minerals is granted in pursuance of section one of this Act at the time when such last-mentioned right is granted or at any subsequent time.

4. *Limitation on power of granting rights.*—(1) Neither the right to work minerals nor an ancillary right shall be granted under this Act unless it is shown that it is not reasonably practicable to obtain the right in question by private arrangement for any of the following reasons:

(a) that the persons with power to grant the right are numerous or have conflicting interests;

(b) that the persons with power to grant the right, or any of them, cannot be ascertained or cannot be found;

* This right is put in by the Coal Act, s. 22 (3).

It is doubtful whether this right in any way widens the scope of this section, but it makes it clear that the proper working of minerals may be unduly hampered by the failure to house workmen, or to occupy works constructed for a coal mining purpose.

By the Coal Act, s. 22 (4), where such a right as is specified in this new sub-section (f) is to be granted on the termination of a lease, and a right to erect or use the works or dwellings was comprised in that lease, the Railway and Canal Commission, in determining whether any compensation or consideration is to be paid or given in respect of the right to be granted by them and the amount thereof, if any, shall have regard to the fact that the right comprised in the lease was therein comprised and to the amount of any rent reserved by the lease in respect thereof.

- (c) that the persons from whom the right must be obtained, or any of them, have not the necessary powers of disposition, whether by reason of defect in title, legal disability or otherwise;
- (d) that the person with power to grant the right unreasonably refuses to grant it or demands terms which, having regard to the circumstances, are unreasonable.

(2) For the purposes of this Part of this Act, a person whose concurrence is necessary for the exercise of a right to work minerals shall be deemed to be a person having power to grant the right, or a person from whom the right must be obtained, as the case may be.

5. *Applications for rights.*—(1) Any person having an interest in any minerals who is desirous of working, either by himself or through a lessee, those minerals, or any adjacent minerals*, and who considers that the circumstances are such that a right to work the minerals can be granted under this Part of this Act, may send to the Board of Trade an application for the grant of such a right.

(2) Any person having a right to work any minerals or applying for such a right who, for the purpose of or in connection with working those minerals either by himself or through a lessee, is desirous of obtaining an ancillary right, and who considers that the circumstances are such that such an ancillary right can be granted under this Part of this Act, may send to the Board of Trade an application for the grant of such a right.

(3) An application under this section shall set forth the circumstances alleged to justify the grant of the right, and shall be in such form, and accompanied by such information verified in such manner, as the Board may direct.

(4) The Board shall consider the application and shall, unless after communication with such other parties interested (if any) as they may think fit they are of opinion that a *prima facie* case is not made out, refer the matter to the Railway and Canal Commission:

Provided that, where it is alleged that the right in question cannot be obtained by reason of any person not having the necessary powers

* See p. 252 as to the effect of sect. 13 of the Mining Industry Act, 1926.

of disposition, or having unreasonably refused to grant it, or having demanded terms which are unreasonable, the Board shall not so refer the application to the Commission without first having communicated with that person.

(5) When the application relates to a right to obtain a supply of water, or a right to dispose of water or other liquid matter, or any other right which appears to the Board of Trade to affect any local authority, the Board before referring the application to the Commission shall send a copy thereof to the local authority in order to enable them to take such steps as they think fit for placing their views before the Commission.

6. *References to Railway and Canal Commission.*—(1) Where a matter is so referred to the Commission, the Commission, if satisfied that the requirements of this Part of this Act are complied with in the case of the applicant, and that it is expedient in the national interest that the right applied for should be granted to him, may, by order, grant the right on such terms and subject to such conditions, and for such period, as the Commission may think fit, and upon such an order being made, the right specified in the order shall, subject to the provisions hereinafter contained, vest in the applicant.

(2) Where such a right is granted, such compensation or consideration as in default of agreement may be determined by the Commission shall be paid or given by the applicant in respect of the acquisition of the right to such persons as the Commission may determine to be entitled thereto.

(3) In determining the duration of any right to be granted the Commission shall have regard to the time reasonably necessary to enable the minerals to be fully worked, and where the applicant's interest in any minerals in virtue of which he is entitled to make the application* is an interest as lessee, shall have regard to the duration of such interest.

(4) Where the right is applied for is a right to let down the surface, the Commission in determining whether the right should be granted—

(a) shall have regard to the value of the minerals required for the

* The words "in virtue of which he is entitled to make the application," are omitted when an application is made under sect. 13 of the 1926 Act (see p. 252).

support of any works or buildings or intended works or buildings on or below the surface as compared with the value of the buildings or works, and as to whether the support of the buildings or works or intended works or buildings is in the national interest more important than the working of those minerals; or

- (b) if there are no such buildings or works, shall have regard to the extent to which the use of the surface for the purposes for which it is used or is intended to be used will be prejudicially affected by subsidence, and as to whether the support of the surface is in the national interest more important than the working of the minerals required for the support thereof.

(5) In determining whether any right should be granted or the conditions upon which any such right should be granted the Commission shall have regard to all the circumstances of the case, and in particular to the extent to which the retention of any minerals is required for the protection of any mines or other works from flooding, or for any other mining purpose, and (so far as relevant) to the royalties, covenants, and conditions reserved by or contained in the applicant's existing mining lease or leases (if any), or customary in mining leases in the district.

7. Provisions where several applications in respect of the same rights.—(1) Where separate applications are made by two or more persons for the right to work the same minerals and are referred to the Commission, the Commission, in addition to the matters aforesaid, shall determine which, if any, of the applicants is to be preferred, or whether the right to work one part of the minerals should be granted to one applicant and the right to work another part should be granted to another applicant; and in arriving at their determination the Commission shall have regard to the question as to how the minerals can be most conveniently worked, to the respective rights of the applicants in the surface or adjacent minerals, and generally to all the circumstances of the case.

(2) This section shall apply to cases of applications by two or more persons for the same ancillary right subject to the necessary modifications, and in particular subject to this modification, that the right may be granted to the applicants, or to any two or more of them, jointly.

Restrictions on working Minerals required for Support.

8. *Restrictions on working minerals required for support.*—(1) If any person having an interest in any land is not entitled to support or sufficient support, whether vertical or lateral, for any buildings or works, whether on or below the surface, erected or constructed, or intended to be erected or constructed, on or below the surface, and alleges that it is not reasonably practicable to obtain a right to such support by private arrangement for any of the reasons mentioned in section four of this Act, he may send to the Board of Trade an application that such restrictions may be imposed on the working of the minerals under that land and the land adjacent thereto as he may consider necessary to secure sufficient support to the buildings or works.

(2) An application under this section shall set forth the circumstances alleged to justify the imposition of the restrictions, and shall be in such form, and accompanied by such information verified in such manner, as the Board may direct.

(3) The Board shall consider the application, and shall, unless after communication with such other parties interested (if any) as they think fit, they are of opinion that a *prima facie* case is not made out, refer the matter to the Railway and Canal Commission:

Provided that, where it is alleged that the right in question cannot be obtained by reason of any person not having the necessary powers of disposition, or having unreasonably refused to grant it, or having demanded terms which are unreasonable, the Board shall not so refer the application to the Commission without first having communicated with that person.

(4) Where any such case is referred to the Commission, the Commission, if satisfied that the requirements of this section are complied with in the case of the applicant, and that it is expedient in the national interest that restrictions should be imposed, may, by order, impose such restrictions, on such terms and subject to such conditions and for such period as the Commission may think just, and upon such order being made the right to enforce the restrictions imposed by the order shall, subject to the provisions hereinafter contained, vest in the applicant.

(5) Where restrictions are imposed, such compensation or consideration as in default of agreement may be determined by the

Commission shall be paid or given by the applicant in respect of the imposition of the restrictions to such persons as the Commission may determine to be entitled thereto.

(6) The restrictions may be either on the quantity or position of the minerals to be worked, or on the methods of working or packing, or otherwise such as may be necessary to secure adequate support to the buildings or works or to prevent or minimise damage thereto.

(7) In determining whether restrictions should be imposed the Commission shall have regard to the value of the buildings or works or the cost of repairing damage likely to be caused thereto by subsidence, as compared with the value of the minerals, or to the importance in the national interest of the erection or preservation of the buildings or works, as compared with the importance in the national interest of the working of the minerals.

(8) For the purposes of this section, where any building or work is an ancient monument within the meaning of the Ancient Monuments Consolidation and Amendment Act, 1913, and is, in pursuance of that Act, under the guardianship or protection of the Commissioners of Works, or is under the guardianship of a local authority, the Commissioners of works or the local authority, as the case may be, shall be deemed to be persons entitled to make an application under this section.

General.

9. Provisions for compensation.—(1) Where a right to work minerals or an ancillary right is granted or any restriction on the working of minerals is imposed under this Part of this Act, the Commission may determine the amount and nature of compensation or consideration to be paid or given and the persons to whom it is to be paid or given, either at the time when they determine whether the right should be granted or the restrictions imposed or at any subsequent time.

(2) The compensation or consideration in respect of any right, including a right to enforce restrictions, shall be assessed by the Commission on the basis of what would be fair and reasonable between a willing grantor and a willing grantee, having regard to the conditions subject to which the right is or is to be granted.

(3) Where the person to whom any compensation or consideration

is payable cannot be found or ascertained, the compensation or consideration shall be paid into court,

(4) The Commission may impose as a condition on the grant of any right or the imposition of any restriction that any compensation or consideration payable in respect thereof shall be paid, or that security to the satisfaction of the Commission for the payment thereof shall be given, before the right is commenced to be exercised, or the restriction is enforced.

10. Provisions as to the Railway and Canal Commission.—(1) The provisions of the Railway and Canal Traffic Act, 1888, as amended by any subsequent enactment, relating to the procedure for the determination of questions under that Act (including the provisions relating to appeals) shall apply to the determination of questions relating to applications under this Act as if they were herein re-enacted and in terms made applicable to the provisions of this Act:

Provided that—

- (a) the Commission, in any case in which they think it expedient to do so, may call in the aid of one or more qualified assessors and hear the case wholly or partially with the assistance of such assessors;
- (b) the Commission may hold a local inquiry for the purposes of this Part of this Act by any one of their members, or by an officer of the Commission, or other person whom they may direct, to hold the same, and the said provisions of the Railway and Canal Traffic Act, 1888 (except the provisions relating to appeals), shall, so far as applicable, apply to such inquiries, and any member, officer, or other person directed to hold an inquiry shall have power to administer oaths, and shall report the result of the inquiry to the Commission;
- (c) the discretion of the Commission with respect to costs shall not be limited in the manner provided by section two of the Railway and Canal Traffic Act, 1894;
- (d) the rules regulating the procedure of the Commission may apply any of the provisions of the Lands Clauses Acts relating to the payment of compensation so far as not inconsistent with the provisions of this Part of this Act.

(2) The Board of Trade and the Coal Commission* and any other Government Department shall give to the Commission such assistance as the Commission may require for the purposes of their duties under this Part of this Act, and shall be entitled to appear and be heard at any proceedings on an application before the Commission under this Part of this Act.

11. *Effect of grant of right.*—A right granted under this Part of this Act shall not confer on the person to whom it is granted any greater or other power than if the right had been granted by a person legally entitled to grant the right, or relieve the grantee from any obligation or liability to which he would have been subject had the right been granted by such a person.

12. *Provisions as to tenants for life, &c.*—An order under this Part of this Act may confer rights on a tenant for life or on any person having the statutory powers of a tenant for life, or any trustee, personal representative, or other person in a fiduciary position, and, where any such rights are so conferred upon any such person, the rights shall be deemed to form part of the property subject to the settlement or the estate of the deceased person or the property subject to the trust, as the case may be.

13. *Saving of rights under the Railways Clauses Act, &c.*—Nothing in this Part of this Act shall prejudicially affect the right under the Railways Clauses Consolidation Act, 1845, or any Act modifying that Act, including Part II. of this Act, or any other Act, whether public general, or local and private, of any railway or canal company local authority or other statutory body to acquire minerals for the purposes of support, or any rights or interests in minerals which may have been acquired by any such company authority or body, or any right of support from minerals to which any such company, authority or body may be entitled, or any right empowering any such company authority or body to acquire the rights to which they are entitled directly or indirectly under any special Act or order relating to the company authority or body or any statute incorporated therewith,

* These words are put in by the Coal Act, s. 22 (5), thereby giving the Coal Commission the right to appear at an application.

or shall confer on any such company authority or body a right to acquire under this Part of this Act any rights to prohibit or restrict the working of minerals.

14. Interpretation.—(1) For the purposes of this Part of this Act, unless the context otherwise requires—

“ Minerals ” include all minerals and substances in or under land obtainable by underground or by surface working;

“ Surface ” in relation to land includes any buildings, works or things erected, constructed or growing thereon;

“ Right to let down the surface ” includes a right to let down superincumbent or adjacent strata up to and including the surface;

“ Lease ” includes under lease or other tenancy and a licence, and “ lessor ” and “ lessee ” have corresponding meanings;

“ Copyhold land ” has the same meaning as in the Law of Property Act, 1922.

(2) In the application of this Part of this Act to Scotland for the reference to the Railways Clauses Consolidation Act, 1845, there shall be substituted a reference to the Railways Clauses Consolidation (Scotland) Act, 1845.

PART II.

MINERALS UNDER RAILWAYS.

15. Amendment of 8 & 9 Vict. c. 20, ss. 78 to 85 as incorporated in future Acts.—The Railways Clauses Consolidation Act, 1845, as incorporated in any Act, order, or other instrument relating to a railway company passed or made after the passing of this Act, shall, except as otherwise expressly provided in that Act order or instrument, have effect as if for sections seventy-eight to eighty-five thereof, inclusive, the following provisions were substituted, and as if the First, Second and Third Schedules to this Act were inserted in that Act as the First, Second and Third Schedules thereto.*

78. Conditions under which minerals under railway may be worked.—(1) If the mine owner of minerals lying under an area

* By reason of sect. 34 of the Coal Act, the Commission take all their interests in coal and mines of coal subject to the provisions set out in this part of this Act.

of protection as hereinafter defined is desirous of working any such minerals, he shall give to the company and also to the royalty owner (if any) notice of his intention so to do at least thirty days before the commencement of the working and on the receipt of such notice the company and the royalty owner respectively may cause the minerals to be inspected by any person appointed for the purpose by the company or royalty owner as the case may be.

(2) If it appears to the company that the working of any of the minerals to which such notice relates will be likely to damage the railway or works or any part thereof, the company may, at any time after the receipt of such notice, give a counter-notice to the mine owner requiring him to leave unworked all or any part of such minerals, and the counter-notice shall specify the minerals (hereinafter referred to as the specified minerals) so required to be left unworked and the particular portion of the railway or works (hereinafter referred to as the protected works) for the support of which the specified minerals are required to be left unworked.

(3) Where any such counter-notice has been served on the mine owner, he shall forthwith serve a copy thereof on the royalty owner (if any).

(4) Where any such counter-notice has been served on the mine owner, the specified minerals shall not be worked or got after the service of the counter-notice, and the company shall pay compensation to the mine owner and the royalty owner (if any) for the loss caused by the specified minerals being left unworked.

(5) The area of protection in relation to any seam of minerals shall be the area comprising any railway or works of the company and such a lateral distance therefrom, on all or both sides thereof, as is equal at each point along the railway to one-half of the depth of the seam at that point or forty yards, whichever be the greater; and, when the said lateral distance exceeds forty yards, the area of protection shall be divided into two areas:

- (a) an inner area of protection consisting of the area comprising the railway or works and a distance of forty yards therefrom on all or both sides thereof; and

- (b) an outer area of protection consisting of so much of the area of protection as is not included in the inner area of protection.

78A. *Compensation for leaving minerals unworked.*—(1) The compensation payable by the company to the mine owner and the royalty owner respectively for the loss caused by the specified minerals being left unworked shall, in default of agreement, be determined by arbitration:

Provided that so far as such compensation is payable in respect of the value of specified minerals—

- (i) the compensation payable to the mine owner and to the royalty owner shall be separately assessed;
- (ii) the compensation payable to the mine owner shall be a sum for each ton of the specified minerals, the rate per ton in the case of minerals lying under the outer area of protection being one-third of the rate which is or would be awarded in the case of minerals lying under the inner area of protection;
- (iii) the compensation payable to the royalty owner shall be based on the amount which would have been received from time to time by way of royalty in respect of the specified minerals if they had been worked out in the ordinary course, and the royalties payable had been—
 - (a) in the case of such of the specified minerals as lie under the inner area of protection, the same as those reserved by and payable under the lease comprising the minerals and subsisting at the date of the counter-notice; and
 - (b) in the case of such of the specified minerals as lie under the outer area of protection, one-third of the royalties so reserved and payable with the addition to such one-third of one penny per ton;
- (iv) in every case the arbitrator shall state in his award the tonnage of the specified minerals on which his award is based.

(2) The mine owner shall also be entitled to be paid by the company the amount of any increase in the cost of working any part of his minerals (other than the specified minerals)

which may have been caused by the failure of the company to give the counter-notice within such a reasonable time as would have enabled the mine owner to avoid such increase in cost, and, in default of agreement, the amount so payable by the company shall be determined by arbitration.

79. *Power to work minerals not affected by a counter-notice.*—

(1) If within thirty days from the service by a mine owner on the company of a notice of intention to work any minerals no counter-notice is served by the company, the mine owner may, after the expiration of those thirty days, and until a counter-notice is served, work any minerals to which the notice relates, so, nevertheless, that the same be done in the manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such minerals in the district where the same shall be situated.

Where a counter-notice is served, whether before or after the expiration of the said thirty days, and the counter-notice does not require the mine owner to leave unworked the whole of the minerals to which the notice relates, the foregoing provisions shall apply to any minerals to which the notice relates which are not specified minerals in like manner as if no such counter-notice had been served.

(2) If any damage or obstruction is occasioned to the railway or works by any improper working of such minerals, the same shall be forthwith repaired or removed (as the case may require and such damage made good by the mine owner at his own expense; and if such repair or removal is not forthwith done, or, if the company think fit, without waiting for the same to be done by the mine owner, they may execute the same and recover from the mine owner the expense occasioned thereby by action.

79A. *Liability in respect of authorised workings.*—(1) If a mine owner works any minerals lying under any part of the area of protection in the manner authorised by this Act, he shall nevertheless become liable on demand by the company (subject as hereinafter provided) to contribute towards the expenses properly incurred, or to be incurred, by the company from time to time thereafter in making good any damage caused by such working to the railway or works of the company (not being

protected works comprised in any counter-notice relating to such area of protection) the appropriate percentage (if any) of those expenses, the appropriate percentage being such as is specified in the First Schedule to this Act according to the depth of the minerals being so worked.

(2) The liability of a mine owner under this section in respect of any part of the railway or works on which such expenditure has been incurred shall not exceed an aggregate sum equivalent to sixpence for each ton of the commercially workable minerals, gotten or ungotten, in such part of any seams as lies under the area ascertained as respects the several seams in accordance with the rules contained in the Second Schedule to this Act, being seams which have been or are being worked under such area as aforesaid:

Provided that, in ascertaining such aggregate sum as aforesaid, minerals gotten more than six years before the date on which a contribution shall have been demanded by the company under this section shall not be reckoned.

(3) Any mine owner making a contribution under this section, who is a lessee, shall be entitled to deduct from any royalties then or thereafter becoming due from him to the royalty owner under the lease, one-third part of the amount which he has so contributed as aforesaid, subject, however, to this limitation: that if the royalty payable by the mine owner under his lease is at the rate of less than sixpence per ton, the amount deducted shall not exceed the amount produced by multiplying one-third of such rate per ton by the tonnage of the minerals with reference to the aggregate amount of which the maximum liability of the mine owner is to be so calculated as aforesaid; and, where the mine owner is entitled to make such a deduction, the sum reserved by and payable under the lease shall be deemed to be the net amount arrived at after making the deduction:

Provided that no such deduction shall be allowed when the liability of the mine owner to the company is a liability arising out of an arrangement between the mine owner and the company with respect to the working of minerals under or near the railway or works.

(4) The liability of a mine owner under this section shall be subject to the following further limitation as respects damage

done by workings in any single mine, that is to say, that when the aggregate of the sums paid by the mine owner in satisfaction of such liability amounts to a sum equivalent to sixpence for each ton of commercially workable minerals, gotten or ungotten, in such part of any seams as lies within the mine and under an area extending laterally on both sides of the railway or works to a distance ascertained in accordance with Rule 1 of the said Second Schedule and extending longitudinally to a distance co-extensive with the portion of the railway lying over or adjacent to the mine, being seams which have been or are being worked under such area as aforesaid, the mine owner shall not be liable to make any further contribution under this section towards the expenses of making good any damage caused to any part of the railway or works by the working of such seams as aforesaid in that mine.

For the purposes of this provision, all the minerals which the mine owner is entitled to work, and which have been, or would in the ordinary course of events and in accordance with good mining practice be, worked from the same shafts or adits shall be deemed to be a single mine.

Where the liability of a mine owner under subsection (2) of this section is reduced by the operation of this subsection, the right of the mine owner under subsection (3) thereof to make deductions from royalties shall be proportionately reduced.

(5) Where a single mine, as hereinbefore defined, is held under leases granted by more than one lessor, any deductions which the mine owner is authorised under this section to make shall be made from the royalties payable to such one or more of such lessors, and in the latter case in such proportions, as in default of agreement may, on the application of the mine owner or any of the royalty owners, be determined by arbitration.

(6) If any dispute arises as to the amount of the expenses towards which a mine owner is liable to contribute under this section, or the amount of his contribution, or the amount to be deducted as between a mine owner and a royalty owner, it shall be settled by arbitration, and, where any such arbitration between a company and a mine owner is to be held, the royalty owner (if any) shall be entitled to have notice of the intended

arbitration, and to appear and be heard at the arbitration proceedings.

79B. *Notices and accounts with respect to damage.*—(1) When and so far as reasonable and practicable, the company shall give notice to the mine owner and the royalty owner (if any) affected specifying particulars of—

- (i) the railway or works to which damage has been caused or to which damage is apprehended from the working of any minerals under the area of protection sufficient to enable the same to be identified;
- (ii) the nature of the damage or apprehended damage; and
- (iii) the nature of the works intended to be carried out for the purpose of making good or preventing the damage.

(2) The company shall keep separate accounts differentiating the cost of the ordinary maintenance of the railway or works from the cost of making good any damage caused to the railway or works by the working of any minerals under the area of protection, and such accounts shall, at all reasonable times, be open for inspection by or on behalf of a mine owner working minerals under or near to such railway or works and the royalty owner (if any) of such minerals.

80. *Rights of access through specified minerals.*—If the working of any minerals is prevented under this Act by reason of a counter-notice, a mine owner whose minerals extend so as to lie on both sides of the specified minerals may cut and make such airways, headways, gateways, or water levels through the specified minerals and the strata above or below the same or any of them as may be requisite to enable him to ventilate, drain, and work his remaining minerals; but no such airway, headway, gateway, or water level shall be cut or made upon or so as to injure any part of the protected works, or within forty yards of any other airway, headway, gateway, or water level, nor shall the same without the consent of the company (which consent shall not be unreasonably withheld) be greater than eight feet wide and eight feet high, unless the top of the same is more than one hundred and sixty yards below the average rail level of the protected works, or, if the top exceeds that distance, than thirteen feet wide and eight feet high.

81. *Additional expenses for severance.*—(1) Where a counter-notice has been given by the company to a mine owner, the company shall from time to time pay to the mine owner the appropriate percentage (if any) of all such additional expenses and losses as may be incurred by such mine owner in consequence of such counter-notice by reason of—

- (i) the continuous working of the mine being interrupted; or
- (ii) the mine being worked in such manner and under such restrictions as not to prejudice or injure the protected works.

(2) For the purpose of this section, the appropriate percentage means the percentage determined in accordance with the rules contained in the Third Schedule to this Act.

(3) If any question or dispute arises between the company and the mine owner concerning the amount of such losses or expenses, or as to the appropriate percentage, it shall be settled by arbitration.

(4) Where the minerals specified in a counter-notice lie in different seams, the amount payable by the company to the mine owner under this section shall be calculated separately as respects each seam:

Provided that, where the works on which any additional expenditure is incurred serve more than one seam, that expenditure shall, for the purposes of this section, be apportioned between the seams served in such manner as, in default of agreement, may be determined by arbitration.

82. *Compensation to surface owners.*—If any loss or damage is sustained by the owner, lessee, or occupier of the land over any specified minerals (not being the owner or lessee of the specified minerals) by reason of the making of such airway or other authorised work as aforesaid, where neither that work nor any like work, would have been necessary save on account of the prevention of the working of the minerals, the company shall make full compensation to such owner, lessee, or occupier of the surface for the loss or damage sustained by him, such compensation in default of agreement to be determined by arbitration.

83. *Rights of inspection.*—(1) For ascertaining whether or not any minerals are being worked or are about to be or have been

worked so as to damage the railway or works of a company, any person appointed by the company may, after at least twenty-four hours notice has been given by the company, enter upon any land (through or near which the railway passes) which the company believe to contain or to have contained such minerals, and may enter into and return from any such minerals or the works connected therewith; and, for that purpose, the person so appointed may make use of any apparatus or machinery belonging to a mine owner, and use all necessary means for discovering the distance from such railway or works to the parts of the minerals which are being or have been worked or are about to be worked; and, after giving a like notice, may inspect and take copies of so much of the working plans and sections of the mine as relate to minerals the working whereof affects or has affected or may affect the railway or works.

(2) A mine owner who desires to work any minerals under or near to the railway or works of the company, and also the royalty owner (if any) or any person duly authorised by either of them, may, at any time, either before or during or after the working thereof, upon giving at least twenty-four hours notice to the company, and subject to such reasonable conditions as may be imposed by the company, enter upon the railway or works and inspect the same and take levels or particulars thereof.

84. *Penalty for refusal to allow inspection.*—(1) If any mine owner refuses to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works or to inspect and take copies of such plans and sections in manner aforesaid, every person so offending shall, for every such refusal, become liable to pay to the company a sum not exceeding twenty pounds.

(2) If the company refuse to allow a mine owner or royalty owner or such duly authorised person as aforesaid to enter upon or inspect any railway or works or to take levels and particulars thereof in manner aforesaid, the company so offending shall, for every such refusal, become liable to pay to the mine owner or royalty owner a sum not exceeding twenty pounds.

85. *Protection against improper working.*—If it appears that any minerals have been worked or are being worked contrary

to the provisions of this Act or the special Act, the company may, if they think fit, give notice to the mine owner thereof, requiring him to construct such works and to adopt such means as may be necessary or proper for making safe such railway or works and for preventing injury thereto; and if, after such notice, the mine owner shall not forthwith proceed to construct the works necessary for making safe the railway, the company may construct such works and recover the expense thereof from the mine owner by action.

85A. *Power to vary rights by agreement.*—Notwithstanding anything contained in this Act, a mine owner, a royalty owner, and the company or any two of them may, by agreement, alter, extend, or otherwise vary their respective rights under the provisions of this Act with regard to any minerals to which this Act applies, but not so as to prejudice the rights of any mine owner, royalty owner, or company not a party to the agreement without his or their consent.

85B. *Savings.*—(1) Nothing in this Act shall affect any agreement between the mine owner and the royalty owner for the payment of any rent or royalty:

Provided that—

- (i) the payment of compensation by the company to the royalty owner in respect of any minerals shall extinguish any liability by the mine owner to pay any royalty in respect of the same minerals;
- (ii) the mine owner shall be entitled to make such deductions as are authorised by subsection (3) of section 79A of this Act notwithstanding anything in any agreement between him and the royalty owner entered into before the first day of August, nineteen hundred and twenty-three, unless the agreement was made after the first day of November, nineteen hundred and twelve, and expressly or by necessary implication provided for the payment of royalties in respect of the minerals supporting the railway or works in the event of the mine owner working them in virtue of a right acquired by agreement or statute or otherwise,

or for the payment of royalties in respect of such minerals whether they are or are not worked;

- (iii) if the exercise by the company of powers conferred upon them by the foregoing provisions of this Act as to minerals in the area of protection will prevent the mine owner from working such quantity of minerals as at the royalties reserved will produce the sum total of the fixed or minimum rent remaining payable under the lease, or otherwise occasions serious hardship having regard to the obligation of the mine owner to pay such rent, or owing to any provision in the lease restricting the time within which a deficiency due to previous short working may be made good, such adjustment shall be made between the royalty owner and the mine owner as, failing agreement, may be determined by arbitration, and any question whether the circumstances are such as to give rise to such a right of adjustment shall be similarly determined.

Where at the time of the exercise by the company of such power as aforesaid any deficiency due to previous short working which may be made good in a subsequent period exists, the amount of such deficiency shall be treated for the purposes of this proviso as if it formed part of the sum total of the fixed or minimum rent remaining payable under the lease.

- (2) Nothing in this Act shall alter, diminish or affect any right to let down the surface, either unconditionally or subject to payment of compensation, or to any other condition, which a mine owner or royalty owner may possess, whether by statute grant lease agreement or otherwise, derived from a title antecedent to the acquisition by the company of their interest in the surface, or conferred on him by a reservation contained in the grant to the company, and a mine owner having such a title and having served a notice in accordance with this Act with respect to the working of any minerals, shall be free to work any such minerals, as to which a counter-notice shall not have been received, discharged from all the restrictions and provisions of this Act,

other than those contained in subsection (2) of section seventy-nine of the Act, but, if a counter-notice is served, the minerals to which such counter-notice relates shall, for the purposes of the assessment of compensation payable to the mine owner or royalty owner under this Act for leaving the same unworked, be deemed to be minerals lying wholly under the inner area of protection, and the appropriate percentage for the purpose of section eighty-one of this Act shall be one hundred.

85c. *Serving of notices, counter-notices, &c.*—Section sixty-seven of the Conveyancing Act, 1881, shall apply to notices and counter-notices and copies thereof required or authorised to be served or given under the provisions of this Act with respect to mines lying under or near the railway, as if it were herein re-enacted and in terms made applicable to such notices, counter-notices, and copies thereof, and to the persons by or on whom the same are so required or authorised to be served.

85d. *Interpretation.*—(1) In the foregoing provisions of this Act with respect to mines lying under or near a railway, unless the context otherwise requires—

- “ Mine owner ” includes the owner, lessee, or other person entitled to work and get minerals;
- “ Seam ” in relation to minerals includes bed, lode and vein;
- “ Surface ” in relation to land includes any buildings, works or things erected, constructed, or growing thereon;
- “ Royalty ” includes rent and any other reservation in respect of minerals by the acre, ton or otherwise;
- “ Royalty owner ” includes any person entitled to receive a royalty in respect of minerals;
- “ Deficiency due to short working ” means the amount by which the royalties payable under a lease of the minerals worked fall short of the fixed or minimum rent;
- “ Lease ” includes an under-lease or other tenancy and a licence;
- “ Lessee ” includes an under-lessee and a licensee.

(2) For the purposes of the said provisions, the depth of a seam at any point of the railway shall be taken to be the distance between the rail level and the point where a line drawn vertically through the centre of the railway would first cut the seam of

minerals, except that for the purpose of ascertaining the area of protection, but not for any other purpose, the said distance shall, where the railway is carried through a tunnel, be measured from the point where the said line would cut the natural surface of the land instead of from the rail level.

(3) Where in an arbitration under the said provisions there are more than two parties involved, then, unless all the parties otherwise agree, the arbitration shall be conducted by a single arbitrator appointed by the Board of Trade, and the provisions of this Act with respect to the settlement of disputes by arbitration shall apply as if all the parties had concurred in his appointment as a single arbitrator.

85E. *Exemption from liability to leave support otherwise than under Act or agreement.*—Save as in this Act, or the special Act, or under any agreement between the company and the mine owner expressly provided, the mine owner as between himself and the company—

- (a) shall not be under any liability to leave support either inside or outside the area of protection; and
- (b) shall be entitled to remove such support without being liable for any damage thereby caused to the railway or works or any part thereof; but so that the removal shall be done in a manner proper and necessary for the beneficial working of the minerals and according to the usual manner of working minerals in the district in which the same is situate.

16. Application to existing railways, &c.—(1) Where—

- (a) a special Act, order, scheme, or certificate confirmed by or having the force of an Act of Parliament relating to a railway company, passed or confirmed before the commencement of this Act, incorporates sections seventy-eight to eighty-five, inclusive, of the Railways Clauses Consolidation Act, 1845, and does not prescribe any distance in lieu of the distance of forty yards mentioned in section seventy-eight of that Act; or
- (b) a special Act relating to a railway company, passed before the commencement of this Act, does not incorporate the said sections, but contains provisions similar thereto, and by the

provision similar to the said section seventy-eight prescribes a distance of forty yards;

the Act, order, scheme, or certificate shall, as from the commencement of this Act, take effect as if the provisions which by this Part of this Act are to be substituted for the said sections seventy-eight to eighty-five were substituted for those sections as incorporated in the Act, order, scheme, or certificate or for the similar provisions contained in the special Act as the case may be, and as if the Act, order, scheme, or certificate incorporated or included the First, Second, and Third Schedules to this Act, subject, however, to the provisions hereinafter contained in this section.

(2) If at the commencement of this Act minerals lying under the outer area of protection are being worked by a mine owner, he shall, within one month after the commencement of this Act, give such notice as would after the commencement of this Act have been required to be given before such minerals were commenced to be worked, and, if such notice is so given, it shall be deemed for the purposes of the provisions of section seventy-eight of the Railways Clauses Consolidation Act, 1845, as amended by this Act, to have been given more than thirty days before the date on which it is in fact given, and the minerals worked before the notice is given shall, for the purposes of the same provisions, be deemed to have been worked since the expiration of those thirty days.

(3) Any mine owner shall be liable to contribute towards the expenses properly incurred by the railway company subsequent to the commencement of this Act in making good damage caused to any railway or works of the company by any working of minerals within the six years immediately preceding the commencement of this Act in like manner as if this Act had been in force at the date of such working; but, save as aforesaid, the mine owner shall be relieved of all liability to the company with respect to the working of any minerals prior to the passing of this Act, except a liability arising under an arrangement with the company.

The provisions of subsections (2), (3), (4), (5) and (6) of section 79A of the Railways Clauses Consolidation Act, 1845, as amended by this Act, shall apply in respect of the liability of a mine owner under this subsection in like manner as they apply in respect of his liability under that section.

(4) Nothing in this section shall—

- (a) take away, diminish or prejudicially alter or affect any estate right or interest in minerals which may have been acquired by a railway company before the commencement of this Act under or by virtue of any express provision in any deed or contract, or under or by virtue of the exercise of their powers under sections seventy-eight to eighty-five of the Railways Clauses Consolidation Act, 1845, or any right of support from minerals which any such company may have so acquired, or any compensation paid or payable by any such company in consequence of the exercise before the commencement of this Act of any such powers as aforesaid; or
- (b) affect any agreement subsisting between a railway company and a mine owner or a royalty owner at the commencement of this Act with regard to the working of, or the leaving unworked, minerals lying under or near to any railway or works of the company, so long as the agreement continues in force, and any such agreement shall, notwithstanding anything in this section, continue in force until determined by effluxion of time, or by the exercise of any power to determine it conferred by the agreement, nor shall anything in this section prevent the entering into a new agreement.

17. *Application of Part II. to Scotland.*—This Part of this Act shall apply to Scotland, subject to the following modifications:—

- (a) For references to the Railways Clauses Consolidation Act, 1845, and to sections seventy-eight to eighty-five thereof, there shall be substituted references to the Railways Clauses Consolidation (Scotland) Act, 1845, and to sections seventy-one to seventy-eight thereof:
- (b) of the substituted provisions, that numbered 85c shall not apply, and of the remaining provisions, those numbered 78, 78A, 79, 79A, 79B, 80, 81, 82, 83, 84, 85, 85A, 85B, 85D and 85E, shall respectively be numbered 71, 71A, 72, 72A, 72B, 73, 74, 75, 76, 77, 78, 78A, 78B, 78C and 78D, and the reference to section 78 in section sixteen of this Act and references to section 79A both in that section and in the

said substituted provisions shall be construed as references to section 71 and to section 72A, respectively:

- (c) for the reference to an arbitrator, there shall be substituted a reference to an arbiter.

PART III.

GENERAL.

18. *Short title, commencement, and extent.*—(1) This Act may be cited as the Mines (Working Facilities and Support) Act, 1923.

(2) This Act shall come into operation on the first day of January, nineteen hundred and twenty-four.

(3) This Act shall extend to Great Britain.

SCHEDULES.

FIRST SCHEDULE.

PERCENTAGE OF CONTRIBUTION.			
Depth in Yards.	Percentage.	Depth in Yards.	Percentage.
160	Nil.	270	21
170	3	280	23
180	5	290	24
190	8	300	25
200	10	350	30
210	12	400	35
220	14	450	40
230	15	500	45
240	16	550	50
250	17	600	55
260	19	650 and over ...	60

The percentage at intermediate depths to be in proportion.

SECOND SCHEDULE.

RULES FOR ASCERTAINING AREA FOR THE PURPOSE OF COMPUTING MAXIMUM LIABILITY OF MINE OWNER IN RESPECT OF AUTHORISED WORKINGS.

1. The area shall extend laterally on each side of (but not including) the inner area of protection to the following distance therefrom:—

If the depth of the seam is 160 yards or under Nil.

If the depth of the seam exceeds 160 yards, but does not exceed 170 yards	1½ yards.
If the depth of the seam exceeds 170 yards, but does not exceed 180 yards	2½ yards.
If the depth of the seam exceeds 180 yards, but does not exceed 190 yards	4½ yards.
If the depth of the seam exceeds 190 yards, but does not exceed 200 yards	5½ yards.
If the depth of the seam exceeds 200 yards, but does not exceed 210 yards	7 yards.
If the depth of the seam exceeds 210 yards, but does not exceed 220 yards	8 yards.
If the depth of the seam exceeds 220 yards, but does not exceed 230 yards	9 yards.
If the depth of the seam exceeds 230 yards, but does not exceed 240 yards	9½ yards.
If the depth of the seam exceeds 240 yards, but does not exceed 250 yards	10 yards.
If the depth of the seam exceeds 250 yards	To a line descending outwards from the railway or works at an angle of one horizontal to five vertical from a point on the boundary of the railway or works at rail level until the depth of 650 yards is reached and thence descending verti- cally.

2. The area shall extend longitudinally for a distance co-extensive with the part of the railway or works upon which expenditure has been incurred in making good the damage, together with a length beyond that distance at either end thereof equal to one-half of the mean depth of the seam or seams in question.

THIRD SCHEDULE.

**RULES FOR DETERMINING PERCENTAGE OF CONTRIBUTIONS TO
ADDITIONAL EXPENSES FOR DAMAGES PAYABLE BY A COMPANY.**

1. The percentage shall be one hundred if the specified minerals do not extend beyond the boundary of the protected works, and shall diminish by one for every one-and-a-half yards by which the specified minerals extend beyond that boundary on each side thereof.

2. If the specified minerals extend to one hundred and fifty yards or more beyond such boundary, no payment shall be due by the company.

3. If the specified minerals extend further from such boundary on one side of the railway than on the other, they shall, for the purposes of this schedule, be deemed to extend beyond such boundary for the mean of such distances on both sides of the railway.

MINING INDUSTRY ACT, 1926.

(16 & 17 GEO. 5, c. 28.)

ARRANGEMENT OF SECTIONS.

PART I.

**PROVISIONS FOR FACILITATING THE RE-ORGANISATION OF THE COAL
MINING INDUSTRY.**

Section.

1. Power to prepare and submit to Board of Trade amalgamation and absorption schemes.
2. Contents of total amalgamation schemes.
3. Contents of total absorption schemes.
4. Contents of partial amalgamation and absorption schemes.
5. Supplementary provisions as to schemes.
6. Reference of schemes to the Railway and Canal Commission.
7. Consideration of schemes by Railway and Canal Commission and effect of confirmation of schemes.
8. Representation before Commission of persons employed.
9. Power to include in schemes provisions as to working facilities.
10. Withdrawal of schemes.
11. Application to undertakings owned by firms and individuals.
12. Powers and duties of the Board of Trade.

PART II.

WORKING FACILITIES.

Section.

13. Amendment as respects coal of 13 & 14 Geo. 5. c. 20, Part I.

PART III.

WELFARE FUND.

14. Royalties welfare levy.
15. Increase in number of welfare committee.
16. Application of royalties welfare levy.
17. Provision of washing and drying accommodation at coal mines.

PART IV.

RECRUITMENT.

18. Recruitment for employment in coal mining industry.

PART V.

COAL MINES EXCESS PAYMENTS AND COAL LEVY.

19. Limitation of further assessments and claims.

PART VI.

MISCELLANEOUS AND GENERAL.

20. Power of coal mining companies to establish profit sharing schemes.
21. Established of joint committees for coal mines.
22. Power to vary 1 & 2 Geo. 5. c. 50. ss. 9 and 10.
23. Facilities to be given to Department of Scientific and Industrial Research.
24. Provisions as to Railway and Canal Commission and as to security for costs.
25. Definition of securities.
26. Short title and extent.

SCHEDULE.

MINING INDUSTRY ACT, 1926.

(16 & 17 GEO. 5, c. 28.)

An Act to make provision for facilitating the working of minerals and the better organisation of the coal mining industry, and with respect to the welfare of persons employed therein, and for other purposes connected with that industry. (4th August, 1926.)

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.

PROVISIONS FOR FACILITATING THE RE-ORGANISATION OF THE COAL MINING INDUSTRY.

1. *Power to prepare and submit to Board of Trade amalgamation and absorption schemes.*—(1) Where with a view to the more economical and efficient working, treating, or disposing of coal the owners of two or more undertakings consisting of or comprising coal mines agree to amalgamate their undertakings either wholly or partially, they may prepare and submit to the Board of Trade a scheme (hereinafter referred to as an amalgamation scheme) framed in accordance with the provisions of this Part of this Act.

(2) Where the owner of any such undertaking, or where the owners of two or more such undertakings who have agreed to amalgamate, consider that in the interests of the more economical and efficient working, treating, or disposing of coal it is expedient that one or more other such undertakings, the owners of which are unwilling to agree to amalgamate or to agree to the proposed terms of amalgamation, should be absorbed wholly or partially by the first mentioned undertaking, or by the amalgamated undertaking, as the case may be, the owner or owners may prepare and submit to the Board of Trade a scheme (hereinafter referred to as an absorption scheme) framed in accordance with the provisions of this Part of this Act.

(3) In this Part of this Act—

(a) companies whose undertakings are to be amalgamated are referred to as constituent companies;

- (b) a company whose undertaking is to be absorbed is referred to as an absorbed company;
- (c) a company, whether or not an amalgamated company, in which any other company is to be absorbed is referred to as the principal company;
- (d) "partial amalgamation" of undertakings includes the amalgamation of parts of undertakings and arrangements for the joint exercise of powers of working, treating, or disposing of coal, or powers incidental or ancillary thereto, or for the conduct of any business or operations in the common interest of the constituent companies, or the vesting in a separate company of the control of the constituent companies, and "partial absorption" has a corresponding meaning, except that no partial absorption scheme shall, without the consent of the owner of the absorbed company, provide for the separation of the treating or disposing of coal from the working thereof, or, in the case of an undertaking of which the primary object is not coal mining, provide for the separation from the undertaking of any coal mine worked as ancillary to such primary object.

2. *Contents of total amalgamation schemes.*—A total amalgamation scheme under this Part of this Act may contain such provisions as may be necessary or expedient for giving effect to the objects of the scheme, and in particular, but without prejudice to the generality of the foregoing provision—

- (a) may provide either for the constitution and incorporation of a new company, or companies, under the Companies Acts, 1908 to 1917, with or without the dissolution of all or any of the constituent companies, and the transfer to the new company of the undertakings of the constituent companies, or the distribution thereof amongst the new companies and such of the constituent companies as are not dissolved, or for the continuance (with or without change of name) of one or more of the constituent companies, and the dissolution of the other constituent companies, and the transfer of their undertakings to the continued company or the distribution thereof amongst the continued companies;

- (b) may provide for vesting in the new or continued company or any of the new or continued companies any or all of the property, rights, powers, duties and liabilities of the constituent companies;
- (c) may provide generally as to the terms and conditions of amalgamation, and for the winding up of the constituent companies or such of them as are to be dissolved, including the allocation to holders of securities of the constituent companies, in substitution therefor and in satisfaction of all claims arising thereunder, of such securities of the new or continued company or any of the new or continued companies and of such amounts as may be specified in the scheme;
- (d) may make such provision as may be necessary with regard to the share and loan capital of the new or continued company or companies, including provision for increasing all or any of the existing classes of loan or share capital of any such company, or creating new classes of loan or share capital of any such company, with such rights, priorities and conditions as may be specified in the scheme;
- (e) may provide for any of the matters for which provision is made by Part V. of the Railways Clauses Act, 1863;
- (f) may make such incidental, consequential and supplemental provisions as appear necessary or expedient in order to give full effect to the purposes of the scheme.

3. Contents of total absorption schemes.—A total absorption scheme under this Part of this Act may contain such provisions as may be necessary or expedient for giving effect to the objects of the scheme, and in particular, but without prejudice to the generality of the foregoing provision—

- (a) may provide for vesting in the principal company the property, rights, powers, duties and liabilities of every absorbed company;
- (b) may provide for the consideration to be given to the absorbed company or several absorbed companies and generally as to the terms and conditions of the transfer, and may provide for the consideration consisting in whole or in part of securities of the principal company, and for that purpose

may provide for increasing all or any of the existing classes of loan or share capital of the principal company, or creating new classes of loan or share capital of that company, with such rights, priorities and conditions as may be specified in the scheme;

- (c) may provide for the winding up of the absorbed company or companies, and may provide on any such winding up for the holder of securities of any absorbed company receiving, in substitution therefor and in satisfaction of all claims arising thereunder, such securities of the principal company forming part of the consideration for the transfer of its undertaking and of such amounts as may be specified in the scheme;
- (d) may provide for any of the matters for which provision is made in Part V. of the Railways Clauses Act, 1863;
- (e) may make such incidental consequential and supplemental provisions as appear necessary or expedient in order to give full effect to the purposes of the scheme.

4. Contents of partial amalgamation and absorption schemes.—A partial amalgamation or absorption scheme under this Part of this Act may contain such provisions as may be necessary or expedient for giving effect to the objects of the scheme, and in particular, but without prejudice to the generality of the foregoing provision—

- (a) may provide by means of the constitution and incorporation of a company, or by the constitution of a joint committee or otherwise, for the joint exercise of the powers, or the conduct of the business or operations, to which the scheme relates;
- (b) may provide for transferring to, or conferring and imposing on, the company, joint committee or other body constituted for the purposes of the scheme all or any of such property, rights, powers, duties and liabilities as may be specified in the scheme;
- (c) may provide generally as to the terms and conditions on which, and the manner in which, the powers are to be exercised, or the business or operations are to be conducted, for the common interest of the companies concerned;

- (d) may make such incidental, consequential and supplemental provisions as appear necessary or expedient in order to give effect to the purposes of the scheme.

5. *Supplementary provisions as to schemes.*—(1) A scheme under this Part of this Act shall not provide for the allocation to any person of securities subjecting the holder thereof to any liability for calls in excess of the liability (if any) to which he was subject as the holder of the securities for which the allocated securities are to be substituted.

(2) *No stamp duty shall be payable in respect of any amalgamation or absorption scheme, or on any debentures, or in respect of any share or loan capital of any company issued in pursuance of such a scheme, or on any conveyance, assignment, or transfer of any of the property or securities of any constituent or absorbed company made in pursuance of any such scheme as aforesaid.**

(3) Any action taken for the purposes of or in connection with the preparation or submission of a scheme under this Part of this Act shall be deemed to be within the powers of any company, and no such action shall give rise to a right on the part of the holders of any debentures or other securities of a company, or of any persons on their behalf, to enforce the security.

6. *Reference of schemes to the Railway and Canal Commission.*—The Board of Trade shall consider any scheme submitted to them, and shall, if satisfied after communication with such parties interested, as they may think fit that a prima facie case is made out that the proposed scheme would promote the more economical and efficient working, treating, or disposing of coal, refer the matter to the Railway and Canal Commission.

7. *Consideration of schemes by Railway and Canal Commission and effect of confirmation of schemes.*—(1) Where a scheme has been referred to the Railway and Canal Commission, the Commission, if satisfied that the scheme conforms to the requirements of this Part of this Act, shall take into consideration all objections to the scheme which may be lodged by any person or by any class or body of persons within such time and in such manner as may be directed by the

* Repealed by the Coal Act, s. 49 (2).

CONTINUATION OF FOOTNOTE ON PAGE 250.

That is to say, that in schemes submitted to the Board of Trade by the Coal Commission under sect. 13 (1A) of the Coal Mines Act, 1930, the Railway and Canal Commission, after hearing such objectors (as set out in sect. 7 (1) of the 1926 Act), may confirm the scheme either without modifications or subject to such modifications as the Railway and Canal Commission think fit, or may refuse to confirm the scheme, provided that the Railway and Canal Commission—

- (a) shall hear such persons as they think fit;
- (b) may not modify the scheme except in certain circumstances;
- (c) shall confirm the scheme if they are satisfied that it conforms to the requirements of the relevant enactments, and if they are satisfied that the terms are fair and equitable to all persons affected by the scheme, avoid financial injury to the constituent companies, and enable the undertakings concerned to be carried on efficiently. (See p. 287.)

In all other cases of schemes submitted by persons or bodies other than the Coal Commission, then sects. 7 (2) and 8 of the Mining Industry Act, 1926 (omitted on p. 250, and now set out below), apply:—

7.—(2) The Commission, after hearing such objectors aforesaid, may confirm the scheme either without modifications or subject to such modifications as the Commission think fit, or may refuse to confirm the scheme:

Provided that the Commission—

(a) shall confirm a scheme if satisfied that it would be in the national interest to do so, and that the terms of the scheme are fair and equitable to all persons affected thereby, and

(b) may in particular, if, upon an objection lodged by the holder of any securities in a constituent or absorbed company to whom by the schemes securities in the amalgamation or principal company are allocated in substitution therefor, they are satisfied that the substitution would not be fair in his case, order that in lieu of the proposed substitution his existing securities shall be purchased at a price to be determined in such manner as the Commission may direct.

8. Upon the question whether a scheme is in the national interest the Railway and Canal Commission may hear such persons, whether in support of or against the scheme, as they think fit, including representatives of persons employed in any undertakings affected by the scheme.

...; ...; ... by ... of this Act, may be granted by a

* For sub-sect. (2) and sect. 8 of this Act are substituted the provisions printed in dark type in the Coal Mines Act, 1930, s. 13 (see p. 285).

scheme confirmed by the Commission under this Part of this Act, and, in so far as any scheme referred to the Commission makes provision for the grant of such a right, it shall be deemed to be a matter referred to them under Part I. of the first-mentioned Act.

10. *Withdrawal of schemes.*—A scheme referred to the Railway and Canal Commission may at any time before confirmation thereof by the commission be withdrawn by the persons by whom it was submitted or, subject as hereinafter provided, by any of them, upon such terms as to costs as the Commission may direct; and at least fourteen days before confirming subject to modifications any scheme submitted to them the Commission shall give notice of the modifications proposed to be made to the persons by whom the scheme was submitted:

Provided that, if any of the persons by whom the scheme was submitted is willing to proceed with the scheme, the Commission may, if satisfied that it would be in the national interest so to do, direct that any such person may, upon such terms as the Commission consider to be fair and equitable to all persons affected by the scheme, proceed with the scheme as if it were a scheme for absorbing either wholly or partially the undertakings of any of the persons desirous of withdrawing the scheme.

11. *Application to undertakings owned by firms and individuals.*—Where an undertaking to which this Part of this Act applies is owned by a firm, or by an individual, or by two or more individuals jointly, the provisions of this Part of this Act shall apply in relation to the undertaking subject to such modifications as may be necessary.

12. *Powers and duties of the Board of Trade.*—(1) If it appears to the Board of Trade that it is the general wish of the owners of any undertakings that the Board of Trade should assist them in formulating or settling the terms of an amalgamation scheme, the Board may give such assistance.

(2) At the expiration of two years from the passing of this Act, the Board of Trade shall make a report to Parliament upon the operation of this Part of this Act, including information as to the extent to which amalgamations and absorptions have taken place among undertakings to which this Part of this Act applies and all such other

information and statistics relevant thereto as they may think fit, and the Board shall thereafter continue to make a like report annually.

PART II.

WORKING FACILITIES.

13. *Amendment as respects coal of 13 & 14 Geo. 5, c. 20, Part I.—*
 (1) *Any person who is desirous of searching for or working, either by himself or through a lessee, any coal may, under and in accordance with Part I. of the Mines (Working Facilities and Support) Act, 1923 (in this Part of this Act referred to as the principal Act), make an application to search for or work the coal, and, on such an application being referred to the Railway and Canal Commission under the principal Act, the Commission may, subject to the provisions of the principal Act, grant the right if they consider that it is expedient in the national interest that the right should be granted to the applicant.**

(2) Where the working of any coal, or the working of any coal in the most efficient and economical manner, is impeded by any restrictions terms or conditions contained in a mining lease, or otherwise binding on the person entitled to work the coal, a right to work† the coal freed wholly or partially from such restrictions or conditions, or to work the coal on other terms and conditions may, on an application for the purpose being made and referred to the Railway and Canal Commission under the principal Act, be granted by the Commission in any case where the Commission consider that it is expedient in the national interest that the right applied for should be granted to the applicant.

(3) An ancillary right may be granted to a person to whom a right of working coal is granted in pursuance of this Part of this Act at the time when such last-mentioned right is granted or at any subsequent time.

(4) The principal Act shall, as respects coal, have effect as if in section five the words "having an interest in any minerals," and

* This section ceases to have effect as respects coal within the meaning of the Coal Act. The section still operates in respect of the Mines (Work Facilities) Act, 1934 (see p. 295).

† Where rights under this section could be given to persons having a right to work coal, they shall be given to the Commission for the purpose of searching and boring for coal.

“ those minerals or any adjacent,” and in section six the words “ in virtue of which he is entitled to make the application ” were omitted therefrom.

(5) For the purposes of this Part of this Act “ coal ” shall not include lignite or brown coal, but save as aforesaid shall include bituminous coal, cannel coal, anthracite, and all other minerals worked or to be worked therewith.

(6) This Part of this Act shall be construed as one with Part I. of the principal Act, and references in that Part of that Act to a right to work minerals shall include references to any right granted under this Part of this Act.

PART III.

WELFARE FUND.

14. *Royalties welfare levy.*—(1) Every person liable to pay mineral rights duty on the rental value of rights to work coal and of mineral wayleaves in connection with coal, or who would be so liable but for any exception by common law or statute, shall be liable to pay for the financial year ending the thirty-first day of March, nineteen hundred and twenty-seven, and for every subsequent financial year a levy (hereinafter referred to as “ the royalties welfare levy ”) at the rate in each case of one shilling for every twenty shillings of that rental value:

Provided that no person shall be liable to pay the royalties welfare levy in respect of any coal worked, or to be worked, by means of any mine of which the principal object is the getting of fire-clay, ganister, ironstone, or other similar minerals.

(2) The provisions of the Finance (1909-10) Act, 1910, relating to the assessment, collection and recovery of minerals rights duty and matters incidental thereto, as set out and adapted in the Schedule to this Act, shall apply to the royalties welfare levy, and in cases where the proprietor of the coal, or the person to whom rent is paid in respect of a right to work coal or a mineral wayleave in connection with coal, is liable to the payment of mineral rights duty, the royalties welfare levy shall be collected at the same time as and together with that duty, and in every other case the royalties welfare levy shall be payable on the first day of January in each year.

- (3) For the purposes of this section and the said Schedule—
 “Coal” shall not include lignite or brown coal, but save as aforesaid shall include bituminous coal, cannel coal, anthracite, and all other minerals worked therewith other than minerals exempt from mineral rights duty;
 Rental value shall be determined in accordance with the provisions of the Finance (1909-10) Act, 1910, relating to mineral rights duty, as amended by any subsequent enactment;
 Other expressions shall have the same meaning as in the said provisions as so amended.
- (4) This section binds the Crown.

15. Increase in number of welfare committee.—The number of the committee constituted under section twenty of the Mining Industry Act, 1920, as amended by the Mining Industry (Welfare Fund) Act, 1925 (hereinafter referred to as “the miners’ welfare committee”), shall be increased by the addition of two members appointed by the Board of Trade, of whom one shall be appointed after consultation with the Miners’ Federation of Great Britain, and one after consultation with such associations or bodies as may appear to the Board to represent persons liable to pay the royalties welfare levy, and the said section twenty shall have effect accordingly.

16. Application of royalties welfare levy.—(1) The Commissioners of Inland Revenue shall, in accordance with arrangements made with the Board of Trade, from time to time pay over to the fund established under section twenty of the Mining Industry Act, 1920 (hereinafter referred to as the welfare fund), the sums collected by them in respect of the royalties welfare levy.

(2) The Board of Trade shall keep a separate account of the proceeds of the royalties welfare levy paid into the welfare fund.

(3) The miners’ welfare committee shall, subject as hereinafter mentioned, apply those proceeds for any of the purposes for which the welfare fund is applicable:

Provided that no part of the proceeds of the royalties welfare levy shall be required to be allocated to any particular district.

17. Provision of washing and drying accommodation at coal mines.—
 (1) It shall be the duty of the miners’ welfare committee to secure

as far as reasonably practicable the provision at all coal mines, to the satisfaction of the committee, of accommodation and facilities for workmen taking baths and drying clothes.*

(2) The committee shall in each year appropriate out of the welfare fund for the purposes aforesaid until the Board of Trade otherwise direct, the whole of the proceeds of the royalties welfare levy paid into the welfare fund in each financial year.

(3) Subsection (5) of section twenty of the Mining Industry Act, 1920, is hereby repealed.

PART IV.

RECRUITMENT.

18. *Recruitment for employment in coal mining industry.*—(1) The Minister of Labour may, after consultation with associations representing respectively employers and persons employed in the coal mining industry, make regulations for the purpose of securing that in the recruitment of persons over the age of eighteen years for employment to which this section applies preference is given, while this section is in force, to persons who were employed in such employment during the period of seven days ending on the thirtieth day of April, nineteen hundred and twenty-six, or when last before that date in regular employment, and in particular such regulations may impose such restrictions as may be necessary for that purpose on the engagement of persons for employment to which this section applies and on the employment of persons engaged in contravention of the regulations, and may provide for requiring the owners, agents and managers of coal mines and persons employed in or seeking such employment to furnish the Minister of Labour with such information, as he may require for the purpose of securing compliance with the regulations:

Provided that no such regulations shall impose restrictions on the engagement for employment of any person in actual receipt of a pension granted out of moneys provided by Parliament in respect of a disability arising out of his service with His Majesty's forces during the war.

* By sect. 52 of the Coal Act, the Railway and Canal Commission shall have power to order, under the Mines (Working Facilities and Support) Act, 1923, the granting of ancillary rights with a view to assisting the Miners' Welfare Committee in the execution of their duty.

(2) This section applies to any employment in or about a coal mine in the getting, handling, hauling, preparation and despatch of coal, being employment such as to make the person employed an employed person within the meaning of the Unemployment Insurance Acts, 1920 to 1925, except employment of any class which by the regulations may be excluded from the application of this section. Any question as to whether employment is employment to which this section applies shall be determined by the Minister of Labour.

(3) If any person contravenes or fails to comply with any regulation made under this section he shall be guilty of an offence and shall, in respect of every such offence, be liable on summary conviction to a fine not exceeding ten pounds, or, in the case of a continuing offence, not exceeding five pounds for each day on which the offence continues.

(4) If for the purpose of obtaining employment either for himself or for any other person in contravention of any regulation made under this section any person knowingly makes any false statement or false representation, or if any person required under the regulations to furnish information to the Minister of Labour knowingly furnishes any false information, he shall be liable on summary conviction to imprisonment for a term not exceeding three months.

(5) All regulations made under this section shall be laid before each House of Parliament as soon as may be after they are made, and if an Address is presented to His Majesty by either House of Parliament within the next subsequent twenty days on which that House has sat next after any such regulation is laid before it, praying that the regulation may be annulled, it shall thenceforth be void, but without prejudice to the validity of anything previously done thereunder or to the making of any new regulation:

Provided that section one of the Rules Publication Act, 1893, shall not apply to any regulations made under this section.

(6) This section shall continue in force until the thirty-first day of December, nineteen hundred and twenty-nine and no longer unless Parliament otherwise determines.

PART V.

COAL MINES EXCESS PAYMENTS AND COAL LEVY.

19. *Limitation of further assessments and claims.*—(1) After the thirtieth day of September, nineteen hundred and twenty-six,

except in a case which is an undetermined case within the meaning of this section, no assessment or additional assessment of coal mines excess payments under the agreement scheduled to the Coal Mines Control Agreement (Confirmation) Act, 1918, or of coal levy under the Coal Mines (Emergency) Acts, 1920 and 1921, shall be made; and no claim for relief from or for reduction or repayment of coal mines excess payments or of coal levy, or for a payment set-off or recovery or for amendment of any payment, set-off or recovery under the aforesaid agreement or for coal award or additional coal award under the Coal Mines (Emergency) Acts, 1920 and 1921, shall be entertained or allowed.

(2) At any time not later than the said thirtieth day of September the Board of Trade may in the case of any person who is or has been the owner of an undertaking within the meaning of the Coal Mines Control Agreement (Confirmation) Act, 1918, or the Coal Mines (Emergency) Act, 1920, give notice to him that they consider his liabilities and his rights under either the Coal Mines Control Agreement (Confirmation) Act, 1918, or the Coal Mines (Emergency) Acts, 1920 and 1921, or both, as being undetermined; and any person who has been assessed to coal mines excess payments or coal levy, or is entitled to make any claim under the Coal Mines Control Agreement (Confirmation) Act, 1918, or the Coal Mines (Emergency) Acts, 1920 and 1921, may give a like notice to the Board of Trade, and where such notice is given to or by any person his case shall be deemed to be an undetermined case for the purposes of this section.

(3) The Board of Trade may at any time give notice, to any person whose case is an undetermined case to the effect that all questions as to his liabilities and his rights under either the Coal Mines Control Agreement (Confirmation) Act, 1918, or the Coal Mines (Emergency) Acts, 1920 and 1921, or both, have in the opinion of the Board of Trade been finally determined.

Any person aggrieved by any such notice may, at any time within thirty days from the date on which the notice is served on him, appeal against it in accordance with the provisions of subsection (5) of section forty-five of the Finance (No. 2) Act, 1915, and the provisions (other than the provisions prescribing the time within which notice of appeal may be given) of any regulation made under subsection (7) of that section, in the same manner as if he were a person

dissatisfied with the amount of an assessment to Excess Profits Duty.

If, where notice has been given to a person under this subsection, that person does not appeal against the notice or the appeal is not allowed, his case shall, as from the expiration of the time within which he was entitled to appeal or as from the date on which the appeal is finally determined, as the case may be, cease to be an undetermined case within the meaning of this section, and subsection (1) of this section shall apply accordingly.

(4) Nothing in this section shall affect any powers vested in the Commissioners of Inland Revenue at the commencement of this Act for the recovery of coal mines excess payments or coal levy; or any powers vested in the Board of Trade at the commencement of this Act for the recovery of any moneys payable by the owner of an undertaking in accordance with the provisions of the aforesaid agreement, or of the Coal Mines (War Wage Payment) Directions and Supplementary Directions, 1918 and 1919, or of the Coal Mines (Emergency) Acts, 1920 and 1921.

(5) Notwithstanding anything in this section, the Commissioners of Inland Revenue may at any time make an assessment in respect of any coal mines excess payments or coal levy which appear to them not to have been assessed by reason of any fraud or wilful default on the part of the person liable to be assessed, and recover the amount chargeable on the assessment; and the Board of Trade may at any time recover any moneys payable by the owner of an undertaking under the provisions of the Acts and Directions aforesaid which appear to them not to have been recovered for a like reason; and any person aggrieved by any such assessment or recovery shall have the same right of appealing against it as he would have had if this Act had not passed.

PART VI.

MISCELLANEOUS AND GENERAL.

20. Power of coal-mining companies to establish profit sharing schemes.—It shall be lawful for any company being the owner of an undertaking consisting of or comprising coal mines, notwithstanding anything in the memorandum or articles of association of the com-

pany, to establish and carry out a scheme for securing to persons employed by the company a share in the profits of the company.

21. Establishment of joint committees for coal mines.—(1) If at any time after the expiration of two years from the commencement of this Act the Board of Trade are satisfied upon representation made to them as respects any coal mine (not being a small mine within the meaning of the Coal Mines Act, 1911) that no adequate opportunity has been afforded by the owner, agent and manager of the mine for the establishment of machinery for mutual discussion between representatives of the management of the mine and representatives of workers employed in or about the mine, of matters of common interest in regard to the working of the mine, the Board may by order direct that regulations made under this section shall apply to that mine.

(2) The Board of Trade may make regulations providing for the constitution of a joint committee for any mine to which the regulations apply, consisting of representatives of the owners and management of the mine and of the workers employed in or about the mine, and having such functions as may be prescribed by the regulations:

Provided that—

- (a) such regulations shall not apply to any mine unless and until they have been applied thereto by an order made under the foregoing provisions of this section;
- (b) no powers in relation to the control or management of a mine shall be included among the functions of any such joint committee; and
- (c) the regulations shall provide for the selection of the representatives of workers employed in or about a mine by ballot of those workers from amongst their own number.

(3) Regulations made under this section shall provide for the procedure and meetings of joint committees and for enabling joint committees to obtain such information and to cause such inspections to be made as may be necessary for the purpose of enabling them to exercise any of their functions under the regulations; and any persons appointed in accordance with the regulations to make such inspections shall have all such facilities for the purpose of making the inspections as persons appointed to make inspections under section

sixteen of the Coal Mines Act, 1911, and that section shall apply accordingly.

(4) Subsections (2), (3), (4) and (5) of section eighty-six, and section one hundred and seventeen of the Coal Mines Act, 1911, and Part I. of the Second Schedule to that Act (which relate to orders making general regulations under that Act), shall apply with the necessary modifications to regulations under this section, and for the purposes of the said Part I. of the Second Schedule to that Act as so applied, the expression a "general objection" means an objection made by or on behalf of any association or body which satisfies the Board of Trade that it represents a substantial proportion of owners of mines or of persons employed in or about mines in Great Britain.

(5) An order under this section may be made so as to be in force either permanently or for a limited period, and may be amended or revoked by any subsequent order.

(6) In this section, except where the context otherwise requires, the expression "management" has the same meaning as in the Mining Industry Act, 1920.

22. Power to vary.—(1) The Board of Trade may, after consultation with the Board for Mining Examinations, by order vary the provisions of sections nine and ten of the Coal Mines Act, 1911, relating to the examinations and qualifications of applicants for certificates of competency under that Act, and the grant of such certificates, in such manner as may appear to the Board of Trade to be expedient for the purpose of adapting them to the needs of the industry and the progress of education.

(2) The provisions of subsections (3) to (5) of section eighty-six and section one hundred and seventeen of the Coal Mines Act, 1911, and of Part I. of the Second Schedule to that Act, shall apply, with the necessary modifications with respect to orders made under this section, in like manner as those provisions apply to orders made under the said section eighty-six.

23. Facilities to be given to Department of Scientific and Industrial Research.—(1) Before any person sinks, for the purpose of searching for or getting any minerals, a shaft or borehole intended to reach a depth of more than one hundred feet below the surface, he shall give to the Committee of the Privy Council for Scientific and Industrial

Research (hereinafter referred to as "the Committee") notice in writing of his intention to do so, and any person who for such a purpose sinks any such shaft or borehole shall keep a journal thereof, and shall retain for a period of not less than six months such specimens of the strata passed through as may have been obtained in the course of the sinking thereof, either as cores or fragments, and shall allow the Committee, or any officer appointed by them, to have free access at all reasonable times to any such shaft, borehole or core, to inspect and take copies of the journals of such shafts or boreholes, to inspect all specimens so obtained and kept, and to take representative specimens of any such cores.

(2) If the person sinking any such shaft or borehole as aforesaid gives notice in writing to the Committee requiring them to treat as confidential any copies of journals or specimens so taken by the Committee or by any officer appointed by them, the Committee shall not allow those copies or specimens to be published or shown to any person not being an officer of the Department of Scientific and Industrial Research, except with the consent of the persons sinking such shaft or borehole:

Provided that, if at any time the Committee give notice to any person from whom such consent is required that, in their opinion, his consent is unreasonably withheld, then that person may, within three months after such notice is given, appeal to the Railway and Canal Commission, but if at the expiration of that period no such appeal has been made, or if after hearing the appeal the Commission do not make an order restraining them from doing so, the Committee may proceed as if such consent had been given.

(3) The owner, agent, or manager of every mine shall allow the Committee or any officer appointed by them to have free access at all reasonable times to all underground workings, and shall supply to the Committee or to any such officer as aforesaid such information and such specimens of seams or strata sunk through or opened out at the mine as may be reasonably required by the Committee.

(4) If any person sinking any shaft or borehole, or the owner, agent or manager of any mine fails to comply with any obligation imposed on him by the foregoing provisions of this section, he shall, in respect of each offence, be liable on summary conviction to a fine not exceeding fifty pounds.

(5) Any officer appointed by the Committee shall have the same rights as to the production and examination of plans and sections kept in pursuance of sections twenty or twenty-one of the Coal Mines Act, 1911, or sections fourteen or nineteen of the Metalliferous Mines Regulation Act, 1872, as are by those Acts conferred on inspectors, and those Acts shall apply accordingly.

24. Provisions as to Railway and Canal Commission and as to security for costs.—(1) The jurisdiction of the Railway and Canal Commission under this Act shall be deemed to be part of their jurisdiction under and for the purposes of the Railway and Canal Traffic Act, 1888, and section ten of the Mines (Working Facilities and Support) Act, 1923, as amended by any subsequent enactment, shall apply in respect of proceedings under this Act in like manner as it applies to the determination of questions relating to applications under that Act:

Provided that—

- (a) the power of holding inquiries under the said section ten shall extend to the holding of inquiries other than local inquiries; and
 - (b) the Commission may refuse to allow the public to be present at any proceedings of the Commission or inquiry under this Act while matters are being dealt with which, in the opinion of the Commission, are of a confidential character.
- (2) The Lord Chancellor, or in Scotland the Lord President of the Court of Session, may attach to the Commission for the purposes of Part I. of this Act, any officers of the Supreme Court or the Court of Session, and such officers shall perform such duties as may be assigned to them by the Commission with the consent of the Lord Chancellor or the Lord President of the Court of Session.
- (3) If it is proved to the satisfaction of the Railway and Canal Commission that there is good cause for requiring any person who has submitted a scheme under Part I. of this Act, or who has made an application for the grant of a right under Part II. of this Act, to give security for any costs which may be ordered to be paid by him to any person affected by the scheme or application, the Commission shall have power to make an order that all proceedings upon the

scheme or application, as the case may be, shall be stayed until such security for the costs of that person as may be required by the order has been given to the satisfaction of the Commission, and may order the payment into court of the whole or any part of any sum so required to be paid by way of such security. The provisions of subsections (2) and (3) of section one of the Mines (Working Facilities and Support) Act, 1925, shall apply to any money required to be paid into court under this subsection but, subject to those provisions, the rules regulating the procedure of the Commission may provide as to the manner in which any such security is to be given and as to the return of any such security.

25. *Definition of securities.*—For the purposes of Part I. of this Act the expression “securities” includes stocks and shares, and the expression “debentures” includes debenture stock.

26. *Short title and extent.*—(1) This Act may be cited as the Mining Industry Act, 1926.

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

SCHEDULE.

PROVISIONS OF THE FINANCE (1909-10) ACT, 1910 APPLIED.

20.—(3) Every proprietor of any coal and every person to whom any rent is paid in respect of any right to work coal or of any mineral wayleave in connection with coal shall, upon notice being given to him by the Commissioners of Inland Revenue requiring him to give particulars as to the amount received by him in respect of the right or wayleave, as the case may be, and where the proprietor is working the coal, particulars as to the coal worked, make a return in the form required by the notice, and within the time, not being less than thirty days, specified in the notice, and in default shall be liable to a penalty not exceeding fifty pounds to be recovered in the High Court.

(4) Royalties welfare levy shall be assessed by the Commissioners of Inland Revenue and shall be payable at any time after the first day of January in the year for which the levy is charged, and any such levy for the time being unpaid shall be recoverable as a debt to His Majesty from the proprietor of the coal where the proprietor is working the coal, and in any other case from the immediate lessor

of the working lessee. As between the immediate lessor and the working lessee, the levy shall be borne by the immediate lessor, notwithstanding any contract to the contrary, whether made before or after the passing of this Act.

21.—(1) Any immediate lessor who under this Act pays any royalties welfare levy, and is himself a lessee of the right to work the coal or of the wayleave in respect of which the levy is paid, shall be entitled to deduct from the rent paid by him in respect of the right to work the coal or the wayleave, as the case may be, to his lessor a sum equal to the royalties welfare levy on a rental value of the same amount as the rent payable; and any person from whose rent any such deduction is made may make a similar deduction from any rent paid by him in respect of the right to work the coal or in respect of the wayleave, as the case may be.

(2) Any person in receipt of rent from which a deduction may be made under this paragraph shall allow the deduction, and the person making the deduction shall be discharged from the payment of an amount of rent equal to the amount deducted, and any contract for the payment of rent without allowing such a deduction shall be void.

(3) If any person refuses to allow a deduction which he is required to allow under this section, he shall be liable to a penalty not exceeding fifty pounds to be recovered in the High Court.

(4) Where in any special case royalties welfare levy has been charged on a rental value based on a rent which has been substituted under the provisions for determining rental value applied by this Act for the rent actually payable by the working lessee, the Commissioners of Inland Revenue shall, on the application of any lessor from whose rent a deduction may be made in respect of royalties welfare levy, make a corresponding substitution or reduction as regards that rent, if they consider that the grounds for the substitution or reduction, as the case may be, are applicable in the case of the rent with respect to which the application is made.

COAL MINES ACT, 1930.

(20 & 21 GEO. 5, c. 34.)

ARRANGEMENT OF SECTIONS.

PART I.

PRODUCTION, SUPPLY AND SALE OF COAL.

Section.

1. Schemes regulating production, supply and sale of coal.
2. Provisions of central scheme.
3. Provisions of district scheme.
4. Effect of schemes on contracts.
5. Committees of investigation.
6. Information to be furnished to Board of Trade.
7. Report to be laid before Parliament.
8. Information obtained under Act not to be disclosed.
9. Offences and penalties.
10. Duration of Part I.

PART II.

REORGANISATION OF COAL MINING INDUSTRY.

11. Constitution of Coal Mines Reorganisation Commission.
12. General functions of Coal Mines Reorganisation Commission.
13. Amendments of Part I of 16 & 17 Geo. 5, c. 28.

PART III.

HOURS OF WORK.

14. Temporary amendment of 8 Edw. 7. c. 57, s. 3.

PART IV.

COAL MINES NATIONAL INDUSTRIAL BOARD.

15. Power to constitute Coal Mines National Industrial Board and functions thereof.

PART V.

GENERAL.

Section.

16. Application of 52 & 53 Vict. c. 49.
17. Exclusion of 10 & 11 Geo. 5. c. 50, s. 5 (2).
18. Interpretation.
19. Short title, citation and extent.

SCHEDULE:

Part I.—Districts for purposes of Part I of Act.

Part II.—Provisions as to Amalgamation and Adjustment of Districts.

COAL MINES ACT, 1930.

(20 & 21 GEO. 5, c. 34.)

An Act to provide for regulating and facilitating the production, supply and sale of coal by owners of coal mines; for the temporary amendment of section three of the Coal Mines Regulation Act, 1908; for the constitution and functions of a Coal Mines National Industrial Board; and for purposes connected with the matters aforesaid.

(1st August 1930.)

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.

PRODUCTION, SUPPLY AND SALE OF COAL.

1. *Schemes regulating production, supply and sale of coal.*—(1) There shall be a scheme (hereafter in this Act referred to as "the central scheme") regulating the production, supply and sale of coal by owners of coal mines situated in Great Britain, which shall, subject to the provisions of the scheme, be administered by a body referred to in this Act as the "central council"; and, subject to the provisions of this Act, there shall be for every district a scheme (hereafter in this Act referred to as a "district scheme") regulating the production, supply and sale of coal by owners of coal mines situated in

the district, which shall, subject to the provisions of the scheme, be administered by a body referred to in this Act as an "executive board."

(2) No scheme shall have effect under this Act unless it has been approved or made by the Board of Trade.

(3) If before the expiration of the period of six weeks from the passing of this Act, or such further period as the Board of Trade may in any case allow, the central scheme or a district scheme for any district is submitted to the Board by any voluntary association or other persons appearing to the Board to be representative of a majority of the owners of coal mines situated in Great Britain or in the district, as the case may be, the Board may, if they are satisfied that the scheme complies with the requirements of this Act, approve the scheme with or without modifications, and in default of such a central or district scheme being so submitted and approved as aforesaid, the Board shall themselves make the scheme.

(4) For the purposes of the last foregoing subsection, the owners of coal mines which, during the period of six months ending on the thirty-first day of December, nineteen hundred and twenty-nine, produced more than half the output of Great Britain or of any district, shall, respectively, be deemed to be a majority of the coal mines situated in Great Britain or in the district:

Provided that, if it appears to the Board of Trade that during the said period of six months the output of a substantial number of coal mines in any district was subject to regulation under any arrangements made by a voluntary association or otherwise, the Board may treat any scheme submitted to them for that district as if the latest period of six months during which the output of those coal mines was not so regulated had been the period mentioned in the foregoing provisions of this subsection.

(5) Any scheme may be amended with the approval of the Board of Trade in manner provided by the scheme, and a new scheme to have effect in substitution for any scheme theretofore in force may at any time be submitted to the Board of Trade by the central council, or, in the case of a new scheme for any district, by the executive board for any district affected thereby, and any scheme so submitted shall, if approved by the Board, have effect accordingly.

(6) Every scheme shall come into force on such date as the Board of Trade may appoint, being (except where a scheme is made by the Board themselves or is to take effect in substitution for a previous scheme) a date not less than one month nor more than three months after the passing of this Act, and the Board may appoint different dates for different schemes, and any scheme for the time being in force shall have effect as if it were enacted in this Act.

(7) The Board of Trade shall, immediately after making or approving any scheme or any amendment thereof, publish the scheme or amendment, as the case may be, in the London Gazette and for the purpose of the Documentary Evidence Acts, 1886 to 1895, any such scheme or amendment shall be deemed to be an order of the Board.

2. Provisions of central scheme.—(1) The central scheme shall provide for the constitution of the central council which shall, subject as hereinafter provided, be composed of representatives of all the owners of coal mines in the several districts:

Provided that, if the scheme is made by the Board of Trade, the central council shall be composed of persons nominated by the Board of Trade after consultation with such voluntary associations (if any) as may appear to the Board to be representative of the owners aforesaid.

(2) The central scheme shall further provide for the following matters—

- (a) for empowering the central council to appoint officers and do all things necessary for the discharge of their functions under the central scheme;
- (b) for the allocation to each district by the council, after consultation with the executive board for the district, of a maximum output for the district (in this Act referred to as “the district allocation”);
- (c) for the district allocation being determined at such times and for such periods as the council think fit, so however that the council shall be required to amend the allocation during any such period if they are satisfied upon the representation of the executive board for the district

- that it is necessary to do so in order to meet an increased demand for coal or any class of coal;
- (d) for the consideration by the council of the operation of the district schemes and for the giving of advice thereon by the council to the executive boards for the several districts, with a view to co-ordinating the operation of the district schemes;
 - (e) for the collection by the council from the executive boards for the several districts of levies, imposed upon them in proportion to the output or disposal of their respective districts, for the purpose of defraying the expenses of the council;
 - (f) for the establishment of a central fund, for the administration and control of the fund (subject to the provisions of the central scheme) by the council, for the payment into the fund of any money received by the council under the provisions of that scheme, and for the payment out of the fund of the expenses of the council and any money payable by the council under the provisions of that scheme;
 - (g) for the appointment of trustees for the council, for the vesting in the trustees of the central fund and of all other property of the council, and for enabling the trustees to sue and be sued for and on behalf of the council;
 - (h) for requiring the executive boards for the several districts to furnish to the council, or any person authorised by the council, such returns, accounts and other information as the council may consider necessary for the operation of the central scheme;
 - (i) for securing that any executive board, which is aggrieved by any act or omission of the council, or of any other executive board or of any other persons in respect of their functions under a scheme in force under this Act, may refer the matter to one or more independent arbitrators, appointed in such manner as may be provided by the scheme; and for the manner in which any such reference is to be heard and determined;
 - (j) for the imposition on and recovery from an executive board for a district of such monetary penalties as may be specified by the central scheme in the event of that board or of

any other person having functions under the scheme for that district, contravening or failing to comply with the central scheme;

- (k) for the manner in which the assets and liabilities of the council are to be dealt with on the expiration of this Part of this Act.

(3) The central scheme may provide for such matters as appear to the Board of Trade to be incidental to, or consequential on, the foregoing provisions of this section or to be necessary for giving effect to those provisions.

(4) If the central council make to the Board of Trade representations that for the purpose of regulating or facilitating the production, supply, or sale of coal, or any class of coal, by owners of coal mines situated in Great Britain it is necessary or expedient that the central scheme should make provision for any matters in addition to or in substitution for the matters mentioned in subsections (2) and (3) of this section, the Board may lay before each House of Parliament the draft of an order providing that the scheme may be amended so as to provide for the matters with respect to which the representations were made and those matters shall be specified in the draft order, and, if each House resolves that the order shall be made, the Board shall make an order in the terms of the draft to take effect on such date as may be specified in the order, and the scheme may be amended accordingly in manner provided by the scheme.

3. Provisions of district scheme.—(1) Every district scheme shall provide for the election of the executive board by all the owners of coal mines in the district in such manner as will ensure that any owners, who were not represented by the voluntary association or other persons who submitted the scheme, shall be fairly represented on the board as first elected:

Provided that, if the scheme is made by the Board of Trade, the executive board shall be composed of persons nominated by the Board of Trade after consultation with such voluntary association (if any) as may appear to the Board of Trade to be representative of the owners aforesaid, or, where there is no such association, with the central council.

(2) Every district scheme shall further provide for the following matters—

- (a) for empowering the executive board to appoint officers and do all things necessary for the discharge of their functions under the scheme;
- (b) for the determination of the class to which any coal produced in the district belongs for any purpose;
- (c) for the determination, at such times and for such periods as may be decided in accordance with the provisions of the scheme, of the standard tonnage of every coal mine in the district in respect of coal and, if it is so decided in accordance with the provisions of the scheme, in respect of any class of coal, so, however, that the method of determination shall be specified in the scheme, and shall be such a method as will ensure that, for the purpose of the determination, regard shall be had to the special circumstances of every coal mine (including the efficiency and economy of the working of the coal mine, the extent to which it has been developed or is being developed for economic working, the extent to which its output has been increasing or decreasing, and, in the case of the first determination, the proportion which the output of the coal mine bore to the output of the district during some recent period during which no arrangements made by a voluntary association or otherwise were in force regulating the output of any substantial number of coal mines in the district);
- (d) for the determination, at such times and for such periods as may be decided in accordance with the provisions of the scheme, of the proportion (in this Act referred to as the "quota") of the standard tonnage which each of the coal mines in the district is to be allowed to produce, so, however, that the scheme shall provide—
 - (i) that in any district in which a standard tonnage has been determined for any class of coal, a separate quota may be fixed as respects that class; and
 - (ii) that the quota fixed as respects coal or any class of coal shall be the same proportion of the standard tonnage

of coal, or of the class of coal, as the case may be, for all coal mines in the district; and

(iii) that all quotas shall be so calculated that, during any period for which the district allocation has been fixed by the central council, that allocation shall not be exceeded;

- (e) for enabling arrangements to be made by owners of coal mines in the district, whereby the output of coal or any class of coal from any such mine may exceed the quota fixed for that mine, as respects coal or that class of coal, so long as the output of coal or that class of coal from some other mine in the district is lower than the quota fixed for that other mine, as respects coal or that class of coal, by an amount not less than the excess;
- (f) for the determination, at such times and for such periods as may be decided in accordance with the provisions of the scheme, of the price below which every class of coal produced in the district may not be sold or supplied by owners of coal mines in the district, and for securing that the actual consideration obtained by the sale or supply of the several classes of coal, exclusive of coal supplied free or at reduced rates for the use of persons who are or have been employed in or about the mine, and the dependents of persons who have been so employed, shall not be less in value than the price so determined;
- (g) for the collection by the executive board from the owners of coal mines in the district of levies, imposed upon the several owners in proportion to the output or disposal of their respective coal mines in the district, for the purpose of defraying the expenses of the executive board and any penalties imposed on, or levies payable by, that board under the provisions of the central scheme;
- (h) for the establishment of a district fund, for the administration and control of the fund (subject to the provisions of the scheme) by the executive board, for the payment into the fund of any money received under the provisions of the central scheme or of the district scheme by the executive board or by any other persons in respect of their functions under the district scheme, and for the payment

out of the fund of the expenses of the executive board and of any moneys payable by that board under either of those schemes;

- (i) for the appointment of trustees for the executive board, for the vesting in the trustees of the district fund and of all other property of the executive board, and for enabling the trustees to sue and be sued for and on behalf of the executive board;
- (j) for requiring the owners of coal mines in the district to furnish to the executive board or any person authorised by that board such returns, accounts and other information as that board may consider necessary for the operation of the scheme;
- (k) for the production to and inspection by an accountant authorised by the executive board for this purpose of books and accounts relating to any coal mine in the district and for the submission by him of a report to the executive board;
- (l) for securing that any owner of a coal mine in the district, who is aggrieved by any act or omission of the executive board or of any other persons in respect of their functions under the scheme, may refer the matter to one or more independent arbitrators, appointed in such manner as may be provided by the scheme; and for the manner in which any such reference is to be heard and determined;
- (m) for the imposition on and recovery from the owner of any coal mine in the district of such monetary penalties as may be specified by the scheme in the event of his contravention of or failure to comply with the scheme;
- (n) for the manner in which the assets and liabilities of the executive board are to be dealt with in the event of the scheme ceasing to have effect under this Act or on the expiration of this Part of this Act:

Provided that a district scheme may make provision for the determination of the standard tonnage of, and quota for, any two or more coal mines in the district which are worked by the same colliery undertaking as if they were one coal mine.

(3) A district scheme may further provide—

- (a) for the deduction, if it is so decided in accordance with the provisions of the scheme, from the quota of any coal mine for any period of the tonnage by which, in contravention of the provisions of the scheme, the output of the coal mine has during any previous period exceeded the quota of the coal mine for that previous period, but without prejudice to any penalty that may have been incurred by reason of the excess;
- (b) for such matters as appear to the Board of Trade to be incidental to, or consequential on, the foregoing provisions of this section or to be necessary for giving effect to those provisions.

(4) If the executive board for any district make to the Board of Trade representations that for the purpose of regulating or facilitating the production, supply, or sale of coal, or any class of coal, by owners of coal mines situated in that district it is necessary or expedient that the district scheme should make provision for any matters in addition to or in substitution for the matters mentioned in subsections (2) and (3) of this section, the Board may lay before each House of Parliament the draft of an order providing that the scheme may be amended so as to provide for the matters with respect to which the representations were made, and those matters shall be specified in the draft order, and, unless either House before the expiration of a period of twenty days on which that House has sat next after the draft is laid before it resolves that the order shall not be made, the Board may make an order in the terms of the draft to take effect on such date after the expiration of that period as may be specified in the order, and the scheme may, with the approval of the Board, be amended accordingly in manner provided by the scheme:

Provided that, in the case of any draft order providing that a district scheme may be amended so as to provide for empowering the executive board for the district, subject to the consent of the central council, to collect from the owners of coal mines in the district levies for the purpose of facilitating the sale of any class of coal produced in the district, the foregoing provisions of this section shall have effect as if for the reference therein to a period

of twenty days there were substituted a reference to a period of twenty-five days.

4. *Effect of schemes on contracts.*—(1) A contract for the sale or supply of coal, whether made before or after the passing of this Act, shall not, unless the terms of the contract otherwise provide, be void or unenforceable as between the parties by reason that it cannot be performed without contravening the provisions of a scheme in force under this Part of this Act.

(2) Where the output of a coal mine exceeds during any period the quota of that mine for that period, the owner of that mine shall not be liable to any penalty under any district scheme, nor shall any deduction be made from the quota of the mine for any subsequent period, in respect of the excess, if it is adjudged by the persons having power under the scheme to impose the penalty or make the deduction or, in the event of an arbitration, by the arbitrator,—

- (a) that the excess was solely occasioned by the performance of contracts made before the eleventh day of December, nineteen hundred and twenty-nine;
- (b) that the excess was reasonably necessary for the performance of those contracts; and
- (c) that, having regard to the provisions of the central scheme, the imposition of the penalty or the making of the deduction, as the case may be, can, without substantial injury to the interests of the owners of other coal mines in the district, be dispensed with.

(3) The owner of a coal mine shall not be liable to any penalty under any district scheme by reason of the fact that he has, in pursuance of any contract, sold or supplied coal at a price below the minimum price determined in respect of that coal under the scheme at the time of the sale or supply, unless the price at which the coal was contracted to be sold or supplied was lower than the minimum price determined in respect thereof under the scheme at the time when the contract was made, or, where no minimum price had then been determined in respect of the coal, unless it is adjudged by the persons having power under the scheme to impose the penalty, or, in the event of an arbitration, by the arbitrator, that the quantity of coal contracted to be sold or supplied is

greater, or the period over which the coal was contracted to be sold or supplied is longer than it would have been if no party to the contract had anticipated that the price would be regulated under the scheme.

5. Committees of investigation.—(1) There shall be constituted a national committee of investigation consisting of nine members, which shall be charged with the duty of investigating any complaint made with respect to the operation of the central scheme, and there shall also be constituted for every district a district committee of investigation consisting of five members, which shall be charged with the duty of investigating any complaint made with respect to the operation of the district scheme for the district for which the committee is constituted:

Provided that no such committee shall be empowered to investigate a complaint which could be referred to arbitration by the complainant under the provisions of any such scheme.

* (1A) If it appears to the Board of Trade to be expedient that more than one district committee of investigation should be constituted for any district with a view to the investigation of complaints relating to different matters or to different localities by different committees, two or more such committees may be constituted therefor and shall be charged respectively with the duty of investigating any complaint with respect to the operation of the district scheme for that district made in relation to such matters or to such localities as the Board may direct.

(2) The chairman and other members of every committee of investigation shall be persons appointed by the Board of Trade, the person to be appointed as chairman shall be a member of the legal profession, and, of the members of the committee other than the chairman, one half shall be persons appointed to represent the interests of consumers of coal, and—

- (a) in the case of the national committee two shall be persons appointed to represent owners of coal mines in Great Britain and the other two shall be persons appointed to represent workers employed in or about such coal mines;
- (b) in the case of a district committee one shall be appointed to represent the owners of coal mines in the district and

* Dark type shows amendments made by the Coal Act.

the other shall be appointed to represent workers employed in or about such coal mines;

and before appointing any person as a representative of any interest, the Board shall consult such bodies as appear to them to represent that interest.

(3) A committee of investigation may act notwithstanding any vacancy in their number.

(3A) The Board of Trade shall cause to be constituted a panel of persons suitable to exercise the functions of the chairman of any committee of investigation in the event of the chairman of any such committee being unable to act on the investigation of any complaint, and in such an event a person shall, in such manner as the Board may direct, be selected from the panel to act as the chairman, and a person so selected for the investigation of any complaint shall, in relation to that investigation, be deemed to be the chairman of the committee, and references in this section to "the chairman" shall be construed accordingly.

(3B) Upon the occasion of the appointment of a member of a committee of investigation as a representative of any interest, the Board shall, after consultation with such bodies as appear to them to represent that interest, appoint two persons, one of whom shall, in the event of that member being unable to act on the investigation of any complaint, be selected in such manner as the Board may direct to act as the member of the committee representative of that interest and a person so selected for the investigation of any complaint shall, in relation to that investigation be deemed to be the member of the committee representative of that interest, and references in this section to "the members" shall be construed accordingly.

(3C) The chairman shall be present at every meeting of a committee of investigation. Any such committee may take evidence on oath, and for that purpose the chairman shall have power to administer an oath. Any evidence taken by a committee shall, except in so far as it relates to any particular business or undertaking or unless the committee for any special reason otherwise decide, be taken in public, and the decision of the committee upon every complaint shall be delivered in public. Subject to the foregoing provisions of this subsection, the meetings and procedure of every committee

of investigation shall be regulated in accordance with rules made by the Board of Trade for the purpose.

(4) The Board of Trade may appoint a secretary to each committee of investigation, and each such committee may employ such accountants, officers and servants as the Board may, with the approval of the Treasury, determine, and there shall be paid by the Board such remuneration (if any) to the chairman of the committee, such travelling and subsistence allowances to the chairman and members of the committee, such remuneration to the secretary so appointed and to the accountants, officers and servants so employed, and such other expenses of the committee, as the Board, with the approval of the Treasury, may determine, and any expenses of the Board under this subsection shall be defrayed out of moneys provided by Parliament.

(5) Where a committee of investigation is required in pursuance of this section to investigate a complaint with respect to the operation of a scheme, the council or executive board charged with the duty of administering the scheme shall furnish the committee with such returns, accounts and other information relating to the operation of the scheme as the committee considers relevant to the investigation, and the complainant also shall furnish the committee with such returns, accounts and other information as the committee considers relevant to the investigation.

(6) If after investigating any complaint made with respect to the operation of a scheme, a committee of investigation is of opinion that any provision of the scheme is contrary to the public interest or ought to be amended on the ground that it is unfair or inequitable in its operation, it shall be the duty of the committee to report the matter to the Board of Trade, and if, after considering the report and consulting such persons as appear to them to be affected, the Board agree with the opinion of the committee, the Board shall make recommendations to the council or executive board charged with the duty of administering the scheme, with a view to the rectification of the matter complained of.

The Board of Trade may hold inquiries for the purpose of assisting them to consider any report made to them under this subsection by a committee of investigation in like manner as they are empowered under section twenty-two of the Mining Industry

Act, 1920, to hold inquiries for the purposes of that Act, and that section shall apply with respect to inquiries held by the Board under this subsection accordingly.

(7) If after the Board of Trade have, under the provisions of the last foregoing subsection, made recommendations to the executive board charged with the duty of administering any district scheme, the matter complained of is not rectified to the satisfaction of the Board, the Board may, by order published in the London Gazette, direct that the scheme shall cease to have effect under this Act and the Board shall make a new scheme in substitution therefor:

(8) If after investigating any complaint made with respect to the operation of a scheme, a committee of investigation is of opinion that any act or omission of any persons in respect of their functions under the scheme is having or is likely to have an effect contrary to the public interest or ought not to be permitted on the ground that it is unfair or inequitable, it shall be the duty of the committee to make to the persons having power under the scheme to rectify the matter such representations as the committee think desirable for that purpose, and those persons shall exercise their functions under the scheme in conformity with the representations.

(8A) Where a committee of investigation has given a decision under the last foregoing subsection upon a complaint made with respect to the operation of a scheme any person aggrieved by the decision, or the executive board charged with the duty of administering the scheme, or the central council, as the case may be, may within fourteen days of the date upon which the decision was given (or within such longer period as the Central Appeal Tribunal may in any particular case allow) refer the matter for arbitration by the Central Appeal Tribunal to be constituted as hereinafter provided.

(8B) The Central Appeal Tribunal shall consist of a chairman and two other members appointed by the Board of Trade, and the Board shall appoint a chairman a member of the legal profession and as the other members persons who appear to the Board to be substantially independent of the coal industry or of any other industry in which large quantities of coal are used, and who are not members, or officers or servants, of an organisation of employers or workpeople in the coal-mining industry, practising mining

engineers, or in any other manner directly connected with that industry.

(8C) The Board of Trade shall appoint persons having the same qualifications respectively as are requisite in the case of the chairman and other members of the Central Appeal Tribunal to exercise the functions of the chairman and members of the Tribunal in the event of the chairman or any other member being unable to act on any arbitration, and a person so appointed shall, in relation to any arbitration as respects which he is exercising such functions, be deemed to be the chairman or a member, as the case may be, of the Central Appeal Tribunal, and references in this section to "the chairman" and to "the members" shall be construed accordingly.

(8D) The Central Appeal Tribunal shall not have power to act except in the presence of the chairman and both members thereof. Such of the provisions of subsection (3C) of this section as relate to the power to take, and the taking of, evidence by committees of investigation shall apply with respect to the Central Appeal Tribunal as they apply with respect to such committees. Subject to the preceding provisions of this subsection the procedure of the Central Appeal Tribunal shall be regulated in accordance with rules made by the Board of Trade for the purpose.

(8E) Upon the hearing of any arbitration by the Central Appeal Tribunal, the council or executive board charged with the duty of administering the relevant scheme shall furnish to the Tribunal such returns, accounts and other information relating to the scheme as the Tribunal considers relevant for the purposes of the arbitration.

(8F) The powers of the Board of Trade under subsection (4) of this section shall extend to the Central Appeal Tribunal in like manner as they extend to committees of investigation, but shall include power to pay such remuneration to the members, as well as to the chairman, of the Central Appeal Tribunal as the Board may, with the approval of the Treasury, determine.

(9) After a decision of the committee of investigation or of the Central Appeal Tribunal as to any complaint has become binding, the committee or the Central Appeal Tribunal, as the case may be, shall make a report thereon to the Board of Trade, and shall also report to the Board what steps have been taken to comply therewith, and the Board shall have power to make in the scheme such

amendments (if any) as they think necessary for securing that the scheme will be administered in conformity with the decision, and in particular may by such amendments alter the composition of the body charged with the administration of the scheme as if the scheme had been made by the Board.

(10) Any person aggrieved—

(a) by the neglect or refusal of a committee of investigation to report to the Board of Trade that any provision of a scheme is contrary to the public interest, or ought to be amended on the ground that it is unfair or inequitable in its operation, or where such a report has been made is aggrieved by any act or omission of the Board of Trade in relation thereto; or

may, with the leave of the Railway and Canal Commission, appeal to that Commission who shall have power to make such order as they think fit.

(11) Any appointment to be made by the Board of Trade under this section of a person who is thereby required to be a member of the legal profession shall be made after consultation with the Lord Chancellor, or where the appointment is of the chairman of a district committee of investigation for a district in Scotland, after consultation with the Lord Advocate.

6. *Information to be furnished to Board of Trade.*—It shall be the duty of the central council as respects the central scheme, and of the executive board for any district as respects the scheme for that district, to furnish to the Board of Trade, in such manner and form as the Board may direct, such returns, accounts and other information with respect to the operation of the scheme as the Board may at any time require.

7. *Report to be laid before Parliament.*—The Board of Trade shall in the year nineteen hundred and thirty-one and each subsequent year lay before Parliament a report upon the operation of all the schemes for the time being in force under this Act.

8. *Information obtained under Act not to be disclosed.*—No information with respect to any particular undertaking shall be included in any report published under this Part of this Act by the Board of Trade,

the central council, an executive board, **the Central Appeal Tribunal**, the national committee of investigation, or a district committee of investigation, unless the owner of the undertaking agrees thereto, and any person who obtains any information in the exercise of the powers conferred upon the council or upon any executive board by any scheme made in pursuance of this Part of this Act, or conferred upon any such committee, or upon **the Central Appeal Tribunal** by this Part of this Act, shall be required to make a declaration of secrecy in such form as may be prescribed by the Board of Trade, and any person who discloses any information so obtained by him shall be guilty of a misdemeanour and liable, on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine not exceeding one hundred pounds, or to both such imprisonment and fine, or on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds, or to both such imprisonment and fine:

Provided that nothing in this section shall apply to the publication or disclosure of any information in so far as it is required to be published or disclosed for the purposes of legal proceedings (including arbitrations) under this Part of this Act or any scheme made thereunder or for any report of such proceedings, or in so far as it is required or authorised by this Part of this Act or any scheme made thereunder to be published or disclosed to the Board of Trade, the central council, **the Central Appeal Tribunal**, a committee of investigation or an executive board; and any such information published or disclosed to the Board of Trade or to the **Central Appeal Tribunal** or to any committee of investigation which is relevant to the proceedings upon any inquiry or arbitration or investigation held by them may be published or disclosed by them to any person being a party to or otherwise directly concerned in those proceedings, but only in such form as does not disclose information relating to any particular business or undertaking.

9. *Offences and penalties.*—(1) If any person contravenes or fails to comply with any provision of this Part of this Act or of a scheme in force thereunder, and no penalty for the contravention or failure is expressly provided by this Part of this Act or the scheme, he shall be liable on summary conviction to a fine not exceeding one hundred pounds, and to a further fine not exceeding twenty pounds

for every day on which the contravention or failure occurs or continues.

(2) Where an offence under this Part of this Act or a scheme in force thereunder, committed by a corporation, is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of, any director, manager, secretary or other officer of the corporation, he, as well as the corporation, shall be deemed to be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

10. Duration of Part I.—(1) This Part of this Act shall continue in force until the thirty-first day of December, nineteen hundred and forty-two, and no longer, unless Parliament otherwise determines:

Provided that the expiration of this Part of this Act shall not—

- (a) affect the previous operation of, or anything duly done or suffered under, this Part of this Act, or
- (b) affect any right, privilege, exemption, obligation, or liability acquired, accrued, or incurred under this Part of this Act; or
- (c) affect any penalty or punishment incurred under this Part of this Act; or
- (d) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty or punishment may be imposed as if this Part of this Act had not expired.

(2) The provisions of this Part of this Act making it an offence to disclose information shall continue in force notwithstanding the expiration of this Part of this Act.

PART II.

REORGANISATION OF COAL MINING INDUSTRY.

11. *

12. General functions of Coal Mines Reorganisation Commission.—

(1) It shall be the duty of the **Coal Commission** (hereafter in this

* The functions of the Coal Mines' Reorganisation Commission are transferred to the Coal Commission, and sect. 11 is repealed.

section referred to as "the Commission") to further the reorganisation of the coal mining industry with a view to facilitating the production, supply, and sale of coal by owners of coal mines, and for that purpose to promote and assist, by the preparation of schemes and otherwise, the amalgamation of undertakings consisting of or comprising coal mines where such amalgamations appear to the Commission to be in the national interest.

(2) The Commission may hold such inquiries as they consider necessary or desirable for the discharge of their functions under this Act, and, in respect of any meeting of the Commission at which a quorum of the commissioners is present for the purpose of any such inquiry, the Tribunals of Inquiry (Evidence) Act, 1921, (other than paragraph (a) of section two thereof) shall apply to the Commission as if it were a tribunal established in manner provided by that Act and as if that Act had been applied thereto in the manner thereby provided.

(3) The Commission may from time to time employ such technical and professional agents as they consider necessary or desirable for the discharge of their functions under this Act, and, subject as hereinafter provided, there shall be paid by the Board of Trade such remuneration to the agents so employed as the Board may, with the approval of the Treasury, determine, and the expenses of the Board under this subsection shall be defrayed out of moneys provided by Parliament:

Provided that a sum certified by an accountant appointed by the Board of Trade to be equal to the amount of any expenses properly incurred by the employment of such agents as aforesaid for the purpose of promoting or assisting the amalgamation of any undertakings shall, in the event of the undertakings being amalgamated, be repaid to the Board by the owners of the amalgamated undertaking.

13. *Amendments of Part I of 16 & 17 Geo. 5, c. 28.*—(1) If it appears to the Coal Mines Reorganisation Commission that it is expedient for the purpose of promoting the more economical and efficient working, treating or disposing of coal than an amalgamation scheme or an absorption scheme, under Part I of the Mining Industry Act, 1926 (hereinafter in this section referred to as "the Act of 1926"), should be prepared and submitted with respect

to any two or more undertakings consisting of or comprising coal mines, the Commissioners shall require the owners of those undertakings to prepare and submit to the Board of Trade an amalgamation scheme or absorption scheme with respect to those undertakings framed in accordance with the provisions of Part I of the Act of 1926, and if the owners fail so to submit such a scheme within such a time as may have been specified by the Commissioners, the Commissioners shall themselves prepare and submit such a scheme to the Board of Trade, and for the purposes of that Part of that Act any scheme so prepared and submitted by the Commission shall be deemed to have been prepared and submitted in manner provided by subsection (1) or (2), as the case may be, of section one of that Act, and that Act shall apply accordingly:

Provided that—

- (a) no such scheme of amalgamation shall provide, without the consent of the owner of the undertaking, for the separation of the treating or disposing of coal from the working thereof, or, in the case of an undertaking of which the primary object is not coal mining, for the separation from the undertaking of any coal mine worked as ancillary to such primary object;
- (b) no coal mine belonging to a company whereof all the shares are held by the owner of an undertaking of which the primary object is not coal mining shall, so long as it is worked as ancillary to such primary object, be amalgamated or absorbed by virtue of a scheme prepared under this section without the consent of the owner of that undertaking.

(1A) The following provisions shall have effect with respect to any scheme submitted to the Board of Trade by the Coal Commission—

- (a) the scheme shall provide for the consideration to be given to each of the constituent companies from which property is to be transferred (hereinafter referred to as a transferor company) being given out of the securities of the new company or of the constituent company to which that property is transferred, as the case may be (hereinafter referred to as the transferee company) and, except in so far as may be otherwise agreed between all the transferor

companies and the transferee company, only out of such securities, and for the amount of the consideration being determined upon the basis of the value at the date of transfer of the property and liabilities of each transferor company transferred by the scheme; the value of the property being assessed at what would have been the value thereof at the date of transfer as between a willing buyer and a willing seller;

- (b) the scheme shall determine the classes of securities of the transferee company which are to be given to the transferor companies in respect of the different classes of property transferred to it, and shall make provision for the determination of the amount of the consideration to be given to each of the transferor companies out of those securities, in so far as it is not determined by the terms of the scheme, being finally determined upon principles specified therein, by arbitration or otherwise, after the scheme has come into operation;
- (c) the scheme may provide for any property of a transferor company thereby transferred to a transferee company being so transferred either subject to, or freed from, all liabilities for the repayment of money lent which immediately before the date of transfer were secured on that property, but if a scheme provides for the transfer of any property freed from all such liabilities, the scheme shall make provision for entitling all persons who immediately before the date of transfer had, by way of security for such repayment, an interest in that property, to participate in the consideration to be received by the transferor company by means of a charge on that consideration or any part thereof, and with the like priorities between each other as existed before the coming into force of the scheme;
- (d) the scheme may make provision for making in any trust affecting property or liabilities transferred to the transferee company, including any compensation trust created in accordance with the provisions of the Workmen's Compensation (Coal Mines) Act, 1934, such modifications as may be consequential upon the amalgamation or absorption to be effected by the scheme.

(2) In relation to any scheme submitted to the Board of Trade under this section by the Coal Commission, the Act of 1926 shall have effect as if for the proviso to subsection (2) of section seven thereof and section eight thereof (which both relate to the consideration of schemes by the Railway and Canal Commission) there were substituted the following proviso, that is to say:—

Provided that the Railway and Canal Commission—

- (a) shall hear such persons, whether in support of or against the scheme, as they think fit, including representatives of persons employed in any undertakings affected by the scheme; and
- (b) shall not have power to make, or require to be made, in the scheme modifications inconsistent with any provisions required by the enactments relating thereto to be included in schemes submitted to the Board of Trade by the Coal Commission but subject as aforesaid may make such modifications, if any, as they consider necessary for enabling the amalgamation or absorption affected by the scheme to be carried out upon terms and conditions that are fair and equitable to all persons affected by the scheme, and are calculated to avoid financial injury to any of the constituent companies and to enable the undertaking of the transferee company to be efficiently carried on; and
- (c) shall (after giving notice of any modification proposed to be made by them not only to the Commission but also to the constituent companies in like manner as they would have been required by section ten of the Act of 1926 to do if the scheme had been submitted by those companies) confirm the scheme if they are satisfied that it conforms to the enactments relating thereto and, consistently with those enactments, that the amalgamation or absorption affected by the scheme will be carried out upon such terms and conditions as aforesaid.

(3) If the owner of any undertaking (in this subsection referred to as the “transferor undertaking”) proposed by any scheme submitted by the Coal Mines Reorganisation Commission to be amalgamated with, or absorbed in, any other undertaking (in this

subsection referred to as the "transferee undertaking") satisfies the Railway and Canal Commission that any property, whether real or personal, belonging to the transferor undertaking formed, at the date of the passing of this Act, a reserve which, when the scheme was submitted, was not required for the efficient carrying on of the transferor undertaking, the Railway and Canal Commission shall not confirm the scheme except after making such modifications, if any, as may be necessary for securing that that property will not be transferred to the transferee undertaking.

(4) *

(5) Where a scheme is referred by the Board of Trade to the Railway and Canal Commission under section six of the Act of 1926, the Coal Mines Reorganisation Commission shall be entitled to appear and be heard at any proceedings in connection with the scheme.

(6) No scheme shall be submitted or certificate granted by the Commission under this section except in pursuance of a decision made at a meeting at which a quorum of the Commissioners is present.

(7) †

(8) This section shall be construed as one with Part I of the Act of 1926.

PART III.

HOURS OF WORK.

14. *Temporary amendment of 8 Edw. 7. c. 57, s. 3.*—(1) During the continuance of the Coal Mines Act, 1926, section three of the Coal Mines Regulation Act, 1908, shall have effect as if for the words "one hour" there were therein substituted the words "half an hour":

Provided that, if an application, by agreement between representative organisations of the owners of and the workers employed in or about the coal mines in any district, is made to the Board of Trade in that behalf with the approval of the Mining Association of Great Britain and the Miners' Federation of Great

* Sub-sect. (4) repealed.

† Sub-sect. (7) repealed by the Coal Act, s. 49 (2).

Britain, the Board of Trade shall make an order, which shall become effective forthwith, that the substitution of the words " half an hour " for the words " one hour " in section three of the Coal Mines Regulation Act, 1908, shall not apply as respects any mine in such district at which the daily hours below ground on an average taken over the twelve weekdays in any fortnight do not exceed the daily hours permissible under section one of the Coal Mines Regulation Act, 1908, as amended by the Coal Mines Act, 1919, by more than the extension of half an hour made under section three of the Coal Mines Regulation Act, 1908, as amended by the Coal Mines Act, 1926, and this section.

At any mine where an extension of time is in any week made under the said section three, the workmen, by agreement between representatives of employers and workmen, may, notwithstanding anything in the Coal Mines Regulation Act, 1908, as amended by any subsequent enactment, begin their period of work on the Saturday of that week before twenty-four hours have elapsed since the beginning of their last period of work, so long as at least eight hours have leapsed since the termination thereof.

(2) This section shall come into operation at the expiration of the period of four months from the passing of this Act.

PART IV.

COAL MINES NATIONAL INDUSTRIAL BOARD.

15. *Power to constitute Coal Mines National Industrial Board and functions thereof.*—(1) The Board of Trade may by order constitute a Coal Mines National Industrial Board (in this section referred to as the " National Board ") consisting of seventeen members appointed by the Board of Trade, so, however, that before appointing the members of the National Board other than the chairman, the Board of Trade shall consult the Mining Association of Great Britain as to six, the Miners' Federation of Great Britain as to six, the Federation of British Industries and the Association of British Chambers of Commerce as to one, and each of the following bodies as to one, that is to say—

The General Council of the Trade Union Congress;
 The Co-operative Union;
 The National Confederation of Employers' Organisations;

and the chairman of the National Board shall not be a member of any of the bodies aforesaid.

(2) Before appointing any person to fill a vacancy among the members of the National Board, the Board of Trade shall consult the body (if any) which they were required by this section to consult before appointing his predecessor. If a member becomes in the opinion of the Board of Trade unfit to continue in office or incapable of performing his duties under this Act the Board shall forthwith declare his office to be vacant and shall notify the fact in such manner as they think fit and thereupon the office shall become vacant.

A member may resign his office by notice in writing under his hand given to the Board of Trade.

(3) The Board of Trade may appoint a secretary to the National Board, and there shall be paid by the Board of Trade such remuneration (if any) to the chairman, such travelling and subsistence allowances to the chairman and members and such remuneration to the secretary of the National Board, and such other expenses of the National Board, as the Board of Trade, with the approval of the Treasury, may determine, and any expenses of the Board of Trade under this subsection shall be defrayed out of moneys provided by Parliament.

(4) Any agreement between the owners of, and the workers employed in or about, the coal mines in any district providing for the regulation of wages or other conditions of labour throughout the coal mines in the district may be sent to the National Board, and it shall be the duty of the National Board to record any agreement so sent.

(5) Where there exists, or is apprehended, any dispute between the owners of and the workers employed in or about the coal mines in any district as to the terms of a proposed agreement between such owners and workers providing for the regulation of wages or other conditions of labour throughout the coal mines in the district, and there has been a failure to settle the dispute in accordance with the arrangements existing in the district for the settlement thereof, either the owners or the workers may refer the dispute to the National Board who shall thereupon inquire into the dispute and report thereon to the owners and workers concerned.

(6) The Board of Trade may make rules regulating the procedure of the National Board, and those rules may, among other things, provide—

- (a) for enabling the National Board to act notwithstanding any vacancy in their number;
- (b) for the hearing of a reference in public or in private, at the discretion of the National Board.

(7) There shall not be included in any report or publication made or authorised by the National Board any information, obtained by the National Board in the course of a reference to them, as to any trade union or as to any particular undertaking, which is not available otherwise than through evidence given during the reference, except with the consent of the secretary of the trade union or of the owner of the undertaking in question, and if any individual member of the National Board or any person concerned in the reference, without such consent, discloses any such information, he shall be liable on summary conviction to a fine not exceeding one hundred pounds.

PART V.

GENERAL.

16. *Application of 52 & 53 Vict. c. 49.*—(1) The provisions of the Arbitration Act, 1889, shall not apply to any reference to the Coal Mines National Industrial Board, except in so far as any of the said provisions may be applied by the rules made under Part IV of this Act.

(2) No scheme or rules approved or made under Part I of this Act shall exclude the application of the Arbitration Act, 1889, to any arbitration held in pursuance of that Part of this Act except in so far as that Act is inconsistent with that Part of this Act:

Provided that, where on any such arbitration an award is stated in the form of a special case for the opinion of the court under paragraph (b) of section seven of that Act, the decision of the High Court thereon shall be final.

17. *Exclusion of 10 & 11 Geo. 5. c. 50, s. 5 (2).*—The expenses of the Board of Trade which are by this Act directed to be defrayed out of the moneys provided by Parliament shall not be taken into

account in computing the amount of the expenses of the Department of Mines for the purposes of the limit imposed by subsection (2) of section five of the Mining Industry Act, 1920, upon the expenses of that department.

18. *Interpretation.*—(1) In this Act the following expressions have the meanings hereby respectively assigned to them:—

“Class” in relation to coal, means a class determined according to the nature of the coal or of the trade, industry or other category of consumer supplied, or according to whether it be supplied for use in Great Britain or for export to any other country:

“Coal” includes bituminous coal, cannel coal, and anthracite:

“Coal mine” means any mine or open working where the getting of coal (including for the purposes of Part IV of this Act, lignite or brown coal), is the principal object of the mining or quarrying operations:

“Disposal” in relation to a coal mine means the tonnage in saleable coal raised and weighed at the pit head at that coal mine, after deducting all coal to be used for the purpose of working the mine and all coal to be supplied free or at reduced rates for the use of persons who are or have been employed in or about the mine and the dependents of persons who have been so employed, and in relation to a district means the aggregate tonnage in saleable coal raised and so weighed at all the coal mines in the district after making the deductions aforesaid:

“District” means for the purposes of Part I of this Act a district mentioned in Part I of the Schedule to this Act, subject to any amalgamation or adjustment of districts under Part II of that Schedule; and for the purposes of Parts III and IV of this Act has the same meaning as it has for the purpose of the arrangements for the time being in force for the regulation of wages in the coal mining industry:

“Functions” includes powers and duties:

“Output” in relation to a coal mine means the tonnage in coal raised and weighed at the pit head at that coal mine, and in relation to Great Britain or a district means the aggregate

tonnage in coal raised and so weighed at all the coal mines in Great Britain or the district, as the case may be:

“ Owner ” has the same meaning as in the Coal Mines Act, 1911.

(2) The references in this Act to the London Gazette shall, in so far as any scheme or order relates to Scotland, be construed as references to the Edinburgh Gazette.

19. Short title, citation and extent.—(1) This Act may be cited as the Coal Mines Act, 1930, and the Coal Mines Acts, 1887 to 1926, and this Act may be cited together as the Coal Mines Acts, 1887 to 1930.

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

SCHEDULE.

PART I.

DISTRICTS FOR PURPOSES OF PART I. OF ACT.

Northumberland.
 Durham.
 Cumberland.
 Lancashire and Cheshire.
 Yorkshire.
 Derbyshire (exclusive of South Derbyshire).
 South Derbyshire.
 Nottinghamshire.
 Leicestershire.
 Shropshire.
 North Staffordshire.
 South Staffordshire (exclusive of Cannock Chase) and Worcester-
 shire.
 Cannock Chase.
 Warwickshire.
 Forest of Dean.
 Bristol.
 Somerset.
 Kent.
 North Wales.
 South Wales (including Monmouthshire).
 Scotland.

PART II.

PROVISIONS AS TO AMALGAMATION AND ADJUSTMENT OF DISTRICTS.

1. If an application is made to the Board of Trade for the amalgamation of two or more districts, and the Board are satisfied that the application has been duly approved in accordance with paragraph 3 of this Part of this Schedule, the Board may by order direct that those districts be treated as one district.

2. If an application is made to the Board of Trade by the owner of a mine situate in any district that the mine should be treated as if it were situate in any other adjoining district, and the Board are satisfied that the application has been duly approved in accordance with the next following paragraph and that the mine has, for the purpose of the arrangements in force for the regulation of wages in the coal-mining industry, been customarily treated as a mine situate in that other district, the Board may by order direct that that mine shall be treated as situate in that other district.

3. An application shall not be deemed to have been duly approved for the purposes of this Part of this Schedule unless it has been approved as respects every district to which the application relates by the owners of coal mines which produced more than half the output of those districts respectively, during the period of six months ending on the thirtieth day of June or the thirty-first day of December last preceding the date of the application, whichever day is the later:

Provided that if in the case of an application made before the first day of January, nineteen hundred and thirty-one, it appears to the Board of Trade that during such period of six months as aforesaid the output of a substantial number of coal mines in any district was subject to regulation under any arrangements made by a voluntary association or otherwise, the Board may treat any application submitted to them which relates to that district as if the latest period of six months during which the output of those coal mines was not so regulated had been the period mentioned in the foregoing provisions of this paragraph.

4. If for the purpose of the arrangements for the time being in force for the regulation of wages in the coal mining industry any adjustments are made in the districts specified in Part I of this Schedule, the Board of Trade may, if they think fit, by order direct that corresponding adjustments shall be made for the purposes of Part I of this Act, and upon the making of any such order, Part I of this Schedule shall have effect subject to any modification specified in the order.

MINES (WORKING FACILITIES) ACT, 1934.

(24 & 25 GEO. 5, c. 27.)

An Act to extend to certain other minerals the provisions of Part II of the Mining Industry Act, 1926, relating to the grant of facilities for searching for and working coal. (28th June 1934.)

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:—

1. *Power of Railway and Canal Commission to grant working facilities in the case of certain minerals.*—(1) Section thirteen of the Mining Industry Act, 1926,* which empowers the Railway and Canal Commission, on an application referred to them by the Board of Trade, to grant to the applicant the right to search for or work coal or, as the case may be, the right to work coal freed from existing restrictions and conditions or upon substituted terms and conditions, shall apply also in relation to any mineral to which this Act applies and, accordingly, in subsections (1) to (4) of the said section thirteen any reference to coal shall be construed as including a reference to any such mineral.

(2) This Act applies to any of the minerals specified in the Schedule to this Act and also, where any other mineral is being, or is to be, worked with a mineral so specified, to that other mineral.

2. *Short title and extent.*—(1) This Act may be cited as the Mines (Working Facilities) Act, 1934.

(2) This Act does not extend to Northern Ireland.

* This section of the 1926 Act, although of no effect as far as coal is concerned may be effective under the Act so long as the minerals concerned are not acquired interests by reason of their being worked with coal.

SCHEDULE.**MINERALS TO WHICH THIS ACT APPLIES.**

Iron ore and ironstone.
Tin ore.
Lead ore.
Zinc ore.
Copper ore.
Tungsten ore.
Fluorspar.
Barytes.
Oil shale.

COAL (REGISTRATION OF OWNERSHIP) ACT, 1937.

(1 EDW. 8 & 1 GEO. 6, c. 56.)

ARRANGEMENT OF SECTIONS.

1. Registration of particulars of ownership.
2. Expenses of Board of Trade.
3. Definition of "coal" and application of Act to certain associated minerals.
4. Interpretation.
5. Application to Scotland.
6. Short title and extent.

SCHEDULES:

First Schedule—Units of separate ownership.

Second Schedule—

Part I.—Procedure as to registration.

Part II.—Payment of costs by the Board.

COAL (REGISTRATION OF OWNERSHIP) ACT, 1937.
(1 EDW. 8 & 1 GEO. 6, c. 56.)

An Act to make provision for the ascertainment and registration of particulars as to proprietary interests in unworked coal and mines of coal and in certain associated minerals, property and rights in land, and for purposes connected therewith. (30th July 1937.)

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:—

1. *Registration of particulars of ownership.*—(1) For the purpose of recording such particulars as are hereinafter mentioned as to proprietary interests that subsist in coal and mines of coal in Great Britain and in certain property and rights held in association therewith, the Commission* shall establish a register, to be called “the coal holdings register.”

(2) The Board shall receive applications duly made to them for the registration of particulars in the register, and after such applications have been examined in accordance with the provisions of this Act, shall register particulars of the facts ascertained upon the examination thereof.

(3) Registrations under this Act shall be effected in respect of such proprietary interests or groups of proprietary interests as are, under the provisions of the First Schedule to this Act, to be treated as constituting units of separate ownership, and applications for registration must be made accordingly.

Any such interest or group of interests is in this Act referred to as a “holding.”

(4) The matters whereof particulars may be registered in respect of any holding shall be—

(a) the coal and mines of coal in which the holding subsists;

* The Coal Commission are to take over the functions of the Board of Trade under this Act (see p. 142).

- (b) the property and rights which are held in association with such coal and mines or any of them and in which the holding subsists;
- (c) the servitudes, restrictive covenants and other matters subject to which the coal hereditaments in which the holding subsists or any of them are or is held;
- (d) such matters of title as are requisite for the identification of the holding as a unit of separate ownership; and
- (e) such other matters, if any, relating to the coal hereditaments in which the holding subsists, or to the title thereto, as appear to the Board to be material for the purpose of rendering the information as to proprietary interests recorded in the register complete.

(5) The provisions of Part I of the Second Schedule to this Act shall have effect with respect to the making and examination of applications for registration, to the ascertainment of the facts whereof particulars are to be registered, to the registration of particulars, and to the rectification of the register.

(6) The provisions of Part II of the Second Schedule to this Act shall have effect with respect to the payment by the **Commission** of costs incurred in giving effect to the provisions of this Act.

(7) The person on whose application particulars have been registered in respect of a holding and any person authorised by him or by an order of the High Court or by rules made by the **Commission**, but no other person, may inspect and make copies of and extracts from the entries in the register relating to the holding.

2.*

3. Definition of "coal" and application of Act to certain associated minerals.—(1) In this Act "coal" means bituminous coal, cannel coal and anthracite, and has also the extended meaning assigned to it by subsection (2) of this section.

(2) This Act shall have effect in relation to minerals or substances other than coal, that are comprised in a lease which confers a right

* Under the Coal Act, s. 35 (2), the Commission shall pay to the Board of Trade a sum equal to the expenses incurred by the Board of Trade under this Act.

to work and carry away both coal and those minerals or substances, in like manner in all respects as if they had been coal, and references in this Act to coal shall be construed accordingly.

(3) In this Act references to coal, other than references to the carrying away, making merchantable or disposing thereof, shall be construed as references to coal that is unworked, that is to say, not so severed as to have become a chattel.

4. Interpretation.—In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

- “Coal hereditaments” means coal and mines of coal and property and rights which are held in association with any coal or mine of coal;
- “Coal-mining lease” means in relation to any coal a lease that confers a right to work and carry away that coal, and means in relation to any mine of coal a lease that confers a right to use it for a coal-mining purpose;
- “Coal-mining purpose” means searching and boring for, winning, working, getting, carrying away, making merchantable or disposing of, coal;
- “Interested” means, in relation to a person referred to as interested in any coal or mine of coal, or in any other land, any person entitled to, or to exercise, or interested in, or in the exercise of, any estate, interest, charge or power in, on or over that coal or mine or that other land, as the case may be, other than a person entitled or interested as aforesaid in respect only of the benefit of a servitude or restrictive covenant adversely affecting that coal or mine or that other land, as the case may be, and “interest” has a corresponding meaning;
- “Lease” includes an underlease and an agreement under which the right to have a lease or underlease granted is subsisting, and in relation to such an agreement “estate owner” means the person entitled to have vested in him the term agreed to be created; neither “lease” nor “underlease” includes a mortgage; “lease” and “underlease” each include a licence (whether personal or by way of profit à prendre) that offers a right to work and carry away coal or to use a

mine of coal for a coal-mining purpose, and in relation to such a licence the expression "reversion" and other expressions importing a reference to a lease shall be construed accordingly with the requisite adaptations;

"Mine of coal" means a space which is occupied by coal or which has been excavated underground for a coal-mining purpose, and includes a shaft and an adit made for a coal-mining purpose;

"Proprietary interest" means any interest in coal hereditaments with the exception of—

(a) an interest arising under a coal-mining lease in coal hereditaments comprised therein that are not comprised in any underlease derived out of that lease; and

(b) an interest arising by virtue of the grant of a right under the Mines (Working Facilities and Support) Act, 1923, either as originally enacted or as extended by section thirteen of the Mining Industry Act, 1926;

"Prescribed" means prescribed by rules made by the Board of Trade;*

"Servitude" means any liberty, privilege, easement, right or advantage annexed to any land and adversely affecting other land, and "annexed to" means, in relation to any coal or mine of coal or to any other land, appertaining or reputed to appertain thereto or to any part thereof, or demised, occupied or enjoyed therewith or with any part thereof, or reputed or known as part or parcel thereof or appertaining thereto or to any part thereof.

5. Application to Scotland.—This Act shall apply to Scotland subject to the following modifications:—

(1) "restrictive covenant" means an agreement or stipulation imposing a restriction and includes a real burden *ad factum praestandum*; "underlease" means sub-lease, and any reference to an underlease derived out of another lease shall be construed as a reference to a sub-lease granted by a lessee; for any reference to a mortgage there shall

* By sect. 35 (1) of the Coal Act, the Board of Trade retain their power to make rules under this Act.

- be substituted a reference to a heritable security; "chattel" means corporeal moveable; and "demised" means let;
- (2) for any reference to the High Court a reference to the Court of Session shall be substituted;
 - (3) any reference to a charge or power in, on or over, any subjects shall include a reference to a heritable security affecting such subjects;
 - (4) "heritable security" has the like meaning as in the Conveyancing (Scotland) Act, 1924, except that it does not include a real burden *ad factum praestandum*.

6. *Short title and extent.*—(1) This Act may be cited as the Coal (Registration of Ownership) Act, 1937.

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

(3) This Act shall not extend to any part of the Forest of Dean or of the Hundred of Saint Briavels in the County of Gloucester in which the privileges of free miners are exercisable.

SCHEDULES.

FIRST SCHEDULE.

UNITS OF SEPARATE OWNERSHIP.

General.

1.—(1) Subject to the provisions of paragraph 2 of this Schedule, each of the following proprietary interests, or groups of proprietary interests, in coal hereditaments shall constitute a unit of separate ownership for the purposes of this Act, namely:—

- (a) each freehold reversion (that is to say, in the case of all the coal and mines of coal that are comprised in a coal-mining lease derived immediately out of the fee simple and in the case of property and rights held in association with any such coal or mine, the interest therein of the estate owner in respect of the fee simple in the coal and mines together with the interests therein of all persons claiming under him);
- (b) each leasehold reversion (that is to say, in the case of all the coal and mines of coal that are comprised in a coal-mining lease that is an underlease and in the case of

property and rights held in association with any such coal or mine, the interest therein of the estate owner in respect of the term of years out of which that underlease is immediately derived together with the interests therein of all persons claiming under him);

- (c) each freehold in possession (that is to say, in the case of all the coal or mines of coal that are not comprised in any coal-mining lease and are in the legal ownership as respects the fee simple of the same estate owner and in the case of property and rights held in association with any such coal or mine, the interest therein of the estate owner in respect of the fee simple in the coal and mines together with the interests therein of all persons claiming under him).

(2) In this paragraph the expression "persons claiming under" means in relation to a person referred to as claiming under the estate owner in respect of a fee simple, or under the estate owner in respect of a term of years, a person interested in respect of—

- (a) an equitable interest or an equitable power enforceable against that estate owner (including any such interest or power which, if subsisting at law, would fall within any of the following heads);
- (b) a legal mortgage, or charge by way of legal mortgage, of that fee simple or of that term of years, as the case may be;
- (c) a rentcharge in possession which confers a right to take the income incident to that fee simple or to that term of years, as the case may be;
- (d) an interest arising under a lease, other than a coal-mining lease, which is derived out of that fee simple or of that term of years, as the case may be, either immediately or by way of underlease derived out of a lease other than a coal-mining lease;

and that expression includes also, in relation to a person referred to as claiming under the estate owner in respect of a fee simple, a person interested in respect of a right saved by paragraph (5) of the Twelfth Schedule to the Law of Property Act, 1922 (which related to land formerly copyhold).

2. Provisions may be made by rules made by the Board of Trade for the consolidation of two or more units of separate ownership as ascertained under the preceding paragraph, or for the division of any unit of separate ownership as so ascertained into two or more units, or for treating as constituting a separate unit of ownership any proprietary interest or interests that would otherwise be comprised in a unit or units of separate ownership as so ascertained.

Application to Scotland.

3. This Schedule shall, in its application to Scotland, have effect as if for paragraph 1 the following paragraph were substituted:—

“(1) Subject to the provisions of paragraph 2 of this Schedule, each of the following proprietary interests, or groups of proprietary interests, in coal hereditaments shall constitute a unit of separate ownership for the purpose of this Act, namely:—

- (a) in the case of all the coal and mines of coal that are comprised in a coal-mining lease granted by the proprietor of the dominium utile and in the case of property and rights held in association with any such coal or mine, the interest therein of such proprietor, together with the interests of all persons claiming under him;
- (b) in the case of all the coal and mines of coal that are comprised in a coal-mining lease (being a sub-lease) and, in the case of property and rights held in association with any such coal or mine, the interest therein of the lessee who is the landlord under the sub-lease together with the interests of all persons claiming under him;
- (c) in the case of all the coal and mines of coal that are not comprised in any coal-mining lease and are in the ownership of the same person as proprietor of the dominium utile, and in the case of property and rights held in association with any such coal or mine, the interest therein of that person together with the interests therein of all persons claiming under him.

(2) In this paragraph—

the expression ‘person claiming under’ means—

- (a) in relation to a person referred to as claiming under the proprietor of the dominium utile, the superior, a creditor in the heritable security, a lessee under a lease other than a coal-mining lease, a person having a personal title capable of being completed by infeftment, a person entitled to demand a conveyance of the subjects by virtue of a valid and enforceable contract, and a person infeft or entitled to take infeftment in an interest in the annual rents of the subjects, and
- (b) in relation to a person claiming under a lessee, a creditor in a heritable security, a sub-lessee under a sub-lease not being a coal-mining lease, a person having a personal title capable of being

completed by registration in the appropriate register of sasines, a person entitled to demand an assignation or sub-lease of the lease by virtue of a valid and enforceable contract, and a person having a registered title or a title capable of being completed by registration to an interest in such lease; and

the expression 'superior' includes the Crown (without prejudice to the Crown's inherent right of superiority over all land in Scotland) and a subject superior or mid-superior."

SECOND SCHEDULE.

PART I.

PROCEDURE AS TO REGISTRATION.

1.—(1) An application for the registration of particulars in respect of a holding must be in the prescribed form, and there must be furnished to the Board of Trade therewith a statement in the prescribed form, and verified in such manner by statutory declaration or otherwise as the Board may reasonably require, of all the circumstances of the holding relevant to the matters specified in paragraphs (a) to (d) of subsection (4) of section one of this Act, including as regards the matters specified in the said paragraph (d)—

- (a) in the case of a holding consisting of a freehold or leasehold reversion, the provisions of the lease or underlease on which that reversion is immediately expectant;
- (b) in the case of a holding consisting of a freehold in possession, the identity of the estate owner in respect of the fee simple in the coal and mines of coal in which the holding subsists; and
- (c) in the case of a holding constituted by virtue of rules made under paragraph 2 of the First Schedule to this Act, such items as may be prescribed.

(2) An application for the registration of particulars in respect of a holding must be made by a person who has a proprietary interest that constitutes or is comprised in the holding:

Provided that the Board may receive an application made by a person who has not such an interest as aforesaid if they are satisfied that, by reason of that person's being concerned in the administration of the holding or on other grounds appearing to them to be sufficient, it is convenient that the application should be made by him.

(3) The person by whom an application was made shall, on being requested by the Board so to do, give to them such further information with respect to the matters specified in paragraphs (a) to (d) of subsection (4) of section one of this Act, and such information with respect to the matters specified in paragraph (e) thereof, as the Board may reasonably require.

(4) This paragraph shall, in its application to Scotland, have effect as if for heads (a) and (b) of sub-paragraph (1) the following were substituted:—

- “ (a) in the case of a holding consisting of the interests specified in head (a) or head (b) of sub-paragraph (1) of the paragraph which is directed by paragraph 3 of the First Schedule to this Act to be substituted for paragraph 1 thereof, the provisions of the lease or sub-lease;
- (b) in the case of a holding consisting of the interests specified in head (c) of the aforesaid sub-paragraph, the identity of the proprietor of the dominium utile; and ”.

2.—(1) The Board shall examine an application duly made for the registration of particulars in respect of a holding with respect to the following matters, that is to say:—

- (a) whether all the property and rights, of which particulars are sought to be registered as being held in association with any coal or a mine to which the application relates, are property and rights so held and whether there are any other property or rights so held which are not stated to be so held;
- (b) whether all the servitudes, restrictive covenants and other matters, of which particulars are sought to be registered as being matters subject to which any coal hereditaments to which the application relates are held, are matters subject to which those coal hereditaments are held and whether those coal hereditaments are held subject to any other such matters not stated in the application;
- (c) whether the holding subsists in all the coal hereditaments in which it is stated to subsist; and
- (d) any other matter whose consideration appears to the Board to be requisite in connection with the ascertainment of the facts material to the proposed registration;

and the Board shall prepare a draft of the particulars to be registered in respect of the holding.

(2) Before settling the draft particulars the Board shall notify the fact of the application having been made to—

- (a) any person who satisfies the Board that he has a proprietary interest comprised in the holding and who, at any time after the commencement of this Act but not later than

the expiration of one month from the date on which the application was received, has served on the Board a request in the prescribed form to be notified of any such application) in respect of the holding received by the Board; and

- (b) any person who, having regard to a statement or information furnished in connection with an application that has been duly made by him for the registration of particulars in respect of another holding, appears to the Board to be concerned;

and shall take such steps as the Board think best for ascertaining whether any difference arises as to the particulars to be registered either between the Board and the person by whom the application was made or any of the persons notified under this sub-paragraph, or between any two or more of those persons, and for resolving any such difference by agreement.

(3) If on the examination of the application it appears to the Board that any issue arises in connection with the ascertainment of the facts material to the proposed registration whose determination by the High Court is requisite, the Board may, before settling the draft particulars, refer it for determination to the Court.

(4) After giving effect to the preceding provisions of this paragraph the Board shall settle the draft particulars and shall send a copy thereof to each of the persons specified in sub-paragraph (2) of this paragraph, and any of those persons who objects to the registration of any of the particulars specified in the draft as being incorrect in any material respect shall be entitled at any time within one month after the copy of the draft has been sent to him to make an application to the High Court for the variation of the particulars as respects any matter not already determined by the Court.

(5) When copies of a draft have been sent under the last preceding sub-paragraph and either no application has been made to the Court thereunder within the time therein mentioned or any application so made has been disposed of by the Court, the Board shall register in respect of the holding the particulars as specified in the draft or as varied by the Court, as the case may require, and shall send to each of the persons specified in sub-paragraph (2) of this paragraph notice of the registration of the particulars, either stating that they have been registered as specified in the draft, or, if they have been varied, setting out the particulars registered.

(6) On any application to the Court under this Part of this Schedule the Board and the persons specified in sub-paragraph (2) of this paragraph shall be made parties to the application, and if the Board represent to the Court that it is expedient that any person other than the Board or the persons aforesaid should be

made a party to the application, the Court may give a direction to that effect.

3.—(1) Information given to the Board in relation to an application for registration of particulars in respect of a holding, whether in a statement furnished with the application or otherwise, shall be related to the circumstances as existing at the date when the information is given.

(2) Where after any such information has been given to the Board any change of circumstances takes place materially affecting the matters as to which the information was given, it shall be the duty of the person by whom the application was made and of any other person having a proprietary interest comprised in the holding, forthwith to inform the Board of the change, if it is known to him and unless he has ascertained that information of the change has already been given to the Board.

(3) Where it appears to the Board, from information given to them under the preceding sub-paragraph or otherwise, that the particulars registered in respect of a holding are incorrect, or that the holding itself does not subsist, the Board shall rectify the register in such manner as may be agreed between them and the persons specified in sub-paragraph (2) of the last preceding paragraph, or, in case of difference, shall notify to those persons the alterations that the Board propose to make in the register and the provisions of sub-paragraphs (4) to (6) of the last preceding paragraph shall have effect in relation thereto as they have effect in relation to draft particulars.

(4) References in this Schedule to any of the persons specified in sub-paragraph (2) of the last preceding paragraph shall, in a case in which such a person dies or becomes incapable of acting, be construed as including references to a person substituted for that person in accordance with rules made under the next succeeding paragraph.

4.—(1) Subject to the preceding provisions of this Schedule, the Board may make rules prescribing the procedure to be followed in giving effect to the provisions of section one of this Act with respect to any matter other than a matter with respect to which rules of Court may be made.

(2) Where any rules are made by the Board under this Schedule a notice of the rules having been made, and of the place where copies of them can be purchased, shall be published in the London Gazette and in the Edinburgh Gazette.

(3) Without prejudice to any power of the High Court the Board shall have power to extend, upon any ground deemed by them sufficient, any limit of time imposed by this Act or by any

rule made by the Board thereunder for the doing of any act or thing.

PART II.

PAYMENT OF COSTS BY THE BOARD.

5.—(1) Subject to the provisions of this paragraph, the Board shall pay the costs (including costs of or incidental to proceedings on an application made to the Court under Part I. of this Schedule) reasonably incurred by the person by whom an application for the registration of particulars in respect of a holding is duly made in giving effect in relation to that holding to the provisions of Part I. of this Schedule or of the rules made thereunder relating to the rights and duties of a person by who an application is made, and for the purposes of this provision costs so incurred by that person as a person notified, under sub-paragraph (2) (b) of paragraph 2 of this Schedule, of an application received in respect of another holding shall be deemed to have been incurred in relation to the first-mentioned holding:

Provided that if two or more applications are made in relation to the same holding, the liability of the Board under this sub-paragraph shall be limited to such a sum as would have been payable by them if a single application only had been made, so however that the Board may pay costs in excess of that sum in any case in which it appears to them that the making of more than one application was justified having regard to any special circumstances.

(2) Subject to the provisions of this paragraph, where any fact particulars whereof are registered in respect of a holding have been ascertained from information furnished by a person notified, under sub-paragraph (2) (a) of paragraph 2. of this Schedule, of an application received in respect thereof, the Board shall pay the costs (including costs of or incidental to proceedings on an application made to the Court under Part I of this Schedule) reasonably incurred by him in giving effect in relation to that holding to the provisions Of Part I of this Schedule or of the rules made thereunder relating to the rights and duties of a person so notified.

(3) The Board shall not be liable to pay any such costs as aforesaid incurred either—

(a) in relation to a holding in respect of which no application for the registration of particulars is duly made within the period of six months beginning as to England and Scotland respectively on the date on which notice is first published in the London Gazette and in the Edinburgh Gazette respectively of rules having been made by the

Board with respect to the procedure for the making of applications, or the date on which the holding comes into existence, whichever is the later, or, in the case of a holding constituted by virtue of rules made under paragraph 2 of the First Schedule to this Act, within such extended period as may be prescribed, so however that this provision shall not have effect as regards a holding in respect of which application is made after the expiration of the said period in a case in which it appears to the Board that sufficient cause is shown for no application having been made within the said period; or

- (b) in relation to a holding in the case of which it appears to the Board that there is no reasonable ground for believing that any coal hereditaments in which the holding is stated to subsist have any marketable value; or
- (c) by a person who has neglected to comply with any of the requirements of Part I of this Schedule or of the rules made thereunder relating to the information to be given by him, whether in the original making of the application or thereafter.

The High Court shall have power, on the application of a person aggrieved by a denial on the part of the Board by virtue of this sub-paragraph of liability to pay any such costs as aforesaid, to give such directions as to the matter in question as appear to the Court to be just.

(4) Subject to the provisions of this paragraph, the Board shall pay the costs of or incidental to proceedings on an application made to the Court under Part I of this Schedule reasonably incurred by a person whom the Court, under sub-paragraph (6) of paragraph 2 or under that sub-paragraph as applied by sub-paragraph (3) of paragraph 3 of this Schedule, directs to be made a party to the application.

(5) The Court may direct that the Board shall not be liable to pay any such costs as aforesaid incurred by any party to an application made to the Court under Part I of this Schedule who appears to the Court to have made such an application or prosecuted proceedings thereon unreasonably or to have been guilty of any such unreasonable failure to agree with the Board or with any other party, or of any such negligence or default, as to disentitle him to payment of his costs.

(6) The Board shall have power to enter into undertakings to pay, and to pay, any costs other than as aforesaid reasonably incurred by any person in furnishing to the Board information or the purposes of this Act.

(7) Any costs that the Board are liable under or by virtue of this Part of this Schedule to pay shall, if the Board or the person entitled to payment thereof so requires, be taxed and settled by the High Court, and any apportionment required to be made for the purposes of the proviso to sub-paragraph (1) of this paragraph shall, if any person concerned in the apportionment so requires, be made by the High Court.

This sub-paragraph shall, in its application to Scotland, have effect as if for references to the High Court there were substituted references to the Auditor of the Court of Session.

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