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## SCHEDULES

### SCHEDULE 7

Section 49.

#### RETAINED INTERESTS IN COPYHOLD LAND

#### PART I

#### CLAIMS IN RESPECT OF RETAINED INTERESTS

##### *Application of Part I*

- 1 (1) This Part of this Schedule shall apply where, at any time on or after the restructuring date, a notice of a retained interest is given by any person in pursuance of an invitation contained by virtue of—
- (a) subsection (3)(d) of section 50 of this Act, or
  - (b) subsection (3)(b) of section 3 of the 1975 Act,
- in a notice for the purposes of section 49 of this Act or, as the case may be, in a notice under that section 3.
- (2) In this Part of this Schedule—
- (a) a notice of a retained interest in pursuance of such an invitation as is mentioned in sub-paragraph (1) above is referred to as a “retained interest notice”; and
  - (b) the person who gives such a notice is referred to, in relation to that notice, as “the claimant”.
- (3) Where any of the Corporation’s rights under section 49 of this Act in relation to any land have been transferred in accordance with a restructuring scheme to any other person—
- (a) the persons to whom a retained interest notice relating to that land may be given for the purposes of this Schedule shall be the Corporation, the Authority or that other person; and
  - (b) a retained interest notice given to the Corporation or the Authority shall be—
    - (i) forwarded by the Corporation or Authority, as soon as reasonably practicable after being received, to that other person; and
    - (ii) treated for the purposes of this Schedule as if given to that other person when it was given to the Corporation or Authority.

##### *Form of claim*

- 2 The claimant shall furnish, together with the retained interest notice, adequate proof of his title to the interest at the time when he gives the notice.

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*Acceptance or rejection of claim*

- 3 (1) Within the period of three months beginning with the date on which the person to whom it is given receives a retained interest notice, or within such longer period as may be agreed between that person and the claimant, that person shall serve on the claimant either—
- (a) a notice in the prescribed form accepting the claimant’s title to the retained interest and acknowledging that an obligation under this Part of this Schedule to pay compensation in respect of it has arisen or, as the case may be, will arise if the right in question is exercised; or
  - (b) a notice rejecting the claimant’s retained interest notice.
- (2) In this Part of this Schedule—
- (a) a notice under sub-paragraph (1)(a) above is referred to as an “acceptance notice”;
  - (b) a notice under sub-paragraph (1)(b) above is referred to as a “rejection notice”; and
  - (c) a reference, in relation to an acceptance notice, to the accepted interest is a reference to the interest to which that notice relates.
- (3) Where a person serves an acceptance notice or a rejection notice, he shall at the same time send a copy of that notice to the Authority.
- (4) A person who fails to comply with any of the requirements of this paragraph as to the service of notices, or as to the sending of a copy of any notice to the Authority, shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (5) A rejection notice shall specify the ground or grounds on which the claimant’s retained interest notice is rejected and, where the matters specified concern only a part of the land to which the retained interest notice relates, shall identify the part in question.
- (6) Subject to paragraph 5 below, where, after the receipt by any person of a retained interest notice, an acceptance notice is served in respect of the retained interest concerned, the service of that acceptance notice shall be a valid ground for the service of a rejection notice in respect of any other retained interest notice which—
- (a) is received by any person after the service of that acceptance notice; and
  - (b) relates to any of the land in which the accepted interest subsists.
- (7) In sub-paragraph (1) above “prescribed” means prescribed by regulations made by the Secretary of State by statutory instrument; and a statutory instrument containing regulations under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Payment of costs of establishing claim*

- 4 Subject to paragraph 5 below, as soon as practicable after any person has served an acceptance notice on a claimant, that person shall pay to the claimant any reasonable legal expenses incurred by the claimant for the purposes of—
- (a) establishing his ownership of the retained interest to which the acceptance notice relates; and
  - (b) giving the retained interest notice by virtue of which the acceptance notice came to be served.

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### *Challenge of rejection notice*

- 5 (1) A claimant who—
- (a) has served a retained interest notice relating to any land (“the relevant land”), and
  - (b) is aggrieved by the service on him of a rejection notice relating to his retained interest notice, other than a rejection notice served in pursuance of an order under this paragraph,
- may, within the period of three months beginning with the date of service of the rejection notice, make an application to the county court for an order directing the withdrawal of the rejection notice and the service of an acceptance notice in respect of the retained interest which he claims.
- (2) On an application under this paragraph, the court may direct that, in addition to the applicant and the person who served the rejection notice, the Authority and any person other than the claimant who has given a retained interest notice relating to the whole or any part of the relevant land shall be made a party to the application unless, in the case of a person other than the claimant who has given a retained interest notice—
- (a) a rejection notice has already been served in respect of that retained interest notice; and
  - (b) the time within which that person might have made an application under this paragraph in respect of that rejection notice has expired without such an application having been made.
- (3) On an application under this paragraph the court shall determine whether—
- (a) the applicant,
  - (b) any other party to the application who contests the applicant’s claim, or
  - (c) any other person (whether a party to the application or not) on whom an acceptance notice relating to the whole or any part of the relevant land has been served,
- was, at the time when he gave his retained interest notice, entitled to a retained interest in the whole or any part of the relevant land and shall order the service (if it has not already been done) of an acceptance notice on that person or, if more than one of them were so entitled to a retained interest in the same piece of land, on that one of them whose retained interest notice was given first.
- (4) An order under sub-paragraph (3) above may contain such provisions as the court considers appropriate—
- (a) for securing that every party to the application other than—
    - (i) the person to whom the retained interest notice in question was given, and
    - (ii) any person on whom an acceptance notice has been, or is ordered to be, served,is or has been served with a rejection notice; and
  - (b) where it appears to the court that an acceptance notice has been served which should not have been served, for securing—
    - (i) that the notice is cancelled; and
    - (ii) that the person who served the notice brings the cancellation to the attention of the person who, if the notice had not been cancelled, would have been the person with an actual or contingent entitlement

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to compensation under this Part of this Schedule in respect of the accepted interest.

- (5) If, in accordance with sub-paragraph (4) above, the court orders the cancellation of an acceptance notice, it shall be conclusively presumed for the purposes of sections 49 and 50 of this Act, and for the purposes of this Schedule, except this paragraph—
- (a) that the person on whom the acceptance notice was served did not have a retained interest in the relevant land at the time when he served his retained interest notice; and
  - (b) that a rejection notice was served in respect of that retained interest notice.
- (6) Nothing in paragraph 4 above shall affect the power of the court on an application under this paragraph (or in any subsequent proceedings) to make such order as to costs as it thinks fit; and any such order may make such modifications, if any, of a person's obligation under paragraph 4 above as appear to the court to be just in the light of the other provisions as to costs which are contained in the order.

#### *Compensation*

- 6 (1) Subject to paragraphs 7 and 11 below, where—
- (a) any person has begun to exercise any right which is a right of his under section 49(1) of this Act,
  - (b) that right is a right in relation to any coal or coal mine comprised in or lying under any land in which a retained interest subsists, and
  - (c) a right to compensation has not arisen under this sub-paragraph in respect of the exercise of the right by a person whose right it was previously,
- the person who has begun to exercise the right shall pay compensation in respect of that interest.
- (2) Compensation under sub-paragraph (1) above shall be calculated by reference to the consideration which, on the date on which the exercise of the right referred to in sub-paragraph (1) above began, would have been appropriate, as between a willing grantor and a willing grantee, on a conveyance of that interest (so far as it subsists in the land subject to the right) to the person who exercises that right.
- (3) Where a person who has become liable for any compensation under this paragraph ceases to be a person who is entitled to exercise the right in question, his so ceasing shall affect neither his liability nor the amount of the compensation.
- (4) Where compensation is due to any person under sub-paragraph (1) above there shall be paid to him, in addition to the compensation, any reasonable valuation expenses incurred by him for the purpose of ascertaining the value, at the date referred to in sub-paragraph (2) above, of the retained interest to which the compensation relates.
- (5) Any dispute as to the amount of any compensation under this paragraph, or as to the amount of any valuation expenses to be paid in accordance with sub-paragraph (4) above, shall be determined by the [F<sup>1</sup>Upper Tribunal].
- (6) Sub-paragraph (3) above shall be subject to so much of any restructuring scheme as makes provision for the transfer to any other person, as from the restructuring date or any subsequent date, of the Corporation's liabilities by virtue of this paragraph; and sub-paragraph (4) above shall be without prejudice to the powers of the [F<sup>2</sup>Upper Tribunal], by virtue of sub-paragraph (5) above, in respect of the costs of proceedings before the Tribunal.

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- (7) References in this Part of this Schedule, in relation to any right under subsection (1) of section 49 of this Act, to a person with a contingent entitlement to compensation under this Part of this Schedule are references to any person who (subject to paragraph 7(3) below) would be entitled to any such compensation if the person with that right began to exercise it.

#### Textual Amendments

- F1** Words in Sch. 7 para. 6(5) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 259** (with Sch. 5)
- F2** Words in Sch. 7 para. 6(6) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 259** (with Sch. 5)

#### *Persons entitled to compensation*

- 7 (1) Subject to paragraph 5 above, it shall be conclusively presumed that a person on whom a rejection notice has been served has neither an actual nor, as the case may be, a contingent entitlement to compensation under this Part of this Schedule in respect of the interest to which the notice relates.
- (2) The person having the right to receive compensation under this Schedule in respect of a retained interest to which an acceptance notice relates shall be the person on whom that notice was served, notwithstanding that he may not own the retained interest at the time when the compensation becomes due; and, accordingly, that right shall devolve on his death and may be assigned in like manner as the right of a creditor under an unsecured debt.
- (3) Notwithstanding anything in sub-paragraph (2) above if, at the time when compensation becomes due in respect of a retained interest, any compensation is paid in good faith to the person who produces the acceptance notice relating to that interest, the surrender of that notice by way of receipt for the compensation shall constitute an adequate discharge to the person paying the compensation of his liability to pay that compensation, without any further proof that the person producing the acceptance notice is entitled in accordance with this Part of this Schedule to receive the compensation.

#### *Agreements with respect to compensation*

- 8 (1) If at any time—
- (a) after an acceptance notice has been served in respect of a retained interest, and
- (b) before the date on which compensation becomes due in respect of that interest,
- any person (“the relevant person”) enters into an agreement in that behalf with another person, being the person with the contingent entitlement to any such compensation, then, on payment to that other person of such consideration as may be agreed, the relevant person shall be relieved of any contingent liability under this Part of this Schedule in respect of that retained interest.
- (2) Where any such agreement as is mentioned in sub-paragraph (1) above is entered into, sub-paragraph (3) of paragraph 7 above shall apply in relation to the payment

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of the consideration agreed as it applies in relation to a payment of compensation at the time referred to in that sub-paragraph (3).

- (3) Without prejudice to sub-paragraphs (1) and (2) above, at any time after an acceptance notice has been served in respect of a retained interest, the person who served it shall cease to be entitled to acquire by agreement that interest or any other retained interest in any coal or coal mine comprised in or lying under any of the land in which the accepted interest subsists.

#### *Notice of compensation*

- 9 (1) Where any person—
- (a) makes a payment of compensation under this Part of this Schedule, or
  - (b) enters into any agreement for the purposes of paragraph 8 above,
- he shall, as soon as reasonably practicable after making the payment or entering into the agreement, send particulars of the payment or agreement to the Authority.
- (2) The particulars to be sent to the Authority in pursuance of sub-paragraph (1) above shall include particulars identifying—
- (a) the person to whom the payment is made or, as the case may be, the parties to the agreement; and
  - (b) the interest in respect of which the payment is made or, as the case may be, in respect of which the contingent liability extinguished by the agreement arose.
- (3) A person who fails to comply with any of the requirements of this paragraph as to the sending of any particulars to the Authority shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

## **PART II**

### **OTHER PROVISIONS**

#### *Saving for rights to dispose of retained interests*

- 10 Subject to paragraph 8(3) above and to any provision applied by paragraph 12 below, neither—
- (a) the publication on or after the restructuring date of any notice for the purposes of section 49 of this Act, nor
  - (b) any publication before that date of a notice under section 3 of the 1975 Act,
- shall prevent any person from acquiring by agreement any retained interest in any coal or coal mine comprised in or lying under land in the area to which the notice relates.

#### *Pre-1975 Act orders under the Mines (Working Facilities and Support) Act 1966*

- 11 (1) If—
- (a) by virtue of an order under section 1 of the <sup>M1</sup>Mines (Working Facilities and Support) Act 1966 or of any agreement, the Corporation was entitled on 31st August 1975 to work any coal or to use any coal mine in which a retained interest subsisted at that time,

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- (b) that entitlement has continued throughout the period since that date as an entitlement of the Corporation or, at different times, of the Corporation and a person to whom the Corporation's rights have been transferred in accordance with a restructuring scheme, and
- (c) the Corporation or such a person is still so entitled,

then section 49 of this Act shall not apply with respect to that coal or coal mine or to any retained interest therein except in relation to matters unconnected with the exercise of that entitlement.

(2) Where—

- (a) a notice given on or after the restructuring date for the purposes of section 49 of this Act specifies any area, and
- (b) at the time when the notice was published, the conditions mentioned in sub-paragraph (1) above were satisfied in relation to any coal or coal mine comprised in, or lying under, land in that area,

so much of that land as consists of that coal or coal mine shall be deemed to be excluded from that area.

(3) If notice of a retained interest is given in pursuance of a relevant invitation at a time when the conditions mentioned in sub-paragraph (1) above were satisfied in relation to any coal or coal mine comprised in or lying under the land in which that interest subsists, then for the purpose of determining the amount of any compensation under this Schedule, that interest, so far as it relates to that coal or mine, shall be treated as no longer subsisting.

(4) In sub-paragraph (3) above “a relevant invitation” means an invitation contained by virtue of—

- (a) subsection (3)(d) of section 50 of this Act, or
- (b) subsection (3)(b) of section 3 of the 1975 Act,

in a notice for the purposes of section 49 of this Act or, as the case may be, in a notice under section 3 of that Act.

#### **Marginal Citations**

**M1** 1966 c. 4.

#### *Transitional provisions*

12 (1) On and after the restructuring date, the following provisions (which broadly correspond to the provisions of Part I of this Schedule), that is to say—

- (a) subsections (4) to (6) and (8)(b) of section 3 of the 1975 Act, and
- (b) Schedule 2 to that Act, other than paragraph 10,

shall have effect, notwithstanding their repeal by this Act and instead of Part I of this Schedule, in relation to any case where a notice of a retained interest was given before the restructuring date in pursuance of an invitation contained, by virtue of subsection (3)(b) of that section, in any notice under that section.

(2) On and after the restructuring date, subsection (8)(a) of section 3 of the 1975 Act (which makes provision equivalent to sub-paragraph (2) of paragraph 11 above) shall have effect, notwithstanding its repeal by this Act and instead of that sub-paragraph, for the purpose of determining the area to which any notice under that section relates.

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- (3) Sub-paragraph (1) above shall be subject to so much of any restructuring scheme as makes provision for the transfer to any other person, as from the restructuring date or any subsequent date, of the Corporation's rights and liabilities by virtue of the provisions having effect in accordance with that sub-paragraph.



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