

Status: Point in time view as at 09/04/2013.

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SCHEDULES

SCHEDULE 14 **E+W**

Section 188.

MINERAL RIGHTS

Acquisition of mineral rights

- 1
- (1) This paragraph applies in each of the following cases, that is to say—
 - (a) where a relevant undertaker acquires any land (whether compulsorily in exercise of any power conferred by or under this Act or otherwise); and
 - (b) where a relevant undertaker carries out any works in relation to any land for the purposes of, or in connection with, the carrying out of any of its functions.
 - (2) Subject to sub-paragraph (3) below, a relevant undertaker shall not, by virtue only of its acquisition of the land or the carrying out of the works, become entitled to any mines or minerals lying under the land; and, accordingly, any such mines or minerals shall be deemed to be excepted from any instrument by virtue of which the land vests in the relevant undertaker unless express provision to the contrary is contained—
 - (a) where the land vests in the relevant undertaker by virtue of a conveyance, in the conveyance; or
 - (b) where the land is acquired by the relevant undertaker in pursuance of any power of compulsory acquisition conferred by or under this Act, in the order authorising the acquisition.
 - (3) A relevant undertaker shall be entitled to such parts of any mines or minerals that lie under the land as it may be necessary for it to dig, carry away or use in carrying out any works for the purposes of constructing, making, erecting or laying any part of its undertaking.

Notice required for the working of underlying mines

- 2
- (1) If the owner of any mines or minerals underlying any part of a relevant undertaker's undertaking proposes to work them, he shall, not less than thirty days before the commencement of working, serve notice of his intention to do so on the relevant undertaker.
 - (2) On receipt of a notice under sub-paragraph (1) above the relevant undertaker may cause the mines or minerals to be inspected by a person designated by it for the purpose.
 - (3) Subject to sub-paragraph (5) and paragraph 3 below, if, where notice has been served under this paragraph, the relevant undertaker—
 - (a) considers that the working of the underlying mines or minerals is likely to damage any part of its undertaking;
 - (b) is willing to compensate the owner of the mines or minerals for the restriction imposed by virtue of this sub-paragraph; and

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- (c) serves notice to that effect on the owner of the mines or minerals before the end of the period of thirty days mentioned in sub-paragraph (1) above, the owner shall not work the mines or minerals except to such extent as may be determined by the relevant undertaker, and the relevant undertaker shall so compensate the owner.
- (4) Any dispute as to the amount of any compensation payable by virtue of sub-paragraph (3) above shall be referred to and determined by the [^{F1}Upper Tribunal].
- (5) If before the end of the period of thirty days mentioned in sub-paragraph (1) above, no notice has been served under sub-paragraph (3)(c) above by the relevant undertaker, the entitlement of the owner of the mines and minerals to work them shall be an entitlement to work them by proper methods and in the usual manner of working such mines or minerals in the district in question.
- (6) If any damage to the undertaking of a relevant undertaker is caused by the working otherwise than as authorised by this paragraph of any mines or minerals underlying any part of its undertaking—
 - (a) the owner of the mines or minerals shall, at his own expense, forthwith repair the damage; and
 - (b) the relevant undertaker may, without waiting for the owner to perform his duty, repair the damage and may recover the expenses reasonably incurred by it in doing so from the owner.

Textual Amendments

F1 Words in [Sch. 12 para. 2\(4\)](#) substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order ([S.I. 2009/1307](#)), art. 5(1)(2), {Sch. 1 para. 225} (with Sch. 5)

Mining communications

- 3 (1) If the working of any mines or minerals is prevented by reason of any of the preceding provisions of this Schedule, the owner of the mines or minerals may cut and make such communication works through the mines or minerals, or the strata in which they are situated, as are required for the ventilation, drainage and working of mines or minerals which are not underlying any part of the undertaking of the relevant undertaker in question.
- (2) Communication works cut or made under this paragraph—
 - (a) shall not, in a case where—
 - (i) the part of the undertaking in question was constructed, made, erected or laid in pursuance of an order made under any enactment or is situated on land acquired by the relevant undertaker in pursuance of any powers of compulsory acquisition; and
 - (ii) the order authorising the works or acquisition designates dimensions or sections for the communication works,
 exceed those dimensions or fail to conform to those sections; and
 - (b) in any other case, shall not be more than 2.44 metres high or more than 2.44 metres wide.

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- (3) Communication works cut or made under this paragraph shall not be cut or made on the land where the part of the undertaking is situated so as to cause damage to that part of the undertaking.
- (4) Where works carried out under this paragraph by the owner of any mines or minerals cause loss or damage to the owner or occupier of land lying over the mines or minerals, the relevant undertaker shall pay full compensation to him for the loss or damage.
- (5) Sub-paragraph (4) above shall not apply where the person sustaining the loss or damage is the owner of the mines.
- (6) In this paragraph “communication works” means airways, headways, gateways or water levels.

Compensation relating to severance

- 4 (1) Where mines or minerals underlying any part of a relevant undertaker’s undertaking are situated so as, on two or more sides of that land, to extend beyond the land on which that part of the undertaking is situated, the relevant undertaker shall from time to time pay to the owner of the mines or minerals (in addition to any compensation under paragraph 2 above) any expenses and losses incurred by him in consequence of—
 - (a) the severance by the undertaking of the land lying over the mines;
 - (b) the interruption of continuous working of the mines in consequence of paragraph 2(3) above;
 - (c) the mines being so worked in accordance with restrictions imposed by virtue of this Act or any order made under this Act,and shall pay for any minerals not purchased by the relevant undertaker which cannot be got or won by reason of the part of the undertaking in question being situated where it is or by reason of the requirement to avoid damage to any part of the relevant undertaker’s undertaking.
- (2) Any dispute as to whether any sum should be paid under this paragraph or as to the amount payable shall be referred to the arbitration of a single arbitrator appointed by agreement between the relevant undertaker and the owner of the mines or minerals or, in default of agreement, by the Secretary of State.

Powers of entry

- 5 (1) Any person designated in writing for the purpose by a relevant undertaker may, for any purpose specified in sub-paragraph (2) below—
 - (a) enter on any land in which the mines or minerals are, or are thought to be, being worked, and which is in or near to the land where any part of that undertaker’s undertaking is situated; and
 - (b) enter the mines and any works connected with the mines.
- (2) The purposes mentioned in sub-paragraph (1) above are—
 - (a) carrying out any inspection under paragraph 2(2) above;
 - (b) ascertaining whether any mines or minerals have been worked so as to damage the undertaking of the relevant undertaker in question; and

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- (c) carrying out any works and taking any other steps which the relevant undertaker in question is authorised to carry out or take under paragraph 2(6) above.
- (3) A person authorised to enter any premises under this paragraph may—
 - (a) make use of any equipment belonging to the owner of the mines or minerals in question; and
 - (b) use all necessary means for discovering the distance from any part of the undertaking of the relevant undertaker to the parts of the mines or the minerals which are, or are about to be, worked.
- (4) Part II of Schedule 6 to this Act shall apply to the rights and other powers conferred by this paragraph.

No exemption for injury to mines and minerals

- 6 Nothing in any provision of this Act or of any order made under this Act shall be construed as exempting a relevant undertaker from any liability to which it would, apart from that provision, have been subject in respect of any damage to any mines or minerals underlying any part of its undertaking or in respect of any loss sustained in relation to any such mines or minerals by a person having an interest therein.

Interpretation

- 7 (1) In this Schedule—
- “conveyance” has the same meaning as in the ^{M1}Law of Property Act 1925;
 - “designated distance”, in relation to any part of a relevant undertaker’s undertaking, means, subject to sub-paragraph (6) below, thirty-seven metres;
 - “mines” means mines of coal, ironstone, slate or other minerals;
 - “owner”, in relation to mines and minerals, includes a lessee or occupier; and
 - “underlying”, in relation to any part of the undertaking of a relevant undertaker, means lying under, or within the designated distance from, that part of that undertaking.
- (2) For the purposes of this Schedule the undertaking of a relevant undertaker shall be taken to consist of so much of any of the following as is for the time being vested in or held by that undertaker for the purposes of, or in connection with, the carrying out of any of its functions, that is to say—
 - (a) any buildings, reservoirs, wells, boreholes or other structures; and
 - (b) any pipes or other underground works particulars of which fall or would fall to be incorporated in any records kept under section 198 or 199 of this Act.
 - (3) References in this Schedule to the working of any mines or minerals include references to the draining of mines and to the winning or getting of minerals.
 - (4) For the purposes of this Schedule land shall be treated as acquired by a relevant undertaker in pursuance of powers of compulsory acquisition if it—
 - (a) was so acquired by a water authority established under section 2 of the ^{M2}Water Act 1973 or any predecessor of such a water authority or by a predecessor of a statutory water company; and

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- (b) is now vested in that undertaker in accordance with a scheme under Schedule 2 to the ^{M3}Water Act 1989 or Schedule 2 to this Act or otherwise.

(5) In relation—

- (a) to any land treated by virtue of sub-paragraph (4) above as acquired in pursuance of powers of compulsory acquisition; or
- (b) to any land acquired by a statutory water company before 1st September 1989 in pursuance of any such powers,

references in this Schedule to the order authorising the acquisition include references to any local statutory provision which immediately before 1st September 1989 had effect in relation to that land for the purposes of any provisions corresponding to the provisions of this Schedule.

(6) For the purposes of this Schedule where—

- (a) any part of a relevant undertaker's undertaking was constructed, made, erected or laid in pursuance of an order made under any enactment or is situated on land acquired by the relevant undertaker in pursuance of any powers of compulsory acquisition; and
- (b) the order authorising the works or acquisition designates any distance for the purposes of any enactment relating to mines or minerals underlying that part of the undertaking,

then for the purposes of this Schedule that distance shall be the designated distance in relation to that part of the undertaking, instead of the distance specified in sub-paragraph (1) above.

Marginal Citations

- M1** 1925 c. 20.
M2 1973 c. 37.
M3 1989 c. 15.

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